

(2011) 01 KAR CK 0011
In the Karnataka High Court
Case No : W.A. No. 1566 of 2010

Siddaiah

APPELLANT

Vs

Management of Mandya National Paper Mills Ltd., Belagula

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Citation : (2012) LLR 1267

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : R.N. Deshpande, for the Appellant;

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—These appeals are filed by the unsuccessful petitioner W.P. No. 17111/07 being aggrieved by the order dated 13.11.2008, wherein the learned single Judge of this Court has declined to interfere with the award passed by the Labour Court, Mysore in Ref. No. 93/99 dt. 23.1.2007 and dismissed the Writ Petition.

2. The appellant herein joined the services of the respondent on 15.3.1963 as a Laboratory boy. The respondent-company introduced voluntary retirement scheme in the year 1988. From time to time it issued Circulars inviting applications from the employees to retire from service. The appellant herein had made an application seeking for voluntary retirement as per the scheme on dt. 9.8.93. Thereafter, the said application was not withdrawn. Thereafter, another circular was issued on 26.12.1995 calling for applications in respect of the employees who seek voluntary retirement. In response to the same, the appellant again submitted the application for voluntary retirement on 3.1.1996.

Thereafter, another circular was issued on 14.10.1996 inviting applications from the employees to retire from service and it was made clear that employees who had already made applications pursuant to the earlier circular, need not make fresh application. The application for voluntary retirement of the appellant, was

accepted 27.3.1997 and he was relieved from the service on 24.3.1997. Being aggrieved by the same a dispute was raised before the Labour Court in Ref. No. 93/99.

3. Before the Labour Court claim statements were filed by the workman. Respondents also filed their statements contending that it was only acceptance order and the voluntary retirement application has not been withdrawn by the appellant and there was no order of termination. The Labour Court after considering the material on record, answered the point against the worker and in favour of the management and rejected the reference by judgment and award dt. 23.1.2007. Being aggrieved by the same Writ Petition was filed by the appellant herein contending that the application seeking for voluntary retirement had expired, the same could not have been accepted and the services of the appellant have been terminated in the garb of voluntary retirement. Therefore, the order of the Labour Court dismissing the reference is liable to be set aside and reference may be allowed. The learned single Judge after considering the contention of the learned counsel appearing for the parties and scrutinizing the material on record held that two applications for voluntary retirement given by the appellant had not been withdrawn, nor accepted and the same has been accepted on 27.3.1997 and he was relieved from the services on 24.3.1997. There is no question of any termination from service and it is only acceptance of the application for voluntary retirement and furl her observed that during the pendency of the Writ Petition the respondent-Company is wound-up by the order of this Court in Company Petition No. 112/94 dt. 20.11.2000 and Official Liquidator is appointed to respondent-company. During the pendency of the proceedings a sum of Rs. 50,000 was paid by way of cheque to the appellant by the respondent-Company. The learned single Judge directed the respondent-Company to settle the balance amount of voluntary retirement benefit to the appellant herein as admissible under law and accordingly dismissed the Writ Petition with the said observations. Being aggrieved by the said order of the learned single Judge these appeals are filed by the unsuccessful writ petitioner.

4. There is a delay of 492 days in filing the appeals and application has been filed for condoning the said delay.

5. We have heard the learned counsel appearing for the appellant.

6. The learned counsel appearing for the appellant vehemently argued that the appellant was a member of the workers' union. Though the application filed for voluntary retirement had expired and the charges were framed against him which were not proved, in the garb of accepting the voluntary retirement, the services of the appellant has been terminated. He has taken us through the relevant Rules governing, the conditions of service of the employees of the respondent-Company and submitted that the application for voluntary retirement had expired and he could not have been accepted. He has also submitted that sufficient cause is made out for condoning the delay in filing the appeals.

7. We have given careful consideration to the contention of the learned counsel appearing for the appellant and scrutinized the material on records.

8. The material on record would clearly show that scheme had been framed by the respondent-Company for granting voluntary retirement to its employees and circular was issued on 8.2.1993 and an application had been filed by the appellant seeking for voluntary retirement. Thereafter, another circular was issued on dt. 26.12.1995 inviting applications from the employees who, were seeking voluntary retirement. Another application was also filed by the petitioner on 3.1.1996 as per the circular. Thereafter, another Circular was issued on 14.10.1996 calling for applications of the employees who seek voluntary retirement and it was made clear that employees who had already made applications pursuant to the earlier circular, need not again apply. However, since disciplinary proceedings were pending against the appellant, the application of the appellant for voluntary retirement dt. 3.1.1996 has been accepted on 27.3.1997 and he has been relieved from the services from 24.3.1997. Therefore, it is clear that the contention of the learned counsel appearing for the appellant that compulsory retirement of the appellant, is a penalty, cannot be accepted, but, it is on the basis of the application given by the appellant. The regular conditions of the services referred to by the learned counsel appearing for the appellant would not be applicable as the circulars were issued under the special scheme for voluntary retirement of the employees the respondent-Company as it was under loss. The material on record would further show that respondent-company is wound up by order dt. 20.10.2000 and official liquidator has been appointed in Company Petition No. 112/94. The additional documents sought to be produced along with the application are not necessary to determine the points arising for determination. Wherefore, it is clear that the order passed by the learned single Judge is justified and does not call for interference in these appeals.

9. There is a delay of 492 days in filing the appeals. The certified copy of the order of the learned single Judge dt. 13.11.2008 was obtained on 6.5.2009 and this appeal has been filed on 19.4.2010. There is a delay of 492 days in filing the appeal and the only averment made in the affidavit filed in support of the application for condonation of delay to explain the delay is that the appellant could not collect the documents from his previous counsel and after collecting the same, he has filed the appeal. Wherefore, it is clear that even if the averment is accepted, the same would not constitute any cause, much less any sufficient cause and would only show lack of diligence on the part of the appellant in filing the appeals. We have already held that there is no merit in the appeals. Accordingly, we hold that no sufficient cause is made out for condoning the delay and I.A. 1/10 is dismissed. Appeals are dismissed on merits and also on the limitation. Since the appeals are dismissed on merits, I.A.2/10 for additional documents is dismissed.