

(2008) 11 KAR CK 0055

In the Karnataka High Court

Case No : Writ Appeal No. 851 of 2008 in Writ Petition No. 3170 of 2006

Kashinath

APPELLANT

Vs

The Managing Director, Krishna Bhagya Jala Nigam Limited

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (c), 25 F

Citation : (2011) 2 KarLJ 469

Hon'ble Judges : Jawad Rahim, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : P. Vilas Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—This appeal is by the Respondent in W.P. No. 3170 of 2006. The learned Single Judge pursuant to the order under appeal has set aside the order of the Labour Court and has further directed the Respondent herein to pay a compensation of Rs. 50,000/-.

2. The facts in nutshell are on a reference made u/s 10(1)(c) of the Industrial Disputes Act, 1947, the case was registered. It appears the Appellant herein appeared and filed the claim statement impleading only the Assistant Executive Engineer. The Respondent despite service of notice did not enter appearance and was placed ex parte. But however, at a later point of time, the Appellant did not put in appearance. However, reference application was dismissed for non-prosecution. The Appellant filed an application seeking restoration of the reference application. On the said restoration of application, the Respondents were notified and entered appearance and filed their objections. The Labour Court accepted the explanation of the Appellant and restored the reference application. The Respondents also filed their objections.

3. It is the case of the Appellant that he had been appointed on daily wage basis by the Respondent on 14-11-1983. He claims that he has worked for more than

240 days continuously and he is entitled for regularisation of service. His grievance is that the Respondent illegally terminated his services on 11-8-1984. According to him, the said termination amounts to "retrenchment" and is in violation of Section 25F of the Industrial Disputes Act, 1947. It appears the efforts of the Appellant for reinstatement did not yield any result. The Appellant approached the Assistant Labour Commissioner for conciliation and finally on failure of the conciliation proceedings, referred the matter to the Labour Court for adjudication.

4. The Respondents have filed their counter and would contend that the Appellant joined the services as stated by him and he had voluntarily quit the service on 11-8-1994 and he was not terminated as alleged. They would further contend that the Appellant had not worked continuously for 240 days as claimed inasmuch as there were several breaks in between. The Respondent was issued with a notice by Coordinator of Karnataka State Daily Wage Workers Federation in the year 1990. They would primarily contend that there is an inordinate delay in seeking reference. They would also contend that the project has come to an end and the question of the Appellant being reinstated does not arise. They would also contend that they are not liable for the alleged wrong termination, assuming that there is one.

5. Both the Appellant as well as the Respondent adduced evidence before the Labour Court. The Labour Court however found that the case of the Appellant was more acceptable and granted the application directing that the Respondent shall reinstate the Appellant as Second Division Clerk on daily wage basis and also that he is entitled for 50% of daily wages admissible to daily rated workman. He was also entitled for the full prevailing wages payable to daily rated workman. This order was questioned by the Respondent in the aforesaid writ petition.

6. The learned Single Judge has allowed the writ petition on two counts. One is that there is an inordinate delay in seeking reference inasmuch as 16 years have elapsed. The other ground is that the appointment of the Appellant was not against a sanctioned post. Hence, the question of directing the Respondent to reinstate the Appellant would not arise. The learned Single Judge has dealt elaborately on this aspect of the matter but however, has dismissed the writ petition on the ground that it is a stale claim.

7. We have heard Mr. Vilas Kumar, learned Counsel appearing for the Appellant and Mr. Sanjay M. Joshi, learned Counsel appearing for the Respondent.

8. It is contended on behalf of the Appellant that the termination of the Appellant would amount to retrenchment and would attract the provisions of Section 25F of the Industrial Disputes Act. He further submits that the learned Single Judge could not have dismissed the claim petition on the ground that it is belated and as stale claim. He would rely on an unreported judgment of a co-ordinate Bench in W.A. No. 3241 of 2005 to buttress his contention that even a stale claim can

be entertained, but, however, the workman could be denied the back wages. The sum and substance is that the Appellant having completed 240 days between 14-11-1983 and 11-8-1984, he is entitled for reinstatement.

9. Mr. Sanjay M. Joshi, learned Counsel appearing for the Respondent would contend that the project itself is time bound project and once the project is complete, the office would move to the new project. Hence, he submits that the Appellant certainly cannot be accommodated in the new project assuming that he had been terminated from service. It is the stand of the Respondent that the Appellant had voluntarily quit the job. He would also further contend that the learned Civil Judge could not have awarded a compensation of Rs. 50,000/- payable by the Respondents.

10. We have given our anxious consideration to the submissions of the learned Counsel appearing for the Appellant as well as Respondent.

It is not in dispute that the Appellant, at some point of time was working with the Respondent. We are not inclined to go into the question whether the Respondent-Krishna Bhagya Jala Nigam Limited could be classified as an industry. We proceed on the premise that it is an Industry and the Labour Law is applicable. But however, the moot question is either the Appellant is entitled to be reinstated on the ground that he had worked for a period of 240 days continuously between 14-11-1983 and 11-8-1984.

11. It is not in dispute that the appointment of the Appellant was on a daily wage basis, which would necessarily mean that he was a casual temporary employee. His employment was certainly not against any sanctioned post. Time and again, it is stated that the reinstatement is to be done only as against sanctioned post and if there is no sanctioned post, the question of the Appellant being reinstated cannot be granted. Indeed if there are some posts, which are required to be filled up, they are required to be done, having regard to the statute as well as the Rules governing the appointment of the employees. Certainly, a daily wage employee cannot claim as a matter of right, that too a legal right, that he should be reinstated with all consequential benefits including the back wages and continuity of service etc. Indeed it is to be noticed that the status of the Appellant at best can be termed as that of a daily wager by virtue of an appointment and on termination, he ceases to be a workman. It is also to be noticed that there was no sanctioned post in existence to which, the Petitioner was appointed. It is not in dispute that the appointment was on ad hoc basis. It is rather difficult for us to envisage that the Appellant attains the status of a workman in view of the provisions of the Act on the ground that he had completed 240 days of work continuously. Indeed the legal consequence that flows from work for the duration under the Industrial Disputes Act is altogether different and on an analogy, it cannot be attracted to present situation. Indeed it is also seen that even otherwise, the said establishment or the project having come to an end, the Appellant cannot have right to the post since he was appointed on a daily wage basis. In this regard, one can refer to the ruling of this

Court in 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. 2003 (5) Kar. L.J. 143 (DB). In fact it is useful to refer to the observations made by the Apex Court in the case of Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, which is as under

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 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.

12. The Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has observed that the orders for absorption, regularisation or permanent continuance of such employees are apparently passed in exercise of the powers of the Court under Article 226 of the Constitution of India. Indeed the Apex Court has observed that:

The powers of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all. Subject to affirmative action in the matter of public employment as recognised by our Constitution has to be seriously pondered over. Indeed the time has come when the Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the constitutional scheme of public employment. Merely because the employee has continued under the cover of an order reporting litigious employment would not be entitled to any right to be absorbed or made permanent in the service.

In fact in such cases, the Courts or Tribunals will not be justified in issuing directions.

13. The Apex Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , has observed thus:

It is well-settled proposition of law that the function of the Court is to interpret the statute to ascertain the intent of the Legislature-Parliament. Where the language of the statute is clear and explicit the Court must give effect to it because in that case words of the statute unequivocally speak of the intention of the Legislature. This rule of literal interpretation has to be adhered to and a provision in the statute has to be understood in its ordinary natural sense unless the Court finds that the provision sought to be interpreted is vague or obscurely worded in which event the other principles of interpretation may be called in aid. A plain reading of the said phrase, under interpretation, shows that it is lucid and clear. There is no obscurity, no ambiguity and no abstruseness. Therefore, the

words used therein must be construed in their natural ordinary meaning as commonly understood.

14. Indeed in the case on hand, it is to be noticed that the Appellant is only a daily wage earner and certainly he has not been appointed as against a sanctioned post. Hence, the question of he being reinstated into the same capacity certainly would not arise.

15. The Apex Court in the case of A. Umararni v. Registrar of Cooperative Societies and Ors. (2004)7 SCC 122 : AIR 2004 SCW 4462, has dealt extensively on the question whether in the absence of any legal right, a workman/a daily wage earner could be directed to be absorbed. Indeed the Apex Court in the case of Surendra Kumar Sharma Vs. Vikas Adhikari and Another, , has observed thus:

A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments, Public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts.

16. The Apex Court in the case of Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, has observed thus:

We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the Appellants miserably fail to establish a legal right. It is further trite and despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.

17. Indeed Farwell, L. J. in Latham v. Richard Johnson and Nephew Limited (1911) All E.R. 117, has observed thus:

We must be very careful not to allow our sympathy with the infant Plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles.

18. Yet again the Apex Court in the case of Ramakrishna Kamat and Others Vs. State of Karnataka and Others, , has rejected a similar plea for regularisation of

service stating as under

We repeatedly asked the learned Counsel for the Appellants on what basis or foundation in law the Appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the Appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zilla Parishads in view of the Government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned Single Judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the Court, the Courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment.

19. This view has been reiterated by the Apex Court in Umadevi's case. The Apex Court in almost similar, if not identical case, in the case of State of M.P. and Others Vs. Arjunlal Rajak, , has observed thus:

It is beyond any doubt or dispute that a daily wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring the status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the Constitutional Scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of the Legislative Act. Concededly, while appointing the Respondent, the constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The Respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of the Forest Department in the district of Guna which as noticed above stood abolished. It is however true that while terminating the services of the Respondent, the Appellants had not complied with the mandatory requirements of Section 25F of the Industrial Disputes Act and, thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well-settled that when a project or a scheme or an office itself is abolished, relief by way of reinstatement is not granted.

20. Indeed identical question had come up before the Apex Court in the case of Mahendra L. Jain and Others Vs. Indore Development Authority and Others, and it has observed that the Labour Court could not have granted any relief to the employees as prayed for inasmuch as the appointments were made for the purpose of a project and they would be deemed to have been terminated after the completion of the project. Therefore only because such appointments has been made, that by itself, does not entitle them to claim permanent continuance.

Having regard to the law laid down by the Apex Court and also the fact that the Appellant was appointed as a daily wage earner we are of the view that the question of upsetting the order of the learned Single Judge on that score would not arise.

21. This takes us to the next question regarding stale claim. Indeed the learned Single Judge has accepted the writ petition of the Respondent on the ground that the claim lodged before the Labour Court was after a lapse of 16 years. Indeed the learned Single Judge has followed the dictum of the Apex Court in case of Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , that a stale dispute ought not to have been adjudicated by the Labour Court particularly when a specific objection was raised by the second party in the counter statement that the dispute is a stale claim. Indeed an effort was made by the learned Counsel appearing for the Appellant to state that a Division Bench of this Court, which is referred to above has observed that even if there is a delay in making a reference to the Labour Court and if it is found that the termination is illegal, the relief could be suitably moulded by granting reinstatement denying the back wages. But however, a stale claim certainly cannot be thrown out on the ground of delay.

22. Indeed it is not the case of a workman who is permanently employed. It is the case of daily wager. As has been observed by us, the claim of the Appellant is not as against a sanctioned post. Moreover assuming that there is retrenchment, the Appellant has been sufficiently compensated. In fact the learned Single Judge was generous enough to award a compensation of Rs. 50,000/- to the Appellant. Indeed we are to note that the said compensation is based on a submission made by the learned Counsel appearing for the Respondent that reasonable compensation may be awarded. The learned Single Judge has found that the circumstances warrant awarding of compensation of Rs. 50,000/-.

23. Having given our anxious consideration to the submissions made by the learned Counsel appearing for the Appellant as well as the Respondent, we are of the view that the order of the learned Single Judge on both counts i.e., on the ground of stale claim and also that a reinstatement of daily wage earner cannot be faulted when the project itself has spent out. We find that there is no merit in this appeal.

Appeal stands dismissed.

24. We note that there is a delay of 85 days in filing the appeal. Since we have dismissed the appeal on merits, the question of issuing notice to the Respondents in the circumstances of the case does not arise.