

(2003) 10 KAR CK 0032
In the Karnataka High Court
Case No : Writ Appeal No. 3763 of 2000

Dharwad Zilla Panchayat and Others

APPELLANT

Vs

Fairokhan A.

RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 A, 2 (s), 25 F

Citation : (2004) 2 KarLJ 210 : (2004) 1 KCCR 85 SN : (2004) 2 LLJ 466

Hon'ble Judges : P. Vishwanatha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : R.K. Hatti, for the Appellant; V.M. Sheelavathi and S. Narayana Gowda, for the Respondent

Judgement

1. This intra-Court appeal is filed by the petitioner in W.P. No. 43368 of 1999 wherein the learned Single Judge has confirmed the award dated 17th May, 1999 made in Reference No. 37 of 1995 by the Labour Court, a copy of which has been produced as Annexure-F in this appeal. The Labour Court by its award at Annexure-F directed the respondent to be reinstated into service with continuity of service, but without back wages.

2. The brief facts that are relevant for the disposal of this appeal may be stated as hereunder:

The respondent sought a reference u/s 10(4) of the Industrial Disputes Act (hereinafter referred to as "Act"). The following points were referred for adjudication to the Labour Court:

"1. Is the management committee justified in terminating the services of the applicant Sri Fairoz Khan, Bellary from 8-7-1992?

2. If so what is the compensation the employee is entitled to?"

3. The claim statement which was filed, stated that the respondent was working as a watchman since 28-3-1989 and he was a sincere and permanent worker and

continuously worked from 28-3-1989 till 8-6-1992 on which day his services were terminated abruptly. It is the case of the respondent that he was neither issued with the notice of termination nor any enquiry was conducted nor any retrenchment compensation was paid to him by the appellants; and he was issued with the order of removal on 8-6-1992 and the said order was against the principles of natural justice and hence, illegal. It is his further case that the appellants extracted work even on weekly holidays and on festival holidays; and no proper wages were paid to him for the said period. It is also his claim that in spite of the representations given to the appellants, setting out the injustice done to him, since no action was taken, he was compelled to raise the dispute.

4. The appellants entered appearance and filed objections to the said claim statement inter alia contending that the claim was false, frivolous and there was total denial. They further denied that the respondent was working with them continuously from 28-3-1989 to 8-6-1992 as contended by him. The appellants submitted that the respondent was appointed as a workman for a period of 120 days with a condition that his services might be terminated at any time without notice and also on a condition that he would not claim the regular post in the Zilla Panchayat, Dharwad; and knowing fully well the conditions imposed on him, the respondent accepted the job and therefore, he is not entitled to any relief. They further contended that the respondent was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), and as such, he was not entitled to claim retrenchment compensation u/s 25-F of the Act.

5. The Labour Court, on consideration of the material placed before it, came to the conclusion that the respondent had worked for a period of 240 days continuously and in the light of the said conclusion, made an award directing reinstatement of the respondent into service with continuity of service while denying back wages. The said award was called in question by the management before this Court in Writ Petition No, 43368 of 1999. The learned Single Judge, by the impugned order, confirmed the award passed by the Labour Court holding that the workman had continuously worked for a period of 240 days and as such the award passed by the Labour Court did not call for interference by him.

6. The learned Counsel appearing for the appellant, Sri R.K. Hatti strenuously contended that the Labour Court as well as the learned Single Judge have failed to appreciate the facts in its proper perspective and have not closely examined the material on record. It was submitted that the respondent was engaged intermittently for a period of 120 days and at no point of time he continuously worked for a period of 240 days. Even otherwise, it was submitted that the project under which the respondent was appointed having been concluded and the said project having been no longer in existence, the respondent cannot claim continuity of service in a non-existent establishment. In support of his contention that the establishment has already spent itself, the learned Counsel for the appellant filed a memo to that effect. He also submitted that since the

respondent was appointed on daily wage basis in the office of the Management of Khadi Gramodyog Rural and Small-scale Industries Division, Zilla Parishad, Dharwad, he is not a workman within the meaning of Section 2(s) of the Act.

7. On the other hand, the learned Counsels appearing for the respondent reiterated his stand that he had worked continuously for 240 days and there was no error apparent on the face of the record which calls for interference and that the award passed by the Labour Court as well as the order passed by the learned Single Judge confirming the said award cannot be interfered with.

8. After hearing the rival contentions, following point falls for our consideration:

"Whether the award passed by the Labour Court and confirmed by the learned Single Judge calls for any interference in this appeal?"

9. It is to be noted that the respondent was appointed on a daily wage basis in the office of the Management - Khadi Village Industries Rural and Small-scale Industries, Zilla Panchayat, Dharwad District, Dharwad for a period of 120 days from 3-6-1989 pursuant to an appointment order at Annexure-A. The respondent was relieved on 30th of September, 1989 pursuant to the order of termination at Annexure-B. The respondent was once again appointed pursuant to Annexure-C on 2-10-1989 for a further period of 120 days and that appointment was on a daily wages basis. Annexure-D is a daily wage register which discloses that at no point of time the appointment of respondent was continuously for a period of 240 days, daily wage being Rs. 15.85 paise per day. Therefore, we are of the view that the finding recorded by the Labour Court which is affirmed by the learned Single Judge that the workmen has continuously worked for more than 240 days, is liable to be set aside on the ground that the said finding has been recorded in disregard of the evidence on record; and therefore the said finding suffers from an error apparent on the face of it. Further, Annexure-E discloses that the services of the respondent were no longer necessary or required and therefore, his services were terminated. A reading of these documents would clearly indicate that the respondent was not working continuously for a period of 240 days so as to attract the provisions of the Act. It is also to be noted that the very purpose for which the establishment was established having spent itself, it is no longer open to the workmen to seek an appointment for a non-existent post. In this regard it is necessary to notice that the relation between the parties being contractual, service being terminated at the end of the period, the Labour Court has not assigned any reason whatsoever as to what was the obligation of the employer to employ the respondent. The status of the respondent, at best, can be termed as that of a daily wager by virtue of letter of appointment and on termination, he ceases to be a workman. Even otherwise, it is further to be noted that there was no sanctioned post in existence to which the respondent was said to be appointed. Admittedly, the assignment was on an ad hoc basis which anticipatedly spent itself out. It is difficult to envisage the status of the workman on an analogy of the provisions of the Act importing the incidents of completion of 240 days work. The legal consequences that flow from work for that duration

under the Industrial Disputes Act are entirely different for what, by way of implication, is attributed to the present situation by way of analogy. In our opinion, it is not appropriate to import and apply that analogy, in an extended or enlarged form here. It is also further seen that even otherwise, the establishment or the project having been come to an end, the respondent cannot have any right to the post since he was appointed on a daily wage basis. This question regarding whether the respondent can be given the benefit of reinstatement and continuity of service under the Act when admittedly he had not completed 240 working days continuously and when the project having spent itself, there being no post under which he can seek reinstatement, has been considered by the Hon'ble Supreme Court in the case of Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, , wherein it is held that when a project has come to an end, the workman does not have a vested right to claim reinstatement. The same view has been taken by the Division Bench of this Court in the case of Centre for Development of Telematics (An Autonomous Body of the Government of India, Ministry of Communications), New Delhi v. D. Suresh and Ors. In this connection it is useful to refer to the observation made by the Hon'ble Supreme Court in the case of K. Somasetty, supra, at paragraph 3 of the judgment, which reads as follows:

"3. It is now well-settled legal position that the Irrigation Department and Telecommunication Department are not an "industry" within the meaning of definition under the Industrial Disputes Act as held in Union of India (UOI) Vs. Jai Narain Singh, and in State of Himachal Pradesh Vs. Suresh Kumar Verma and another, . The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive Principles, that the Government should bring about welfare State by all executive and legislative actions. Under these circumstances, the State is not an "industry" under the Industrial Disputes Act. Even otherwise, since the project has been closed, the respondent has no right to the post since he had been appointed on daily wages. It is brought to our notice that the respondent has been reinstated. The order of the reinstatement has been placed before us which indicates that at the threat of contempt of Court, the order has been enforced. It is stated therein that it is subject to the final order of this Court in this appeal".

Further, another Division Bench of this Court in the case of Karnataka State Road Transport Corporation, Hubli Division, Hubli (Now North West Karnataka Road Transport Corporation) Vs. B.B. Tabusi, , while dealing with the question of reinstatement, has expressed its anguish and has stated thus:

"With distress, we note that in several cases, in a cavalier manner, the Labour Courts and Industrial Tribunals have been handing out the relief of reinstatement to casual and temporary workman in statutory bodies and governmental organisations, although there is no sanctioned post. Under the garb of exercise of powers u/s 11-A of the Industrial Disputes Act, the Labour Courts and Industrial Tribunals cannot grant the relief of reinstatement amounting to

regularisation and appointment to the non-existing post which is otherwise not permitted in law. The provisions of Section 11-A cannot be abused and misused to circumvent the legal provisions relating to selection and appointment to statutory bodies and to the Government Departments and governmental agencies. We strongly feel that the Industrial Tribunals and Labour Courts should be seriously informed about the basic propositions of law in order to avert and avoid handing out illegal regularisation and appointment by way of reinstatement. Henceforth, we, sincerely hope and anticipate that such illegal orders would not be repeated by the Labour Courts and Tribunals".

10. In the light of our above conclusion, we find it unnecessary to consider the submission of Sri Hatti that the respondent is not a "workman" within the meaning Section 2(s) of the Act.

11. In the light of the discussion made above, we make the following:

ORDER

Order dated 8th February, 2000 made in Writ Petition No. 43368 of 1999 by the learned Single Judge is set aside and the order made dated 17th May, 1999 in Reference No. 37 of 1995 by the Presiding Officer, Labour Court, Hubli is hereby quashed.

12. In terms stated above, this appeal is allowed and disposed of. However, no order is made as to costs.