

(2000) 03 KAR CK 0028
In the Karnataka High Court
Case No : Writ Appeal No. 4468 of 1998

The Executive Engineer, Karnataka Electricity Board, Bagalkot	APPELLANT
Vs	
M.K. Ron and Others	RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 F

Citation : (2000) 87 FLR 810 : (2000) ILR (Kar) 4099 : (2000) 6 KarLJ 538 : (2001) 1 LLJ 245

Hon'ble Judges : K. Sreedhar Rao, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri B.C. Prabhakar, for the Appellant; Sri Ramesh B. Anneppanavar, for the Respondent

Judgement

G.C. Bharuka, J.—This appeal has been preferred on behalf of the Karnataka Electricity Board (in short the "Board") constituted under the provisions of the Electricity (Supply) Act, 1948, against the order dated 28-1-1998 passed by the learned Single Judge in W.P. No. 13155 of 1989, by which he has affirmed the judgment and award dated 11-10-1988 passed by the Labour Court in reference No. 106 of 1981 directing reinstatement of the respondents with 65% of back wages from the date of termination in the year 1974.

2. It is not in dispute that during the period 1971-74, the respondents were working with the Board as casual worker in the Bijapur District for completion of new electrification work like drawing of electric lines, erection of poles etc, Such casual workers are known in the establishment of the Board as "temporary time rolls" (in short the TTR").

3. Adjudication was undertaken by the Labour Court pursuant to reference made by the State Government by their Notification No. SWL 457 of 1981, dated 8-9-1981 wherein the following point of dispute was formulated:

"1. Are the management of Executive Engineer (Electrical), O and M Division,

Bagalkot, justified in terminating the services of the following workmen:

1. Sri M.K. Ron w.e.f. 12-7-1974
2. Sri Ramappa Sikkeri w.e.f. 29-7-1974
3. Sri B. Pujar w.e.f. 29-7-1974
4. Sri S. Hiremath w.e.f. 29-7-1974 .
5. Sri Govindappa Dasar w.e.f. 29-7-1974
6. Sri I.N. Badiger w.e.f. 29-7-1974
7. Sri Hanamant Adin w.e.f. 29-7-1974".

4. The respondents' plea before the Labour Court was that though they, as TTR labourers, had worked for more than 240 days during the twelve calendar months but their services were terminated without complying with the requirements of Section 25F of the Industrial Disputes Act, 1947 (in short the "Act") and therefore they are entitled to be reinstated with full back wages.

5. On the other hand, the appellant-Board in their written statement took up the plea that because of lapse of more than 7 years the controversy, which was sought to be raised at a belated stage has become stale and therefore the same cannot be adjudicated. It was also pleaded that since respondents were employed for temporary work like Electrification Scheme undertaken in a particular area, which has already been completed, there cannot be any occasion for their reinstatement.

6. The Board in support of its case examined M.Ws. 1 to 14, who had been working as Section Officers at the respective places where respondents were employed as TTR labourers for execution of a project of electrification in certain area. They have deposed regarding the days on which the respondents had worked as TTR during the period 1971-74 with reference to records of the Board exhibited as Exs. M. 1 to 10. The 7th respondent-Sri S. Hanumanth Adin, who had examined himself as M.W. 5, had stated that at the time of retrenchment, he was getting Rs. 4/- per day.

7. In order to ascertain whether Section 25F of the Act will be applicable in relation to a particular worker alleged to have been retrenched within the meaning of Section 2(oo) of the Act, one needs to find out whether he was in continuous service for a period of one year within the meaning of Section 25F of the Act. Learned Counsel for the parties are in agreement that in case of a person like the respondents, it is Section 25-B(2)(a)(ii) will be applicable for ascertaining continuous service. This provision reads as under:-

"25-B. Definition of continuous service.--For the purposes of this Chapter-

(1) xxx xxx xxx; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed

to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) xxx xxx xxx; (ii) two hundred and forty days, in any other case".

8. The scope and manner of calculation of 240 days has been explained by the Supreme Court in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., , In para 12 of the report, it has been held that.-

"It is not necessary for the purposes of sub-section (2)(a) that the workman should be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of sub-section (1) his case would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-section (2) envisages a situation not governed by sub-section (1). And sub-section (2) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of 12 calendar months counting back wages and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in sub-section (2)(a) it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days".

9. In the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, , the Supreme Court has held that.-

"In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is "actually worked under the employer". This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc.".

10. At our request, learned Counsel appearing for the contesting respondents with reference to the evidence both oral and documentary placed before the Labour Court have prepared a statement regarding number of days which the

respondents had actually worked during 12 calendar months preceding the date of termination. The statement shows that the 1st respondent had worked for 285 days from June, 1973 to May 1974, the 2nd respondent had worked for 249 days from July 1973 to June 1974, the 3rd respondent had worked for 204 days from August 1973 to July 1974, the 4th respondent had worked for 226 days from August 1973 to July 1974, the 5th respondent had worked for 171 days from August, 1972 to July 1973 and the 6th respondent had worked for 171 days from August, 1972 to July 1973.

11. From the above, it is clear that as per the evidence brought on record, some of the respondents have not worked for 240 days to attract the provisions of Section 25F of the Act during the period of 12 calendar months preceding the date of alleged termination. Learned Counsel for the appellant-Board has submitted that since the controversy regarding illegal termination had been raised after lapse of almost 7 years, it was impermissible on the part of the Labour Court to adjudicate upon the same. In support of his submission he has placed reliance on the judgment of the Supreme Court in the cases of Shalimar Works Limited Vs. Their Workmen, , Ratan Chandra Sammanta and others Vs. Union of India and others, and in the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, .

12. On the other hand, learned Counsel for the respondents placed heavy reliance on the judgment of the Supreme Court in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, .

13. In the case of Ratan Chandra Sammanta, supra, the Supreme Court in para 6 of the report has held that.-

"Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well".

14. Recently, the above principles have again been reiterated in Nedungadi Bank Limited's case, supra. In para 6 whereof, it has been held that-

"Law does not prescribe any time-limit for the appropriate Government to exercise its power u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In

fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent".

15. In the present case as well, though termination of the respondents had taken place in year 1974 but the reference was made only in the year 1981 i.e., after a lapse of 7 years from the date of termination. During the interregnum period the Board had also framed new statutory regulations called Karnataka Electricity Board (Recruitment and Service Conditions of Daily Rated Workmen) Regulations, 1974 (in short the Regulations") for recruitment of TTR by renaming it as Daily Rated Workmen. These statutory Regulations were brought into force w.e.f. 4-1-1975. This regulation was framed u/s 29 of the Electricity (Supply) Act, 1948.

16. Mr. Prabhakar, learned Counsel appearing for the Board, submits that after coming into force of the said Regulations, regular appointments have already been made under the provisions thereof as and when required at the places of execution of electrification works/temporary works. His further submission is that the impugned judgment and award directing reinstatement of respondents that too with back wages will put the Board in precarious situation since not only the Board has to suffer heavy financial setbacks but it will be forced to take the respondents into employment in violation of the statutory Regulations of recruitment and that too for which no posts are available.

17. We strongly feel that as already noticed by the Supreme Court in Nedungadi Bank Limited's case, supra, submissions made on behalf of the Board has to be given due weightage and serious consideration. So far as the judgment of the Supreme Court in Ajaib Singh's case, supra. is concerned, as could be found from para 11 thereof, the Supreme Court has refused to entertain the plea of delay on the ground that the said plea was not raised by the management before the Labour Court. But in the present case, we find that a specific plea regarding delay was raised in the written statement in the following terms:

"It is very well-settled that the workmen must be diligent and move for a reference at his earliest. In this case, the reference is bad as it is stale and belated. It is submitted that the stale and belated reference if encouraged, it will have adverse repercussions over industrial relations. Hence, the reference is liable to be rejected in limine as it is stale and belated".

18. Despite the above said objection regarding maintainability of the reference itself having been taken by the Board at the threshold, no explanation was put forth on behalf of the respondents to explain the delay nor the Tribunal has dealt with this aspect.

19. For the aforesaid reasons, in our opinion, since the reference itself was stale

being belated it was not entertainable by the Labour Court and the same ought to have been rejected on the said ground alone.

20. Accordingly, the judgment and award of the Labour Court is quashed and impugned order of the learned Single Judge is set aside.

21. In the result, the appeal is allowed. No costs.