

(2008) 01 KAR CK 0081
In the Karnataka High Court
Case No : Writ Petition No. 9139 of 2006

Cauvery Neeravari Nigama Limited and Another	APPELLANT
Vs	
Smt. Shantha	RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 B, 25 F

Citation : (2008) 2 KCCR 874

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Shwetha Anand, for the Appellant; M.S. Anandaramu, for the Respondent

Judgement

Subhash B. Adi, J.—An award dated 22nd April 2006 in IDR No. 74/2002 on the file of Labour Court, Chikmagalur is called in question by Cauvery Neeravari Nigama Limited.

2. The respondent claiming to be workman, alleged that she had worked as a Literate Assistant on daily wages w.e.f. 16-4-1980 till 25-5-1989 and she was removed from the service without any enquiry and alleged that it is an unfair labour practice, arbitrary and malafide and amounts to victimization. In this regard, the respondent approached the Conciliation Officer. On failure of the conciliation, the matter was referred to the State Government. The State Government by order dated 5.9.2002 referred the matter to the Labour Court. The claim petition of the respondent was contested by filing a counter statement by the petitioner. In the counter statement, it is alleged that the petitioner is not an industry and appointments to the post are governed by the rules and regulations and also alleged that the Labour Court has no jurisdiction. In addition to the same, it is also alleged that, the reference is made after abnormal delay. In this regard, it is also alleged that it is difficult to search and produce relevant documents pertaining to alleged employment of the respondent. It is also denied that the respondent had worked for 240 days and further alleged that the dispute

cannot be entertained after lapse of nearly 13 years.

3. Before the Labour Court, the workman was examined as WW-1 and from the Management side, one witness MW-1 was examined. The Labour Court on appreciation of the evidence held that, the respondent has worked as Literate Assistant from 1980 to 1989 and has proved that, she had worked for 240 days in terms of Section 25-B of the Industrial Disputes Act (hereinafter referred to as "the At") and further held that, since the respondent has proved that she had worked for 240 days and she has been removed in contravention of Section 25-F of the Act, even if there is delay, the delay will not come in the way of Labour Court to mould the relief. On these findings, the Labour Court directed the petitioner to reinstate the respondent without backwages.

4. Learned Counsel appearing for the petitioners submitted that the Labour Court was not justified in ordering reinstatement when the claimant has sought for reference of the dispute after lapse of 13 years, which is not explained either before the Conciliation Officer or before the Labour Court. In this regard, learned Counsel relied on para-3 of the counter statement filed by the petitioner, which reads as under:

3. As this reference is abnormally delayed, it is not possible for the second party to search and produce the records to this Hon'ble Court. And further the first party had not filed any claim statement before this Hon'ble Court giving such particulars (working days etc.,). Hence, on this ground also the reference is liable to be dismissed in limine.

She also referred to paras-4 and 5 of the counter statement and submitted that the appointment of the respondent was only temporary and it is not against the sanctioned post. She further submitted that, if the workman seeks reference at a belated stage, the Labour Court is not justified in entertaining such a belated reference without there being any justification. She also submitted that the delay has vital effect on the defence of the petitioner and in this regard, it is specifically stated in the counter statement that, because of the delay, the petitioner was not able to search and produce necessary records. In support of her contentions, she relied on the judgment of the Apex Court reported in S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, and referred to para -17 and submitted that the delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. She also submitted that, no material or evidence could be kept intact in anticipation of any dispute might be raised by the respondent.

5. In this regard, she relied on a judgment reported in (2007) 2 SCC 813 in the matter of Uttaranchal Forest Development Corporation v. M.C. Joshi and referred to para-9 of the said judgment, and submitted that, for the purpose of ordering reinstatement, several factors are required to be considered, namely, as to whether such an appointment had been made in terms of statutory rules, whether there is a delay in raising dispute, etc. She also relied on anr. judgment

of the Apex Court reported in 2006 SCC (L&S) 791 in the matter of Karnataka Power Corporation Limited Through Its Chairman and Managing Director and Anr. v. K. Thangappan and Anr. and referring to para -5 of the said judgment and submitted that, in case of delay, even where workman had made representation, mere making of representations will not justify the belated approach and the delay and laches, one of the factors, has to be borne in mind while exercising discretionary power under Article 226 of the Constitution of India. Another judgment reported in 2006 (3) LLN 813 in the matter of Manager (Now Regional Director), R.B.I v. Gopinath Sharma and Another was relied by the learned Counsel for the petitioner and submitted that, even though there is no limitation prescribed for seeking the reference of disputes to an industrial tribunal, it is reasonable that, the disputes should be referred as soon as possible after it has arisen. In a dispute relating to discharge of workmen; the delay of four years in raising the dispute was held to be fatal. The Apex Court in the said judgment, has held that the delay in seeking the reference has rendered the dispute stale. Relying on these judgments, learned Counsel for the petitioners submitted that, fact that 13 years have lapsed from the date of discharge or dismissal of the workman in seeking the reference, the Labour Court ought to have rejected the reference. She also submitted that, in similar circumstances, the Apex Court, considering the delay has rejected the claim for reinstatement. It is also held by the Apex Court that the reinstatement is dependent on several circumstances. If the post is sanctioned post, which is required to be filled in accordance with the statutory provisions or post is not sanctioned, or there is inordinate delay, the Apex Court in such circumstances, has rejected the claim of reinstatement, and in turn has granted compensation.

6. Learned Counsel for the respondent submitted that, though there is a delay in seeking reference, but once the reference is made by the State Government to the Labour Court, the reference cannot be dismissed on the ground of delay. The Tribunal or Labour Court would get the jurisdiction to adjudicate the dispute and in such circumstances, dismissing the reference on the ground of delay does not arise. He submitted that, even otherwise, the Labour Court has considered the question of delay and found that the relief could be moulded by only granting reinstatement. He further submitted that, insofar as respondent is concerned, the respondent has worked from 1980 to 1989 and she was removed from service, which is evident from the findings of the Labour Court wherein the Labour Court has perused the NMR extracts produced at Exs. M1 to M9 and the work certificate at Ex.W1. If the workman establishes that she had worked for 240 days as required u/s 25-B of the Act, the Labour Court in a case of delay in seeking reference, it can mould the relief by denying backwages. In this regard, he strongly relied on a judgment reported in Karan Singh Vs. Executive Engineer Haryana State Marketing Board, and submitted that the issue that arose before the Apex Court was, as to whether the Reference Court can reject the reference on the ground of delay and the Apex Court has held that, once the reference is made, the Reference Court gets the jurisdiction and it cannot reject the reference

on the round of delay. In this regard, he relied on para-9 of the said judgment and submitted that, on the ground of delay, the reference cannot be rejected. He pointed out that, even in the said case, there was delay of 6 years and the Apex Court held that, on the ground of delay alone, the reference cannot be rejected. Relying on the said decision, he further submitted that the Labour Court in this case considering the delay, moulded the relief by denying backwages. He further relied on an unreported decision in W.P. No. 218/2003 D.D. 17th November 2006 and referred to para -8 and submitted that, the delay would only be considered for moulding the relief and reference cannot be rejected solely on the ground of delay. He also relied on anr. unreported judgment of this Court in W.P. No. 25522/2000 D.D. 8th February 2006 and submitted that this Court in case of delay of 16 years has granted relief of reinstatement.

7. It is not in dispute that, as per the claim statement, the respondent was appointed on 16.4.1980 and his services were discontinued w.e.f. 25.5.1989. It is also not in dispute that the reference is made on 5.9.2002. The time taken to seek reference from the date of dismissal is about 13 years. The State Government referred the dispute as regards to the validity of the termination of the respondent. The Labour Court on appreciation of the evidence has found that the respondent has proved that she had worked for 240 days continuously in terms of Section 25-B of the Act and in case of delay, the relief could be moulded by denying backwages and by only granting reinstatement.

8. No doubt, the findings of the Labour Court show that the respondent has worked for 240 days. But undisputedly, there is a delay of 13 years in seeking reference. The claim petition is produced by the petitioner at Annexure-A. In the claim petition at para-3, the respondent has stated that she was frequently approaching the petitioner - authorities for reinstatement and consequential relief. However, when the petitioner - authorities failed to give effect to her request, she sought for conciliation. Except this statement, there is no other material to show, as to why the workman sought reference at a belated stage. In the counter statement, it is stated that, on account of the delay, it is difficult for the authorities - the petitioner to search and produce the relevant records before the Court. It is also stated that, the appointment of respondent is temporary. In this regard, it is also submitted by the learned Counsel for the petitioner that, the post to which the respondent was engaged is not a sanctioned post.

9. No doubt, the Apex Court in the matter of Executive Engineer Haryana State Marketing Board (supra) has held that the reference cannot be rejected on the ground of delay alone. However, the Apex Court has taken into consideration the earlier decisions reported in S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, and accepted the earlier view and taking into consideration the factor of delay, the Apex Court at para-15 has observed thus:

15. In the aforesaid background, we would have normally set aside the award of the Labour Court and the High Court. But because of long passage of time, it would be inappropriate, particularly when Appellant has not even offered any

semblance of explanation for the delay. By observing so, the Apex Court awarded Rs. 60,000/- by way of compensation as against reinstatement. The Apex Court in the matter of Uttaranchal Forest Development Corporation (supra) has observed that:

9... The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

Considering the facts and circumstances of the case, even in the said case, the Apex Court did not direct reinstatement, but has granted compensation. In a decision reported in 2005 SCC 628 in the matter of Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Ors. at paragraphs -4 and 5 of the said judgment, the Apex Court has observed thus:

5. ...The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here.

It is also observed that, merely because the workman has completed 240 days and the discontinuance of the service of the workman was not legal and that by itself does not confer any right on the daily wagers to claim right in the post.

10. It is now well settled law that, though the reference cannot be rejected only on the ground of delay, but the delay will have vital effect on the defence of the Management. In such circumstances, the delay has to be taken into consideration while granting relief, in cases where the appointments are made against the non-sanctioned post or statutory post and if there is a delay, the Apex Court consistently has observed that the reinstatement cannot be automatically granted.

11. In this case, from 1989 till 2002, no material is produced by the respondent to explain said delay. Even if the reference is to be accepted, but there is no justification to grant the relief of reinstatement after lapse of nearly 13 years much less in respect of the non-sanctioned post. The Labour Court has only observed that, in case of delay, the relief has to be moulded by granting only reinstatement. This approach is contrary to the view taken by the Apex Court, the Apex Court in such circumstances has granted only compensation. In case of delay, the reinstatement is not automatic, several factors are required to be

taken in to consideration. Even in the judgments relied by the learned Counsel for the respondent, the Apex Court has considered the delay, though has held that the reference cannot be rejected on the ground of delay, but has moulded the relief only by granting compensation. In my view, though the respondent has proved that she has worked for 240 days, however, the delay in seeking reference disentitles her from seeking reinstatement, instead, the respondent would be entitled for compensation.

12. In this case, the Labour Court has found that the respondent had worked from 1980 to 1989 i.e., for 9 years. However, since there was delay, the reinstatement is not ordered, but the respondent is required to be compensated. In the light of the facts and circumstances of the case, the compensation is granted.

Accordingly, the petition is partly allowed. The award dated 22nd April 2006 in IDR No. 74/2002 on the file of Labour Court, Chikmagalur is quashed. However, the petitioner is directed to pay Rs. 75,000/- to the respondent as compensation.