(1986) 01 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 964/86

B.H.E.L. Employees Association — APPELLANT

Vs

Chief Labour Commissioner — RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 5, 6, 6 (1)

Citation : (1986) ILR (Kar) 1313 : (1986) 2 LLJ 260

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Judgement

1. By consent of the Counsel for the parties, this petition is treated as have been posted for final hearing and I have heard the Learned Counsel.

2. The short point for consideration in this petition is, whether the Central Labour Commissioner was justified in rejecting the appeal filed by the petitioner Union on the ground that the same was barred by limitation ?

3. It is not in dispute that the period of limitation under S. 6 of the Industrial Employment (Standing Orders) Act, 1946, is 30 days from the date on which the copies are sent under sub-s. (3) of S. 5 of the Act and the appeal has to be filed within 30 days from the date on which the copies are sent. It is also not in dispute that the copy of the certified standing order dated 31st December, 1984 was sent by registered post on 5th January, 1985 to the petitioner''s Union and the same was received by the Union on 7th January, 1985. On these facts, limitation for the purpose of appeal under S. 6 of the Act will have to be computed from 7th January, 1985.

4. It is also not in disputes that the petitioner had sent the appeal memorandum by registered post on 4th February, 1985 to the Central Labour Commissioner. A copy of the appeal memo was also field before the Regional Labour Commissioner (Central), Bangalore.

5. If the appeal papers were sent on 4th February, 1985 in the ordinary course of

post, it should have reached the Central Labour Commissioner on or before 7th February, 1985. But the appeal papers reached the Central Labour Commissioner only on 8th February, 1985, i.e., a day after the period of limitation expired.

6. The relevant provisions of the Industrial Employment (Standing Orders) Act, 1946, providing for appeal read as under :

"6(1) Any employer, workman, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under sub-s. 2 of S. 5 may, within thirty days from the date on which copies are sent under sub-s. 3 of that section, appeal to the appellate authority........."

How is the period of limitation to be computed when the appellate authority does not sit at the place where the parties reside ?

7. A similar point came up before this Court in W.P. Nos. 5473 and 5476/1975 (DD : 7th October, 1980). The appeal provisions under the Emergency Risks (Goods) Insurance Scheme read as under :

"Any person against whom an assessment and a determination have been made in accordance with paragraph 2 or paragraph 3 of this Schedule i.e., Third Schedule may appeal to the Government of India in the Ministry of Finance, Department of Revenue and Insurance within thirty days of the date of receipt of the notice of demand."

Considering the appeal provision under the Emergency Risks (goods) Insurance Scheme, I had observed :

Mr. U. L. Narayana Rao, Learned Senior Central Government Standing Counsel, has reiterated the stand of the Respondent by relying on the decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, . In that case, the Supreme Court was dealing with the provisions of S. 27(3) of the Mysore Town Municipalities Act, 1951, which provided for giving of three clear days'' notice for holding a special general meeting. While interpreting the word ''giving'' in that Section, the Supreme Court observed :

"''Giving'' of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however ''giving'' is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though a person to whom it is tendered refuses to accept it. We can find however, no authority or principle for the proposition that as soon as the person with a legal duty to give the notice, despatches the notice to the adder of the person to whom it "has to be given, the giving is complete"."

On the basis of these observations of the Supreme Court on the interpretation of the word ''giving'' in S. 27(3) of the Mysore Town Municipalities Act, Mr. Narayana Rao maintained that the words "may appeal to the Government of India in the

Ministry of Finance, Department of Revenue and Insurance within thirty days from the date of receipt of the notice of demand" occurring in Clause 5 of the Third Schedule to the Schemes, mean that the appeals should reach the Government of India within thirty days from the date of the order and mere mailing of the order within a reasonable time on the expectation that the papers would reach the Respondent within thirty days, would not serve the requirements of the said provision.

The analogy Mr. Narayana Rao wanted to draw from the decision of the Supreme Court adverted to above, is not applicable for interpreting Clause 5 of the Third Schedule to the Scheme. We are concerned with a provision for appealing against an order under entirely different statute. In the present cases, there is no dispute that the appeal-papers were mailed on 16th June, 1972 from Davangere. In the ordinary course of post, those papers sent by registered post ought to have reached Delhi on or before 20th June, 1972, Mr. Narayana Rao does not say that there is any prohibition for preferring appeals by registered post. Therefore, the petitioner cannot be held responsible for any delay caused in transit when it had used sufficient care to see that the papers were mailed in time so that they could reach Delhi in the ordinary course of post on or before 20th June, 1972. It is entitled to take the benefit of S. 27 of the general Clauses Act. In the circumstances, though the papers actually reached the respondent on 22nd June, 1972, the view taken by the respondent that the appeals were filed two days beyond the period of limitation, is clearly untenable."

8. The very same reasoning applies to the facts of this case. For these reasons, this Petition is allowed, the impugned order Annexure-F is quashed and the Central Labour Commissioner is directed to take the appeal on his file and dispose of the same on merits.

9. The Central Labour Commissioner is requested to dispose of the appeal expeditiously since the question of transfer of employees from one unit to another unit involved in this appeal is of considerable importance to the day-to-day management of Respondent-3.

10. It is made clear that the other clauses in the Standing Orders which have come into force and which have not been challenged by the petitioner could be implemented by the third respondent-management.