

(2016) 07 KAR CK 0051

In the Karnataka High Court

Case No : Writ Appeal Nos. 200007-200010 of 2016 and Writ Appeal Nos. 200140-200143 of 2016

Gulbarga Electricity Supply Company

APPELLANT

Vs

Sanjeev Kumar

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Citation : (2016) 3 CLR 897 : (2016) 151 FLR 474 : (2016) 4 KCCR 2911

Hon'ble Judges : Anand Byrareddy and L.N. Swamy, JJ.

Bench : Division Bench

Advocate : Ravindera Redddy, Advocate, for the Appellants; P. Vilaskumar, Advocate, for the Respondents Nos. 1 to 7

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.— Heard the learned Counsel for the appellant and the learned Counsel for the respondents.

2. The appellant is a statutory body and the respondents were employed by the appellants as Junior Assistants/Ledger Maintenance, the respondent-workmen had approached the learned Single Judge by way of a writ petition assailing an award dated 7th September 2012 passed in Reference No. 12 of 2012 whereby they had sought reinstatement into service with continuity of service, back wages and all consequential benefits. They had alleged illegal termination as on 31st January 2008 and had raised a dispute in that regard.

3. Their grievance was considered in the Reference referred to above and the Labour Court, after addressing the rival contentions and the evidence tendered by the parties, had rendered the award dated 7th September 2012 rejecting the reference. It is in that background the writ petitions were filed.

3a. The learned Single Judge, after having called for the record from the Labour Court and on examination of the same and on the basis of the rival contentions, has found that the respondents herein had rendered service from the year 1998

until they were terminated on 31st January 2008. They had all been examined as witnesses and the documents produced by them were marked; and that on behalf of the appellants herein a management witness was examined and documents were also marked. The learned Single Judge, being conscious of the fact that the petition was one filed under Article 226 of the Constitution of India, where there is limited scope to re-appreciate the evidence and that the only exercise that could be undertaken normally, is to consider whether the authority or the Court below had proceeded in accordance with law in the assessment of evidence or other material which was available, in the decision making process, and it is in that vein the record has been examined by the learned Single Judge. It has been found that the Labour Court had taken into consideration that a large number of workers, numbering 1400 contract workers, had been appointed by the respondents therein in the year 1998. The present respondents were also appointed and that was not in serious dispute. The Labour Court, however, had discounted that aspect of the matter. Some of the workers, according to the finding of the learned Single Judge, was said to have been regularised, and the petitioners, i.e. the respondents herein, were sidelined, but they continued to be in service.

4. The Labour Court has made reference to contracts under which they were employed, viz. the documents provided at Exhibits M1 to M7; and the learned Single Judge has re-examined those very documents in addressing whether the Labour Court was right in arriving at its conclusion that the provision under section 2(oo)(bb) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act" for brevity) was applicable. On a perusal of the specimen contract under which each of the respondents were engaged, it was noticed that the workmen had been taken for work for the period 1st April, 2003 to 30th September, 2003. Therefore, if that was taken into consideration, the Labour Court having denied relief to the petitioners based on the said exhibit and other documents, was certainly found to be perverse, since the relationship of employer and employee was not terminated, co-terminus with the date mentioned, viz. 30th September 2003. The respondent workmen herein had continued to work with the appellant up to the year 2008. They were unceremoniously terminated by an oral order on 31st January 2008.

5. Therefore, the learned single Judge has found that the Labour Court was required to notice that subsequent to 30th September 2003, the petitioners had continued to work with the respondent right up to 31st January 2008 when they were terminated. If that position was taken into consideration as against the job that had been assigned to them under the agreement even after the period when the agreement had come to an end, they had continued to work for more than five years which would entail the right in favour of the petitioners since, in any event, the work discharged thereafter is more than 240 days per year. This aspect of the matter, it was noticed by the learned single Judge, was overlooked by the Labour Court and the Labour Court has incorrectly applied the exception as contained in section 2(oo)(bb) of the ID Act.

6. The learned Single Judge had noticed that the work was of a continuous nature but the tenure of the workmen was being continued from time to time with artificial breaks which would amount to an unfair labour practise as contemplated under paragraph 10 of Schedule 5 of the ID Act. That apart, it was also held that some of the employees, who are similarly placed, were regularised and it is only the others who have not been regularised such as the respondents herein. The nature of the work, therefore to be termed as contractual, was not justified. From the documents available on record the learned Single Judge has found that the benefit of reinstatement and continuity of employment could not have been denied to the petitioners.

7. The learned Single Judge has also referred to a similar petition in Writ Petitions No. 85580-85596 of 2012 decided on 19th January 2015 wherein a similar view was taken in respect of those petitioners who were similarly placed. It is in the vein, that the award passed in the Reference 12 of 2012 was set aside. The termination was held to be illegal and the respondents were directed to reinstate the petitioners into service and grant continuity of service. It is this order of the learned Single Judge, is under challenge in the present appeal.

8. The learned Counsel appearing for the appellant would contend that there was no scope under Article 226 of the Constitution of India to re-examine the award, which was on findings of fact by the Labour Court. It is emphasised that the respondents herein were engaged on contract basis and after the expiry of the term of contract, the relationship came to an end and therefore, the question of claiming continuity of service as a regular workmen was without any basis and that the provision of retrenchment under the ID Act, 1947 was clear in regard to contract labour, and therefore, the learned Single Judge was misdirected in arriving at the opinion formed in the impugned order.

9. It is also contended that the extension of engagement of the respondent-workmen was with a specific condition that their services would not be continued beyond 31st January 2008 and therefore, the conclusion of the learned Single Judge in the impugned order that the petitioners were to be continued even beyond that period, would amount to re-writing the contract. The Labour Court had rightly considered the petitioners' discontinuance does not amount to retrenchment and that it fell squarely within the ambit of section 2(oo)(bb) of the ID Act.

10. Primarily, it is contended that the reference was a stale claim and the Labour Court having held that the reference would fail on that ground alone has been completely overlooked by the learned Single Judge. In this regard, he would place reliance on the following decisions of the Supreme Court. Firstly, our attention is drawn to tire judgment in Oshiar Prasad v. Sudamdih Coal Washery, 2015 (4) SCC 71 and reliance is placed on the observations made therein that services of the appellants in that case and those, at whose instance the reference was made, having been terminated long prior to making the reference, and since the workers were neither in the services of either the contractor or the principal

employer on the date of making the reference in question, that no industrial dispute existed is sought to be pressed into service. However, it is to be noticed that in the decided case by the Supreme Court, the contractor had been engaged on a turn-key basis and the workers involved were employed by the contractor and that after execution of the contract, the workers were left in the lurch. It is in that background, till at they had sought a reference after a delayed period and it is in that context the Supreme Court has opined that they were neither employed by the principal employer nor were they continued under regular employment by the contractor and hence the reference could not have been entertained after much delay. The said decision cannot be applied in the present circumstance as the contractual relationship between the appellant and the respondents was a direct contract.

11. He would also place reliance on yet another judgment in the case of C.S. Azad Krishi Evam Prodyogiki Vishwavidyalaya v. United Trades Congress and another, 2008 (1) SCJ 162, wherein the persons employed or daily wages having sought regularisation of service was the controversy and the Supreme Court following the case of Secretary, State of Karnataka and others v. Uma Devi and others and other authorities, having reiterated the law laid down therein that completion of 240 days of continuous service in a year itself would not be a ground for directing an order of regularisation and that regularisation cannot be the mode of recruitment by any State within the meaning of Article 12 of the Constitution anti that no person, who was temporarily or casually employed, could be directed to be continued permanently as it would be creating another mode of employment which is impermissible in law; and therefore, having firmly held that the question of regularisation of temporary or contractual labour cannot be countenanced.

12. Insofar as the principles laid down in the above decision are concerned, the learned Single Judge was very conscious of the settled principles in this regard and it is for this reason that he has pointedly observed that having regard to the fact that the workmen had been continued in the same work for more than five years which entailed a right in their favour, and when similarly placed workmen had been regularised into service the question was really incidental as to whether they should be regularised in service. It was the illegal termination and the unfair labour practise which gained prominence, which the Labour Court has overlooked and it is on that count that the learned Single Judge has proceeded to direct that they be regularised into service.

13. Besides, the Supreme Court in the case of U.P. State Electricity Board v. Pooran Chandra Pandey and others, (2007) 11 SCC 92, while referring to a large number of decisions which had similarly addressed the question of regularisation, has observed that, the Bench was constrained to refer to the above decisions and principles contained therein because it found that often Uma Devi's case was being applied by Courts mechanically as if it were Euclid's formula without seeing the facts of a particular case. As observed in Bhavnagar University and

Bharat Petroleum Corporation Ltd., a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, it was held that Uma Devi's case could not be applied mechanically without seeing the facts of a particular case, as a little difference in facts could make Uma Devi's case inapplicable to the facts of a case. Similar would be the reasoning in the present case on hand. Hence, given the circumstances, the said decision also would not apply.

14. Incidentally, the learned Counsel for the respondent-workmen also places reliance on the decision in the case of ONGC Limited v. Petroleum Coal Labour Union and others decided on 17th April 2015 in Civil Appeal No. 3727 of 2015. wherein the Supreme Court has revisited the decisions laying down the principle That temporary and casual labourers could not be reinstated into service with back wages, and it is demonstrated how those decisions could be distinguished on the facts and circumstances of each case and the workmen concerned in the above case had been directed to be reinstated.

15. Reliance is also placed on Shalimar Works Limited v. Their Workmen, AIR 1959 SC 1217, Here again, the reliance is sought to be placed on the observations of the Supreme Court as to there being no limitation prescribed for reference of a dispute to an Industrial Tribunal. Even then it was only reasonable that the dispute should be referred soon as possible after such dispute arises and after conciliation proceedings having failed, particularly, when the dispute is as to the wholesale discharge of workmen, as in the case on hand. However, this observation was made in the context of the company in question having committed a breach of section 33 and the remedy to that section being provided under section 33-A of the ID Act and it could have been availed of even by an individual workman and since it was not done for over a period of four years, the Court having taken exception, cannot be found fault with.

16. In the present case on hand., it is noticed that in the reference before the Labour Court, there was no such issue framed as to limitation. This was crucial insofar as the respondent-workmen were concerned for it is quite possible that if the issue had been framed the workmen would have then been in a position to tender evidence to explain and justify the delay, if any. When no such issue had been framed, the Labour Court then having proceeded to hold that the claim was a stale claim in answering the following issue framed: "whether the petitioners are entitled to an order of reinstatement", is clearly a mismatch, for the issue framed is entirely different in finding that the reference was a state claim. This was wholly unfair and unjust insofar as the respondent-workmen were concerned. In any event, this would not be a ground on which the impugned order could be set at naught. Consequently, we do not find any merit in these appeals and that same stand dismissed.

17. It is noticed that the respondent-workmen had been out of employment since the year 2008 and the order of the learned Single Judge is dated 15th December, 2015. In view of the continued hardship of the respondent-workmen, the

appellant is directed to comply with the order of the learned Single Judge within four weeks from the date-of receipt of the certified copy of this order.