

(2013) 03 KAR CK 0182

In the Karnataka High Court

Case No : Writ Appeal No. 6569 of 2012 (L-Res)

Sri. Narayanappa

APPELLANT

Vs

The Management of M/s. Strides Arco Lad., Ltd.

RESPONDENT

Date of Decision : 27-03-2013

Acts Referred:

Citation : (2013) 3 AKR 550 : (2013) ILR (Kar) 3101 : (2013) 3 LLJ 426

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : A.J. Srinivasan, for the Appellant; B. Pramod, for the Respondent

Judgement

K.L. Manjunath, J.—Legality and correctness of the order passed by the learned Single Judge in W.P. No. 38461/2011, dated 28.03.2012 is called in question in this appeal. Heard the learned counsel for both the parties.

2. The appellant was working as a workman under the respondent-Company and joined respondent-factory in July 1998. Prior to that, he had 2 acres of agricultural land. In the year 1995, 2 acres of land situated in Sy. No. 36/9, which was his ancestral property was sold to the respondent-Company and adjoining land measuring 1 acre 20 guntas which was owned by his uncle Seethappa, was also sold to the respondent-Company with an assurance that after construction of the factory, he would be given an employment. Accordingly, he was given an employment by the respondent-Company. It is also his case that on the assurance that he would be given employment, he was made to sell his agricultural land. He was working in the respondent-Company drawing salary of Rs. 2050/- per month upto 03.10.1999. From 03.10.1999, he was not allowed to enter into the premises of the respondent-Company and he was denied the work. Therefore, he raised a dispute. The matter was referred by the State Government to the Labour Court in Ref. No. 8/2005. It was contended by the respondent-factory that the appellant was on probation, he was appointed on 31.03.1999. Prior to that, he was working as a apprentice and as per the rules of the Company, the appellant was required to undergo a medical test. Accordingly,

he underwent medical test. The medical report disclosed that he was a HIV infected person. Having learnt that he is an HIV infected person, the appellant on his own voluntarily abandoned the work. Therefore, the respondent-Company requested the Labour Court to dismiss the reference. It was also contended that the reference was barred by time.

3. Before the labour Court, the appellant was examined as WW1, he relied upon Exs. W1 to W16. On behalf of the Management one Rafeeqe Ahmed Agadi was examined as MW1 and the Management relied upon Exs. M1 to M5.

4. The Labour Court after appreciating the evidence, came to the conclusion that there was no denial of work by the respondent-Company. Since the appellant was an HIV infected person, on his own had abandoned the work and that there was no refusal of the work by the second party. Labour Court also came to the conclusion that, there is delay in approaching the Court. Accordingly, the reference was rejected by an order dated 20.02.2010.

5. Challenging the legality and correctness of the said order, the appellant filed writ petition before the learned Single Judge.

6. The learned Single Judge came to the conclusion that the Labour Court could not have rejected the reference on the ground of delay. However, he came to the conclusion that there was no refusal of the work by the Management and on the contrary, the appellant on his own has abandoned the work. Accordingly, the writ petition was dismissed. Challenging the concurrent findings, the present appeal is filed.

7. Sri. A.J. Srinivasan, learned counsel for the appellant contends that the appellant, who was the owner of 2 acres of land, which was the only livelihood for the appellant and his family members, was forced to sell the land to the respondent-Company for construction of the factory with an assurance that he would be given an employment. Accordingly, he worked as apprentice and later, a formal appointment order was issued. He was directed to undergo medical examination. Then only it was learnt by the respondent-Company and the appellant that he was an HIV infected person. The Management having noticed that the appellant is suffering from HIV positive, as in the year 1999 it was considered to be very deadly disease the people were afraid of even speaking to such persons, the Management cleverly refused to give work and he was not allowed to enter into the premises and on account of the act of the respondent, the appellant is suffering from 1999 without any work. According to him, the Labour Court did not appreciate the background of the case and the evidence let in by him. The appellant being villager and poor workman and suffering from HIV positive is made to loose job. Therefore, he contends that based on technicality the appellant cannot be denied work and respondent cannot be permitted to take shelter under guise of issuance of appointment order calling the appellant as probationer dismissing from service and discharge him from his duty. Therefore, he contends that the learned Single judge as well as learned judge of the Labour

Court were required to consider the case of the appellant on humanitarian consideration and did not consider pathetic situation of the appellant and if really, the respondent had allowed him to work, he was ready and willing to work. However, the respondent did not allow him to work. In the circumstances, he request the Court to set aside the order and direct the respondent to reinstate him with full backwages and to extend all other consequential benefits.

8. Learned counsel for the respondent submits that the appreciation of the evidence by the Labour Court is just and proper and that, at no point of time the respondent denied the work to the appellant and the appellant having learnt that he is suffering from HIV positive, on his own has abandoned the work and now he is trying to plead guilty on the ground of his illness. According to him, there was no necessity for the respondent to issue an order of termination or discharge since the appellant did not attend for the duty for more than ten days. Therefore, he requests the Court to dismiss the appeal.

9. Having heard the learned counsel for both the parties, what is to be considered by this Court in this appeal is:

Whether any error is committed by the learned Single Judge in declining to interfere with the order of the Labour Court or not?

10. Facts in this case are not in dispute to the following extent that the appellant was the owner of the 2 acres of land, which was sold by him to the respondent, wherein factory is constructed by the respondent and that he was assured of giving an employment by the respondent and that the appellant has been working from July 1998. Though it is termed as apprentice by the respondent from July 1998, he does not dispute that a formal appointment order was issued later.

11. As per the terms and conditions of the appointment order, the appellant had to undergo medical test, where it is proved that he was suffering from HIV positive.

12. Para 5 of the counter reads as hereunder:

5. The Court below has rightly considered the Clause 4 of the Appointment Order Ex. M1, the same is extracted hereunder for ready reference

This offer of probation is subject to your being found fit now by the medical officer or medical institution appointed by the company for this purpose to work in the factory. This medical fitness is a mandatory requirement to work in the factory at any time and medical examination will be conducted every year to prove your medical fitness.

It is submitted that the aforementioned condition is mentioned in the appointment order since the second party is a pharmaceutical company manufacturing medicines and other medicine consumables. In the Medical report Ex. M4 conducted by the Company's Medical institution, it is found that the blood

of the first party workman contained HIV positive. Hence, he was found medically unfit for work. The petitioner-1st party having come to know of the said report, remained absent from work from 3.10.1999. Since then he has not turned up for work thus being the position, the allegation of the first party (petitioner herein) that from 3.10.1999 till 1.7.2003, the respondent-management has not permitted the petitioner to work though he was regularly reporting to work is incorrect. The petitioner has not produced any iota of evidence to prove the said allegation. The court below having appreciating the entire evidence on record has recorded positive findings that the respondent has not refused work to the petitioner and on the contrary, he himself absented from duty. Thus being the position, the petitioner is not entitled for any relief in this writ petition. Hence, the same is liable to be dismissed.

13. From reading of the aforesaid paragraph, it is clear that the appellant came to know of his illness only on going through the medical report as per Ex. M4 conducted by the respondent. The contention of the respondent is that the appellant has not produced any iota of evidence to prove that the respondent has denied the work to the appellant. But in this matter, there cannot be any written of evidence or any documentary evidence with a workman. On the contrary, all records would be maintained by the respondent-Company. As rightly pointed out by Sri. A.J. Srinivasan, learned counsel for the appellant, the case of HIV positive used to rarely diagnosed in the year 1999 and this Court can take judicial notice of such disease, there was no awareness about the nature of disease. People were under the impression that it is communicable disease and that people were even afraid to speak to such patient and to be in the company of the such person. In such circumstances, if the respondent-Company has not allowed the appellant to work, when appellant on oath has deposed before the Labour Court, the circumstances, which compel him to be out of job, on account of refusal to give work to him by the respondent, this Court has to believe such version and the appellant cannot be permitted to contend that he was only probationer and on his own has abandoned the work. This Court has to examine the background of the case wherein the appellant has lost his ancestral property by selling the same to the respondent. Now, he is without job and without property. As a matter of fact, he made a request to give a job to his son. According to him, his son was working with the respondent under a contract which shows that he has got experience to work in the respondent-factory and same is also not considered by the respondent. Therefore, in this background, we are of the view that the evidence of the appellant on oath should have been accepted by the learned Single Judge and the Labour Court considering the background of this case. In the circumstances, we are of the view that an error is committed by the learned Single Judge in dismissing the writ petition. Similarly, the Labour Court has also committed illegality in dismissing the reference on the ground of delay and laches and that the appellant on his own has abandoned the work. In this case, we have the evidence of both parties which is based on oath against oath. In the circumstances, considering the background of this case, we are inclined to

accept the oral evidence of the appellant because there is hostile discrimination in refusing the work to the appellant on account of his illness as he is suffering from HIV. As a matter of fact the respondent being a Company should have more sympathetic towards appellant either providing an alternate job or allow him to continue the same job.

14. As the proverb goes, "fact is stranger than fiction and truth is stranger than fiction." However, as Mark Twain stated "truth is stranger than fiction but it is because fiction is obliged to stick to possibilities, whereas truth isn't". There can be no better an example than the present facts. When the workman was found to be HIV positive the work ceases. The workman pleads that he was denied work. The management pleads that he did not report to work. On examining the entire material the facts persuade us to hold that it is not because the workman did not come to work, but that he was denied employment.

15. Only because a person is diagnosed as HIV positive he cannot be denied employment. However, as a result of being found to be HIV positive or of any other illness, if the workman is unable to perform his duties then he could be terminated or otherwise dealt with. The reason for this would be that he is unable to perform his duties. However, that is not the case herein. There is no medical evidence to show that he is incapable of performing his duties. The facts would show that he has been terminated only because he has been tested to be HIV positive. Therefore the plea of the management cannot be accepted. He cannot be discriminated on that ground alone. He could be dealt with, if he is incapable or unable to do any work, but not solely on the ground of suffering from an illness. As we understand, the object of conducting a medical test is to ensure that the workman is medically fit to do the job. It is not intended to find out the various diseases that the workman is inflicted with. Therefore the medical examination that has to be done, is only to ensure the physical ability to perform the job. Therefore the discrimination meted out to the workman only because the medical report shows that he is HIV positive, cannot be accepted.

16. There is a fundamental relation between HIV/Aids and human rights. It is important to bring HIV/Aids policies and programmes in line with international Human Rights law. It is necessary that these workers should be treated in the same way as any other worker with an illness. Their continuation in work, enhances their physical and mental well being and they should be encouraged to do so. A patient suffering from such a disease requires full sympathy. They cannot be treated as an out caste. They cannot be untouchables. The workman cannot and should not be avoided, especially when untouchability in any form has been abolished. Treating such patients in such a manner would even broaden the view that they are being treated as untouchables.

17. Only because the workman is a HIV positive nobody shall work with him, nobody shall be with him and he cannot remain as a normal workman. This cannot be permitted. It is unacceptable. Every person is entitled to human dignity. His rights requires to be honoured and respected not only by the State,

but by the other citizens also. There cannot be a discrimination by the State or by an individual on this ground alone. In the result, this appeal is allowed. We set aside the award passed by the II Additional Labour Court, Bangalore, dated 20.02.2010 under Ref. No. 08/2005 and the order of the learned Single Judge, dated 28.03.2012 passed in W.P. No. 38461/2011. We direct the respondent-Company to reinstate the appellant to work giving 50% of the backwages and extend continuity of service and all other consequential benefits.

Two weeks time is granted to settle the dues of the appellant and to reinstate him to the service.