

(2014) 02 KAR CK 0147

In the Karnataka High Court

Case No : Writ Petition No. 31214 of 2011 (L-RES)

The Deputy Conservator of Forests, Mysore Division and
Another

APPELLANT

Vs

B.P. Maruthi

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j), 25B, 25F

Citation : (2014) 4 AKR 242 : (2014) 142 FLR 103 : (2014) 3 KarLJ 121

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.A. Ariga, Additional Government Advocate, Advocate for the Appellant; B.D. Kuttappa for M/s. Subba Rao and Company for Respondent 1, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—State of Karnataka, along with the Deputy Conservator of Forests, have jointly presented this petition, aggrieved by the award dated 22-9-2010 in Reference No. 135 of 2002 Annexure-A of the Labour Court, Mysore, directing reinstatement of the respondent to the post held by him during October 1999, however without regularization, but with 40% back wages from 19-6-2002, reserving liberty, to the petitioner to comply with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, Act), in addition to denial of consequential benefits and continuity of service. Having heard learned Counsel for the parties, perused the pleadings and examined the award impugned, there is no more dispute that the, respondent-workman when engaged on daily wage basis, was paid wages when provided with work. It is also a matter of fact that the respondent-workman was not appointed in a regular recruitment against a substantive post in the Forest Department of the State as required by the Karnataka Civil Services Rules, 1958. Yet another fact is that there is no material to establish that the respondent-workman did work continuously for a period of 240 days in twelve months immediately preceding

the alleged termination, though M.W. 1-Range Forest Officer testified to the fact that the workman did work in the establishment during the years 1997, 1998 and 1999 under 01 Timber Head, in connection with activities relating to felling and selling of timber. In other words, it was the petitioner who was in custody of the records to have placed the same before Court to establish that there was no continuous service as required by Section 25B of the Act. Such is not the conduct of the petitioner.

2. Regard being had to the fact that the petitioner does not dispute the discharge of duties of the respondent as a daily wage worker, coupled with the testimony of M.W. 1-Range Forest Officer, Labour Court, was fully justified in concluding that the workman had rendered 240 days of continuous service within a period of twelve months immediately preceding the alleged order of termination. The Labour Court was also justified in concluding, in the circumstances, that there was violation of Section 25F of the Act while terminating services of the daily wagger-responent as on 1-10-1999.

3. Respondent-workman did not place relevant material constituting substantial legal evidence of the fact that the petitioner-Department which had engaged his services was, in fact, engaged in social forestry, so as to fall within the definition of the term "industry u/s 2(j) of the Act.

4. Apparently and obviously, respondent-workman did not place relevant material constituting substantial legal evidence of the fact that the department in which respondent was working was engaged in social forestry, so as to fall within the definition of the term "industry" u/s 2(j) of the Act. If regard is had to the observations of the Supreme Court in State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar, that Forest Department is not an industry, while in Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., observing that the scheme of the Forest Department to create a park to fulfill the recreational and educational aspirations of the people, is not the sovereign function of the State, and therefore is an industry, the Labour Court in the facts and circumstances, was not justified in recording a finding that petitioners. Department of Forest in the State of Karnataka is an industry u/s 2(j) of the Act. To that extent, finding of the Labour Court is perverse.

5. Be that as it may, when there is no dispute that the respondent-workman was engaged on daily wages and served the petitioner for approximately 10 years, though, intermittently, ends of justice would be met by directing payment of compensation in lieu of reinstatement, back wages, continuity of service and consequential benefits, as held by the Apex Court in catena of decisions. In almost similar, though not identical circumstances in W.P. No. 45180 of 2012, dated 10-9-2012 and W.P. No. 18668 of 2013, dated 12-9-2013, this Court confirmed the award of the Labour Court directing compensation of Rs. 1,25,000/- in lieu of reinstatement and other consequential benefits of a similarly circumstanced daily wage employee of the Forest Department.

6. In the result, petition is allowed in part. The award of the Labour Court, insofar as it refers to the finding that petitioner is an "industry" u/s 2(j) of the Act and directions to reinstate the respondent-workman to the "old post" with 40% back wages, is quashed. The award of the Labour Court stands modified entitling the respondent-workman to compensation of Rs. 1,25,000/- An lieu of reinstatement and other consequential benefits/Compliance within three months, failing which the amount shall carry interest at 9% per annum till the date of payment. I.A. No. 1 of 2014 is dismissed as having become unnecessary.