(1994) 06 KAR CK 0012

In the Karnataka High Court

Case No : Writ Appeal No''s. 1253 to 1256 of 1994

Gokak Mills, Gokak Falls and Another — APPELLANT

Vs

Commissioner for Workmen''s Compensation, Belgaum and Others — RESPONDENT

Date of Decision : 13-06-1994

Acts Referred:
Constitution of India, 1950 — Article 14
Payment of Gratuity Act, 1972 — Section 7 (7)
Workmens Compensation Act, 1923 — Section 30

Citation : (1994) ACJ 1099 : (1994) ILR (Kar) 1982 : (1994) 3 KarLJ 164

Hon'ble Judges : S.B. Majmudar, C.J;Tirath S. Thakur, J

Bench : Division Bench

Judgement

S.B. Majmudar, C.J.—These writ appeals are filed against the order of the learned single judge disposing of a batch of writ petitions which challenged 3rd proviso to Section 30 of the Workmen''s Compensation Act, 1923 (for short ''the Act'').

"That no appeal shall lie against any order unless a substantial question of law is involved in the appeal and,..... is not less than three hundred rupees : Provided further that.. to by parties :"

The impugned third proviso reads thus :

"Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."

2. It is submitted that the requirement of depositing the amount payable under the order appealed against even at the stage of filing appeal itself results practically in whittling-down the right of appeal and is therefore arbitrary. It is not possible to agree with this contention. The learned single Judge rightly repelled that contention following a Division bench judgment of this Court in the

case of Mandal Panchayat, Gokarna v. Smt. Seetabai Rama Kale and Others W. A. No. 273 of 1993, DD : 6-4-1993. In that case, the Division Bench consisting of K. A. Swami, the then Actg. Chief Justice and Sadashiva, J. considered a pari materia proviso, which was second proviso to Section 7(7) of the Payment of Gratuity Act, 1972, which had laid down that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equivalent to the amount of gratuity required to be deposited under sub-section (4) or deposits with the appellate authority such amount. The learned single Judge has held that the object of second proviso to Section 7(7) is to discourage filing of the appeals and even if the appeals are filed, the person who is entitled to the payment of gratuity should not be deprived of the benefit of it during the pendency of the appeals. It was found that there is nothing to show that the proviso become invalid, as only it has provided for pre-deposit of gratuity amount. So far as the present provision is concerned, it has to be kept in view that the Workmen''s Compensation Act, is a beneficial legislation. The dependents of the workman who suffers fatal injury or the workman who gets a grave physical injury in the course of employment, are entitled to go to the Commissioner of Workmen''s Compensation for claiming adequate and proper amount of compensation as laid down by the Schedule to the Act. Under these circumstances, once the Commissioner adjudicates and awards compensation paper of the employer, if the latter''s right to appeal is made subject to the fetter of depositing of the amount, it cannot be said that the right of appeal has become illusory or arbitrary. It is now well-settled that the appeal is the creation of statute and it is open to the Legislators to give a fettered right of appeal or unfettered right of appeal as the Legislative policy requires in the given set of circumstances for catering to which the statute is enacted. In this connection, we may refer to a decision of the Supreme Court in the case of The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, of the report, the Supreme Court has observed that provision of pre-deposit cannot be treated as nullifying the right of appeal, specially keeping in view the fact that the discretion is vested in the Appellate Judge to dispense with the compliance of the above requirement. Consequently, it cannot be said that the impugned notices are arbitrary and violative of Article 14 of the Constitution, as submitted.

3. It was next contended that the proviso nowhere provides that withdrawal of the amount in deposit should be permitted. There is nothing in the proviso to permit or to deny permission to the respondent automatically to withdraw the amount in deposit and therefore, in the appropriate case, appellant can always submit to the appellate court that withdrawal may not be permitted or may be permitted with suitable conditions and that power of appellate Court is not fettered by the proviso.

4. It is lastly contended that even from the practical point of view, after obtaining the certificate from the Commissioner and by the time the appellants could approach the appellate court, which may be situated at a long distance, the

amount may get disbursed and then irreparable injury would be caused to the appellants. These are questions which depend upon peculiar circumstances of the case, which cannot make the proviso invalid. The appellants can urge their grievance either before the Commissioner or before the appellate Court, but that would not affect the legality of the proviso. Even the question has been examined by the aforesaid Division bench in Mandal Panchayat''s case and it has been held that the difficulty in obtaining stay from the appellate court about withdrawal would not be a relevant consideration regarding validity of the said provision.

5. For all these reasons, therefore, no ground is made out for our interference with the order of the learned single Judge. Appeals are dismissed.

