

(2015) 11 KAR CK 0021
In the Karnataka High Court
Case No : Writ Appeal No. 50513/2012 (L-TER)

The Asst. Executive Engineer KBJNL and Others	APPELLANT
Vs	
Tayamma	RESPONDENT

Date of Decision : 07-11-2015

Acts Referred:

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

Citation : (2015) 11 KAR CK 0021

Hon'ble Judges : A.S. Bopanna and G. Narendra, JJ.

Bench : Division Bench

Advocate : Sanjay M. Joshi, Advocate, for the Appellant; Santosh Annappa, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The appellants are before this Court assailing the order dated 20.06.2012 passed in W.P. No. 84125/2009 whereby the learned Single Judge has upheld the award dated 27.07.2009 passed in KID No. 225/2000.

2. The respondent herein contending that her services were illegally terminated on 01.10.1999 had filed a claim petition before the Labour Court under Section 10(4-A) of the I.D. Act. The Labour Court after taking into consideration the rival contentions has recorded a finding that the respondent herein had worked for more than 240 days in a year and in that view, was of the opinion that the termination without following due procedure of law is contrary to Section 25-F of the I.D. Act. As such, the Labour Court has set aside the order of termination and directed reinstatement of the respondent into service to the post which she was holding at the time of her termination with concurrent DSR rates.

3. The appellants herein claiming to be aggrieved by the same were before this Court in W.P. No. 84125/2009. The learned Single Judge while taking note of the rival contentions has arrived at the conclusion that when the Labour Court has taken into consideration the fact that the respondent herein had worked from

01.07.1989 to 01.10.1999, that in itself would be sufficient to take into consideration the case as put forth and the finding recorded by the Labour Court would be justified.

4. Learned counsel for the appellants while assailing the award passed by the Labour Court and consequently being approved by the learned Single Judge would contend that the appellants herein had contended before the Labour Court that the NMRs would not be retained after five years and as such, mere non-production of NMRs cannot be held against the appellants. It is their case that the respondent ought to have independently established that she had worked for 240 days and when she has failed to do so, the Labour Court as well as the learned Single Judge ought to have taken this aspect into consideration and in that light should have taken a decision in the matter.

5. Having taken note of the contention put forth by the learned counsel for the respondent, we have adverted to the manner in which a consideration was made by the Labour Court since the same has been approved by the learned Single Judge. In that regard, a perusal of the award passed by the Labour Court would indicate that the respondent herein had examined herself as WW1. The appellants herein had also examined a witness as MW1. From the evidence of the said witness except for stating that the respondent herein had not worked for more than 240 days and relying upon the documents which were produced at Exhs. M1 to M37, the relevant documents to indicate that the same cannot be construed as completion of 240 days in a year has not been appropriately produced. The mere contention that the NMRs would not be retained for more than five years would not also be acceptable in the present facts since in any event, the respondent herein had immediately raised a dispute when the termination is alleged to have been made.

6. If that be the position, when the matter was pending before the Labour Court, it was incumbent on the appellants herein to retain all records, if the said records would establish the contentions of the respondent herein to be contrary to what had been pleaded by the respondent. Therefore, in the present facts, when the appellants herein contend that the NMRs though maintained have been destroyed and in that light have not produced the same, it is an appropriate case where adverse inference would have to be drawn against the appellants.

7. Therefore taking all these aspects into consideration, when there can be no dispute with regard to the periods during which the respondent had worked, it would have to be construed that she had worked for 240 days continuously in a year and therefore both the Labour Court as well as the learned Single Judge were justified in their conclusion. Hence, we see no reason to interfere with the award of the Labour Court or the order passed by the learned Single Judge.

The appeal being devoid of merit stands disposed of.