

(2014) 09 KAR CK 0344

In the Karnataka High Court

Case No : Writ Petition No. 58213 of 2013 (L-RES)

Sreenivasa

APPELLANT

Vs

Dr. B.R. Ambedkar Medical College

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33-C(2)

Citation : (2015) 1 KarLJ 269

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Sangamesh R.B., Advocates for the Appellant; Karthikeyan B.S. Iyer, Advocates for the Respondent

Judgement

S. Abdul Nazeer, J.—The petitioner had been working in the establishment of the respondent-college as a driver. After his retirement on attaining the age of superannuation, he filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947, in I.D. No. 16/11 before the II Additional Labour Court, Bangalore, for payment of earned leave encashment for a period of 240 days with interest at 10% p.a. from the date of superannuation till the date of payment. The Labour Court by its order dated 25-2-2013 has held that the petitioner is entitled for E.L. encashment for 90 days in a sum of Rs. 29,370/- with interest at 10% p.a. from the date of his application till the date of realisation. The respondent challenged the said order of the Labour Court by filing a writ petition in W.P. No. 38043 of 2013. This Court by order dated 2-1-2014 dismissed the writ petition. The appeal filed by the respondent in W.A. No. 323 of 2014 (L-RES) (Dr. B.R. Ambedkar Medical College, Bangalore v Sreenivasa) was dismissed by the Division Bench on 18-2-2014.

2. In the meantime, the petitioner filed this writ petition challenging the validity of the order at Annexure-C, dated 25-2-2013 and also the validity of Rule 12(12) of the Service Rules framed by the respondent and for a mandamus directing the respondent to pay a sum of Rs. 90,369/- towards E.L. encashment of 240 days.

3. Learned Counsel for the petitioner would contend that having regard to the order of the Labour Court in an identical case in Application No. 23 of 2012 against the respondent, wherein E.L. encashment was granted for 240 days, the petitioner is also entitled for E.L. encashment for the similar period. It is argued that Rule 12(12) of the Service Rules framed by the respondent is arbitrary and is opposed to public policy. Relying on the order of the Labour Court in Application No. 23 of 2012, dated 21-9-2013, he submits that the petitioner is also entitled for payment of E.L. encashment for 240 days.

4. On the other hand, learned Counsel appearing for the respondent submits that the order of the Labour Court in Application No. 16 of 2011, dated 25-2-2013 has attained finality having regard to the order of the Division Bench in W.A. No. 323 of 2014. It is argued that the petitioner has not pleaded as to how Rule 12(12) of the Service Rules framed by the respondent is arbitrary. It is further argued that EL encashment has been made in terms of Rule 12(12) of the Service Rules framed by the respondent, which hold the field where the order was made. Therefore, question of grant of 240 days EL does not arise. The order of the Labour Court in Application No. 23 of 2012, dated 21-9-2013 is an ex parte order. In the said case, effect of Rule 12(12) of the Service Rules has not been considered.

5. I have carefully considered the arguments of the learned Counsel made at the bar and perused the materials placed on record. As noticed above, the order of the Labour Court at Annexure-C, dated 25-2-2013 was challenged by the respondent in W.P. No. 38043 of 2013. This Court dismissed the writ petition on 2-1-2014. Writ appeal filed by the respondent in W.A. No. 323 of 2014 was also dismissed by the Division Bench. The petitioner has not pleaded as to how Rule 12(12) of the Service Rules framed by the respondent is arbitrary. Without the plea, question of considering its validity does not arise. Even otherwise, he has not pointed out as to how the said Rule is invalid or arbitrary. EL encashment has been granted under Rule 12(12) of the Service Rules. The Rules do not provide for EL encashment for a period of 240 days. The Labour Court has granted EL encashment in terms of Rule 12(12) of the Service Rules. The Labour Court while deciding the claim made in Application No. 23 of 2012 has not considered the effect of Rule 12(12) of the Service Rules. Therefore, the said order cannot be taken into consideration while deciding the instant case. I do not find any error in the impugned order. Writ petition is accordingly dismissed. No costs.