

(2011) 12 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 34671 of 2011 (L-KSRTC)

Mr. L. Dakshina Murthy

APPELLANT

Vs

Divisional Controller KSRTC, Bengalooru Central Division,
K.H. Road, Shanthinagar Bangalor-560 027

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

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

Citation : (2011) 12 KAR CK 0070

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Ram Mohan Reddy

1. Petitioner while in the service of the respondent filed W.P. 2075/2004, whence the respondent was directed to consider the petitioner's representation, in compliance of which the respondent issued the endorsement dt. 17.3.2004 rejecting petitioner's request. Petitioner filed W.P. 21387/2005 calling in question the endorsement dt. 17.3.2004 alleging that certain benefits flowing from the Judgment in W.A.4997/1998 were not extended to him. The learned Single Judge by order dt. 5.10.2005 set-aside the endorsement and directed a fresh consideration in accordance with the principles laid down in W.A.4997/1998. Petitioner having filed CCC No.901/2005, respondent complied with the order dt.05.10.2005 by issuing a Divisional Establishment Order No.699 dt.24.12.2005 Ann-G fixing the Time Scale of Pay w.e.f. 16.12.1978 while declining to grant arrears of wage, but extending service benefits w.e.f. 14.5.1982, the date on which the petitioner was absorbed in a clear vacancy and refixation of the pay, where afterwards the Contempt Petition was dismissed by order dt. 21.2.2006.

2. A conductor having retired from service of the respondent-Road Transport

Corporation on 31.3.2005 received the terminal benefits which included gratuity, leave encashment, provident fund, fixation of arrears of Rs. 10,020/- totalling to Rs.3,13,928/- in addition to other sums under cheques dt. 26.10.2005 and 16.5.2005 in all totalling to Rs.5,17,014/-.

3. Petitioner filed Application No. 9/2006 invoking Section 33C(2) of Industrial Disputes Act, 1947, for short "ID Act" before the Prl. Labour Court, Bangalore claiming the following:

a) difference of Time Scale of Pay from 16.12.1978

-Rs. 1,10,560/-

b) Provident Fund

10,540/-

c) 225 days leave encashment

72,146/-

Rs. 1,93,246/-

That application was opposed by filing statement of objections of the respondent interalia contending that under the DEO 669 dt. 24.12.2005, the petitioner's basic pay was fixed at Rs.5,620/. Time Scale benefit extended w.e.f. 16.12.1978, while arrears of salary was denied and further, on retirement, gratuity, leave encashment, arrears and Provident Fund totalling to Rs.3,13,928/- in addition to other claims, was made over to the petitioner under two cheques dt. 26.10.2005 and 16.5.2005 for a total sum of Rs.5,17,014/-. Parties entered trial whence the petitioner was examined as AW-1 while respondent examined one T.V. Rajendra Babu, Establishment Superintendent as RW-1, and marked documents. Labour Court having regard to the material on record, more appropriately in the light of DEO 669 dt. 24.12.2005, which is not called in question, and keeping in mind that the arrears of wage was denied, declined to accept the claim of the petitioner and accordingly by order dt. 12.8.2010 rejected the application. Hence this petition.

4. Although Smt. S.B. Lakshmi, learned counsel for the petitioner contends that the petitioner was entitled to arrears of pay after re-fixation in the Time Scale w.e.f. 16.12.1978, I am afraid that contention is unsustainable since the condition mentioned in DEO 669 dt. 24.12.2005 Annexure-G is that the petitioner is not entitled for arrears of wages. The next contention that the petitioner was entitled to Provident Fund is also without any basis since such a claim is not maintainable in an application u/s 33C(2) of the Act. As regards the last contention, petitioner was entitled to leave encashment of 225 days, learned counsel for the respondent-Corporation submits that reckoning the basic pay + Dearness Allowance, when divided by 30 days and multiplied by 225, the leave encashment value of Rs.69,426/- having been paid, the claim for Rs. 72,146/- was justifiably not accepted by the Labour Court. That submission of the learned

counsel for the respondent in the circumstances requires acceptance.

5. Although a faint effort was made by the learned counsel for the petitioner to contend that increments were not extended to the petitioner on the premise of the admission of RW-1 in cross-examination to that effect, I am afraid that contention also must be rejected for two reasons. Firstly, because such a claim was not made before the Labour Court in the application; secondly that DEO 669 dt. 24.12.2005 discloses extending annual increments on 17.5.1983; 19.5.1986; 30.11.1988; 2.3.1990; 1.1.1993; 6.12.97; 12.12.1999; 12.12.2000; 20.6.2002 and 17.2.2005.

6. Learned counsel for, the petitioner submits that liberty be reserved to the petitioner to question DEO 669 dt. 24.12.2005 Annexure-G by initiating a conciliation proceeding and seek reference of the dispute if the conciliation fails. There can be no fetter on the right of the petitioner to raise an industrial dispute over the Divisional Establishment Order in respect of matters not subject matter of the order impugned of the Labour Court, however, subject to the explanation for delay and laches and therefore, liberty as such need not be reserved to the petitioner.

In the circumstances, the order impugned not shown to suffer from legal infirmities, occasioning grave injustice to the petitioner does not call for interference.

Petition devoid of merit is rejected.