
(2015) 03 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 80201/2009 (L)

President, Vasavadatta Cements

APPELLANT

Vs

S. Damodar Rao

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 2(s)

Citation : (2015) 03 KAR CK 0021

Hon'ble Judges : Ravi V. Malimath, J.

Bench : Single Bench

Advocate : N.B. Diwanji, Advocate for Pramod N. Kathavi, for the Appellant;
Jayanandayya, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi V. Malimath, J.—The case of the respondent is that he was appointed as an Assistant Manager under the petitioner-Company on 03.02.1997. He was entrusted with the work of a Senior Clerk. He was not assigned any managerial or supervisory work. The main function that he performed was of a workman. He neither had any authority nor power to sanction leave or to cancel leave, issue memo to the workmen or any such acts of like nature. He was terminated from service of the petitioner by the order dated 16.02.2002 with effect from 31.10.2002. Hence, he filed a claim petition under Section 10(4-A) of the Industrial Disputes Act, 1947 (for short the Act") seeking to set aside the order of termination. By the impugned award, the claim petition was partly allowed. The respondent therein was directed to reinstate him into service within three months and granted 50% back wages. Aggrieved by the same, the management has filed this petition.

2. Sri N.B. Diwanji, learned counsel for the petitioner contends that the respondent is not a workman. That he is an Assistant Manager. That he has performed managerial and supervisory duties. The appointment order also speaks of his designation. Therefore, he cannot be considered to be a workman

in terms of Section 2(s) of the Act. Hence, he pleads that the petition be allowed by setting aside the impugned award.

3. On the other hand, Sri Jayanandayya, learned counsel for the respondent defends the impugned order. He contends that he is a workman as defined under Section 2(s) of the Act. That he does not have any managerial or supervisory jurisdiction at all. His main job as could be seen from the job profile is only clerical in nature. Therefore he is a workman. Hence, he pleads that the petition be dismissed.

4. On hearing learned counsels, I am of the considered view that there is no merit in this petition. The Labour Court has exhaustively considered the material on record. It has taken into consideration the job profile of the respondent, the appointment orders, the work being conducted and as well as the evidence lead in by both the parties. On considering the same, an exhaustive order has been passed by holding that the respondent is a workman and that his termination is illegal. I do not find any good ground to interfere with the well considered order of the Labour Court.

5. The primary contention of the petitioner is that the respondent is not a workman. He relies on the appointment order to justify the same. The appointment order would narrate that he was selected and appointed to the post of Assistant Manager (Packing Plant). Therefore, it is contended that since he is an Assistant Manager he cannot be considered as a workman.

6. The Hon'ble Supreme Court have held in a catena of decisions that the nomenclature of the job is not a relevant factor. What is important is the actual nature of the work done by the workman that would determine whether he falls within the definition of Section 2(s) of the Act. Whether he is called as a Manager or Supervisor, the name does not imply that he is not a workman but a manager.

7. Therefore, what has to be considered is the nature of the work performed by the workman. In terms of Ex. M-11 produced by the management with regard to the job profile of the petitioner is as follows:

"i) To ensure achieve monthly Cement dispatches targets.

ii) To ensure that Contractor has made required loaders available in all three shifts.

iii) To ensure Wagons/Trucks are loading timely.

iv) To ensure running of Packing machines in all three shifts smoothly, in case of stoppages to find out reasons and remedies.

v) To ensure timely placement/haulage of wagons in all the shifts, in case of demurrages, to find out reasons and avoid repetition.

vi) Co-ordination with Railways and Sales and Technical departments.

vii) Responsible for ensuring sufficient stock of bags through advance planning.

- viii) Ensure proper branding of bags as per laid down procedures and arrange to verify the same for proper traceability.
- ix) Responsible for wastage of bags in handling/storage.
- x) Responsible for ensuring that cement is packed in appropriate bags as per weight norms.
- xi) To plan loading programme in consultation with Sales Department.
- xii) Responsible for optimizing the loading time of Wagons/Trucks.
- xiii) Any other job, concerning your area of work, as may be assigned to you by your Superior/Management and when required.
- xiv) To avoid shortages/excess bags loaded in wagons. Surprise random checking of loaded wagons.
- xv) To ensure target material loading per packer in all shifts.
- xvi) T.P.M. Activities and ISO 9002, ISO 14001 records maintaining."

8. Reading of the same would show that there is no duty assigned to the workman that could be stated to be managerial. His job is to maintain the records, taking of loaded wagons, optimizing the loading time of the wagons, to ensure the cement is packed in an appropriate bag, to ensure there is no wastage of bags, to ensure sufficient stock of bags etc. None of these would show that there was any managerial work being conducted by the workman. Most of these works are menial in nature. They certainly come under the definition of workman. Therefore, only because the designation is that of an Assistant Manager, it does not mean that he is not a workman.

9. It is within the jurisdiction of the management to define the nomenclature of each of its workman. Even those workmen who are doing menial work may be designated as manager. That does not mean that they come within the managerial post. The job profile having been considered, I have no hesitation to hold that the Labour Court was justified in holding that the respondent is a workman.

10. So far as the illegal termination is concerned, the Labour Court having considered the material on record, was of the view that the termination is illegal. That there is no sufficient documentary evidence from the management in order to substantiate their case by either defending the order of termination or otherwise. Under these circumstances, I have no hesitation to hold that the award passed by the Labour Court is just and appropriate.

11. Consequently, the petition being devoid of merit, is dismissed.

Rule discharged.

In view of dismissal of the writ petition, Misc. W.80101/2009 filed for direction is

disposed off.