

(2015) 02 KAR CK 0301
In the Karnataka High Court
Case No : Writ Petition No. 4831/2008(L)

Secretary and Others

APPELLANT

Vs

K. Venkatappa Setty and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 25F

Citation : (2015) 02 KAR CK 0301

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

Bench : Single Bench

Advocate : V.R. Datar and Ravi Hegde, for the Appellant; K. Varaprasad, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the award dated 12/11/2007 passed in C.R. No. 54/1989.

2. The respondents contending that their termination during July 1988 without following due procedure as contemplated under Section 25F of the Industrial Disputes Act, 1947(the "ID" Act for short) had raised a dispute which had been referred to the Central Government Industrial Tribunal cum Labour Court(the "CGIT" for short) in C.R. No. 54/1989. At the first instance, the award dated 29/07/2001 was passed whereby the reference had been rejected. The respondents were before this Court in Writ Petition No. 37972-988/2001. This Court by order dated 06/06/2002 had set aside the award and remanded the matter for fresh consideration. On reconsideration, the award dated 28/11/2002 was passed. The workmen were once again before this Court in Writ Petition No. 5025/2005. This Court by order dated 06/06/2007, for the second time, had set aside the award and remanded the matter to the CGIT for consideration. It is on such consideration, the present impugned award dated 22/11/2007 has been passed.

3. The CGIT in the said award had directed reinstatement of the first party workmen, whose names were indicated, into service with full back wages from the date of their respective termination till the date of reinstatement with all consequential benefits. The petitioner/management is before this Court assailing the said award.

4. The learned counsel for the petitioners while assailing the award would contend that the Tribunal was not justified in its conclusion. A detail reference is made to the award passed by the Labour Court with reference to the evidence tendered before the Tribunal. In that regard, it is contended that the Tribunal was not justified in relying upon the documents at Exs. W-16 and W-17 to arrive at its conclusion in favour of the respondents. It is the case of the learned counsel that based on the said documents, the Tribunal ought not to have arrived at the conclusion that the respondents herein had worked for more than 240 days. In that light, it is contended that the conclusion of the Tribunal that the termination is without compliance of Section 25F of the ID Act and therefore it amounts to retrenchment under Section 2(oo) of the ID Act, is not justified. In any event, the Tribunal was not justified in granting either continuity of service or back wages and therefore the award is liable to be set aside.

5. The learned counsel for the respondents/workmen would, however, seek to sustain the award passed by the Court below. It is the contention of the learned counsel that the Tribunal having taken note of the oral as well as the documentary evidence has arrived at its conclusion and when there is a finding on fact based on evidence, the same does not call for interference. The learned counsel would also refer to the documents produced along with I.A. 1/15 for production of the additional documents. In that regard, it is pointed out that in similar circumstance certain workmen who had been terminated had assailed the award passed by the Tribunal. In the said case, the learned Single Judge of High Court at Andhra Pradesh had directed reinstatement without back wages. A Division Bench of that Court affirmed reinstatement but with 50% back wages. In the said circumstance, it is contended that it would not be open for the petitioners to assail the award when the Division Bench of the Andhra Pradesh High Court has affirmed reinstatement of similarly situated persons under the same management.

6. In the light of the rival contentions, I have perused the award passed by the Tribunal and the records received therefrom.

7. I have take note of the oral evidence tendered through MW-1 and also the workman as WW-1. In that light, I have also perused the documents Exs. W-16 and W-17 which has been referred to by the Tribunal. In that light, a perusal of the award would indicate that the Tribunal on taking note of the details as contained in the documents at Exs. W-16 and W-17, has arrived at the conclusion that the respondents herein had worked for more than 240 days and therefore their termination is contrary to the provisions in Section 25F of the ID Act. While arriving at such a conclusion, the Tribunal has also kept in view the

observations made by this court at the earlier instance when the matter had been remanded for considering it afresh. In that light when the documents have been kept in view and the Tribunal has also taken note of the fact that the very same documents had been relied upon by the Tribunal while considering the case of one Sri. Mehaboob and the regularization of service accorded, in that case having attained finality, the Tribunal was justified in arriving at its present conclusion based on the said documents which are relevant.

8. On perusal of the additional documents, it is seen that some of the employees who were terminated in similar set of circumstance under the same petitioner management had raised a dispute and the same was referred to the Industrial Tribunal-1, Hyderabad in ID No. 80/1991 and connected references. The Tribunal while taking note of the very same documents which are presently taken note of by the Tribunal in the instant case, had arrived at the conclusion that the workmen are entitled to reinstatement with full back wages and consequential benefits. The award passed therein is produced as Annexure R-1 along with the application. The petitioners herein had assailed the said order before the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 14028/1994(Annexure "R-2). The learned Single Judge of that Court after taking note of the contentions which had been urged on behalf of the management to assail the award, had negatived the back wages but to the extent of the Industrial Tribunal granting reinstatement to the workmen, continuity of service and other consequential benefits was maintained. Claiming to be aggrieved by the order passed by the learned Single Judge, both the management as well as the workmen were before the Division Bench of that Court in Writ Appeal Nos. 505/2003 and 985/2004(Annexure "R3"). The Division Bench, after considering all aspects of the matter, affirmed reinstatement, consequential benefits and continuity of service which had been granted. Insofar as back wages, the Division Bench had modified the order and has held that the workmen are entitled to 50% of back wages.

9. In the light of the above, since in similar circumstance the very same documents have been relied upon by the workmen relating to the very same management and the award of the Industrial Tribunal, Hyderabad, has been upheld by the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad, the very same consideration would have to be made herein to uphold the award of the Tribunal directing reinstatement with continuity of service.

10. The question that would, however, arise for consideration is as to nature of the consequential benefits that is required to be ordered and as to whether the respondents herein should be granted full back wages as has been granted by the Industrial Tribunal.

11. As already noticed, the learned Single Judge of the High Court of Andhra Pradesh, Hyderabad, had denied the back wages which has been modified by the Division Bench to hold that the workmen are entitled to 50% back wages. A perusal of the reasons as indicated by the Division Bench would disclose that in

the said facts, the workmen had made an assertion that they were not employed alternatively and when such a positive statement was made, the management did not produced any material to prove that they were in fact engaged in alternate employment. In that view, in the instant case, it is observed that there is nothing on record to indicate that the respondent/workmen have categorically stated that they are not employed else where. Even if that be so, it was necessary for the industrial Tribunal to record a finding on this aspect and thereafter either grant or deny the back wages. A perusal of the award would indicate that the Tribunal has not made any consideration on this aspect of the matter. In such circumstance, keeping in view that the termination which has now been set aside had taken place as far as back during the month of July 1988, in my opinion, if either full or even 50% of the back wages is awarded, it would not be in the interest of justice. I am of the said opinion for the reason that the very contention which had been put forth before the Division Bench on behalf of the management is with regard to the loss that had been suffered by the management and it is in the circumstance, the back wages had been restricted to 50% therein.

12. In the instant case, nearly 27 years have gone by from the date of termination. In the said circumstance, certainly, the respondents could not have remained idle for such long period as they would have been employed else where even if it be for survival. However, since there is no material on record to indicate that the actual nature of their employment elsewhere or the quantum of salary/ wages they would have drawn, it would be appropriate that in the instant case, the back wages be fixed at 30%. Therefore, keeping in view all the above aspects of the matter, the award passed by the CGIT dated 12/11/2007 insofar as directing reinstatement with continuity of service is affirmed. However, the same stands modified to hold that the respondents/workmen would be entitled to only 30% back wages and for the remaining benefits, consequential benefits would only remain notional i.e., for the purpose of fixing the salary as on the date of reinstatement or for the purpose of calculating the terminal benefits.

In terms of the above, the petition stands disposed of.