
(1990) 07 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petition No. 2738 of 1984

M/s. Sikka-n-sikka Engineers Pvt. Ltd.

APPELLANT

Vs

Labour Court, Hubli and Another

RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1990) 4 KarLJ 605

Hon'ble Judges : R. Ramakrishna, J

Judgement

The above petitioner has filed this writ petition under Article 226 of the Constitution of India to quash the Judgment and Award of the Labour Court, Hubli, passed in Reference No. 66/1978, dated 14/16-6-1982.

The petitioner was a medium scale factory having its works at Bangalore and Registered Office at Bombay. They started business initially at Belgaum and later started another factory at Bangalore. For economic reasons, the petitioner closed the factory at Belgaum and terminated the services of all the workmen. They have also sold the said factory as per Annexure-A. At the time of closure, a reference was pending before the Labour Court in respect of certain demands by the union. The second respondent-Union, on behalf of some workmen has raised an Industrial dispute pertaining to various demands including the demand pertaining to termination of two workmen by name. Sri Shekar and Sri S.B. Chogule. Consequent to this dispute, the Government has referred the dispute for adjudication before Labour Court, Hubli.

At the time of hearing of the above reference by the Labour Court, Hubli, the second respondent-Union has withdrawn the subject referred to in the reference except the termination of two workmen before the closure.

Now we are concerned with the reference shown below:

1. Whether the workman Sri Shekar R. Vantumari should be reinstated in service with full back wages and continuity of service with effect from 30th December,

1977.

2. Whether the workman Sri S.B. Chogule should be reinstated in service with full back wages and continuity of service with effect from 30th December, 1977.

The second respondent having received the notice of this writ petition has remained absent. Notices were initially sent to its address and later paper publication was made in "Samyukta Karnataka" Kannada daily, largely circulated at Belgaum side.

To show that the petitioners are not justified in dismissing the workmen shown in the reference, the second respondent-Union which espoused the cause of these workmen, has led evidence through one Prabhakar WW2. On behalf of the petitioner, one Kumar Kini (MW2) was examined who is one of the partner of the petitioner firm.

It is admitted that the workman Shekar was terminated with effect from 29-11-1977. He was alleged to have been appointed during September/October, 1976. But there is no document showing the same. The period of probation fixed was six months subject to extension for another six months. It is expected that this workman would have given his evidence to show when actually he was appointed. He having failed to show the date of appointment, the presumption is that at the time of his termination he had not completed his probationary period.

In respect of Sri S.B. Chogule, he was appointed on 16-6-1977 on probation for a period of six months and his services were terminated with effect from 30-12-1977 as unsatisfactory.

It is conclusive that Sri Shekar was not a member of the Union at the time of his termination as the Union started its active role from 30-11-1977.

The Labour Court proceeded on the premise that these workmen have put in more than one year of service and hence Section 25-F of the Industrial Disputes Act, 1947 is attracted and non-compliance of the said section render the termination order illegal. Since there is no material to show that these two workmen have put in more than one year of service, the reasoning of the Labour Court is not sustainable.

Nextly, there is absolutely no material placed by the 2nd respondent that these workmen were terminated after completion of their probationary period. The case of the petitioner is that these two workmen were terminated for non-satisfactory of service during their probationary period. Hence the Labour Court has committed an error in coming to the conclusion that the termination of these two workmen amounts to punishment.

The Labour Court further proceeded for the reinstatement of these two workmen in the branches of the petitioner-firm in view of the existence of Clause 8 in the order of appointment which reads as under:

"You may be transferred to any other Department/Section, Site, Branch, Division,

Sister Concern of the company now in existence or established hereafter anywhere in India and it shall be binding on you to report to duty there within the specified date and time mentioned in your transfer order".

The Labour Court has construed this condition in the order of appointment that the factory is in existence and therefore the dismissed workmen can be reinstated in the branches of the petitioner-firm. This condition is to be construed as one of service condition for a workman to be ready to work in any branch when exigencies are there while he was in service. Since the Company at Belgaum was closed, there could not be any scope for the workmen working in the factory to be transferred to any other branch. If we take this as the base, the petitioner could not have retrenched any of the workmen after selling the running concern as they would have been connected in the branches at Bangalore or Bombay.

Looking from any angle, the impugned Award passed by the learned Presiding Officer, Labour Court, Hubli, is legally not sustainable.

In view of the foregoing, the Judgment and Award of the Labour Court, Hubli passed in Reference No. 66/1978, dated 14/16-6-1982 is hereby quashed.

There is no order as to costs.