

(1990) 04 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 6600 of 1985

Management of M/s. Kirloskar Systems Ltd., Bangalore	APPELLANT
Vs	
Presiding Officer, II Additional Labour Court, Bangalore and Others	RESPONDENT

Date of Decision : 04-04-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(C)

Citation : (1991) 4 KarLJ 312

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

The Court, made the following:

The petitioner has suffered an award passed dated 21-11-1984 by the 1st Respondent, the Presiding Officer, II Additional Labour Court, Bangalore, published in the Gazette dated 9-8-1984.

2. The petitioner is II Party-Management of M/s. Kirloskar Systems Ltd., Bangalore. On 9-1-1985 this Court returned the papers for some defects in it, and it was represented. After the delay was condoned, this Court directed the petition to be posted for preliminary hearing on 19-4-1985. However, nothing transpired on the subsequent dates till 8-7-1985. On 8-7-1985 this Court directed to call for records and to post one week thereafter. On 25-7-1985 interim stay was granted. Thereafter, the matter came up on 11-9-1986. On 11-9-1986 this Court after hearing the matter for some time stayed awarding of back wages in the impugned Award. Thereafter, the matter dragged on in this Court which is a sad reflection on our justice dispensation system.

3. From the order sheet it is seen that other orders were passed in the interregnum, to some of which I will make a reference in the course of this order.

4. One of the main reasons why this petition has not been disposed of is that the parties had engaged themselves in adjudicating the matter, which did not directly arise for consideration, having regard to the limited scope in the matter of

disposal of the writ petition. The fact is that the matter had been heard on merits in the course of last two or three weeks, subject to availability of time.

5. The undisputed facts in the writ petition are as follows:

A reference came to be made in terms of Section 10(1)(c) of the Industrial Disputes Act, by the State Government, and the points of dispute referred were as follows:

I. "Is the Management justified in refusing work to the following workmen on the dates mentioned against each of them?

1. Venkataramana

2. Kalappa

3. Krishnoji Rao

4. Muniramaiah

5. M. Krishnan

6. N. Jayaramaiah |

|

|

|

|

| With effect from

27-10-1977

7. Seenappa Naidu, S

8. Chikkavenkatramana

9. Lingaiah

10. Muniswamy, T

11. Ullurappa

12. Pullaiah

13. C. Nagaraju

14. G. Muthukrishna

15. Siddalingappa

16. Rudraiah

17. Kanthraja |

|
|
|
|
|
|
|
|
|
|
|
| With effect from

11-10-1977

II. If not to what relief the said workmen are entitled?

6. The 1st Party-workmen are working in different capacities in the establishment of II Party for the past several years as averred by them in their statement of objection. The II Party-Management had not confirmed these workmen and they were treated as casual labourers on daily wages and were deprived of their legitimate rights. By way of victimisation for their lawful trade-union activities in making the demands for such benefits, they were refused work by the II Party, and therefore the Management was at fault and committed a wrong and illegal act in violation of the principles of natural justice.

7. The first party workmen further contended that the refusal of employment or termination which amounted to retrenchment was also bad for non-compliance of the provisions of Section 25-F of the Industrial Disputes Act. Hence, they were entitled to reinstatement with continuity of service, back-wages and all other consequential benefits.

8. The II Party-Management, i.e., Kirloskar Systems Ltd., in their statement resisted the claim, inter alia alleging that there was no dispute as such, and no refusal of employment on the dates specified, which happened, after agreeing on the points of dispute referred to with reference to which seven of the workmen were and are working even to day and seven others had voluntarily stopped coming to work from different dates. It was further alleged by the Management that the 1st party workmen were/are working as casual employees on daily wages for a specific purpose and as such they did not possess any right to claim reinstatement or continuity of service. It was also alleged by the Management that some of the workmen had, in fact, continued to work even after the alleged refusal of work on the specific dates and some others had voluntarily stopped coming to work. It was however averred in its statement that the practice of

recruiting such personnel on daily basis was prevalent. On such pleadings the Labour Court framed issues, which are as follows:

"1. Whether the 1st Party workmen were casual labourers and therefore, this reference is bad?

or

Whether the 1st Party workmen had been regularly employed by 2nd Party?

2. Whether some of the 1st Party workmen abstained from work and some of them continue to work under the 2nd Party as contended by the said party and whether this reference is bad for that reason?"

9. The parties before the Labour Court examined several witnesses and also produced documents in support of their respective cases. The 2nd Party-Management examined on its behalf M.W. 1, and got marked as many as five documents. Exhibits M-1 to M-5, the workmen also got examined as many as 13 workmen including the President of the Union, and got marked as many as 51 documents, i.e., Exhibits W-1 to W-51. After appreciating the evidence on record, the case of the Management came to be rejected by the 1st respondent, i.e., the II Additional Labour Court. Consequently, the reference came to be answered in favour of the workmen, and in view of the 5 of the workmen not participating in the proceedings before the 1st respondent-Labour Court, it gave direction for reinstatement of the remaining workmen with back-wages. The back-wages were directed to be paid subject to certain conditions. In view of certain events that had occurred during the conciliatory proceedings as well as during the pendency of the dispute before the 1st respondent-Labour Court, the condition was that the back-wages had to be paid only for those days were required to be paid to each workman who was refused work.

10. It would be useful to mention here that when the 2nd Party had alleged that it did not have the practice of recruiting casual labour before the Labour Court, it took up the plea that it will reinstate any or all the workmen for any appointment except those who had not participated in the proceedings.

11. Aggrieved by the Award, as above, the petitioner has challenged the legality and correctness of the same inter alia, urging many grounds, but only one ground that has been pressed at the time of hearing, i.e., the ground urged before the Labour Court that the conclusion reached on the evidence, namely, the oral testimony of the workmen themselves and also the evidence accepted by the Labour Court produced in the form of certain vouchers for having received payment on dates subsequent to the dates mentioned in the points of dispute demonstrated the perversity of the conclusions of the Labour Court and as such the matter be remanded to the Labour Court after setting aside the Award in question for fresh determination in accordance with law.

12. Before dealing with the said argument it is useful to state that due to numerous reasons this Court came to pass many interim orders.

13. On 25-7-1985, Rama Jois, J., clarified that the stay of the Award was confined to back-wages only and the Management-petitioner, should take back the workmen to duty, if they reported for duty, the following day. Thereafter, I made an order on 16-11-1987, allowing I.A. No. II filed by the widow of respondent 7, who died during the pendency of the writ petition, she was impleaded as respondent No. 7-A. I again made an order on 30-11-1987, allowing a motion for adjournment made by the petitioner's counsel and clarified that the interim stay was confined to payment of back-wages and reinstatement of the workmen. The interim stay was modified and direction was issued to the Management to deposit all back-wages in respect of the workmen who had succeeded before the Labour Court on the basis of the last drawn wages on the date of their termination. Subsequently, a sum of Rs. 49,928/- had been deposited in this Court and, thereafter, an application was made by the 1st Party-workmen, respondents in this proceeding claiming a sum of Rs. 840/- per month, inter alia, on the ground that since the reinstatement itself was for one year that, on account of no fault on the part of the workmen, some workmen who were freshly recruited were paid wages at Rs. 18/- per day; and that there was no justification to pay only the wages which were drawn by them when the dispute came to be referred for adjudication.

14. Even before that an application was made before, this Court and this Court having got some statements made by the learned counsel for 2nd Party-workmen, i.e., the respondents herein, had directed that the management was obliged to pay back-wages for the period between 9-9-1984 (the date on which the Award came into force) and on 7-7-1986 date on which the workmen were actually reinstated.

15. In the light of this background and due to the controversy that arose thereafter this Court, on 14-2-1990, directed that the Management shall pay Rs. 14/- per day as agreed to by the Managing Director when he appeared in person in this Court.

16. In the course of the proceeding some applications were filed complaining the alleged contempt of Court on the part of the Management, with which the Managing Director feels some what aggrieved, I do not think that he should seriously take that as a ground to contest the findings of the Labour Court. Proceedings that were initiated do not amount to his conviction under the Contempt of Courts Act. Sometimes these steps will be taken by the parties in this Court to expedite the relief obtained and no more.

17. It is useful at this stage to refer to this Court's order dated 14-2-1990. The agreement to pay Rs. 14/- per day was subject to the condition that it will be in accordance with the final Judgment and the payments made shall be worked out in the appropriate forum where the Award has to be implemented under Section 33 of the Industrial Disputes Act.

18. I, therefore, must repeat that the order to be made on the merits of the

contentions advanced in this case are subject to the result of the adjudication which is said to be pending in Application No. 61/1984, in the Court of the 2nd Additional Labour Court, Bangalore.

19. Reasons given by learned Presiding Officer, Labour Court for rejecting the case of the petitioner is found in paragraph 10 of the Award. He has noticed earlier that the stand taken by the Management before the respondent Labour Court was that the employees had no right to claim the status of permanent workers and right to reinstatement and they were to be treated as casual labourers employed to perform casual work which was agreed from day-to-day. In support of that Ext. M-1, was produced. It was contended that an agreement was signed by some of the respondents on different occasions to substantiate that they were being employed on daily wages for performing casual work. But in the course of the examination of M.W. 1, he has admitted that some of the workers had been working for many years and he had also stated that the payment evidenced by Ext. M-1, wages paid to the respondents- workmen were not reflected in any other book maintained by the management, as the management had not maintained books for casual employees. In other words, the vouchers were not corroborated by the agreement which was scrutinised by the Labour Court. The learned Presiding Officer has chosen to rely upon the evidence adduced by the workmen in regard to their length of service, the nature of work done by them and the denial of employment. At some point of time some of them admitted, in examination-in-chief itself, that they are working even up to the date of their reinstatement. It is mentioned in the points of dispute referred to for adjudication as pointed out by the Managing Director in the evidence of some of the workmen. I do not think that those inconsistencies should be taken note of by this Court as evidence recorded was years after the dispute came to be referred and such inconsistency could be easily attributed to lapse of time.

20. When any inconsistency can be explained, with reference to the other material on record, it cannot render other evidence like letter written to the Conciliation Officer from which the date or the time may be identified in the year 1977.

21. Therefore, having regard to the oral evidence presented on both sides, the Labour Court has chosen to accept the evidence of the workmen instead of that of the management to come to a finding in favour of workmen.

22. Undoubtedly, the Management has pointed out lapses on the part of the counsel who represented them before the Labour Court as well as this Court and it was those lapses which made the petitioner to approach this Court. It may be so, or it may not be so. But having engaged a counsel, his lapses, if any, must be held to be lapses of the Management and for that reasons I cannot set aside the Award.

23. In other words, the procedure and reasoning adopted in appreciating the evidence is satisfactory from the point of view of the rules of evidence to which

we are accustomed. In that view of the matter I am not inclined to interfere with the Award. The workmen have been undoubtedly, employed for a long period in different capacities. Admittedly, they do not constitute, what may be presumed to be casual workmen as judicially decided. For instance some of the workmen have worked in weaving division of the petitioner's company, some others have worked in the watch-and-ward, and some others have worked as supervisors. How casual workers may do such work is not explained having regard to the activities carried on by the establishment of the company.

24. Therefore, the Labour Court correctly came to the conclusion that the workmen may be treated as permanent workmen who were refused work which amounted to termination of their services. I, therefore, unhesitatingly, dismiss this writ petition as devoid of merit, subject to the observations made earlier in regard to the rights of the parties and in regard to the settlement of accounts in terms of the Award in proceedings under Section 33 of the Industrial Disputes Act.

25. The amount in deposit in this Court will be transferred to the Labour Court to enable it to disburse the same in terms of its final order in the pending proceedings.

Order accordingly.