

(2016) 06 KAR CK 0099
In the Karnataka High Court
Case No : W.P. No. 18243 of 2013 (L-RES)

Sankranti Dina Patrike

APPELLANT

Vs

Mysore Division Industrial Workers General Union and Anr.

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2016) LabLR 892

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

Bench : Single Bench

Advocate : Mr. Nagendra Kumar, Advocate, for the Appellant; Served, for the Respondent

Final Decision : Allowed

Judgement

1. This petition is directed against the award passed by the Labour Court at Mysuru in reference No.8/2009 dated 27.4.2012.

2. Brief facts of the case are that the reference was made by the Government of Karnataka under Section 10 (1) (C) of the Industrial Dispute Act, 1947 (herein after referred to as the "ACT" for short) for adjudication of the dispute between the respondent and the petitioner herein. Points for reference are as follows:

"1. Whether Second party justifies the refusal to give work to First Party, the Manager by name Machamma Mallige of Sankranti Daily w.e.f. 19.2.2008?

2. If not, to what relief, first party is entitled to?"

3. The Labour Court after appreciating the evidence led by the parties allowed the reference in part, directing the petitioner second party to reinstate the workman into the post last held by her. The petitioner is directed to pay 30% of back wages from the date of refusal to give her employment till the date of reinstatement.

4. The learned counsel appearing for the petitioner would contend that the first

respondent-Union was the first party before the Labour Court. It was averred that the second respondent by name Smt. Machamma Mallige was working with the petitioner as proof reader which is a daily Kannada evening local newspaper having wide circulation in Mysuru District. It was contended that she was appointed to work by the earlier management during the year 1986, later on at the time of refusal of working, she was working as Sub-editor. It was the case of the second respondent that she has been refused employment from the present management of petitioner since 19.02.2008 without assigning any reasons.

5. The learned counsel contends that the present management has taken over daily news paper concern after the demise of the erstwhile owner, Sri. Chandrasekhar Kukkikatte in 2007. There was no cessation of service and employment as alleged by the second respondent, no fresh employment orders were issued to the employees. The present management has stepped into the shoes of the erstwhile management. However, due to some unavoidable reasons the business was not continued and the said printing circulation of Sankranthi Dina Patrike was closed from December 2008 which has been admitted by the second respondent in her cross examination before the Labour court. It is established on record that the said Sankranthi Dina Patrike concern is closed from December 2008. In such situation, the Labour Court directing the petitioner to re-instate the workman into service is totally unsustainable and practically unworkable. It is also contended that no iota of evidence was placed on record by the workman to prove that she was working as Subeditor in the petitioner's concern and no documents are produced to establish the wages drawn by her. Accordingly, he seeks to set aside the order passed by the Labour Court and allow the writ petition.

6. Though the respondents are served they remained absent.

7. Heard the learned counsel appearing for the petitioner and perused the material on record.

8. It is the contention of the workman before the Labour Court that she was working as Sub-editor in the petitioner's concern and she was refused employment by the present management from 19.02.2008 without assigning any reasons. Ex.W8 is Form of Declaration which discloses that the petitioner herein was a publisher and printer of Sankranthi Dina Patrike. Learned counsel appearing for the petitioner disputes that the second respondent was working with the new management as Sub-editor. Ample evidence was produced by the workman to prove that she was working as Sub-editor with the present management at the time of refusal of work on 19.02.2008. No documents are produced by the petitioner to discard this evidence. It has come on record that the workman second respondent was working with the petitioner - local daily newspaper for a long time with continuous service of more than 240 days prior to refusal of the work by the management-petitioner newspaper. This Act of refusal of work to the petitioner certainly amounts to termination or otherwise an illegal retrenchment, it is not in accordance with section 25-F of the Industrial

Disputes, Act, 1947.

9. In the circumstances, Labour Court has given a finding that refusal of work by the petitioner amounts to illegal retrenchment. In view of the law laid down in the case of "Deepchandra v. State of U.P and another" reported in 2001 AIR-SCW 4862 Volume - II, allowed the reference in pare. However, the direction given by the Labour Court to re-instate the workman into service to the post last held by her is unworkable for the reasons that the second respondent herself in her cross examination stated thus:-

"7. I was not given the benefit of E.S.I. and P.P. by Management of 2nd party. From 18.2.2008, I was refused work by 2nd Party.

8. Since December 2008, Sankranthi Kannada Daily is not in circulation. It is true that the office of the said daily was closed from December 2008".

This evidence on record clearly establishes that Sankranthi Dina Patrike was closed from December 2008. In view of the categorical admission made by the workman-second respondent coupled with the evidence of MW1-Sudhakara S. Shetty herein, it is evident that the said Sankranthi Dina Patrike is closed from 2008. Given the circumstances, the petitioner can be directed to pay 30% of the back wages from the date of refusal to give work i.e., 19.2.2008 till the date of closure of Sankranthi Dina Patrike i.e, December 2008. The direction of the Labour court to re-instate Lie second respondent into service is unjustifiable.

10. Accordingly the order passed by the Labour court impugned herein is modified as under:

i) The direction, to re-instate the second respondent into service to the post last held by her is set aside.

ii) The petitioner is directed to pay 30% of back wages from the date of refusal to give work i.e., 19.02.2008 till the date of closure of Sankranthi Dina Patrike newspaper i.e. December 2008.

11. In the result, writ petition is allowed to the extent indicated above.