

(2009) 02 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No's. 8012, 8013, 12073 and 12074 of 2008

Sree Vinayaka Devasthana Samithi

APPELLANT

Vs

Smt. Kamalamma

RESPONDENT

Date of Decision : 21-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (j)

Citation : (2009) 123 FLR 576 : (2009) ILR (Kar) 4021 : (2009) 5 KarLJ 361 : (2010) 1 LLJ 757

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : K. Hanumantharayappa, in W.P. Nos. 8012 and 8013 of 2008 and V.Y. Kumar, in W.P. Nos. 12073 and 12074 of 2008, for the Appellant; K. Hanumantharayappa in W.P. Nos. 12073 and 12074 of 2008 and V.Y. Kumar in W.P. Nos. 8012 and 8013 of 2008, for the Respondent

Judgement

Subhash B. Adi, J.—These four writ petitions arise out of two awards passed by the First Additional Labour Court, Bangalore in I.D. Nos. 15 and 16 of 2004, both dated 25-2-2008. W.P. Nos. 8012 and 8013 of 2008 are by the management. W.P. Nos. 12073 and 12074 of 2008 are by the workmen viz., P. Krishnappa and Smt. Kamalamma-workmen.

2. Management has filed the writ petitions against the direction of the Labour Court for reinstatement of the workmen whereas, both the workmen have filed writ petitions against the denial of back wages and consequential benefits.

3. Both the workmen sought for reference of dispute against the termination of their services. It is stated that, both the workmen were removed from service on 28-5-1999. It is also stated that, both are husband and wife.

4. Case of the workmen was that, they were appointed as helpers in the temple in 1987 on a salary of Rs. 100/- per month and no appointment order was issued to them. The last paid salary was Rs. 1,100/-. Without any justification and without any reason, they were removed from service with effect from 28-5-1999

and said removal amounts to illegal retrenchment. It is also submitted that, they were in continuous service of 240 days in a year.

5. The claim petition was opposed by the temple committee inter alia denying the relationship of employer and employee and also denying that the temple is an industry and further denying that, the workmen were employed on a monthly salary of Rs. 1,100/- and they are in continuous service.

6. Labour Court considering the evidence held that, the workmen are appointed as Helper and they were drawing salary of Rs. 700/- per month and also held that, workmen have proved that they were in continuous service of 240 days in a year and directed reinstatement.

7. Sri Hanumantharayappa, learned Counsel appearing for the temple committee submitted that, workmen were appointed as helpers for sweeping the temple for an hour in a day and their services were not for regular and continuous. It is also submitted that, the workman Krishnappa used to drink alcohol and come to the temple and in this regard, there was a complaint and his attitude had spoiled the temple atmosphere and in this regard, the temple authority had discontinued the employment of his and his wife. He also submitted that, employment was neither regular employment nor any appointment order was issued, no salary or wage slips were issued. The services of these workmen were required only for sweeping purpose in the early morning and except this, there is no employment. In this regard, he also relied on the claim petition and pointed out that, only Rs. 100/- was paid per month for the purpose of sweeping only in the early morning and not entire day nor regular employment. Nextly contended that, temple cannot be an industry nor the respondents are workmen within the meaning of Section 2, Clause (s) of the Industrial Disputes Act, 1947. He further submitted that, though the workmen were dismissed in the year 1999, the dispute is raised in 2004 and now after nearly 10 years, the Labour Court has passed an award for reinstatement of the workmen without even considering whether the temple could keep such post vacant for nearly 10 years. He also submitted that, the temple is not an ancient or big temple, but a temple constructed in an extension area for the benefit of locality. It is not a big temple to engage or make an appointment. Only for the purpose of maintaining the sanctity and purity of the temple, sweeping work was given to these respondents and except this, there is no other work given to them.

8. Sri Kumar, learned Counsel appearing for the workmen submitted that, the witness examined for the temple committee has admitted that, the workmen were drawing salary of Rs. 700/- per month. He also submitted that, workmen had produced documents to show that, their services were engaged by temple committee. He relied on Exs. W. 1 to W. 6 to show that these documents prove the employment of the workmen. He further submitted that, temple is an industry and the employees appointed by the temple committee are entitled to maintain dispute under the provisions of the Industrial Disputes Act. He further submitted that, the engagement of the workmen was not for short period or

temporary.

9. Case of the workmen is that, on 28-5-1999 they were removed from service. It is not an ancient temple, but it is a temple built in an extension area at Bangalore. It is also admitted that, these workmen were engaged for sweeping purpose, there is no direct evidence to show that they were appointed by appointment order or any evidence to show that they were paid regular salary. However, it has come in the management evidence that the workmen were drawing Rs. 700/- per month.

10. Even assuming that, these workmen had worked in the temple, between the date of their removal and award, there is nearly more than 9 years gap. In a temple established in an extension area for the benefit of the local people, if some engagement is made, it is not viable to reinstate such persons nearly after ten years. This question also has to be answered. Apart from this, this Court in Writ Appeal No. 2713 of 2005, dated 11th August, 2005 (Radhakrishna Bhakta v. Subramanya Shastri and Anr. 2006 (1) AIR Kar. R. 301 (DB)), relying on the judgment of the Kerala High Court in the matter of A. Kesava Bhatt Vs. Sree Ram Ambalam Trust and Another, , has held as under:

The temple was held not to be an industry within the meaning of Clause (j) of Section 2 of the Act. We have carefully gone through this judgment and are in agreement with the reasoning of the learned Single Judge.

This judgment being a Division Bench judgment, it has binding effect on this Court. The Apex Court in a judgment in the matter of Uttaranchal Forest Hospital Trust Vs. Dinesh Kumar, , has held that, engagement of part-time basis for an hour daily not completing 240 days continuous service and was called to work whenever work was available has held that, the award cannot be passed for reinstatement.

11. In the light of the judgment of the Division Bench and particularly, the nature of temple in this case, I do not find that temple could be relegated to the position of industry and create a dispute, which may have an effect on the sanctity of the temple itself. Purity and sanctity are the paramount considerations in the temple, to create a faith in the deity. Any rule behaviour, unruly atmosphere in the temple would spoil not only the purity but also affects the sentiments of the devotees. Apart from this, nearly 10 years have lapsed from the date of termination. Even assuming that, the workmen were agitating wrong forum from 1999 to 2004, at this length of time, it is not proper to direct reinstatement without even knowing whether such a reinstatement is possible, any direction to reinstatement would be prejudicial to the interest of the Management, and somebody might have already been engaged in the place of these workmen. In my opinion, in view of the judgment of the Division Bench and in view of the nature of the work assigned and the temple being not an industry and particularly work being a part-time, it is not a case for issue of direction for reinstatement. Labour Court without even appreciating the facts without even

there being an evidence to show that the temple is an industry or not, mechanically has adjudicated the dispute. Hence, the award is liable to be quashed.

Accordingly, Writ Petition Nos. 8012 and 8013 of 2008 filed by the temple committee are allowed and the impugned award is quashed. Consequently, W.P. Nos. 12073 and 12074 of 2008 filed by workmen are dismissed.