

(2012) 03 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 5512 of 2007 (L-RES)

Tata Coffee Ltd.

APPELLANT

Vs

Mylarappa and Others

RESPONDENT

Date of Decision : 08-03-2012

Acts Referred:

Citation : (2012) 4 LLJ 196

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : P.D. Vishwanath, for the Appellant; M.A. Appaiah, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Aravind Kumar

1. Management has called in question award dated November 29, 2006 passed by the Labour Court, Chickmagalur in I.D.R. No. 65/2003 Vide Annexure-A, whereunder dispute raised by workman has been partly allowed and management has been directed to pay 50% wages during the relevant period i.e., from August 11, 2001 to October 2, 2001. Heard Sri. P.D. Vishwanath, learned Counsel appearing for petitioner. Though respondents are served and are represented by learned Counsel, none appears. This writ petition being of the year 2007 and rule having been issued on August 18, 2008 writ petition is taken up for final disposal.

2. The respondent-workmen raised a dispute through Labour Union before the Conciliation Officer and the appropriate Government on receipt of report from Labour Officer has by its order dated December 30, 2002 referred the dispute for adjudication i.e., as to whether workmen 1 to 33 have been refused employment from August 11, 2001 to October 2, 2001. On such reference being made claimants filed the claim petitions seeking for payment of full wages to the workman for the period from August 11, 2001 to October 2, 2001. The management appeared and filed its statement of objections denying averments

made in the petition. On behalf of the workmen one witness was examined and documents W-1 to W-47 were marked on behalf of the management. One witness was examined as M.W. 1 and documents M1 to M8 were marked. After considering the contentions raised in the petition Labour Court held that first party-workmen were working as temporary workers in the estate of the petitioner. It also held that workmen are entitled for 50% wages for the period August 11, 2001 to October 2, 2001.

3. It is the contention of Mr. Vishwanath, learned Counsel appearing for petitioner that Labour Court having given a finding that workmen are temporary worker it ought not to have awarded wages for the period from August 11, 2001 to October 2, 2001, inasmuch as workmen have never worked in the petitioner estate during this period and they are not entitled to any wages on the principles of "No work No pay." He would also contend that there is no pleading with regard to the fact that workmen were not gainfully employed during the period and in the absence of such material, Labour Court committed an error in awarding wages for the period from August 8, 2001 to October 2, 2001. In support of his submission he relies upon the judgment of the Hon"ble Apex Court in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, .

4. Having heard the learned Counsel appearing for petitioner and on perusal of the impugned award as also claim petition and evidence produced along with the writ petition, it is noticed that reference made by the appropriate Government was only to the extent as to whether there has been refusal of employment by the management from June 11, 2001 to October 2, 2001. On account of the contention raised by workmen that they were permanent employees and not temporary employees. Labour Court considered the evidence tendered by the parties and at paragraph 15 it has been held as follows:

Therefore, on perusal of above standing order, the contention taken by the I Party counsel cannot be accepted. But from the evidence given by WW1 and also MW1 and also the documents over which the parties placed reliance, I can safely said the I Party workmen were working as a temporary workers in the II Party estate.

Labour Court has proceeded to award backwages on the ground that management has refused workmen to work. It was the specific contention of the management that these workmen were working as temporary workers and were given job depending upon the exigencies of the work and on account of their absence from August 11, 2001 to October 2, 2001 they were not entitled to backwages as ordered by Labour Court. A perusal of the award of Labour Court would go to show that workmen took up the contention that they have been prevented from working in the estate from August 11, 2001, as informed to them by the Estate Manager. It is not in dispute that workman have been subsequently employed by the petitioner with effect from October 3, 2001. If it were to be so, the oral evidence of workmen that they have been denied employment from August 11, 2001 to October 2, 2001 is difficult to be accepted. It has been

contended by workmen that in order to employ contract labourers they were not provided with the work by petitioner. If it were to be so, the moot question would be as to why the very same workmen have been employed from October 3, 2001 by petitioner. Thus, it is a oath against oath, which came be considered by Labour; Court to hold that the management did not provide work on the ground that workmen had raised dispute with regard to payment of minimum wages. The evidence of WW1, Sri. Mylarappa dated August 3, 2006 would go to show that he has denied the fact that he has not worked from October 3, 2001. However, when the matter was pending before the Labour Court it is admitted by the authorised representative of the workmen that they have been working from October 3, 2001. If it were to be so, it was for workmen to have proved the fact that they have been denied employment for the period August 11, 2001 to October 2, 2001 by placing sufficient material, in this regard. In the absence of any cogent material being available before Labour Court it was not justified in directing the petitioner-management to pay 50% wages for the said period. The Hon"ble Supreme Court in J.K. Synthetics v. K.P. Agarwal and Another (supra) has held that it is necessary for the workman to plead that he was not gainfully employed during this period so as to entitle him to seek for backwages. It is also held that workman should atleast assert on oath that he was never gainfully employed or is carrying on any business venture and he did not have any income during this period. In the background of the dicta laid down by the Hon"ble Apex Court referred to supra when the facts are examined namely, when the claim petition and the evidence of the workmen WW1 is perused they would go to show that it was never pleaded or such a contention was raised about workmen not having been engaged in any avocation during this period. Even the evidence tendered by WW1 on behalf of the workmen does not speak or state about these workmen not being otherwise engaged during this period. In the absence, thereof the Labour Court was not justified in awarding 50% backwages for the period from August 11, 2001 to October 2, 2001. In the result following order is passed:

ORDER

- i. Writ petition is allowed.
- ii. Award of Labour Court dated November 29, 2006 passed in I.D.R. No. 65/2003 at Annexure-A is hereby quashed.
- iii. No order as to costs.