

(1961) 04 KAR CK 0001
In the Karnataka High Court
Case No : Criminal Appeal No. 172 of 1960

State of Mysore

APPELLANT

Vs

Campbell (R.D.) and Another

RESPONDENT

Date of Decision : 07-04-1961

Acts Referred:

Factories Act, 1948 — Section 55, 8 (1), 92

Citation : (1962) 2 LLJ 265

Hon'ble Judges : K.S. Hegde, J; Ahmed Ali Khan, J

Bench : Division Bench

Judgement

Hegde, J.—In Criminal Case No. 791 of 1959 on the file of the learned Judicial Magistrate F. C. Gokak, the respondents were tried for offences under S. 92 read with S. 55 of the Factories Act, 1948 (63 of 1948) (which shall be hereinafter called the "Act"), but they were acquitted. The State has come up in appeal against the order of acquittal.

2. The complaint against the respondent is that on 18 May 1959 three of their workers were found working during the midday interval. The Court below did not go into the merits of the case. It acquitted the respondent solely on the ground that the complainant had no competence to file the complaint in question. The complainant claims to be an inspector of factories serving in the Belgaum area. By a curious process of reasoning the court below came to the conclusion that for every area as such, a separate inspector of factories should be appointed; there is no proof that the complainant was appointed for the Belgaum area; and therefore, he had no competence to file the complaint. It is not disputed that the complainant is an inspector of factories appointed under S. 8(1) of the "Act." Section 105 provides for filing of complaints. That section says :

"(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an inspector."

3. If this section is read by itself, there can be no doubt that "an inspector" of

factories can file a complaint under the "Act." As mentioned earlier, there is no dispute that the complainant is "an inspector" within the meaning of that expression found in S. 105. But the court below thought that in view of S. 8(1) of the "Act" "an inspector" of factories could operate only within a particular area to which he was appointed. In our view the court below did not properly construe S. 8(1). That section says :

"The State Government may, by notification in the official Gazette, appoint such persons as possess the prescribed qualification to be inspectors for the purposes of this Act and may assign to them such local limits as it may think fit."

4. This provision means that "an inspector" appointed under the "Act" is an inspector for all purposes under the "Act". In the instant case it is proved that the complainant Sri Eshwarappa was first appointed by the old Mysore State as Inspector of factories, as per its order, dated 30 April, 1956. Later he was transferred to Belgaum as per order dated 7 October, 1958. That order specifically says that Sri Eshwarappa, inspector of factories Mysore, transferred as Inspector of factories, Belgaum, vice Sri Rajadaksha, who will be in additional charge of Hubli, until Sri Prahalada Rao relieves him. Before Sri Eshwarappa, Sri Rajadaksha was the inspector of factories at Belgaum as could be seen from the order of the Government dated 15 January, 1957. The contention on behalf of the respondents is, and that contention has appealed to the court below, that the Belgaum area as such has not been assigned to Sri Eshwarappa as required by S. 8(1) of the "Act". Apart from the fact that this contention is highly technical, in our opinion, it has no merits. Transferring of Sri Eshwarappa is one form of assigning that area to him. This is a well-known procedure.

5. Sri G. K. Govinda Bhat contends that the assignment of the area must be by notification; the transfer not having been made by notification the assignment becomes invalid. We do not think that there is any substance in this contention. What S. 8(1) says is that the appointment of an inspector must be by notification in the official Gazette. It nowhere mentions that assignment of local area must be by notification. The contention of Sri Bhat is that "the State Government may, by notification in the official Gazette" must be considered to apply both for the appointment as well as for the assignment of the local area. Such a construction is not possible on the language of this section. In the section after the words "appoint such persons as possess the prescribed qualification to be inspectors" come the words "and may" before the words "assign to them such local limits as it may think fit." In fact, assignment of local area is within the discretion of the State Government. It may or may not do it.

6. In our view, the view taken by the Court below is wholly wrong and we are clearly of the opinion that Sri Eshwarappa was competent to file the complaint in question.

7. The next question for decision is whether it is necessary to take further proceedings in this case. From the reply submitted by the respondents, the

correctness of which is not denied, it is seen that in the factory in question there are about 5,000 workers working. The respondents have taken every possible step to see that no worker works during the interval. The persons named in the complaint must have worked without the knowledge of the respondents. That being so, we do not think that the ends of justice would require that these proceedings should be continued.

8. The learned Government Pleader tells us that this appeal has been filed mainly with a view to clarify the law.

9. In the result, this appeal is dismissed.