

(2015) 03 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 5764/2007 (L-RES)

B.S.S. Kumar

APPELLANT

Vs

The Divisional Controller, N.E.K.R.T.C.

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2015) 03 KAR CK 0049

Hon'ble Judges : Ravi V. Malimath, J.

Bench : Single Bench

Advocate : P. Vilas Kumar, for the Appellant; Amaresh S. Roja, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ravi V. Malimath, J.—The case of the petitioner-workman is that he was appointed as Assistant Traffic Inspector in the year 1979. He was promoted as a Traffic Inspector in the year 1982. On 24.09.1996 articles of charge were issued to him on the ground that he had remained absent unauthorizedly. A reply was furnished. An enquiry was initiated. By the order dated 29.05.1983 he was demoted to Assistant Traffic Inspector. His basic pay was reduced. The punishment was challenged in Reference No. 267/2000. The management contended that he was not a workman and therefore the Labour Court has no jurisdiction. The Labour Court by its award dated 31.01.2006 set aside the order of punishment. Aggrieved by the same, the management filed writ petition No. 46889/2002. By the order dated 27.05.2005 the petition was partly allowed. The findings of the Tribunal on the preliminary issue with regard to invalidity of the enquiry was not disturbed nor was the evidence. Liberty was reserved to the management to file additional written statement only with regard to the status of the respondent. Liberty was also provided to the respondent-workman to file a reply statement to the additional statement if necessary. Hence, the matter was remanded on this ground. On remand the impugned award was passed. The

Labour Court held that the petitioner is not a workman and not covered under the definition under Section 2(s) of the Industrial Disputes Act (for short "the Act"). Aggrieved by the same, the present petition is filed.

2. Learned counsel for the petitioner contends that the impugned order is bad in law and liable to be set aside. That the Labour Court failed to consider the facts and materials of the case. That the matter was remanded in the earlier writ petition by specifically granting liberty to the management to file its additional written statement with regard to the status of the respondent. Nothing has been done. After remand they have contested the matter afresh. Evidence was let in. The Labour Court was at a tangent in holding that the evidence of the management would show that he was performing supervisory work. Therefore he does not come under the definition of Section 2(s) of the Act.

3. On the other hand, learned counsel for the management defends the impugned order. He contends that there is no error committed by the Labour Court that calls for any interference.

4. Heard learned counsels and examined the material on record. The only reason for remanding the matter on the earlier occasion was to enable the management to place material in support of their case that the petitioner is not a workman. The same was due to the fact that no such material was placed before the learned Single Judge. Hence, an opportunity was granted. Therefore they had to place appropriate material in order to establish the same. No material was let in by them. However, evidence of M.W. 1 was recorded. During his cross-examination he has stated that the ATI and TI are not empowered to sanction the leave to the Corporation servants, to cancel the operation of schedules or to operate new schedules. That there is a job profile. That the ATI has only checking duties. He shall have to follow the programme fixed by the ATM or DTO or any other higher officers. That there are records to show the work allotted to the claimant-workman. Notwithstanding the evidence of M.W. 1 that there is a job profile and that there are records to show the work allotted to the claimant no such material is produced. Since it was they who have raised the issue as to whether he is a workman or not, necessarily they would have to discharge their burden. Merely stating in evidence is not sufficient. The material which was in their possession has not been produced. There is no job profile that is placed for consideration. The material with regard to the work allotted to the claimant has not been produced. Therefore they have failed to discharge the burden. They have failed to show that the claimant is not a workman. Looking into the job profile or looking into the records regarding the work allotted to the claimant would have thrown sufficient light in order to determine whether the claimant is a workman or not. Having failed to discharge their burden the management have failed to show that the claimant is not a workman.

5. The Labour Court went into depths of the plea of both the parties by placing reliance on the various judgments of this Court and the Hon'ble Supreme Court. The Labour Court went into discussing as to the nature of work that would

determine as to whether a claimant is a workman or not, whether it is supervisory or not etc. All this is unnecessary, in view of the fact that the management have not produced any material with regard to the nature of the work. It is only when material would have been produced with regard to the nature of the work of the claimant, it is only then that the Labour Court could have determined whether such work is managerial or comes with the definition of workman. In the absence of such material the entire discussion is a futile exercise. Therefore, the finding of the Labour Court cannot be sustained.

6. For the aforesaid reasons, I have no hesitation to hold that the management has failed to discharge their burden whether the claimant is a workman or not. The burden cannot rest on the claimant. It is only when the initial burden is discharged, the same would shift on the claimant. The management has not discharged their burden and hence no burden is shifted on the claimant.

7. When the earlier order of the Labour Court was challenged in the aforesaid writ petition the matter was remanded to the Labour Court only to determine as to whether the claimant is a workman or not. The finding of the Labour Court with regard to the validity of the enquiry was upheld. Therefore, the only point for consideration was whether the claimant is a workman or not. Therefore since that was the only issue remanded to the Labour Court, nothing else needs to be considered.

8. For the aforesaid reasons the petition is allowed. The award dated 31.01.2006 passed by the Labour Court, Gulbarga in Ref. No. 267/2000 is quashed. In view of the order of the Labour Court having been affirmed, so far as the enquiry is concerned in writ petition No. 46880/2002 dated 27.05.2005, the petitioner is entitled to all consequential benefits. Rule made absolute.