

(2014) 06 KAR CK 0103

In the Karnataka High Court

Case No : Writ Appeal Nos. 50283-50295 of 2013 (L-TER)

Mallikarjun

APPELLANT

Vs

Associated Cement Co. Ltd.

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4A), 25F

Citation : (2015) 1 AKR 264 : (2014) 143 FLR 896 : (2015) 2 KCCR 1977

Hon'ble Judges : Rathnakala, J;B.S. Patil, J

Bench : Division Bench

Advocate : P. Vilaskumar Marthand Rao and Shivalok N. Talwar, Advocate for the Appellant; Ashok S. Kinagi, Advocate for the Respondent

Judgement

B.S. Patil, J.—These appeals arise out of the order dated 11.2.2013 passed by the learned Single Judge dismissing the writ petitions filed by the appellant-workmen challenging the order passed by the Labour Court, Gulbarga.

Brief facts leading to the dispute before the Labour Court stated in nutshell are, that the appellants herein filed applications under section 10(4-A) of the Industrial Disputes Act, 1947 ("the Act" for short) challenging the action of the respondent-Management refusing to engage their services and in taking up a contention that there existed no relationship of employer and employee between the appellants and 1st respondent-Associated Cement Co. Ltd., Wadi.

The case of the appellants was that their services were engaged right from the year 1982 against clear vacancies for courier services and since the date of appointment, they were sincerely and honestly discharging their duties. They were paid nominal wages. Though they served for effecting courier services and were treated as temporary employees, they were not treated as workmen discharging duties under the 1st respondent-Cement Company. In fact, they were making demand to accord them equal treatment by paying equal pay. Because of such demand made persistently, their services were terminated from 2005 and thereafter their salary and other allowances were paid in the name of

the 2nd respondent-Roopali Communications. In this background, alleging mala fides, unfair labour practice in refusing employment to them and illegally terminating their services, they approached the Labour Court seeking to set aside the order of oral termination dated 18.8.2005 and for reinstatement with consequential benefits.

2. The respondent-Management resisted the claim contending inter alia that they used to transport the cement bags to different destinations and once the goods reached the destinations, railway receipts were required to be produced for the purpose of delivery of the cement bags. In order to ensure that the railway receipts are produced at the designated railway stations for the purpose of taking delivery, the management entrusted the delivery of the documents/railway receipts to identified couriers who were engaged on assignment basis but they were not the employees of the company.

3. It was further urged by them that their engagement was only for the specific assignment as and when need arose. It was also urged that the applicants/workmen were not required to be present at the factory premises. They were free to attend any other work either during their onward journey or during their return journey. They were only required to deliver the documents at the designated place and to the specified official or person and submit to the company acknowledgment given by the said authority.

4. On the basis of the pleadings, the Labour Court framed necessary issues. The applicant-workmen examined one witness and got marked seven documents. The 1st respondent examined two witnesses M.W. 1 and M.W.2 and got marked 78 documents. No evidence was adduced on behalf of the 2nd respondent-Roopali Communications.

5. Based on the evidence on record, the Labour Court recorded findings holding that there was no evidence produced to establish the existence of employer and employee relationship between the workmen and the management. It also found that there was no material to suggest that the first party workmen were under the control and supervision of the employer and that they worked for 240 days under the Management continuously. The Labour Court was of the view that compliance of section 25-F would arise only in case of proof of relationship of employer and employee and the continuous services put in for atleast 240 days. Thus, the claim petitions filed by the appellants were dismissed. This order passed by the Labour Court was challenged in the writ petitions.

6. The learned Single Judge has re-considered the entire matter and has found that the findings recorded by the Labour Court were based on the evidence on record and the decision rendered on the point in various judgments.

7. Mr. P. Vilaskumar, learned Counsel appearing for the appellants has principally contended that statement of objections filed by the respondents and evidence of MW.1 and MW.2 considered together would clearly indicate that there is an admission on the part of the Management regarding the relationship of employer

and employee, the nature of the control exercised by the Management over the workmen and the fact that in case the workmen failed to discharge their duties assigned by the Management, their services could be terminated. He urges that these materials which are found on record have been ignored by the Labour Court and as also the learned Single Judge resulting in miscarriage of justice.

8. Learned Counsel has placed strong reliance on the judgment of the Apex Court in the case of Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, , to support his contention that right to control the manner of work is not the exclusive test for determining relationship of employer and employee and that even on the admitted facts it disclosed that the Management used to assign the work to the employees on regular basis and therefore, the relationship of employer and employee stood established.

9. Per contra, learned Counsel appearing for the 1st respondent-Management strongly refuted the contention of the learned Counsel for the appellants and supported the findings recorded and the conclusion reached by the Labour Court as affirmed by the learned Single Judge.

10. Having carefully considered the respective contentions and on perusal of the entire materials on record, we find that neither the statement of objection filed by the respondent nor the evidence of MWs. 1 and 2 examined together would show that there is any admission by the Management regarding the relationship of employer and employee between them.

11. The statement of objection which is referred to and extracted by the learned Single Judge discloses that the main stand of the Management has been that the work of courier service was assigned to different applicants/workmen and the number of assignment from 1989-2005 was ranging from 5 times to 66 times. As can be seen from the table extracted in the judgment of the learned Single Judge regarding the number of assignments of such courier service to different workmen, during the year 1989 the assignment made were 5; during the year 1999 the assignment made were 8 and the maximum assignment up to 66 was made in the year 2003.

12. MW.2 has stated in his evidence that once an assignment was given to the person to effect the courier service, the assignment was over. He was not given any identity card and was not required to attend or be present in the factory premises. Although, the workman i.e., WW.1 has in his evidence has asserted that they were treated as temporary employees and were paid specific and definite wages, absolutely, no material was produced by them to substantiate their claim. Even to support their assertion that they were issued with identity card and that they used to be present in the factory premises during working hours, no material was produced. These aspects have been taken note by the learned Single Judge while recording the finding that the appellant-workmen failed to establish that there was an employer and employee relationship much less any control and supervision on the part of the Management over the

employees.

13. The decision in Silver Jubilee Tailoring House and others case (cited supra), deals with a totally different set of facts and circumstances. There, the Apex Court has emphasized that while examining the relationship of employer and employee, the emphasis need not be unduly laid on the control exercised by the Management over its employee. The control, no doubt, is an important factor but it is wrong to say that it was decisive in each case.

14. In para 31 of the judgment, the Apex Court has held that the fact that generally the workers attended the shop which belonged to the employer and worked there on the machines, also belonging to him, was a relevant factor. When the services were performed generally in the employer's premises, there was some indication that the contract was a contract of service. It was possible that the same was another facet of the incidental feature of employment. In such a situation a Court may well feel inclined to apply the "organisation" test suggested by Denning, L.J., in *Stevenson Jordan and Harrison v. Macdonald and Evans* (1952) 1 TLR 101. The Apex Court proceeds further to hold in the said case that the fact that sewing machines on which the workers did the work generally belonged to the employer was an important consideration for deciding that relationship was that of master and servant and apart from that when such employer in the facts of the said case had the right to reject the end product if it did not conform to the instructions of the employer and direct the worker to re-stitch it disclosed the element of control and supervision involved.

15. It is thus, clear that the facts and circumstances in which the above decision has been rendered whereunder material was entrusted by the Management for being stitched to the employees by providing them sewing machines and with specific instructions regarding the stitching which formed the basis for establishing the relationship of employer and employee in the said case. The same has nothing to do with the facts involved in the present case.

16. In the facts of the present case as already adverted to above, the assignment of courier service was for few occasions. There is nothing to show that the employees were made to come to the factory and were paid wages for discharging their duties and that there was control and supervision of the duties discharged by them. Mere fact that they were entrusted with some railway receipts to hand it over to the designation consignee cannot be made basis to hold that there was a relationship of employer and employee. There is also no material, as found by the Labour Court, to establish that each of these employees were on the rolls of the same factory and discharged their duties during the relevant period for a period of 240 days continuously so as to press into service the provisions of section 25-F of the Act. In the above circumstances, we have no hesitation to hold that findings recorded by the Labour Court as affirmed by the Single Judge do not suffer from any illegality warranting interference in these appeals.

Hence, these appeals are dismissed.