

(1996) 12 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 498 of 1996 with W.P. No. 647 to 662 of 1996 and W.P. No. 1355 to 1371 of 1996

Associated Cement Company Ltd., Shahabad, Gulbarga Dist.

APPELLANT

Vs

Shivamma (Smt.) and Others

RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4A), 2 (s), 25 F

Citation : (1998) ILR (Kar) 394 : (1997) 4 KarLJ 544

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri. B.C. Prabhakar, for the Appellant; Sri. Basavaraj Kareddy, Sri. V.N. Sathyanarayana and Sri. P. Vilaskumar, for the Respondent

Judgement

Mohan Kumar, J.—The petitioners in these two sets of writ petitions who are the seller and purchaser of an industrial undertaking challenge the award passed by the Labour Court in the matter of re-employment of the workers of the seller. The workers who are the respondents in these writ petitions have taken notice through Mr. Basavaraj Kareddy and I have heard the Counsel as well.

2. The seller had employed the workers in question as Malis to tend the garden attached to the house of the Officers of the seller industrial establishment. They have admittedly put in services between 10 to 20 years on 30-6-1989, their services were terminated without complying the requirements of Section 25-F of the I.D. Act by the seller. Thereupon, these workers raised an industrial dispute u/s 10(4-A) of the I.D. Act. These applications were made on 17-10-1989. Pending the proceedings, the industrial establishment was transferred by the seller in favour of the purchaser on 31-12-1989. Thereupon, the purchaser was also impleaded to the proceedings. The Labour Court, after considering the respective contentions held that order of termination as illegal and it was accordingly set aside as void ab initio; it held that both the seller and the purchaser are liable to reinstate the workers against the original post held by them with 50%

backwages from the date of the claim petition, i.e., 16-10-1989. It is also held that since two of the claimants have attained superannuation prior to the date of termination, those workers are entitled to retirement benefits only, if any, as per the company rules. These awards are challenged as stated earlier by both the seller as well as the purchaser.

3. Writ Petition Nos. 498 and 647 to 662 of 1996 are filed by the seller of the industrial establishment. W.P. Nos. 1355 to 1371 of 1996 are filed by the purchaser. For the sake of convenience the parties would be referred to as seller and purchaser while respondents as the workers.

4. It was initially contended by the petitioner that "Malis" working in the Bungalow of the Officers of the Industrial establishment, would not come within the definition of "workmen" in Section 2(s) of the I.D. Act. But in the light of the settled law (vide the decision of the Supreme Court reported in J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others, , this contention was not seriously pursued.

The main contention of the petitioners in both the writ petitions is in relation to the direction issued by the Labour Court to reinstate the workers. Mr. B. C. Prabhakar, learned Counsel appearing for the petitioner contended that in the light of Section 25-FF of the I.D. Act as interpreted by the Supreme Court in Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, and in Workmen of Brahmaputra Tea Estate, represented by Assam Chah Karamchari Sangha, Dibrugarh Vs. The Incoming Management of Brahmaputra Tea Estate and Others, , the Labour Court cannot issue such a direction. He also challenges the award in so far the backwages are concerned.

5. In this case, the claim has to be considered in two stages. Firstly, the workers were retrenched from service on 30-6-1989 without complying with the provisions of Section 25-F of the I.D. Act. Admittedly, as there has not been the compliance of the requirements of Section 25-F, the said retrenchment is to be declared as null and void. The result is that the workers are deemed to have been in service from 30-6-1989. This means that all the workers terminated from service would be deemed to be in service and would be eligible for the wages. The next stage is that when the establishment is sold to the purchaser, the same is thus transferred. The document relating to the sale has been produced in the writ petition. A perusal thereof clearly shows that the same is not a sham transaction. Thereunder, the purchaser has been put in possession and the transaction is complete and real.

6. The further enquiry therefore is whether the workers in such circumstances can seek re-employment against either the seller or purchaser. This is a case where there has been a complete real transfer of the industrial establishment by the seller to the purchaser. A perusal of the document produced as stated earlier shows that the transfer is not sham or nominal or benami. There is a bona fide completed transaction. Even though the question may not be very germane,

there is no case as well for the workers that the purchaser is the successor-in-interest of the seller. If so, the question arises as to whether the workers are entitled to be re-employed by the purchaser.

7. A similar question had come up for consideration before the Supreme Court in *Brahmaputra Tea Estate case*, *supra*. That was a case whereby separate Court proceedings in a mortgage suit, a Court Receiver was appointed with respect to the Tea Estate in question. The said Receiver took steps to terminate the services of certain workers and they were terminated on 21st August, 1961 by the Superintendent of the Estate as per the orders of the Receiver. They raised a dispute and the Government referred the dispute relating to the termination on 27th July, 1962 for adjudication. In the meanwhile, in liquidation proceedings with respect to the company which owned the Estate, the Calcutta High Court ordered its sale. The Official Liquidator sold the Tea Estate to the purchaser as per registered deed dated 18th August, 1962. Now, in the dispute before the Labour Court the purchasers were made party along with the Superintendent of the Tea Estate who formally issued the order of termination. The Receiver in the mortgage suit who directed the termination was not made a party. The Labour Court held that the purchaser purchased the Tea Estate long after the reference, that under the sale deed he had not taken over any of the liabilities of the Tea Estate, that the Receiver who intimated the termination of services as referred to above has not been made party and that no relief can therefore be granted against the purchaser. When the matter came up before the Supreme Court, the following contentions were urged.

"(i) that the view of the Labour Court, that the purchaser is not liable for the claims of the workmen, is erroneous; and

(ii) that even if it is held that the purchaser is not liable, the Labour Court, which had ample jurisdiction, in regard, should have issued notice, either to the receiver, appointed in the suit, or the Official Liquidator, or to both of them, proceeded to investigate and adjudicate upon the claims of the workmen".

The Supreme Court considered these contentions. Thereafter following the dictum in *Brahmaputra Tea Estate case*, *supra*, Their Lordships held as under :

"We are in agreement with the contentions of the learned Solicitor-General that the view of the Labour Court, that respondent I is not liable to answer any of the claims of the workmen concerned, is perfectly justified. From the various facts, given above, it will clearly be seen that the order terminating the services of the workmen, was made on 21st August, 1961, by the Superintendent of the Tea Gardens, under instructions from the Receiver, appointed by the Jorhat Court, in the mortgage suit. On 5th October, 1961, the High Court had appointed a Receiver for the Tea Gardens, as separate from the Tea Company, in the suit, *Transfer Company Suit No. 7 of 1962*. The order referring the dispute to the Labour Court was made by the Government, on 27th July, 1962. Respondent 1, admittedly, was not in the picture, on these various dates. It cannot also be

stated, having due regard to the various recitals contained in the sale deed, dated 11(sic) August, 1962 and considered, in the light of the principles, laid down by this Court in Anakapalle's case, supra, that respondent 1 is the successor-in-interest of the Tea Company. What was purchased by respondent 1, was only the equity of redemption in part of the assets of the Tea Company, in respect of which the Official liquidator was still functioning. Therefore the learned Solicitor-General is perfectly justified in his contention that respondent 1 cannot be considered to be a successor-in-interest of the Tea Company, nor can he be considered to claim through the Receiver or Liquidator. Even on the basis that respondent 1 is considered to be a person, to whom the ownership of the undertaking has been transferred. it will be seen that the claims of the workmen will have to be considered, as against the Tea Company, in accordance with Section 25-FF of the Act, when its proviso cannot be invoked."

(Respondent-1 referred to is the purchaser)

If this be the legal position, in the instant case, then applying the dictum herein the worker cannot clearly proceed against the purchaser and seek any relief. The document of purchase in this case produced herein clearly shows that it is a real transaction and is not sham or nominal. The purchasers have not taken the good will of the seller and they are not the successor-in-interest of the seller. Under these circumstances, the workers are not entitled to seek the relief of the reinstatement against the purchaser or against the seller.

8. While considering this question a reference to the observation of the Supreme Court in Anakapalle's case, supra, would be apposite. That was a case where a Sugar Manufacturing Company was purchased by the appellant. The appellant declined to employ all the workers of the seller. A dispute was raised regarding the right for reemployment by the workers and was referred for adjudication. The Tribunal after examining the, transfer deed came to the conclusion that the appellant was the successor in interest of the seller and therefore granted the relief of re-employment. Reversing the direction the Supreme Court considered the scope of Section 25-FF and ruled interpreting the said section of the Act after its amendment consequent to the decision in Hariprasad Shivshankar Shukla and Another v. A. D. Divelkar and Others AIR 1957 SC 121 stated thus :

"(17) The scheme of the proviso to Section 25-FF emphasises the same policy. If the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading Section 25-FF as a whole, it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of Section 25-FF is to restore the position which the Legislature had apparently in mind when Section 25-FF was originally enacted on September 4, 1956. By amending Section 25-FF, the Legislature has made it clear that if industrial

undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfied the three requirements of the proviso."

Thus, it is held that unless the three conditions in the proviso to Section 25-FF are satisfied, the workers cannot claim right of re-employment against the purchaser. The only relief that they can claim is what is conferred on them u/s 25-FF and against the seller.

9. In such circumstances, the relief granted to the workers by the Labour Court has to be modified. As the services of all the workers were not terminated on 30-6-1989, after complying with the requirement of Section 25-F, the same is declared to be null and void. The workers are entitled to be reinstated with back wages and are entitled to wages till 31-12-1989. As the industrial establishment was transferred on 31-12-1989 to the purchaser by the seller, the workmen are entitled to compensation from the seller in accordance with Section 25-FF of the I.D. Act, as if the workmen had been retrenched. The two employees whose claims have been restricted to the award of retirement benefits are also entitled to the relief as the transfer effect entitles all workmen employed as on that date, to claim compensation "as if" the said workmen have been retrenched. Besides, the workmen will be entitled to receive 25% of the amount quantified as payable u/s 25-FF of the Act, in excess, as they are all over aged and losing their employment. The award passed by the Labour Court insofar as it relates to re-employment of these workers is vacated. The award passed by the Labour Court is modified accordingly,.

10. The writ petitions are disposed off as above.