

(2013) 07 KAR CK 0177

In the Karnataka High Court

Case No : Writ Petition No. 9866 of 2012 (L-KSRTC)

Karnataka State Road Transport Corporation

APPELLANT

Vs

Mumtaz

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2013) 3 LLN 660

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; S.B. Mukkannappa, for the Respondent

Judgement

Dilip B. Bhosale, J.—Heard the learned counsel for parties. By consent of learned counsel for parties, the petition is taken up for final disposal forthwith. The petition is directed against the order dated 23rd August 2011 passed by the Presiding Officer, III Addl. Labour Court, Bangalore on the application No. 2/2005 filed by respondent-workman u/s 33(C)(2) of the Industrial Disputes Act, 1947 (for short "the Act") By this order, the application filed by respondent-workman has been allowed in part, and the petitioner-management has been directed to make payment of leave encashment benefit for a period of 153 days only, which was at the credit of applicant as on the date of superannuation.

2. The respondent retired as a driver of the petitioner-Corporation on 30.09.1999. In 2005, he filed application u/s 33(C)(2) of the Act seeking direction to the petitioner-Corporation to make payment of a sum of Rs. 1,05,000/- with interest being arrears of leave encashment salary for a period of 211 days and half of the salary for 278 days that was at his credit as on the date of retirement.

3. The respondent-workman worked for petitioner-Corporation since 1969 till he attained the age of superannuation in 1999. During this period, he was dismissed from service after following the due procedure, by the disciplinary authority for

unauthorized absence. The order of the disciplinary authority was challenged before the Labour Court. The Labour Court dismissed the dispute raised by the respondent-workman. That order was carried to this court by way of W.P. No. 10118/1993. The writ petition was allowed and directions were issued to the Corporation to reinstate the respondent workman without backwages. In the said order, the learned Judge did not make any reference to the benefit of continuity of service or other consequential benefits. In view thereof, the petitioner was reinstated treating it as fresh appointment. That was challenged by the respondent-workman by filing another W.P. No. 20335/1997. That writ petition was allowed. The relevant observations in the order dated 27.08.1997, disposing of the writ petition reads thus:

... It is made clear that the petitioner shall be reinstated with continuity of service and other consequential benefits, but without backwages. However, taking into account the facts and circumstances of the case, the period of absence for which the petitioner has been found guilty shall not be taken into account for continuity of service. Accordingly, the order at Annexure-C stands quashed.

2. Time granted to implement the award of this Court shall be 3 months from the date of receipt of this order.

4. After reinstatement, petitioner worked till he attained the age of superannuation. The petitioner, after six years from the date of retirement, filed application u/s 33(C)(2) of the Act for seeking leave encashment benefit.

5. It is clear and not disputed that the petitioner claimed leave encashment benefit for the period commencing from the date of his dismissal till he was reinstated, i.e., from 08.01.1984 to 21.04.1997. Admittedly, during this period he did not work. It is needless to mention that, to earn the leave one should work and then seek encashment of leave earned. Merely because he was given continuity of service and other benefits, it does not mean that he is entitled for benefit of leave encashment. It is not in dispute that all other benefits were extended to the respondent workman by the Corporation such as increments, promotion, pay fixation etc. The Tribunal seems to have granted leave encashment benefit only in view of the observations made by this Court in W.P. No. 20335/1997 disposed of on 21.08.1997. From perusal of the observations made in the said order, I do not find any indication on the basis of which the respondent workman could have prayed for leave encashment benefits after more than five years of his retirement.

6. In this connection, learned counsel appearing for the petitioner corporation invited my attention to the judgment of the Division Bench of this Court dated 08.11.2012 in Writ Appeal No. 16714/2011. It would be advantageous to make reference to the relevant observation in the said judgment.

11.... Even if the misconduct is not proved, in this case, it is an admitted fact: that the workman remained absent from duty. He is now seeking the benefit of

leave encashment. First he should work, earn the leave, should not avail the same and then he can seek for enhancement of such leave earned. When he has not worked and not earned leave, the question of granting him the benefit of leave encashment would not arise. Therefore, the interpretation placed by the learned Single Judge is contrary to the judgments referred by the Apex Court as aforesaid, and also runs counter to the legally admitted evidence available on record. Therefore, the said order cannot be sustained.

Keeping the aforementioned observations in view and having regard to the facts of this case, in my opinion, impugned order passed by the Labour Court deserves to be set-aside. Ordered accordingly. No costs.