
(2013) 10 KAR CK 0077

In the Karnataka High Court

Case No : Writ Petition No's. 62918, 64864-64876 of 2012 (L-TER) and 63507, 64220-64232 of 2012

The Managing Director, The Chief Engineer, The Executive Engineer and The Assistant Executive Engineer, Karnataka Urban Water Supply and Drainage Board

APPELLANT

Vs

Mr. Basavaraj Ningappa Hudli and Others
 Basavaraj Ningappa Hudali Vs The Karnataka Urban Water Supply and Draining Board and Others

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1)(d), 10(4A), 25F

Citation : (2013) 10 KAR CK 0077

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : N.M. Hansi in W.P. Nos. 62918 and 64864-64876/2012 and Sri Ravi V. Hosamani in W.P. Nos. 63507 and 64220-64232/2012, for the Appellant; Ravi Hosamani, Advocate for Respondent No. 1 in W.P. Nos. 62918 and 64864-64876/2012, Sri N.M. Hansi, Advocate for Respondent No. 1, Sri M.V. Chavan, Advocate for C/R2 to 14 in W.P. Nos. 62918 and 64864-64876/2012 and for C/R5, 6 to 18 in W.P. Nos. 63507 and 64220-64232/2012, for the Respondent

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J.—W.P. Nos. 62918/2012 and 64864-876/2012 are filed by the Karnataka Urban Water Supply and Drainage Board (KUWSDB) and its functionaries, raising the challenge to the common award, dated 20.10.2011 (Annexure-D) passed by the Additional Labour Court, Hubli, in KID No. 20/2005 and other connected petitions, in so far as it directs the petitioners to re-instate the respondent Nos. 2 to 15 pay them back-wages, etc. W.P. Nos. 63507/2012 and 64220-232/2012 are filed by the Contractor, raising the challenge to the very same award. The facts of the case in brief are that the KUWSDB, an instrumentality of the State Government has undertaken the project of supplying water to Belgaum City from Hidkal dam. For maintaining its three pumping

stations, it entered into an agreement with the Contractor, namely, Basavaraj Ningappa Hudli for engaging the qualified personnel. The workmen, employed by the Contractor, raised the industrial dispute ventilating their grievance that they were illegally removed. When the conciliation did not lead the workmen anywhere, they filed the petition invoking Section 10(4A) of the Industrial Disputes Act, 1947, (the I.D. Act for short). They contended before the Additional Labour Court that when they demanded the payment of wages at the agreed rates, the Contractor started taking the resignations forcibly and orally ordering the workmen not to come for duty. It is their further case that no notice was issued and no retrenchment allowance was paid. They sought their reinstatement with full back wages, continuity of service, etc.

2. The Contractor took the stand that the workmen voluntarily abandoned the work. It was contended that only one workman, the petitioner in KID No. 20/2005 is dismissed, as he committed the misconduct of urinating in the water tank. The KUWSDB and its functionaries denied any privity of contract between itself and the workmen. As the KUWSDB has not appointed them, it is not liable to reinstate them or to pay any wages. The KUWSDB also contended that they are not workmen within the meaning of Section 2(s) of the I.D. Act and that the KUWSDB is not an industry within the meaning of Section 2(j) of the said Act.

3. Based on the rival averments made by the parties, the Additional Labour Court framed the following issues:

1. Whether the claimant is a workman under Industrial Disputes Act, 1947?
2. Whether the Institution in which the claimant is working is industry within the Industrial Disputes Act, 1947?
3. Whether the management proves that the petitioner remained absent unauthorisedly on duty from 1.4.2005?
4. Whether the respondent-management is justified in terminating the petitioner-claimant from service from 19.4.2005?
5. Whether the petitioner is entitled for reinstatement, continuity of service and back wages?
6. If not, what relief the claimant is entitled?

4. In all the cases, almost identical issues are framed. The only change is in respect of the dates. Based on the oral and documentary evidence placed on record, the Additional Labour Court answered the contentious issues in favour of the workmen. It passed the impugned award setting aside the termination order in respect of the 14 workmen (respondent Nos. 2 to 15 in W.P. Nos. 62918/2012 and 64864-876/2012). The Additional Labour Court directed their reinstatement, payment of backwages, continuity of service, etc. The liability to satisfy the impugned award was put jointly on the Contractor, KUWSDB and its functionaries.

5. Sri N.M. Hansi, the learned counsel appearing for the petitioners in W.P. Nos.

62918/2012 and 64864-876/2012 submits that the dispute raised by the respondent Nos. 2 to 15 does not fall within the ambit of Section 10(4A) of the I.D. Act. The non-payment of the prescribed wages cannot be agitated invoking the said provision. He submits that there is no employer-employee relationship between the petitioners and the respondent Nos. 2 to 15. As the term "employer" used in Section 2(g) of the said Act has no coverage for the principal employer, the very raising of the dispute is without the authority of law. If the respondent Nos. 2 to 15 are the workmen, it can be only be under the Contractor.

6. Sri Hansi submits that the impugned award does not state as to why the KUWSDB is fastened with the direction to reinstate the respondent Nos. 2 to 15. He submits that even when the principal employer has not obtained the registration and the Contractor has not obtained the licence, no liability can be imposed on the petitioners. In this regard, he brought to my notice, the Full Bench decision of this Court in the case of Steel Authority of India Ltd. Vs. Steel Authority of India Ltd. Contract Workers" Union, , the relevant portion of which is extracted hereinbelow:

44. Before concluding we may summarize our conclusions as follows:

(i) The system of contract labour has not been abolished altogether. In the absence of a notification u/s 10 of the Act abolishing the system in question in a particular establishment, recourse to that system has to be inferred as necessary by that establishment.

(ii) Whenever there is no prohibition notified u/s 10 of the Act, the employment of contract labour cannot be treated as opposed to public policy.

(iii) Neither the registration u/s 7 nor the licensing u/s 12 of the Act creates any privilege to employ contract labour. The purpose of licensing is regulatory in character, of a right which is already recognised.

(iv) It is impermissible to read into the definition of "contractor" under the Act as the holder of a valid licence under the Act.

(v) The employer is not responsible for the failure of the contractor to obtain a licence u/s 12 of the Act, and there is no compulsion imposed on him under the Act that he should continue to engage only a licensed contractor.

(vi) The statutory consequences are to be specifically found in the very Statute.

(vii) The effect of the contravention of any of the provisions of the Act is to be located from the various provisions of the Act, and it is not possible to infer a consequence which may result in imposing higher burdens or larger liabilities on a person who is not directly connected with the contravention of the law as in the case of a registered establishment engaging a contractor who in turn fails to obtain licence.

(viii) There is absolutely no warrant to deem a direct relationship of employer-employee between the principal employer and the contract labour only because

the contractor fails to obtain a licence. Such deeming will result in enlarging the scope of the penal provisions without any express words to that effect.

(ix) Regularization of the contract labour, whether employed through a licensed contractor or through an unlicensed contractor, is not one of the objects stated anywhere in the Act.

(x) The appellant in the instant case has complied with the provisions of Section 7 of the Act, and the finding to the contra by the Labour Court was rightly reversed by the learned Single Judge.

7. Nextly, he has relied on the Apex Court's decision in the case of Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others, . He read out the last portion of para 18 of the said decision which is as follows.

.....It appears to us that the High Court proceeded to conclude that the labour contract was not genuine and the workers of the Union were employees of the corporation because the corporation and the contractors did not comply with the provisions of the CLRA Act. Conclusion that the contract was sham or it was only camouflage cannot be arrived at as a matter of law for non-compliance of the provisions of the CLRA Act but a finding must be recorded based on evidence particularly when disputed by an industrial adjudicator as laid down in various decisions of this Court including the constitution bench judgment in SAIL. The cases on which the High Court placed reliance were the cases where finding of fact was recorded by the labour courts on evidence.

8. Sri Ravi V. Hosamani, the learned counsel appearing for the petitioners in W.P. Nos. 63507/2012 and 64220-64232/2012 submits that the petitions filed u/s 10(4A) of the I.D. Act are barred by limitation. He submits that the identical averments made in para 3g of all the petitions are to the effect that finally from 20.04.2004, the Contractor orally instructed them not to come on duty. If the workmen wanted to file petition invoking Section 10(4A) of the I.D. Act, they ought to have filed the same within six months from 20.04.2004. However, the petitions are filed on 03.09.2005.

9. Sri Hosamani submits that there is no dispute at all, as the Contractor never terminated the services of the workmen as on the date of the presentation of the petition on 03.09.2005. He submits that the petitioner has terminated the services of only one employee, that is, the fifth respondent Kadappa as he was found urinating in the water tank.

10. He submits that the period of the contract given by KUWSDB itself was for a period of six months. As there is change in the contractor, the question of reinstating the respondent - workmen would not arise at this juncture. He submits that the signatures of the workmen on the contract agreement are unnecessarily disbelieved by the Additional Labour Court. He submits that it has adopted a cavalier approach. The full backwages are granted without noticing the documents placed on its record and the subsequent event of KUWSDB not

awarding the contract to the petitioning Contractor. He submits that the contract between the petitioning Contractor and KUWSDB is over in 2007.

11. Sri M.V. Chavan, the learned counsel for the respondent - workmen submits that they have worked from February 2001 till 18.04.2005. It is only on 19.04.2005 that they were orally asked not to come for duty.

12. He brings to my notice, the Apex Court's judgment in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., wherein the contract system was held to be a mere camouflage, because the overall control of contract labour including the administrative control rested with the Electricity Board. In the said reported case, the contractor did not have a licence and the principal employer did not have the registration. The learned counsel submits that the facts of the case on hand and the facts of the reported case are almost identical. In the reported case the doctrine of "lifting of veil" was applied and it was held that there was real contractual relationship between the Electricity Board (principal employer) and the contract labourers.

13. He submits that the Labour Court has applied its mind to all the aspects of the matter like the principal employer not obtaining the registration, the contractor not obtaining the licence, non-payment of the prescribed wages and the production of the fabricated documents by the Contractor. Under these circumstances, the Labour Court has delivered the finding that the respondent - workmen are retrenched without complying with the requirements of Section 25F of the I.D. Act.

14. The first question that falls for my consideration is whether the petitions filed by the respondent Nos. 2 to 15 invoking Section 10(4A) of the I.D. Act were barred by limitation?

15. To answer this question, the provisions contained in Section 10(4A) of the I.D. Act are to be perused. The said provisions are extracted hereinbelow:

10(4A) Notwithstanding anything contained in Section 9C and in this Section, in the case of a dispute falling within the scope of Section 2A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub section (1).

16. The perusal of the afore-extracted provisions reveals that the petition has to be filed within six months from the date of the communication of the order of termination, etc. There is no provision for the condonation of delay in filing the application u/s 10(4A) of the I.D. Act.

17. In the cases on hand, the respondent - workmen have made identical averments in para 3g of the petition that finally from 29.04.2004 the contractor

orally instructed them not to come for duty. But the petitions are filed on 03.09.2005.

18. The reply on behalf of the respondent - workmen is that it is only on 19.04.2005 that they were orally asked not to come for duty.

19. In the next paragraph i.e., in paragraph 3h, the respondent - workmen claim to have worked till 19.04.2005. The petitions, the statement of objections and the evidence placed on record create more confusion than clarity as to the date on which the cause of action has arisen for the filing of the petition before the Additional Labour Court. The Additional Labour Court ought to have framed an issue regarding limitation and treated the same as the preliminary issue. On holding the enquiry, if it finds that the petitions filed u/s 10(4A) of the I.D. Act are barred by limitation, it is not required to consider the petitions on merits. It has to only reject the petitions. On the other hand, if the respondent - workmen cross the first hurdle of limitation, then the Additional Labour Court has to adjudicate the matter on merits.

20. Even if the Additional Labour Court rejects the petition on the ground of limitation, the respondent - workmen are not going to be left remediless. They can raise the industrial dispute before the Government. If the conciliation before the Government fails, they have to only seek the reference by the Government to the Labour Court for the ventilation of their grievances. The impugned award is liable to be quashed on the ground of not framing the issue on limitation and its consequent non-considering.

21. The second question that I propose to examine is whether the Addl. Labour Court is justified in awarding the backwages. Unless it is shown that the terminated workman was not gainfully employed, the question of granting the backwages would not arise. In this regard, it is profitable to refer to the Apex Court judgment in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, . The relevant paragraph of the said judgment is extracted hereinbelow:

18. Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be

that as it may.

22. In para 20 of its award, the Labour Court has this to say: "It is necessary to make it clear that respondents 2 to 5 have reemployed workmen through another Labour Contractor." When the respondent workmen are found to be re-employed, the Additional Labour Court is not justified in awarding the backwages from 19.04.2005.

23. Even assuming that the respondent workmen were not gainfully employed for sometime, what has to be considered is whether they are entitled to full backwages or part backwages. The Addl. Labour Court's award granting backwages at the rate of Rs. 6,000/- for Diploma Holder and Rs. 5,000/- for operators is absolutely not sustainable. The determination of the wage is not one of the enumerated cases for approaching the Labour Court u/s 10(4A) of the I.D. Act. Section 10(4A) provides for specified, enumerated classes of disputes namely discharge, dismissal, retrenchment and termination. Even, if it is found that the workman is illegally removed from service and that he was not gainfully employed thereafter and till his reinstatement, he is only entitled to get the wages which were being paid to him as on the date of his removal.

24. This does not mean that the workman is to be underpaid. If the wages are being underpaid, his remedy is to raise the industrial dispute invoking Section 10(1)(d) of I.D. Act, which reads as follows:

10(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing -

(a) xxx xxx

(b) xxx xxx

(c) XXX XXX

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.

25. The first item in the Third Schedule reads as follows:

1. Wages, including the period and mode of payment;

26. Thus, viewed from any angle, the awarding of full backwages for the entire period cannot be justified.

27. The third question is whether the respondent - workman Kadappa was removed from service or had abandoned his work. The Contractor's evidence is self-contradictory on this issue. The relevant portions are extracted hereinbelow:

I state that this petitioner had abandoned the service and remained absent from 01.04.2005 unauthorisedly.

28. This statement is at variance with what the Contractor has stated in the police complaint filed against Kadappa. In the complaint, it is stated that he is removed from service. Further, in the earlier part of the deposition, the Contractor has stated as follows:

I state that the termination of the petitioner does not amount to retrenchment.

29. The Contractor has also not discharged his burden of proving before the Additional Labour Court that the respondent - workman Kadappa committed the misconduct of urinating in the water tank. Even when it is the case of the Contractor that the other operators had witnessed Kadappa urinating in the water tank, they are not examined before the Labour Court. Admittedly, no enquiry is held against Kadappa and the burden of proving before the Labour Court that Kadappa has committed the misconduct is not discharged by the Contractor. Therefore I specifically entitle the respondent workman Kadappa to the substantial relief, provided he crosses over the first hurdle of limitation.

30. Whether the workmen were appointed for a particular contract period, for a particular project and whether contract is subsequently entrusted by the KUWSDB to any other contractors are required to be gone into by the Additional Labour Court, because if the respondent - workmen succeed in showing that they have filed the petitions within the prescribed period and that they are illegally removed from service, the only relief is not the reinstatement. Even if the reinstatement is not possible or feasible, the workmen would be atleast entitled to reasonable compensation.

31. The fourth question is whether the Additional Labour Court is justified in holding that there is misappropriation of wages and manipulation of records. The finding that the Contractor has misappropriated the wages of the workmen in league with the officers of the KUWSDB is not based on credible evidence. Based only on the ipse-dixit of the workmen, it cannot be concluded that the workmen were getting Rs. 2,700/.

32. The finding that there is no due verification of the Contractor's records by the officers of the KUWSDB is correct, but the Additional Labour Court's opinion that the documents at Exs. M1 to M3 are manipulated for misleading it is subjective.

To come to such conclusion, any adjudicatory forum has to fully apply its mind and consider the materials placed on its record. As held by the Apex Court in the case of Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another, , the word "consider" connotes active application of mind and consideration of all relevant aspects of the matter.

33. The Addl. Labour Court has concluded that the respondent workmen have worked for 240 days prior to 19.04.2005 even in the absence of their discharging the burden of showing the same. The Apex Court in the case of The Range Forest Officer Vs. S.T. Hadimani, has held that the onus of showing that the workman

has worked for 240 days in a given year is on him; it cannot be shifted on the Management.

34. For all the aforesaid reasons, I find that the impugned award is unsupportable and unsustainable. I therefore quash the same and remand the matter to the Additional Labour Court for fresh enquiry. The parties and/or their respective learned counsel shall appear before the Additional Labour Court on 11.11.2013 without waiting for any notice from it. The parties are at liberty to adduce additional/fresh evidence. The Additional Labour Court shall dispose of the remanded matter as expeditiously as possible and in any case within six months from the date of the parties' first appearance on 11.11.2013. These petitions are accordingly disposed off. No order as to costs.