

(2005) 06 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 36046 and 36047 of 1999

The Managing Director KSRTC

APPELLANT

Vs

Mohan Bhide and Another

RESPONDENT

Date of Decision : 03-06-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 F

Citation : (2005) ILR (Kar) 4962 : (2005) 3 KCCR 202 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; Ashok S. Mensinkai Advocate, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Petitioner is before challenging the common award passed by the Labour Court in ID No. 256/88 and 260/88.

2. Respondents in WP No. 36046/99 and 36047/99 were engaged as casual labourers to work as security guards on payment of Rs. 10 per day in Dharmasthala Depot to meet the exigencies of work on 14-9-1984 and 24-1-1984 respectively. They were not appointed on regular basis and they had no lien or right to be considered for fresh appointment. Respondents raised a dispute on the ground that they were refused employment from February, 1988 and January, 1988 respectively. Corporation contested the matter. Witnesses were examined. Labour Court ordered reinstatement with continuity of service and 30% back wages. This award is challenged in these petitions.

3. Learned Counsel for the corporation argues that no appointment order was issued to the respondent workmen and they have no claim or right to any post in terms of the material available on record. She further says that the entire award is based on misconception of material facts in terms of the findings and interference is sought for.

4. Per contra, learned Counsel for the workmen supports the award.
5. After hearing, I have carefully perused the material on record.
6. It is the case of the respondent workmen that they were appointed by the Corporation and that they were refused employment resulting in retrenchment. A statement to this effect was filed by the workmen before the Labour Court. Same was contested.
7. Labour Court framed as many as six issues and answered them in favour of the respondent workmen. Labour Court granted reinstatement with 30% back wages to each one of the workmen. Let me see as to whether this award is sustainable or not.
8. Workmen say that they were appointed as security guards by the corporation and later they were refused employment. Management states that they were appointed on casual basis to meet the exigencies of work and no appointment order was issued. Evidence was recorded. In the evidence, workmen relied on W-1 for the purpose of employment. I have seen W-1 filed before the labour court. W-1 is nothing but a communication addressed by the depot manager Dharmasthala to the Divisional Controller, Mangalore. In the said letter it is stated that the orders may be issued to these workmen. Therefore what is clear to this Court is that these two workmen were not given any specific orders of appointment as is being normally done in the case of workmen. Unfortunately, the learned Judge has not bestowed his attention with regard to proper employment by the Corporation in terms of W-1, in the case on hand. In fact the labour Court notices that they were appointed on 21-4-1984 and 24-1-1984 respectively whereas no such order of appointment was available. Even otherwise, it is seen that what is produced before the Court is only xerox copy and the original was not produced by the workmen. Therefore it can safely be presumed that in the absence of any acceptable material on record, these two workmen were not appointed by the Corporation. To this extent, learned Counsel for the petitioner is right in his submission that the Labour Court is wrong in coming to the conclusion that these two workmen were appointed and they were retrenched after appointed. Arguments were advanced with regard to retrenchment.
9. Supreme Court in *The Range Forest Officer Vs. S.T. Hadimani*, has rules in para 3 reading as under:

"In our opinion the tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or tribunal to come to the conclusion that a

workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

9.1 AIR 2004 SCW 5184 the Supreme Court ruled that merely because the Corporation did not produce best evidence which was in its possession, no adverse inference can be drawn against the Corporation. The burden of proof was on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment.

9.2 Supreme Court in 1977(2) SLR 571 has ruled that temporary employees working on daily basis have no right to hold the post. Their disengagement from service cannot be construed as retrenchment under the Industrial Disputes Act.

9.3 A Division Bench of this Court in W.A.No. 2358/2002 has set aside the award of the Labour court on the ground that there is no retrenchment. The Court noticed that no records of the Corporation have been called for by the workmen in support of his claim.

10. From these decisions what is clear to this Court is that the workman must positively prove that he had worked for 240 days in terms of Section 25F of the Industrial Disputes Act. Unfortunately, in the case on hand, the very appointment is doubtful in the light of my earlier finding. Labour Court unfortunately without going into these aspects of the matter has chosen to grant reinstatement on the sole ground that the Corporation did not produce the muster roll etc. The Supreme Court has ruled that it is for the workman to call for the same and prove the same. In these circumstances, I find substance in the argument of the learned Counsel that the Labour Court has committed a serious error in granting reinstatement in addition to 30% back wages. In these circumstances, these petitions are accepted. Impugned award is set aside. No costs.