
(2009) 09 KAR CK 0015
In the Karnataka High Court
Case No : W.A. No. 250 of 2008

Sri. Ananth Awdhani

APPELLANT

Vs

Sun Pharmaceuticals Industries Limited

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 17 B

Citation : (2010) ILR (Kar) 1086 : (2010) 5 SLR 282

Hon'ble Judges : Ravi Malimath, J;N.K. Patil, J

Bench : Division Bench

Advocate : Ameet Kumar Deshpande, for the Appellant; Ashok Kinagi, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In this writ appeal, the appellant is questioning the correctness of the impugned order dated 05-06-2007 passed by the Learned Single Judge in W.P. No. 9408/2005. By the impugned order, while confirming the order dated 12-03-2004 passed by the Labour Court Gulbarga in KID No. 138/1995.in respect of reinstatement with continuity of service, the Learned Single Judge set aside the order passed by the Labour Court in so far as it relates to payment of back wages.

2. The brief facts of the case giving rise to the present appeal is that, the appellant joined the establishment of the respondent as "Medical Representative" in the year 1988 and worked till 08-04-1995 at Gulbarga branch and subsequently, he has been transferred to Mumbai branch and he was directed to report for duty on 30-04-1995. The request of appellant for cancellation of his transfer was turned down by the respondent and thereafter, the appellant applied leave from 02-05-1995. Based on the proved charge of misconduct (remaining absent from service un-authorisedly), by the order dated 22-07-1995, the services of the appellant came to be terminated and the said order of termination came to be challenged by him before the Labour Court in KID No. 138/1995. The

Labour Court on evaluation of the oral and documentary evidence adduced by the respective parties, allowed the dispute in part and directed the respondent-management to reinstate the appellant into service with continuity of service and with full back wages. Challenging the said order, the management has preferred writ petition No. 9408/2005 before this Court. The Learned Single Judge, by the order impugned as stated above, while confirming the order of reinstatement with continuity of service, set aside the order of the Labour Court only in so far as it relates to payment of back wages. Being not satisfied with the denial of back wages, the workman felt necessitated to file the present appeal.

3. We have heard the Learned Counsel on both sides and perused the material on record.

4. The principal contention of Sri. Ameet Kumar Deshpande, Learned Counsel for the workman-appellant is that, since the onus is on the management to substantiate the fact that the appellant is gainfully employed during the pendency of the proceedings, the Learned Single Judge is not justified in depriving the payment of back wages to the appellant-workman and prays for setting aside the order passed by the Learned Single Judge.

5. Per contra, Sri. Ashok Kinagi, Learned Counsel appearing for the respondent-management contended that, the Learned Single Judge is justified in rejecting the claim of the appellant for payment of back wages. In support of his submission, he placed strong reliance on the decision of the Apex Court rendered in the case of Sahakari S.K. Limited v. Kashinath Ganapati Kamble (2009) 1 SCC (L & S) 372.

6. On careful scrutiny of the material on record including the impugned order passed by the Learned Single Judge, it is clear that the Learned Single Judge has recorded specific finding which reads thus:

Apart from not adducing any evidence before the Labour Court, the respondent has not even filed any affidavit before this Court showing that he was not gainfully employed to claim the wages u/s 17-B of the Act. This clearly shows that the respondent is not keen on back wages.

7. The appellant has not filed any affidavit either before the Labour Court or before the Learned Single Judge stating that he has not gainfully employed during the pendency of the proceedings. Even in the present appeal also, he has failed to file such affidavit showing that he was not gainfully employed, as contemplated u/s 17-B of the Industrial Disputes Act. In the absence any positive or acceptable evidence to substantiate that the appellant-workman was not gainfully employed during the pendency of the proceedings, the Labour Court has committed grave error in awarding back wages to the appellant. Further, the Hon'ble Apex Court, in the case cited supra laid down the following dictum:

It is now well settled by a catena of decisions of this Court that having regard to the principles contained in Section 106 of the Evidence Act, the burden of proof

to show that the workman was not gainfully employed is not on the employer. In this case, the burden of proof has wrongly been placed upon the appellant.

The Learned Counsel for the appellant has failed to produce any contra material to convince us as to why the said dictum laid down by the Apex Court cannot be made applicable to the facts of the present case.

8. The Learned Single Judge, on appreciation of the material on record in proper perspective has arrived at right conclusion and justified in setting aside the order of the Labour Court, in so far as it relates to payment of back wages. On re-appreciation of the entire material on record and in view of the dictum laid down by the Apex Court in the case referred supra, we do not find any good ground to interfere with the well reasoned order passed by the Learned Single Judge and consequently, the writ appeal is liable to be dismissed, as the same is devoid of merits.

Accordingly, the writ appeal is dismissed.