

(2016) 06 KAR CK 0109

In the Karnataka High Court

Case No : W.P. No. 40019 of 2013 and 40021, 4022 of 2013. (L-TER)

M/s. Karnataka Power Transmission Corporation Limited

APPELLANT

Vs

Mr. S. Harisha & Ors.

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 150 FLR 1047 : (2016) 5 KantLJ 122 : (2016) LabLR 880 :
(2016) 4 LLN 165

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Mr. Harikrishna S. Holla, Advocate. in W.P. No. 40019 of 2013, Mr. Harikrishna S. Holla, Advocate. in W.P. No. 40021 of 2013, Mr. Harikrishna S. Holla, Advocate. in W.P. No. 40022 of 2013, for the Appellant; Sri Sharath S.S. Gowda, Advocate. in W.P. No. 4

Final Decision : Dismissed

Judgement

S. Sujatha, J.—Since identical issues are involved in these matters, all these cases are clubbed, heard together and disposed of by this common order.

2. Petitioner is an undertaking of Government of Karnataka engaged in power distribution. The Petitioner Company has established various 66/1, KV MUSS Stations in different parts of Mysore. The respondents claiming to be the workmen of the petitioner Company, filed claim statements in the reference made by the Government of Karnataka for adjudication of the dispute of refusal to give work to the workmen. It was inter alia contended that they have joined the services of the petitioner as operators. Though they have rendered unblemished record of service to the petitioner for more than 240 days, the petitioner without following the procedure prescribed under Section 25F of the Industrial Disputes Act, 1947 (the 'Act' for short) refused to give work to the respondents. Accordingly, they sought for reinstatement with back-wages. Petitioner refuted the claim made by the workmen mainly contending that there

was no relationship of employer and employee as between the petitioner and the workmen. The petitioner had engaged the services of the contractor through whom the workmen were employed, as such, the provisions of the Act are not applicable to the case on "hand and prayed to dismiss the reference confirming the refusal of work to the workmen. The Labour Court after analysing the material on record, allowed the reference in part directing the petitioner to reinstate the workmen into service to the same post last held by them under the same terms and conditions along with 50% back-wages from the date of retrenchment till the date of reinstatement.

3. Being aggrieved, the petitioner is before this Court.

4. Learned counsel for the petitioner Sri Rajesh Shettiger appearing on behalf of Sri Harikrishna S. Holla vehemently contended that the agreement dated 30.06.2004 executed between the petitioner and the contractor evidences that the workmen were employed by the contractor. There was no direct relationship of employer and employee between the petitioners and the workmen. Indeed, the petitioner had produced documents Exs.M.1 to M.5 to establish that the workmen were employed through the contractor and they were paid through the contractor. This crucial evidence was not considered in the right perspective by the labour Court. Brushing aside this vital evidence, the labour Court wrongly held that there was relationship of employer and employee between the parties and directed the petitioner to reinstate the workmen with 50% back-wages. Learned counsel would contend that the award passed by the labour Court is contrary to the evidence on record and in support of his contention, the learned counsel placed reliance on the judgment of this Court in the case of Karnataka Power Transmission Company Limited Contract Workers Union v. The Karnataka Power Transmission Company Limited, (W.P. No. 12774/13 disposed of on 2.9.2013).

5. Per contra, Sri Sharath S. Gowda, learned counsel appearing for the respondent in W.P. No. 40022/2013 would contend that the agreement relied on by the petitioner dated 30.6.2004 would noway assist the petitioner since the workmen were employed by the petitioner much before the execution of the said agreement. This appointment of the workmen is admitted by the petitioner as per the experience certificate issued by the Assistant Executive Engineer certifying that the workmen were working under the petitioner establishment continuously from 3.6.2003 to 31.12.2006. It is also contended that Ex W.7 - the shift chart shows that the workman was employed by the petitioner and this has been admitted in the cross-examination of the employee. Learned counsel would further contend that no renewal agreement entered into between the contractor and the petitioner is produced either before the labour Court or before this Court to establish that the workmen were employed by the contractor in pursuance to the agreement entered into between the contractor and the petitioner. Accordingly, learned counsel would contend that the relationship of employer and employee between the petitioner and the workmen were established before the

labour Court. The labour Court has rightly considered the evidence on record and having considered the various judgments of the Apex Court, allowed the reference in part directing the petitioner to reinstate the workmen into service with 50% back-wages which cannot be found fault with.

6. I have given my anxious consideration to the rival contentions submitted by the parties.

7. The facts are almost similar in all the cases. The undisputed facts are that the workmen were working in the petitioner Company much earlier to the date of execution of the agreement, relied on by the management to contend that the petitioner had entered into an agreement with the contractor who in turn had employed the workmen. The dispute is regarding the relationship of employer and employee between the parties. The material evidence on record i.e., Exs.WS, W6 and W7 clearly establishes that the certificates were issued by the Assistant Executive Engineer of the petitioner Company certifying that these workmen were working in the petitioner establishment from 2003 to 2006. The shift register signed by the petitioner also comes to the aid of the workmen to establish that - relationship of employer and employee. These documents are hot denied by the petitioner. No material evidence is adduced by the petitioner to discard this vital evidence of the workmen. The documents on record shows that the workmen have continuously worked for more than 240 days in the establishment of the petitioner. It was mandatory for the petitioner to follow the provisions of the Act before refusing the work to the workmen. The action of the petitioner amounts to illegal retrenchment. Much emphasis is placed by the learned counsel appearing for the petitioner on the agreement entered into between the contractor and the petitioner. At this juncture, it is beneficial to refer to the judgment of the Apex Court in the case of Hussain Bhai, Calicut v. Alath Factor Thezhilal Union, Kozikode reported in 1978 (37) FLR 136 wherein it is held thus:

"The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact; the employer. He has economic control over the workers subsistence, skill and continued employment. If he for any reason, chokes off, the worker is, virtually; laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ?ex-contractu is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different, perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myraid devices, half-hidden infold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to

when labour legislation casts welfare obligations on the real employer, based on Articles 38-39-42, 43 and 43-A of the Constitution. The court must be astute to

avoid the mischief and achieve the purpose of the law and not be misled by the Maya of legal appearances.

If the livelihood of the workman substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary, but the inference defies ingenuity. The liability cannot be shaken off."

8. The factual matrix in the present case, if examined in the light of the said judgment, the contractor agreement appears to be a myriad device designed by the petitioner to dispute the relationship of employer and employee between the parties. The Judgment relied on by the learned counsel for the petitioner was rendered in the context of the Industrial Tribunal after considering the evidence on record had held that the workmen were engaged by several contractors and they were never registered on permanent roll and they were removed from service without complying Section 25 of the Act. The claim of the workman was negated and the award was passed holding that no jural relationship of employer and employee between the parties was established, the workman were not appointed pursuant to the process of recruitment under the recruitment rules of KPTCL but were employed by the contract agencies. In such circumstances, this Court upheld the award passed by the labour Court rejecting the claim of the workmen. This judgment is of no assistance to the petitioner in the present batch of cases wherein it is categorically admitted by the petitioner in its evidence coupled with the Exs.W.5 to 7 issued by the Assistant Executive Engineer of the petitioner that these respondents were working in the petitioner establishment for more than 240 continuous days. In the given circumstances, the relationship of employer and employee is established in the present batch of cases and it was mandatory to comply with the provisions of Section 25F of the Act which having not been done, the labour Court is justified in setting-aside the dismissal order passed by the petitioner with 50% back-wages.

9. No other contention is raised by the petitioners in challenging the impugned awards herein.

10. I do not see any irregularity or illegality in the award passed by the labour Court. Writ petitions are dismissed.