

(2011) 07 KAR CK 0190

In the Karnataka High Court

Case No : Writ Appeal No. 357 of 2010 (L-TER) C/w Writ Petition No 36394 of 2009 (L-TER)

Sri Srinivasa

APPELLANT

Vs

The State of Karnataka
 Chief Executive Officer, Zilla Panchayath, Mandya - 571 401 and Assistant Executive Engineer, Panchayath Raj Engineering Sub-DN., (Earlier Known as Zilla Panchayat Engineering Sub-DN. Nagamangala Mandya District - 571 432 Vs Srinivasa

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10 (4A), 25 (F)

Citation : (2011) 07 KAR CK 0190

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

Bench : Division Bench

Advocate : V.S Naik and Manjula N Kulkarni, in Writ Appeal No. 357 of 2010 L-TER and Sri B.J. Somayaji, in Writ Petition No 36394/2009 L-TER, for the Appellant; K. Krishna, AGA for R1 and Sri B J Somayaji, for R2 and 3 in Writ Appeal No. 357 of 2010 (L-TER) and Sri V.S. Naik and Manjula N Kulkarni, in Writ Petition No 36394/2009 (L-TER), for the Respondent

Judgement

1. Writ Appeal No. 357/2010 is filed by the workman being aggrieved by the order passed by the learned single Judge in W.P. No. 30027/2009 dated 20.10.2009, wherein the learned single Judge of this Court has declined to interfere with the order and award passed by the Labour Court, Mysore, in I.I.D. No. 219/1999 dated 29.01.2009 and dismissed the writ petition. Against the very same order and award of the Labour Court dated 29.01.2009, respondents 2 and 3 in W.P. No. 30027/2009 - Zilla Panchayat have filed W.P. No. 36394/2009. The material facts leading up to this appeal and writ petition are as follows:-

1.1 The first party before the Labour Court (hereinafter referred to as "the workman") was appointed as a driver on daily wages basis on 24.09.1995 in the respondent - Zilla Panchayat. He served the respondents for a period of three

years four months as a Driver. Since his services were terminated, he raised a dispute u/s 10(4-A) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") seeking for reinstatement, continuity of service, full backwages and consequential benefits, which was registered in IID No. 219/1999 on the file of the Labour Court, Mysore. The Labour Court, after considering the contentions of the authorized representative of the workman and the learned counsel for the respondent, by order and award dated 29.01.2009, held that the workman had put in more than 240 days of service as he was working as Driver from 24.09.1995 to 01.06.1999 i.e., nearly for three years four months and 11 days and his termination without complying with the provisions of Section 25-F of the Act is erroneous and liable to be set aside. However, having regard to the fact that the workman was not appointed in regular recruitment, the Labour Court thought it fit to hold that the workman should be awarded lump sum compensation of s.2,00,000/- (Rupees Two Lakhs only) in lieu of reinstatement, payment of backwages and consequential benefits. Accordingly, the Labour Court allowed the petition in part directing the second party -Zilla Panchayat to pay to the workman the said compensation within two months from the date of the order while holding that the workman is not entitled for reinstatement or any other benefit. Being aggrieved by the said order and award passed by the Labour Court, writ petition No. 30027 of 2009 was filed by the workman.

1.2 The learned single Judge, after considering the contentions of the learned counsel for the parties and the material on record, by order dated 20.10.2009, held that since the petitioner - workman had completed 240 days of continuous service in a year, his termination without payment of retrenchment compensation is violative of Section 25-F of the Act and the Labour Court was justified in awarding lump sum compensation of Rs. 2,00,000/- to the workman and accordingly, rejected the petition - W.P. No. 30027/2009 as devoid of merit. Being aggrieved by the said order, the workman has preferred Writ Appeal No. 357/2010.

1.3 W.P. No. 36394/2009 is filed by the respondent before the Labour Court Mysore, in IID No.219/1999 being aggrieved by the same order and award dated 29.01.2009 contending that termination of the workman was justified and the Labour Court was not justified in setting aside the order terminating the services of the workman and in awarding compensation of Rs. 2,00,000/- to the workman.

2. We have heard the learned counsel appearing for the appellant in W.A. No. 357/2010, who is respondent in W.P. No. 36394/2009 and the learned Additional Government Advocate appearing for respondent No. 1 in W.A. No. 357/2010 and the learned counsel appearing for respondents 2 and 3 in the said writ appeal, who are petitioners in W.P. No. 36394/2009.

3. The learned counsel appearing for the workman (appellant in W.A. No. 357/2010 and respondent in W.P. No. 36394/2009) submitted that the Labour Court, having held that the workman had put in service of 240 days and his termination was not in compliance with the provisions of Section 25-F of the Act,

ought to have held that the workman was entitled to reinstatement into service with backwages, continuity of service and all other consequential benefits and mere awarding of lumpsum compensation would not fulfill the provisions of the Act, which are meant for the benefit of the workmen. In support of his contention, he has relied upon the decision of the Hon''ble Supreme Court in Anoop Sharma and Executive Engineer, Public Health Division No.1, panipat (Haryana) Case 2010 III LLJ 1 (SC), wherein the Hon''ble Supreme Court has observed that termination of service of mali-cum-chowkidar, without fulfilling the requirements of Section 25-F of the Act was nullity and has restored the award for reinstatement with backwages. The learned counsel for the workman has also relied upon the decision of the Hon''ble Supreme Court in Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) (2010 II LJ 678 (SC)) of 2009, wherein the Hon''ble Supreme Court has held that the High Courts, while exercising their jurisdiction under Articles 226 and 227 of the Constitution of India, 1950, were under a duty to interpret statutes like the Industrial Disputes Act, with social welfare benefits, in such a way as to further the statutory goal and not frustrate it. However, on facts, it was held that modification by High Court of Labour Court's award for reinstatement of workman with 50% backwages was not justified.

4. The learned counsel appearing for respondents 2 and 3 in W.A. No. 357/2010 - Zilla Panchayat (petitioners in W.P. No. 36394/2009) submitted that the order passed by the Labour Court dated 29.01.2009 is justified and it was not necessary for the respondent - Zilla Panchayat to comply with the provisions of Section 25-F of the Act and the workman was not entitled to reinstatement or compensation.

5. The learned Additional Government Advocate appearing for respondent No.1 in W.A. No. 357/2010 submitted that the award passed by the Labour Court identical to the award impugned in the present cases has been confirmed by Division Bench of this Court in W.A. No. 890/2008 and 10040/2010, disposed of on 03.08.2010 and wherefore, the impugned order of the learned single Judge cannot be set aside at the instance of the workman. He further submitted that the writ petition No. 36394/2009 filed by the Zilla Panchayat may be allowed by setting aside the order and award passed by the Labour Court setting aside the order of termination of the workman.

6. We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinized the material on record in the light of the principles laid down by the Hon''ble Supreme Court in the decisions cited by the learned counsel appearing for the parties. Scrutiny of the material on record would clearly show that the workman had put in 240 days of continuous service with the respondent - Zilla Panchayat and there was non-compliance with the provisions of Section 25-F of the Act. The workman had put in service of more than three years with the respondent - Zilla Panchayat and wherefore, the order passed by the Labour Court setting aside the order of termination of the

workman is unassailable. However, the contention of the learned counsel appearing for the workman that the Labour Court ought to have ordered reinstatement of the workman with backwages, continuity of service and consequential benefits, instead of granting compensation of Rs. 2,00,000/- and the order and award of the Labour Court dated 29.01.2009 is contrary to the very purpose for which the provisions of the Act has been enacted, which is a social welfare legislation, cannot be accepted having regard to the facts of this case. It is clear from the decision of the Division Bench of this Court in Writ Appeal Nos. 890/2008 and 10040/2010, which have been disposed of on 03.08.2010 following the judgement of the Hon"ble Supreme Court in Senior Superintendent, Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal and Others AIR 2010 SCW 2860 and considering the recent trend, wherein the Courts have been awarding compensation in lieu of reinstatement and backwages, that the order and award of the Labour Court setting aside the termination of the workman and awarding compensation to the workman in lieu of reinstatement, backwages and consequential benefits, which is confirmed by the learned single Judge in W.P. No. 30027/2009 would meet the ends of justice. Similar orders have been upheld by this Court and wherefore, following the reasons assigned by this Court in the said W.A. Nos. 890/2008 and 10040/2010 disposed of on 03/08/2010, we hold that the order and award passed by the Labour Court dated 29.01.2009, which has been confirmed by the learned single Judge in W.P. No. 30027/2009 is justified and does not suffer from any error or illegality as to call for interference in Writ Appeal No. 357/2010 and in view of the same, W.P. No. 36394/2009 filed by respondents 2 and 3 in W.P. No. 30027/2009 - Zilla Panchayat against the said order and award of the Labour Court is devoid of merit and is liable to be rejected.

Accordingly, W.A. No. 357/2010 and W.P. No. 36394/2009 are dismissed.