

(2006) 06 KAR CK 0040
In the Karnataka High Court
Case No : Writ Appeal No. 3491 of 2005

The Management of Bharat Earth Movers Limited	APPELLANT
Vs	
J. Benjamin	RESPONDENT

Date of Decision : 13-06-2006

Acts Referred:

Constitution of India, 1950 — Article 142, 21, 39 (a), 41
Industrial Disputes Act, 1947 — Section 11 A, 2 (oo)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2006) 06 KAR CK 0040

Hon'ble Judges : V. Gopala Gowda, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Kasturi Associates, for the Appellant; M. Subramanya Bhat and Subba Rao and Co., for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The respondent was a workman in Bharat Earth Movers Ltd. Kolar Gold Field (hereinafter referred to as ?BEML?). He sustained injuries during the course of employment on 19/04/1984. The Medical Board of the BSI assessed 100% disability. Therefore he was paid disablement benefit at the rate of Rs. 28/- per day. Invoking Regulation 98 of ESI Regulations (General), the workman was discharged from employment w.e.f.15/05/1989. Aggrieved by the same the workman raised Industrial Dispute. The Labour Court passed Award dt. 30/06/2006 in Ref. No. 188/1992 directing the management of BEML to reinstate the workman in a suitable post without backwages but with continuity of service. Challenging the said Award, the workman filed W.P No. 4945/2001. The learned Single Judge clubbed both the petitions and passed the order dismissing the Writ Petition of the management and allowing the Writ Petition of the workman by granting the following reliefs:

a) The petitioner is entitled to continuity of service and all consequential benefits from the date of termination till the date of reaching the age of superannuation;

b) The petitioner is entitled to full back wages from the date of termination till the date of his attaining the age of superannuation less the disablement benefit paid to him under the provisions of the Employees' State Insurance Act, 1948

c) The petitioner would be entitled to retire mental benefits.

This appeal is filed by the management assailing the correctness of the order of the learned Single Judge by urging various grounds.

2. Sri. K. Kasturi, learned Senior Counsel for the Appellant-BEML finds fault with the impugned order in ordering reinstatement of the workman with full back-wages from the date of termination as the workman has got 100% permanent disability. There is no dispute regarding disability. The question of performing duties does not arise. Therefore, there was frustration of contract. In that view of the matter, the order holding termination as void ab initio is bad in law. If at all, the learned Single Judge wanted to modify the award by granting back-wages, it should have been on the basis of the judgment of the Supreme Court in the case of Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, . When the respondent-workman has not worked for a long period of 20 years on the ground of 100% disability and when he has received the E.S.I. benefit, grant of continuity of service with full back-wages till his age of superannuation by the learned Single Judge imposes heavy burden on the employer and it is bad in law.

3. The learned Counsel further contends that the finding recorded by the learned Single Judge holding that the termination of the respondent-workman does not amount to "retrenchment", because, medical unfitness by 100% permanent disability amounts to continuous ill-health in terms of exception-cardino to Section 2(oo) of the Industrial Disputes Act is not correct. Therefore, the question of awarding salary for the non-employment period does not arise at all.

4. Another ground of attack is that the learned Single Judge has erred in not applying the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "Disabilities Act"). To the Industrial Disputes Act, 1947, Section 11-A was inserted by amendment Act No. 45 of 1971 w.e.f. 15.17.1997. Therefore, awarding of full salary from the date of termination till the date of attaining superannuation by the learned Single Judge is contrary to the law laid down by the Supreme Court in the case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, .

6. learned Counsel has further contended that the Labour Court being the fact finding Court, though it has set aside the order of termination, answered Issue No. 2 holding that the termination is not justified and in exercise of its discretionary power awarded reinstatement with continuity of service. The same could have been modified as indicated in the impugned order by the learned Single Judge by applying the provisions of Act 1995. Therefore, the learned Counsel has prayed to set aside the order of the learned Single Judge.

7. Learned Counsel Sri. Subramanya Bhat appearing on behalf of the respondent-Workman sought to justify the order of the learned Single Judge contending that it is a well considered order. He relied upon the decision of the Supreme Court in the case of Narendra kumar Chandla v. State of Haryana and Ors. reported in 1995(1) LAB. I.C. 309, wherein, the Apex Court, dealing with the case of a workman whose right arm was completely amputated due to sarcoma (cancer) and who was discharged from service, and interpreting Article 21 of the constitution, has held that "Article 21 protects the right to livelihood as an integral facet of right to life." The said decision is not a binding precedent to Article 21 of the Constitution of India. But, it is an order passed under Article 142 to do complete justice to the parties. The learned Single Judge has considered the provisions of the Workmen's Compensation Act, 1923 and moulded the relief in the writ petition filed by the petitioner-workman, while dismissing the writ petition filed by the respondent-BEML and the same is perfectly legal and valid, which need not be interfered with by this Court. The decisions relied upon by the learned Senior Counsel on behalf of the appellant-BEML are not helpful to the case of the appellant.

8. Sri. Subramanya Bhat, learned Counsel, rebutting the submission of Sri. K. Kasturi, learned Senior Counsel, contends that the Disabilities Act, 1995 could not have been applied to the facts of this case, though the said Act is prospective in nature, the contention of the learned Counsel for the appellant is not tenable in law in view of the decision of the Supreme Court in the case of Lakshmi Narayan Guin and Others Vs. Niranjana Modak, , wherein the Apex Court while interpreting Section 13(1) & (6) of the West Bengal Premises Tenancy Act (12 of 1956), examined the applicability of the extension of Act to a particular area after passing eviction decree but during pendency of an appeal. It has also examined whether Section 13 could be invoked and whether a tenant is entitled to claim protection as an appeal being continuation of a suit. In the said Judgment, the Supreme Court has made an observation at para-8 and 9 while referring to the two constitutional Bench judgments reported in Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbasha Chandra Yograj Sinha, and Rafiquennessa Vs. Lal Bahadur Chettri (Dead) through his Representatives and Others, . Further, the Apex Court also referred the judgments reported in Smt. Dayawati and Another Vs. Inderjit and Others, , Ram Sarup Vs. Munshi and Others, (Mula and Others Vs. Godhu and Others, and extracted a relevant portion of the judgment delivered in the case reported in Smt. Dayawati and Another Vs. Inderjit and Others, , which reads thus:

If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even alter the judgment of the Court of first instance.

9. In support of the same proposition of law, the learned Counsel for the respondent-workman has placed reliance upon another decision of the Supreme

Court reported in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, (Para-21), contending that the learned Single Judge without applying the provisions of the Act 1995 modified the award of the Labour Court.

10. Further, the learned Counsel for respondent-workman places reliance upon the decision of the Apex Court in the reported in 2004 SCC 524 in the case of *Kunal Singh v. Union of India*, wherein the object and intendment of the Act, and right of the disabled workman u/s 47 of Disabilities Act 1995 was examined with reference to the condition of a person with disability within the meaning of Section 2(i)(v) and granted the relief in favour of the workman. This decision supports the relief granted in favour of respondent by the learned Single Judge. The learned Counsel for the workman had strongly justified the findings and the reasoning recorded by the Labour Court on the contentious point No. 2, placing strong reliance upon the decision of this Court in the case of *Management of Motor Industries Co., Ltd. Vs. Presiding Officer*, wherein this Court has considered Regulation 98 of the Employees' State Insurance Regulations, 1950, with reference to Clause-17.4 of the Certified Standing Orders of the Company. In Paras 8 and 9 of the said case, this Court has referred to the case reported in 1972(2) all England reports 715 and also extracted the relevant paragraphs with regard to "the incapability of a workman due to sickness, the question of whether or not the relationship between employer and employee has come to an end by frustration sounds more difficult than it is." It is contended that various relevant aspects are taken into consideration for affirming the findings and reasons recorded by the learned Presiding Officer of the Labour Court in holding that the termination order is bad in law, which finding of fact is lightly accepted by the learned Single Judge and therefore, the same need not be interfered with by us, having regard to the facts and circumstances of the case keeping in view that the appellant-BEML is a Public Sector undertaking Company, which is controlled by the Union of India and therefore, it is a model employer. In the case of *Lakshmi Narayan Guin v. Niranjana Modak* referred to supra, at paras- 8 & 9, the Division Bench of the Supreme Court has held that the amended provisions of the I.D Act are applicable to the pending cases and that decision is applicable with all force to the case on hand. Therefore, the power exercised by the learned Single Judge accepting the findings recorded by the Labour Court on the points of dispute referred to it and in setting aside the order of termination passed by the appellant against the respondent-Workman and granting the reliefs as indicated above by applying judgment in *Anand Bihari's* case and in *Narendra Kumar Chandra's* case is proper. Therefore, the learned Counsel prayed not to interfere with the same in the appeal of the BEML.

11. With reference to the above said rival legal contentions, we have carefully examined the contentions urged on behalf of the parties to find out as to whether the order passed by the learned Single Judge modifying the award of the Labour Court by awarding reinstatement with continuity of service, requires our interference in this appeal or not? We answer the above point in the negative, against the appellant for the following reasons:

The Labour Court being a fact finding Court on a reference made to it by the Karnataka State Government to adjudicate the existing industrial dispute between the parties on the points of dispute has conducted enquiry after giving opportunity to the parties to file their statement and counter statement in justification of their respective claim and counter claim and recorded its finding of fact with reasons by answering both the Points of dispute against the appellant-BEML and it has set aside the order of termination passed against the workman. The evidence of both the workman-WW1 and appellant/Management MW.1 is referred to at para-12 & 13, appreciated the same in its award after referring to the Judgment of the Supreme Court in the case of Narendra Kumar Chandla. It has recorded valid and cogent reasons in support of its findings on the points of dispute and set aside the order of termination, holding that the same is in contravention of the provisions of the Act 1995, E.S.I. Regulations and the law laid down by the Apex Court in the above referred decision. Therefore, the learned Counsel for the workman rightly sought to justify the Judgment and Award passed by the Labour Court by rightly placing reliance on the decision of this Court in the case of Management of Motor Industries Co. Ltd. v. Presiding Officer reported in ILR 1987 KAR 506, The labour court after proper interpretation of Regulation 98 of the Regulations, relevant Clause of the certified Standing Order of the Company and law laid down by the House of Lords in the case reported in All England Law Reporter has passed the Award. We affirm the findings and reasons recorded by the Labour Court in its Award.

12. The learned Single Judge keeping in view the observations made by the Apex Court in Anand Bihari's case cited supra, particularly, at para-11 & 12, wherein it is held that a person who is put-in number of years service in any of the statutory Corporation, cannot be discharged from service on the ground of enumerated ailments under the E.S.I Regulations and discharge of a workman would affect the livelihood of that employee. On the basis of the above decision of the Supreme Court, the learned Single Judge while affirming the findings and reasons of the award of the Labour Court, has rightly held that the appellant-BEML is an authority which is instrumentality of the State under Article 12 of the Constitution of India and therefore, has rightly applied the observations of that case to the case on hand. Further, learned Single Judge has rightly noticed the observations made by the Supreme Court in the case of Narendra Kumar Chandla wherein it has referred to Article 21 of the Constitution of India and it has extracted the real purport, intendment and philosophy of that Article and keeping in view the facts of the present case that the workman has rendered number of years service in the appellant-Company before he had suffered 100% permanent disability, held that the case falls under Regulation 98. The learned Single Judge has observed that the employer should keep in mind the object of Article 21 of the Constitution of India, which protects right to livelihood of a citizen, which is an integral facet of right to live and it is worthwhile to refer to the decision of the Constitutional Bench of the Supreme Court reported in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, wherein the

Apex Court has examined Articles 21, 39(a) and 41 of the Constitution of India and referred to a decision reported in (1954) 347 MD 442 (Baksey v. Board Regents) and made certain observations at Para-32, which reads thus:

The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.

13. The exposition of the aforesaid law laid down by the Constitutional Bench in the Olga Tellis case would justify the observations made in Narendra Kumar Chandla's case. Therefore, the contention urged by the learned Senior Counsel on behalf of the appellant-BEML that the grant of full salary to the respondent from the date of termination till the date of his attaining superannuation is not permissible in law, cannot be accepted by us as it is opposed to the provisions of Section 47 of the 1995 Act for two reasons, namely, the same is in violation of Articles 21, 14 and 16 of the Constitution of India. Regulation 98 must be read along with the aforesaid provisions of the Act. Though it is regulatory in character interpretation of the same with reference to Article 21 of the Constitution must prevail over exercise of power conferred upon the employer to discharge a workman who is suffering from any one of the ailments enumerated under the above Regulation. Further we are accepting the legal submission of the learned Counsel for respondent that the provisions of Section 47 of 1995 Act is applicable to the case on hand in view of the decision of the Apex Court in Lakshmi Narayan's case referred to supra, in which two Constitutional Bench judgments are referred to, and held that the amended provision of the enactment are applicable to the case which is pending in Appeal. Apart from the above, the appellant/Company was required to discharge its statutory duty of issuing notice while exercising its power under the Regulations before passing an order terminating the services of the respondent on the ground that he has suffered permanent disability of 100%. This statutory duty has not been performed by the appellant at the time of passing the order and the same is rightly pointed out by the learned Counsel for the respondent by placing reliance upon the decision of this Court in MICO's case cited supra, wherein this Court has referred to the Marshall v. Harland & Kloff Ltd.'s case reported in 1972 All. E.R. 715, wherein

the said Court highlighted the relevant aspects to be considered by the employer while discharging the workman who is suffering from ailment keeping in view the rights of such workman and the hardship that would be confronted to him. We are in full agreement with the view taken by this Court in MICO's case as the same would be applicable to the facts and circumstances of the present case.

14. For the aforesaid reasons, the learned Single Judge is right in modifying the Award of the Labour Court in favour of the respondent-workman. Apart from the said reasons, the reliance placed by learned Senior Counsel Mr. K. Kasturi on the decision in M/s. Firestone's case cited supra in support of his contention that the Disability Act has no retrospective effect and therefore it is not applicable to the facts and situation of the present case is not tenable in view of the judgment of the Supreme Court in the case of Lakshmi Narayan Guin's case cited supra wherein it is held that the amended provisions to the statutory Act are applicable to the cases where there is an appeal pending against the order.

15. The provisions of the Disabilities Act 1995, Industrial Disputes Act and E.S.I. Act are social legislations, which are pre-constitutional enactments, have passed the test of Article 13(1) of the Constitution of India. The above Acts are enacted to render social justice to the workmen. Therefore, we hold that the law laid down in the Lakshmi Narayan Guin's case referred to supra will apply to the fact situation and therefore, the learned Single Judge was perfectly justified in applying the provisions of Section 47 of the Disabilities Act 1995 to the case on hand because the date on which the said Act came into force the dispute was pending before the Labour Court. Therefore, the reliance placed upon Lakshmi Narayan Guin's case referred to supra is applicable to the case on hand. The learned Counsel for the respondent rightly places reliance upon the Kunal Singh's case referred to supra for moulding the relief in favour of the respondent.

16. For the aforesaid reasons, we are in full agreement with the reasons given by the learned Single Judge while dismissing the writ petition No. 4945 of 2001 filed by the appellant/petitioner. We do not find any good grounds entertain this appeal.

17. The appeal stands dismissed.