

(2008) 01 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 240 of 2007

The Managing Director, Krishna Bhagya Jalanigam Ltd.	APPELLANT
Vs	
Sri Mehboobsab	RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4A), 25 F

Citation : (2008) ILR (Kar) 1983 : (2008) 3 LLJ 433

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : M.R.C. Ravi, for the Appellant; Subba Rao and Co. and M. Subramanya Bhat, for the Respondent

Judgement

Subhash B. Adi, J.—An award dated 12th September 2006 passed in K.I.D. No. 395/1999 on the file of the Labour Court, Gulbarga, is called in question.

2. The respondent-workman raised a dispute u/s 10(4-A) of the Industrial Disputes Act, inter-alia alleging that, he was appointed on daily wages, as a Work Inspector on 01.01.1994 and he worked till 02.05.1985 and again he was reinstated from 27.05.1996 and was terminated from his services on 26.02.1999 and alleged that his termination is illegal and is entitled for all the benefits u/s 25F of the I.D. Act.

3. The said claim petition was contested by the respondent inter-alia denying the allegations made in the claim petition and stated that the respondent has not worked for 240 days.

4. Before the Labour Court, the workman got himself examined as WW-1 and also got marked Ex. W-I and W-2. On behalf of the petitioner, MW-1 was examined. The Labour Court on appreciation of the evidence found that, the respondent has worked for more than 240 days and also held that, the petitioner is an Industry and the refused to give work to the respondent amounts to retrenchment and directed the petitioner to reinstate the respondent within three

months. However, the Labour Court did not grant backwages or consequential reliefs.

5. The learned Counsel for the petitioner submits that, the evidence of the workman discloses that, he had worked from 27.05.1998 to 26.02.1999 and he had completed 240 days. He also submitted that, the engagement of the respondent on daily wages in the said post in which the respondent is working is not a sanctioned post and direction issued by the Labour Court to reinstate the respondent is contrary to the well settled law laid down by the Apex Court. He further submitted that, just because the workman has completed 240 days will not automatically get right to reinstatement and submitted that, the Labour Court has erred in ordering reinstatement. In this regard, he submitted that, the work assigned to the workman is in respect of a project, which was to be completed in one year. He further submitted that, it was temporary assignment and the project has been completed. He further submitted that, by way of an Affidavit evidence is filed before the Labour Court and in the said Affidavit, it is categorically stated that, there is surplus of 1,163 workmen.

6. In this regard, he relied on several judgments of the Apex Court and pointed out that, merely because the workman has proved that, he had completed 240 days of continuous service in a year, he will automatically become entitled for reinstatement and the Labour Court is required to consider several factors before granting relief.

7. In this regard, he relied on a judgment reported in 2006 SCC L & S 967 in the matter of Municipal Council, Sujapur v. Surinder Kumar and relied at para 15 of the said judgment and submitted that, only because relief by way of reinstatement with full back wages would be lawful, it would not mean that the same could be granted automatically. He further submitted that, in the said case, the Apex Court granted only compensation of RS. 50,000/- as against the direction for reinstatement. He also relied on another judgment of the Apex Court reported in 2006 SCC 934 in the matter of Nagar Mahapalika v. State of U.P. and Ors. and submitted that, the Apex Court after considering the judgment of the earlier judgment in the matter of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, held that, passing a direction for reinstatement of service has to be substituted by granting compensation and in the said case interpretation of the word retrenchment as interpreted in Nilajkar case was considered and held that, the appointment of the respondent have been made for carrying of work of an assessment, such assessments are done periodically. Their services thus should not have been directed to be continued. He relied on para a 25 of the said judgment, which reads thus:

It is now well settled, by reason of a catena of decisions of this Court, that only because the Labour Court may grant the relief of reinstatement with full back wages the same should (sic not) be granted as a matter of course. The appellant herein has clearly stated that the appointments of the respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in

violation of the provisions of the Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workman from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money. Appointments of the respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefore having come to an end. It, therefore, in our considered view, is not a case where the relief of reinstatement should have been granted.

Relying on the said para, learned Counsel submitted that, the post in question being a non-sanctioned post, it cannot be continued for the sake of reinstating the respondent, which would amount to creating a post illegally. In this regard even the Apex Court in the matter of *State of U.P. v. Neeraj Awasthi and Ors.* reported in 2006 SCC 190 has observed that:

In the instant case, furthermore, no post was sanctioned. It is now well settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill up the same in terms of the existing rules. They having regard to the provisions of the Regulations, may not fill- up all the posts.

Relying on the said para, learned Counsel further submitted that, in case of non-sanctioned post a direction, of reinstatement ought not to have been given. He also relied on several other judgment to point out that, the Apex Court in several judgments considering the nature of the post, period for which the workman was engaged, existence of the project, temporary nature of work and existence of post has held that, the granting of reinstatement is not justified, and in the place of direction for reinstatement, the compensation is awarded.

8. Learned Counsel appearing for the respondent-workman submitted that, the workman has worked for more than 240 days continuously in a year is not in dispute. In other words, the workman has worked for 240 days, however, he is not continued in the employment which amounts to termination from service, and is a retrenchment. Once there is a retrenchment the consequence must follow.

9. In this regard, he also relied on a decision reported in 2005 LAB. I.C. 2279 in the matter of *Bank of Baroda v. Ghemarbhai Harjibhai Rahari* and submitted that, the Apex Court at para 4 considering the completion of 240 days of continuous service in a year had directed reinstatement of the workman, though there was no letter of appointment. Relying on the said judgment, he further submitted that, once the retrenchment is proved, the consequent should follow. He also submitted that, in this case, even the workman who were on daily wages against the non-sanctioned post have been given work in terms of an order dated

26.05.1998 and if that is so, it cannot be said that, the respondent is not entitled for direction of reinstatement. He further submitted that, reinstatement is not to the permanent post, but it is only in respect of daily wages and submitted that, the award of directing the reinstatement does not call for interference.

10. It is not in dispute that, the respondent has completed 240 days continuous service in a year. The only question that arises for consideration in this writ petition is,

as to whether the respondent is entitled for reinstatement in to service, on the ground that he has completed 240 days of continuous service in a year?

11. The appointment of the respondent admittedly is on a daily wages for a particular purpose and he was appointed as a Work Inspector and it is stated that, the said post is not a sanctioned post. In an affidavit filed by the petitioner before the Labour Court, discloses that, as many as 1,163 workers are in surplus in the said project. No doubt, non-continuing the workman who was completed 240 days in a year amounts to retrenchment. Whether the retrenchment by itself confers right on the workman to seek reinstatement under the facts and circumstances of the case is required to be considered.

12. The petitioner is a Company, which is engaged in carrying of the irrigation projects, and once the irrigation projects are completed, naturally the work force engaged in the said project would become surplus. In such circumstances, whether it is viable to continue of the entire workmen, irrespective of their requirement. The Apex Court in similar circumstances has held that, in case of engagement of a workman in a project, on the completion of the project, if the service of a workman is not continued or terminated, it will not amount to retrenchment. In case of a contractual Appointment, the appointment comes to end at the end of the contract, in case of temporary appointment also, the employment would come to an end at the expiry of the period. The non-continuation of workman will not amount to retrenchment.

13. In similar circumstances, the Apex Court has held that, even if retrenchment is proved, the workman will not become entitle for the relief of reinstatement, granting reinstatement is not automatic, it depends on the various facts and circumstances of each case. In this case, having found that the engagement of the respondent in respect of a particular project and against the non-sanctioned post, there is no provision for continuing the workman in a post which is not sanctioned and continuing the person in respect of a non-sanctioned post amounts to continuation in a post which is not in existence would be illegal and amount to creating the post without cadre strength. All these appointments are temporary in nature and for a particular purpose and if such appointment is continued, as stated in the Affidavit, it becomes surplus staff.

14. However, in view of the provisions of Section 25F of I.D. Act, the Apex Court in such circumstances has granted compensation in the place of reinstatement. In this case the workman has proved that he has worked 240 days in a year and

the refusal of work would amounts to retrenchment. However, in view of the project being completed and there is already a surplus staff of 1163 and also the post being a non-sanctioned post, continuing the respondent in service or reinstating the respondent would be wholly illegal. In the light of the facts and circumstances of this case, compensation can be awarded in place of reinstatement. In the circumstances, it is just and proper to grant the relief of compensation.

15. Accordingly, this writ petition is partly allowed. A direction issued by the Labour Court for reinstatement of the respondent is hereby quashed. In the place of reinstatement, the respondent is entitled for compensation of Rs. 50,000/-. Petitioner to pay the compensation of Rs. 50,000/- in three months from the date of receipt of this order.