
(2015) 11 KAR CK 0305

In the Karnataka High Court

Case No : Writ Petition No. 30881/2012 (L-RES)

The District Watershed Development Officer and Others

APPELLANT

Vs

Puttamadamma and Others

RESPONDENT

Date of Decision : 25-11-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 25(F), 25F

Citation : (2016) 2 KarLJ 219

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : T.S. Mahanthesh, AGA, for the Appellant; Vighneshwar S. Shastri, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Sujatha, J.—This writ petition is directed against the award passed by the Labour Court at Mysore in Ref. No. 40/2006 dated 17th August 2011.

2. The facts in brief are that, the respondents raised a dispute under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act") which was referred by the State to the Labour Court at Mysore in Reference No. 40/2006. It was the case of the respondents that they were appointed as daily wage employees by the District Watershed Development Officer, Mysore on 01.09.1988 in Horticultural Division and they were working at Nellurammana Kere, Gundlupet, Chamarajnagar from 01.09.1988 till 31.03.1992 when they were terminated. The petitioners resisted the claim of the respondents denying the allegations made by the respondents and contended that the respondents were working as daily wage employees in seasons under the special scheme "Kooligagi Kalu Yojane" for a specific period. After completion of the scheme and fund, the question of again engaging daily wage employees does not arise and they were not appointed on regular basis and also they were not working continuously for 240 days for the preceding calendar months from the alleged date of termination. The Labour Court after recording evidence allowed the

reference. Being aggrieved by the said award, the petitioners are before this Court.

3. The learned Counsel appearing for the petitioners vehemently contended that the respondents were terminated from the services on 31.03.1992 as seasonal scheme of "Kooligagi Kalu Yojane" had come to an end. The Reference is made by the Government under Section 10(1)(C) of the Act on 10.03.2006. Thus, it is contended that there is an inordinate delay in making the Reference to the Labour Court, Stale Claim/Industrial Disputes not in existence, cannot be adjudicated at this length of time i.e. after fourteen (14) years after the date of termination of the workmen from service. Further, it is also contended that the respondents have not continuously worked for 240 days to avail the benefits under the Act. No prior notice is required before retrenching these seasonal workers, Section 25(F) of the Act is not applicable to these seasonal workers who were appointed for a specific period.

4. Learned Counsel places reliance on the Judgment of Hon"ble Apex Court in the case of Prabhakar Vs. Joint Director Sericulture Department and Others--> to contend that there were no live disputes between the parties to refer the Industrial Disputes for adjudication before the Labour Court. Even when no period of limitation is provided for raising the disputes under the Act, there could not have been a Reference at the belated stage. The Labour Court ignoring this primary concepts, which goes to the root of the matter, allowed the Reference in part directing the petitioners to reinstate the respondents into service to the same old post which they were holding prior to the date of retrenchment and to pay 50% back wages from the date of retrenchment i.e. from 31.03.1992 till the date of reinstatement within one month from the date of award. This award is totally contrary to the law laid down by the Apex Court in the case of PRABHAKAR stated supra and accordingly, he seeks for allowing the writ petition setting aside the award passed by the Labour Court.

5. Per contra, the learned Counsel appearing for the respondents contends that the respondents were appointed as daily wage employees from 01.09.1988 by the District Watershed Development Officer, Mysore in Horticultural Division. They were working at Nellurammana Kere, Gundlupet and Chamarajanagar from the date of appointment i.e. from 01.09.1988 till the date of termination i.e. 31.03.1992 continuously without any interruption. The action of the petitioners in removing them from services is opposed to the provision contained in Section 25F of the Act. It is also contended that the respondents sent various representations individually and also through their Union and have issued legal notices and also made several requests to petitioners to take back them to duty. They plead, on the assurances, given by the Officers waited for a long time and they were all no avail.

6. It is contended that the respondents have also approached the Labour Commissioner for necessary action, conciliation proceedings also ended in failure, failure report was sent to the Government. Thereafter, a reference was made to

the Labour Court. It is also contended that the respondents were facing financial problem and they could not approach the Government immediately to refer the matter to the Labour Court for adjudication of the Industrial Dispute. Accordingly, he contends that there is delay in making Reference to the Labour Court and such delay is not fatal to the case. It is justified by the explanation offered and the cause shown by the respondents. These factors have been considered by the Labour Court and the Labour Court allowed the Reference in part directing the petitioners to reinstate the workmen with 50% backwages, which cannot be found fault with. Accordingly, he seeks for dismissal of the writ petition.

7. Learned Counsel places reliance on the Judgment of the Apex Court in the case of Raghbir Singh v. General Manager, Haryana Roadways, Hissar (2014 AIR SCW 5515).

8. Having heard the rival submissions of the learned Counsel for the parties, it is an admitted fact that the respondents were dismissed from services on 31.03.1992 and the reference was made by the Government of Karnataka under Section 10(1)(C) of the Act for adjudication of the Industrial Disputes on 10.03.2006. Ex. W1, W2, W3, W4 and W5 placed before the Labour Court are the Representations dated 21.05.1992, 01.10.1993, 08.09.1994, 03.04.1995 and 01.06.1993 given to the petitioners and concerned authorities to re-appoint the respondents. Ex. W6 is the representation sent by the Union to Assistant Labour Commissioner, Ex. W7 is the Notice sent by the Assistant Labour Commissioner to both the parties, Ex. W8 is the Notification issued by the Government of Karnataka regarding transfer of daily wagers to concerned Departments.

9. Considering these evidences oral as well as documentary, the Labour Court has come to the conclusion that there was immediate action taken by the respondents in approaching the authorities to reinstate the respondents' services. It is also come on record that the illiteracy, financial problems, workmen living in the villages added to the delay in not seeking for Reference immediately. This evidence led by the workmen has not been challenged by the petitioners. The petitioners have assigned sufficient reasons for the delay. The Hon'ble Apex Court in the case of Raghbir Singh stated supra has held that:

"Hence, we are of the opinion, having regard to the facts and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the Conciliation Officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the Conciliation Officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore, it cannot be said that there was a delay on the part of the appellant in raising the

dispute and getting it referred to the Labour Court by the State Government."

The subsequent judgment of the Hon"ble Apex Court in the case of Prabhakar supra, considering the case of Raghubir Singh supra and after considering the other Judgments of Apex Court, held that this issue of dispute or differences arise when demand is made by one side i.e. workman and rejected by the other side i.e. the Employer and vise-versa, industrial dispute cannot be said to exists until and unless the demand is made by the workmen and it has been rejected by the Employer. How such demand should be raised and what stage may also be relevant, the workmen after a lapse of several years cannot make a demand to convert it into a dispute, what otherwise would have become a buried issue and the legal position is summarized. However, it is categorically held that if workmen is able to give satisfactory explanation for the laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reasons that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead" then it would be non-existent dispute which cannot be referred.

10. In the light of the judicial pronouncements made by the Apex Court, the facts of the present case are examined. It is noticed that immediately after the termination of the services of the respondents on 31.03.1992, several representations were given and demands were made by the workmen which is not disputed. Even conciliation proceedings having failed, the matter was referred to the Labour Court for adjudication under Section 10(1)(C) of the Act.

11. In the given circumstances, the disputes cannot be said to be stale in order to adjudicate the dispute as raised by the workmen, satisfactory explanation is given by the respondents for the delay caused in referring the matter to the Labour Court. In such view of the matter, delay would not come in the way of the workmen to adjudicate the industrial disputes.

12. Accordingly, I am of the considered opinion that the contentions of the petitioners that the award passed by the Labour Court requires to be set aside only on the ground of delay requires to be negated in view of the Judgments of the Apex Court, referred to above vis-?-vis fact and circumstances of the present case.

13. On the next issue of not complying with the provisions of Section 25F of the Act, the Labour Court has considered the evidence placed by the workmen on record. It is noticed that, to support the case of the petitioners denying the continuous working of the respondents for more than 240 days, no NMR or any other documents is produced before the Labour Court to discard the evidence placed on record by the respondents. Mere denial not being supported by any documents would not come to the assistance of the petitioners to plead that the respondents have not worked continuously for more than 240 days. Hence, the provision of Section 25F of the Act is not applicable. It is proved beyond doubt

that the workmen - respondents have worked continuously for more than 240 days and accordingly, the petitioners were required to comply the provisions of Section 25F of the Act. Non-compliance of the Act is fatal to the case.

14. For the foregoing reasons, I do not see any merits in the arguments advanced by the learned Government Advocate. However, it is an admitted fact that the respondents were terminated on 31.03.1992 and reference was made on 10.03.2006, award being passed on 17th August 2011. In the circumstances, the Labour Court directing the petitioners to reinstate the workmen with 50% backwages is not justifiable. The Apex Court in the cases referred to above has held that the relief can be moulded to in the facts and circumstances of the case. The delay though does not demolish the structure of the Industrial Dispute, the workmen admittedly have not worked for a long period of 14 years. It is not come on record that the respondents were not gainfully employed during this period of 14 years, in such an event doctrine of "No work no pay" attracts, awarding 50% of backwages for a long period would be a burden on the State Exchequer also.

15. Keeping this in mind, I am of the opinion that it would be appropriate to modify the award passed by the Labour Court, directing the petitioners to reinstate the respondents with continuity of service and consequential benefits without backwages.

16. Accordingly, the writ petition is allowed in part. The petitioners shall comply with the order expeditiously.