

(2015) 12 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition Nos. 101460-101467/2013 (L-RES)

Sanjeevkumar and Others

APPELLANT

Vs

Gulbarga Electricity Supply Company Limited and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(oo)(bb)

Citation : (2015) 12 KAR CK 0079

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : P. Vilas Kumar, Advocate, for the Appellant; M.H. Acharya and Ram Rao Kulkarni, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the award dated 07.09.2012 passed in Reference No. 12/2012 impugned at Annexure-A to the petitions. In that light the petitioners are seeking that they be reinstated into service with continuity of service, back wages and consequential benefits.

2. The petitioners alleging illegal termination of their services on 31.01.2008 had raised a dispute in that regard. The grievance of the petitioners were considered in Reference No. 12/2012. The Labour Court after adverting to the rival contentions and the evidence tendered by the parties has by the award dated 07.09.2012 rejected the reference. The petitioners claiming to be aggrieved by the same are before this Court.

3. Heard the learned counsel for the parties and perused the petition papers including the records received from the Labour Court. In support of the contentions put-forth by the petitioners with regard to the petitioners having rendered service from the year 1998 until they were terminated on 31.01.2008, eight of them have been examined as WW-1 to WW-8 and the documents at Exs. W-1 to W-7 were marked. On behalf of the respondents - management a witness

as MW-1 was examined and the documents at Exs. M-1 to M-20 were marked. The Labour Court while answering the issue raised for its consideration has taken note of the said evidence and has arrived at the conclusion.

4. Since in the instant petition filed under Articles 226 and 227 of the Constitution of India there is no scope to re-appreciate the evidence but is only to notice as to whether the evidence taken into consideration by the Labour Court and the manner of assessment of the said evidence would lead to perversity, the matter requires consideration in that light.

5. If these aspects of the matter are kept in view, it is seen that while making a consideration in this regard the Labour Court has taken into consideration that several workers numbering as many as 1400 contract workers had been appointed by the respondents in the year 1998. The fact that the petitioners were also appointed in the said process is not seriously in dispute nor has the Labour Court discounted that aspect of the matter. However, the fact that some of the workers have been regularized and the petitioners have not been regularized has also been taken into consideration. While in that light considering the right as claimed by the petitioners to continue in service and to be regularized therein, the Labour Court has made reference to the contracts that had been entered into between the workmen concerned and the management. The documents at Exs. M-1 to M-7 have been taken into consideration by the Labour Court and in that light by the said contract it is concluded that the petitioners had been taken to work only for the period stated therein and has arrived at the conclusion that in view of the provisions contained in Section 2(oo) (bb) of the Industrial Disputes Act, 1947 the termination of the petitioners cannot be considered as illegal and therefore the relief has been denied.

6. As noticed, when this Court is required to consider the nature of the finding as rendered by the Labour Court and since it is noticed that the relief has been denied to the petitioners based on the documents at Exs. M-1 to M-7, in order to consider the correctness of the assessment as made by the Labour Court, I have referred to the said documents which is available in the records secured from the Labour Court. A perusal of the said agreement would no doubt indicate that the workman has been taken as a Gangman for the period 01.04.2003 to 30.09.2003. Similar is the position in the document at Ex. M-7 which has been relied upon by the Labour Court. Therefore, if the said document is taken into consideration, the reasoning thereafter assigned by the Labour Court to deny the relief to the petitioners based on the said documents would have to be termed as perverse, as the consideration of the said documents in the light of the provisions that has been referred to in the award could have been made only if the relationship of employer and employee was brought to an end on 30.09.2003 after the contract period.

7. As accepted by the Labour Court the petitioners have continued to work up to the year 2008. The allegation made by the workmen was that they were terminated on 31.01.2008 by an oral order. Therefore, what was required to be

noticed by the Labour Court was that subsequent to 30.09.2003 also the petitioners have continued to work in the respondent upto 31.01.2008 when they were terminated by an oral order. If that be the position, as against the job that had been assigned to them under the agreement even after the period when the agreement had come to an end, the workmen had continued to work in the same position for more than 5 years which would entail the right in favour of the petitioners since in any event the work discharged thereafter is more than 240 days per year. This aspect of the matter has been lost sight by the Labour Court and has applied the exception as contained in Section 2(oo)(bb) of the ID Act. The very nature of the arguments relied on indicates that the work is of a continuous nature but the tenure of the workmen was being continued from time to time with artificial break which in fact amounts to unfair labour practice.

8. That apart what is also not in dispute is that some of the employees who were similarly placed were regularized and it is only the others who had not been regularized were continued to work in the same post and even on that count the nature of the employment termed as contractual by the Labour Court would not be justified. Therefore, from the very admitted documents that were available on record, the benefit of reinstatement and the continuity of employment could not have been denied to the petitioners.

9. Further the learned counsel for the petitioners has also relied on an order dated 19.01.2015 passed in W.P. Nos. 85580-596/2012 wherein a learned Judge of this Court after referring to the judgments of the Hon"ble Supreme Court has directed that the petitioners therein who are similarly placed as that of the petitioners be reinstated and regularized in service.

10. Though the learned counsel for the respondents has relied on the order dated 09.04.2015 passed in W.P. Nos. 13711-13723/2015, the said decision would not be of assistance to the instant facts. Firstly what is necessary to be noticed is that the petitioners therein had approached the High Court directly when they were aggrieved by a notification which had been issued seeking to fill up about 228 vacant posts of Junior Assistant. In that light the petitioners working therein being threatened of their position were before the Principal Bench of this Court and it is in that circumstance the learned Judge was of the view that the relief sought for in the said petitions is to be rejected. However, in the instant facts as noticed, the petitioners who had rendered long service in the respondent - Corporation were before the Labour Court alleging the illegal termination and were therefore seeking to be reinstated into service and the question of the regularization was incidental thereto. Therefore if these aspects are kept in view the consideration as made by the Labour Court in the instant case is not justified.

11. The award dated 07.09.2012 in Reference No. 12/2012 is accordingly set aside. The termination of the petitioners on 31.01.2008 is therefore held to be illegal. The respondents are directed to reinstate the petitioners into service, grant continuity of service and treat them as the regularly appointed workmen of the respondent - Corporation. However, in the facts and circumstances of the

case the petitioners would not be entitled to the back wages in monetary terms but the respondents at the point of reinstating the petitioners shall fix the wages by taking the consequential benefits in notional terms and fix the wages equal to that of a similarly placed employee who has continued in service till the date on which the petitioners are reinstated. The implementation of this order shall be made by the respondents within two months from the date on which a copy of this order is furnished to the respondents.

Petitions stand disposed of accordingly.