

(2005) 03 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No's. 42199 and 50235 of 2004

The Himalaya Drug Company

APPELLANT

Vs

Taj Ahmed

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (c), 25 B, 25 B (2) (a) (ii), 25 F

Citation : (2005) 107 FLR 248 : (2005) ILR (Kar) 3525 : (2005) 3 KarLJ 589 : (2005) 2 KCCR 93 SN : (2005) 3 LLJ 504

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : S.N. Murthy and Associates in W.P. Nos. 42199 and 50235 of 2004, for the Appellant; M.S. Narayan, for Respondent in W.P. No. 42199 of 2004 and M.S. Narayan and Associates for Respondent in W.P. No. 50235 of 2004, for the Respondent

Judgement

Mohan Shantanagoudar, J.—By the impugned award dated 10-8-2004 passed in Reference No. 50 of 1999, the Additional Labour Court, Bangalore accepted the reference and directed the management of M/s. Himalaya Drug Company ("management" for short) to reinstate the workman into service to his original post with continuity of service but without any back wages.

2. The case of the workman-respondent herein is that he was appointed as a Mazdoor by the management on 18-10-1994 on daily wages of Rs. 24/- per day; that he continued to work till 22-12-1995 on which date, he was illegally removed from his service without due compliance of law which is nothing but exploitation and unfair labour practice. According to him he has worked for 240 days in the year preceding his termination.

3. On the other hand, it is the case of the management that the workman was engaged as Mazdoor on a temporary basis initially for the period between 18-10-1994 and 28-12-1994; was continued from time to time that his last engagement on temporary basis was between 4-10-1995 and 21-12-1995 on

which day he was terminated; that his entire temporary engagement did not exceed 240 days; that he was appointed for a particular purpose and the workman was discontinued immediately after the purpose for which he was appointed was over and consequently, the employer-management contended that the workman is not entitled to any relief

4. Ultimately, a reference was made to the Labour Court by the Government u/s 10(1)(c) of the I.D. Act. Before the Labour Court, the aforesaid contentions were raised by the respective parties and the evidence was let in by both the parties. After appreciating the material on record, the Industrial Tribunal has allowed the reference and held that the workman, in all, has put in more than 240 days continuously including the national holidays, festival holidays and Sundays and consequently, directed the management to reinstate the workman into service to his original post with continuity of service but without any back wages. Aggrieved by it, the management has preferred W.P. No. 42199 of 2004. On the other hand, being dissatisfied with the denial of back wages, the workman has preferred W.P. No. 50235 of 2004.

5. Certain undisputed facts of this matter are as under:

(a) The workman was a daily wage employee and was engaged on temporary basis.

(b) The workman was paid Rs. 24/- per day whenever he actually worked.

(c) The workman was not paid on Sundays, Festival Holidays and other general holidays, either under contract of service or under-compulsion of statute, standing orders etc.

6. Shri S.N. Murthy, learned Senior Advocate appearing for management submitted that the workman has worked only for 197 days that too not continuously, under the establishment from 22-12-1994 to 21-12-1995 on which day, the workman was terminated as is clear from wage-Register Ex. M. 6; thus, the workman has not worked for 240 days continuously in the year preceding his termination; that even according to the Labour Court, the workman has put in only 21 days of service in all in the said period of 12 months preceding 21-12-1995; however, the Labour Court, on miscalculation, has wrongly observed that the workman has worked for 238 5 days, as could be seen from the discussion made in paragraph 13 of its award; that the Labour Court, while coming to the conclusion that the workman has worked more than 240 days in a year has wrongly taken into consideration unpaid Sundays, festival holidays and other general holidays; in support of his contentions, he relied upon the following judgments :

1. The Range Forest Officer Vs. S.T. Hadimani, ;

2. Union of India and others Vs. Rajendra Kumar Sharma, ;

3. Malkiat Singh v. Labour Commissioner and Another 1997 LLR 358 ;

4. Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, .

7. On the other hand, Sri M.S. Narayan, learned Advocate appearing for the workman submits that Sundays and other holidays shall also be taken into account while computing the number of days of continuous service rendered by the workman. In support of his contentions, he relied upon the following judgment of the Apex Court and the various High Courts:

1. Workmen of American Express International Banking Corporation's case;
2. Management of Sri Akilandeswari Mills Ltd. Vs. Asst. Commr. of Labour (Controlling Authority under Payment of Gratuity Act) and Others, ;
3. Chagga Lal Vs. Panchayat Samiti and Another, ;
4. Pawan Kumar Shrivastava Vs. Municipal Corporation,

8. Looking to the rival contentions of the parties, the only question that arises for consideration is:

"Whether Sundays and other holidays for which no wages are paid, either by contract or by compulsion of statute should be taken into account for the purpose of reckoning the number of days on which the employee actually worked, for the purposes of Section 25-F read with Section 25-B of the Industrial Disputes Act?"

The answer to the said question is in the "negative" for the following reasons.

9. The judgments relied upon by the learned Counsels for both the parties reiterate the dictum laid down by the Apex Court in the case of Workmen of American Express International Banking Corporation cited supra. Learned Counsel for the workman by heavily relying on the said judgment vehemently submitted that the Sundays and other holidays shall also be taken into consideration while computing 240 days of continuous service. By careful reading of the said judgment in Workmen of American Express case, it is clear that the same will in fact, help the case of the management in this case. The Apex Court in the said judgment, while dealing with similar question has observed thus:

"Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief u/s 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision, which is of relevance, is Section 25-B of the Industrial Disputes Act. 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."

(emphasis supplied)

10. The aforesaid judgment of the Apex Court makes it clear that the words "actually worked under employer" would include all those days for which the workman has been paid wages, either under contract of service or under any statute or notification etc. In other words, those days for which no wages have been paid to the workman cannot be counted for the purpose of determining whether the workman worked continuously for a period of 240 days. There cannot be any dispute in this matter, that the workman has worked for only 197 days and was paid wages only on those days. The same is very much clear from the register Ex. M. 6. Further, from the material on record it is clear that the workman was not paid the wages for Sundays and other gazetted holidays either under contract of employment or under any statute or notification. No notification or standing order is brought to the notice of this Court to show that the casual or daily wages workers are entitled to be paid even on Sundays or general holidays during which they have not worked. Therefore, Sundays and other gazetted holidays for which the wages are not paid cannot be counted while computing the continuous service of the workman. If the holidays for which no wages are paid by the employer are excluded, the total number of actual working days of the workman would be only 197 days. Under such circumstances, if the holidays in which the workman did not work and for which no wages have been paid by the employer are excluded, the working days of the petitioner fall short of 43 days. Thus it is clear that the workman has not worked for 240 days continuously in the year preceding his termination. Hence, the Labour Court is not justified in holding that the workman has worked for 240 days continuously (including unpaid Sundays and other general holidays) in the year preceding his termination. Consequently, the impugned order cannot be sustained and the same is liable to be quashed. In view of the above, the following order is made.

The Writ Petition No. 50235 of 2004 filed by the workman is dismissed. Writ Petition No. 42199 of 2004 filed by the management is allowed. The impugned award dated 10-8-2004 passed by the Additional Labour Court, Bangalore in Ref. No. 50 of 1999 vide Annexure-K, directing the management to reinstate the workman into service with continuity of service is quashed.