

(2013) 04 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 4885 of 2013 (L-TER)

K.L.J.A. Kiran Babu

APPELLANT

Vs

Management of the Hewlett-Packard Global Soft Pvt. Ltd.

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A)

Citation : (2013) 138 FLR 496 : (2013) 4 LLJ 395 : (2013) LLR 819

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : K.L.J.A. Kiran Babu, Party in Person, for the Appellant; K.R. Anand, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 26.12.2012 in I.D. No. 1/2012 (Old No. I.D. 10/2008) passed by the Labour Court at Bangalore. Petitioner contends that he was an employee of respondent and he was illegally terminated from service on 30.7.2007. Aggrieved by this order of termination the petitioner approached this court in W.P. No. 2028/2007 and the same came to be rejected as not maintainable and reserved liberty to the petitioner to approach the appropriate forum for appropriate relief in accordance with law. Thereafter, the petitioner raised a dispute in I.D. No. 10/2008 on the file of the Labour Court at Bangalore u/s 10(4-A) of I.D. Act. Respondent entered appearance and filed objections inter alia contending that petitioner is not a workman. During the pendency of the proceedings before the Labour Court, petitioner filed an application seeking withdrawal of the dispute. Accordingly, the Labour Court vide order dated 7.2.2009 dismissed the dispute as withdrawn. Thereafter the petitioner filed W.P. No. 1538/2011 and the same came to be dismissed vide order dated 7.2.2011. Aggrieved by this order, petitioner filed an appeal in W.A. No. 1008/2011. The Division Bench disposed the writ appeal vide order dated 8.3.2011 with observation as under:

The appellant who appears in person, after arguing for sometime states, that he may be permitted to revive the proceedings, which was initiated by him before the Labour Court in I.D. No. 10/2008 at Bangalore.

2. In view of the fact, that the appellant is not understanding the niceties of law, we consider it just and appropriate to require the Labour Court to consider his application for revival of I.D. No. 10/2008, sympathetically.

In view of the above, the instant writ appeal stands disposed of.

Since the main writ appeal is disposed of Misc. W. 471/2011 does not survive for consideration. (underline is mine)

2. Thereafter the petitioner filed an application I.A. No. 14 before the Labour Court for revival of dispute in I.D. No. 1/2012 (Old No. 10/2008). Under the impugned order, the Labour Court dismissed the application as not maintainable and also on merits.

3. Heard petitioner party-in-person and learned counsel for the respondent and perused the entire writ papers.

4. Petitioner party-in-person is contesting the proceedings. By considering the legal equipment of the petitioner the Division Bench of this court directed the Labour Court to consider his application for revival of the dispute sympathetically. The Labour Court rejected the application filed by the petitioner on the ground that it has no power to revive its own order. This approach of the Labour Court is contrary to the direction issued by this court in WA No. 1008/2011. In identical circumstances, the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, held that the Industrial Tribunal has the power and competency to set-aside its ex parte award if it is satisfied that the aggrieved party was prevented from appearing at the hearing due to sufficient cause. Further the Supreme Court in *Jet Ply Wood Private Ltd. and Another Vs. Madhukar Nowlakha and Others*, held that due to a mistake of plaintiff he had withdrawn the suit, court would not be powerless to set-aside the withdrawal order in exercise of inherent power u/s 151 CPC. Similar view is taken by a Division Bench of this court in W.P. No. 8067/2007 vide order dated 17.7.2007. Therefore the finding of the Labour Court is contrary to the law declared by this court and the Apex Court and as such the same is liable to be set-aside.

5. Learned counsel for the respondent relying on judgments of Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, , *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, contend that the impugned order passed by the Labour Court is in accordance with law. A perusal of these judgments specify that the Tribunal should be considered to be endowed with ancillary or incidental powers as are necessary discharge its functions effectively for the purpose of doing justice between the parties. Again these judgments will only support the case of

the petitioner. The reasoning of the Labour Court that no grounds are made out to revive the dispute is contrary to the material on record. It is the specific case of the petitioner that under mistaken notion and under great pressure and disappointment he made an application to withdraw the dispute. Petitioner is unemployed from the year 2008. Petitioner in person is contesting the proceedings. Petitioner is not legally well versed with regard to the procedure and niceties of law. These are the facts that are to be taken into consideration while disposing his application for revival. But unfortunately, the Labour Court gave more attention to certain development in the record which are totally unwarranted for consideration of the application filed by the petitioner. Therefore, the reasoning of the Labour Court that no grounds are made out is contrary to the fact situation. For the reasons stated above, the following:

ORDER

(I) Writ petition is hereby allowed.

(II) The impugned order dated 22.12.2012 in I.D. No. 1/2012 (Old No. I.D. 10/2008) is hereby set-aside.

(III) The application I.A. 14 filed by the petitioner is hereby allowed.

(IV) The impugned order dated 7.2.2009 is hereby recalled and I.D. 1/2012 (Old No. I.D. 10/2008) is hereby restored on file.

(V) The Labour Court to proceed with the matter in accordance with law by providing an opportunity to both the parties and as expeditiously as possible and in any event not later than six months from the date of receipt of copy of this order.