

(2016) 07 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No. 11087 of 2016 (L-ID)

D. Suresh

APPELLANT

Vs

Principal, Bharath Matha Composite P.U. College, Koppa Post,
Pirayapattana Taluq, Mysore District, Karnataka

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A)

Citation : (2016) 6 KantLJ 685

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sri M.A. Appaiah, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Aravind Kumar, J. - Heard Mr. M.A. Appaiah, learned Counsel appearing for the petitioner. Perused the records.

2. Petitioner raised a dispute under Section 10(4-A) of the Industrial Disputes Act, 1947 before the Labour Court, Mysore for setting aside the order of dismissal dated 31-3-2014 passed against him and to direct the second party - respondent to reinstate him into service with full back wages, continuity of service and other consequential benefits. After said dispute being adjudicated, it came to be held by the Labour Court that order of dismissal is liable to be set aside and accordingly set aside the same as illegal and directed the respondent-College to reinstate the first party - workman into service to the post last held by him, within one month from the date of the award and also holding that petitioner-workman would be entitled to continuity of service and consequential benefits would be reckoned only for purposes of grant of terminal benefits. However, with regard to claim for back wages, it was denied, against which finding the present writ petition has been presented.

3. It is the contention of Counsel appearing for petitioner that Labour Court had

erred in not considering the material placed on record and it also committed further error in arriving at a conclusion that workman had not produced any documents to show that he was not employed during the period of the dispute or immediately after the order of dismissal, till the order of reinstatement. It is the contention of the learned Counsel that respondent-Management having failed to establish that petitioner was gainfully employed and earning, Labour Court could not have denied the back wages. Hence, he prayed for setting aside the award in question insofar as denial of back wages are concerned.

4. Having heard the learned Counsel appearing for petitioner and on perusal of the impugned award, it would indicate that Labour Court after evaluating the evidence tendered by the parties, has arrived at a conclusion that petitioner-workman is not entitled for back wages. Finding recorded by the Labour Court in that regard reads as under :

"39. With regard to claim of back wages, the First Party contended that he remained unemployed since the date of termination of service and as such, he is entitled to claim back wages with all other consequential benefits. On the contrary, the Second Party by producing certain photographs as per Exs. M. 12 to M. 14 and C.D., tried to establish that the first party is gainfully employed and as such, he is not entitled to claim any back wages.

40. Keeping in view the rival contentions with regard to award of back wages, I have carefully gone through the entire materials. Though the photograph of the First Party appears in Exs. M. 12 to Exs. M. 14, it does not itself establish that the First Party was engaged in panipuri business. So, the production of Exs. M. 12 to M. 15 does not establish that the first party was gainfully employed. However, the stand taken by the first party that he was simply assisting his brother-in-law in doing panipuri business would indicate that he is getting some income in the said business by assisting his brother-in-law. Hence, his admission with regard to assisting his brother-in-law in panipuri business establishes the fact that he is getting some income in said business. So, it is deemed that the First Party has not remained unemployed without any earnings. Even otherwise the First Party has not placed any materials to show that he remained unemployed without any earnings till this date. As such, he must be assisting his brother-in-law in panipuri business and getting some income to look after his family members. So, it cannot be said that the first party was not gainfully employed.

41. Further, the second party is an educational institution, which runs school on the fees collected from the schools. So, the margin of profit would be very less. Under these circumstances, the Second Party cannot be burdened to pay back wages to the First Party. Even otherwise, on the principal of "no work no pay", the First Party is not entitled for any back wages. However, the continuity of service and consequential benefits can be considered only for terminal benefits. So, with these observations and for the reasons stated above, I am of the view that the action of second party in terminating the services of the first party is

liable to be set aside. Hence, answer Issue 1 in the Affirmative and Issue 2 in the Negative."

5. On the one hand, workman contended before the Labour Court that he was not gainfully employed. On the other hand, respondent-Management contended that petitioner-workman was gainfully employed. In order to establish this fact, Management produced Exhibits M. 12 to M. 14 and a CD-Exhibit M. 15 to establish that petitioner-workman was running panipuri business, though petitioner-workman has not whispered in his evidence with regard to any employment or work being discharged by him. But on the other hand, having taken a consistent stand throughout that he is without any work, when confronted with this evidence in the cross-examination, he has admitted that he was only assisting his brother-in-law in doing panipuri business and he was getting a paltry sum from his brother-in-law. The said admission itself would indicate that the petitioner was not without any avocation. As to whether the income derived from the said employment was sufficient enough to meet the requirement of the petitioner as well as his family members, is a question of fact. This was required to be proved by the workman at least by examining his brother-in-law under whom he claimed to have been working and getting a paltry sum. This exercise was not undertaken by the workman before the Labour Court.

6. But on the other hand, the Labour Court having noticed that workman had consistently taken a stand that he was not gainfully employed, had spilled the truth while in the witness-box when confronted with the documentary evidence to hold that petitioner-workman was running panipuri business, by admitting that he was only assisting his brother-in-law. It is because of this precise reason Labour Court has arrived at a conclusion that contention of the workman that he was not employed after the dismissal order came to be passed and during the pendency of the dispute before the Labour Court, was bereft of truth and as such, it has refused the claim for award of back wages.

7. Yet another factor which swayed in the mind of the Labour Court to deny back wages, is the fact that the respondent-Management is an Educational Institution which runs the institution on the basis of the fees paid by the students and burdening the Management to pay the back wages, would amount to financial burden being laid on the management, as also one of the grounds to deny back wages. This finding recorded by the Labour Court as already extracted herein above is based on correct and proper appreciation of material evidence available on record and there is no error committed by the Labour Court calling for interference at the hands of this Court. Hence, the following :

Order

(i) Writ petition is hereby dismissed.

(ii) Judgment and award passed by the Labour Court, Mysore, in I.I. D. No. 6 of 2014, dated 18-11-2014 is hereby affirmed.

(iii) However, it is made clear that affirming of the award is only with reference to the denial of back wages.