

(2015) 02 KAR CK 0400

In the Karnataka High Court

Case No : Writ Petition No. 106318 of 2014 [L-KSRTC]

Divisional Controller, NEKRTC

APPELLANT

Vs

Mallikarjun Gowda

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0400

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Shivakumar S. Badawadagi, for the Appellant; Y. Lakshmikant Reddy, Advocates for the Respondent

Judgement

Aravind Kumar, J.—Heard Sri Shivakumar S. Badawadagi, learned counsel appearing for petitioner-corporation and Sri Y. Lakshmikant Reddy, learned counsel appearing for respondent-workman.

2. Award passed by the Labour Court in Reference No. 1/2011 dated 12.06.2013 is under challenge by the Corporation in the present writ petition contending inter alia, that Labour Court had allowed the claim petition earlier by award dated 19.11.2011, same came to be challenged by the corporation in W.P. 63462/2012 contending inter alia that there was a delay of 18 years in raising the dispute and this aspect had not been delved upon by Labour Court and accepting the plea put forward by the corporation writ petition came to be allowed on 21.11.2012 by remanding the matter to the Labour Court for expeditious disposal at any rate within six months from the first date of hearing and on such order of remand being made Labour court instead of examining the issue of delay and has arrived at a conclusion that once reference is made it cannot be invalidated on the ground of delay and as such it has not considered directions issued by this court. As such without touching delay factor, Labour court has proceeded to examine the merits of claim and accordingly allowed the reference and set aside the order of dismissal passed against the workman on 24.07.92 by the corporation by impugned award. Hence it is contended by Sri

Shivakumar S. Badawadagi, learned counsel for corporation that direction issued by this court having not been complied impugned award is liable to be set aside.

3. Per contra Sri Y. Lakshmikant Reddy, learned counsel appearing for workman would defend the order passed by the Labour court. This court while examining the correctness and legality of the award passed by the Labour court on 19.11.2011 in W.P. 63462/2012 found that first point referred to by the Government to the Labour court was to consider as to whether raising of the dispute after 18 years of removal of workman is justified, and impugned award discloses delay aspect had not been considered by the Labour Court and as such the award came to be set aside and matter came to be remanded.

4. Labour court instead of examining the aspect of delay has refused to examine the same on the ground that reference cannot be invalidated on the ground of delay by relying upon the Judgment of Hon''ble Apex Court in the case of Karan Singh Vs. Executive Engineer Haryana State Marketing Board, . Perusal of the reference made by the Government which has been extracted in the impugned award would clearly indicate that Point No. 1 referred to by the appropriate Government for being adjudicated by the Labour court relates to issue of delay namely, as to whether workman is entitled to the relief sought for on account of claim having been raised 18 years after the date of his dismissal. Thus, it was incumbent upon the Labour court to examine, adjudicate and answer the said reference. It could not have abdicated of its responsibility to answer the said reference. The Hon''ble Apex Court in the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, has held that where dispute becomes stale when reference is sought for after considerable time has lapsed, such reference of said dispute will have to be held as bad on the ground it had become stale and thereby to hold non existence of a industrial dispute. It has been held by the Hon''ble Apex Court in Nedungadi Bank''s case as under:

"6. Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they

were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex facie bad and incompetent".

5. Referring to the said Judgment Hon"ble Apex Court in the State of Karnataka and Another Vs. Ravi Kumar, has yet again held that delay of 14 years in seeking reference and challenging the order of termination would fall within the definition of a stale claim and as such it held that the employer cannot be expected to prove the alleged misconduct after 14 years by producing evidence to stave of the claim of the workman.

6. Thus, dicta laid down by the Apex Court indicating that stale claim is to be rejected and the reference in question made by appropriate Government clearly indicated that issue of delay in raising the dispute after 18 years from the date of dismissal from service was required to be enquired into and as such it was incumbent and mandatory on the part of reference court to answer the said point No. 1 referred to and only in the event same being held against employer it could have examined the reference on merits. This exercise has not been done by the lower court as could be seen from impugned award. In that view of the matter order passed by the Labour court cannot be sustained.

Hence, I proceed to pass the following:

ORDER

1. Writ petition is hereby allowed.
2. Judgment and award passed by Labour Court, Hubballi in Ref. No. 1/2011 dated 12.06.2013 is hereby quashed.
3. Matter is remitted back to Labour court for adjudication of Point No. 1 referred to by the appropriate Government and in the event of same being held in favour of workman it would be at liberty to adjudicate the claim on merits.
4. No opinion is expressed on the merits of the claim. All contentions are kept open.
5. Labour court shall expeditiously dispose of the case at any rate within three months from the date of appearance of parties which is fixed as 16.03.2015. Labour court is not required to issue notice to the parties since they are duly represented and learned advocates appearing for the parties undertaking to appear on the date of hearing fixed hereinabove.

Ordered accordingly.