
(2016) 02 KAR CK 0279
In the Karnataka High Court
Case No : WP No. 19566/2014 (L-Res)

The Principal, Government I.T.I.

APPELLANT

Vs

R. Hema Kumar and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (2016) 149 FLR 1047 : (2016) LabLR 360

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : T.S. Mahentesh, A.G.A., for the Appellant; V.S. Naik, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—1. The petitioner is before this Court assailing the award dated 07.09.2012 passed in I.I.D. Nos. 128 and 129/2003 as at Annexure-A to the petition. The respondents herein had raised a dispute in I.I.D. Nos. 128 and 129/2003 contending that they were illegally terminated from the services on 15.06.2003, though they had continuously been working in the School being run by the petitioner herein. The Labour Court at Mysuru after referring to the evidence available on record has arrived at the conclusion that the respondents have rendered more than 240 days of service in a year and in that view, having arrived at the conclusion that the provision contained in Section 25F of the Industrial Disputes, Act, 1947 has not been followed before terminating the services of the respondents, has set aside the termination and directed reinstatement.

2. The petitioner herein while assailing the award would contend that the Labour Court was not justified in granting reinstatement as has been done in the present case. Learned Government Advocate would contend that the respondents were claiming that they were working in the School. The School cannot be considered

as an Industry and therefore the consideration as made by the Labour Court is not justified. It is also the case of the learned Government Advocate that the respondents in any event cannot contend that they had been working against any vacant post nor they had been appointed after following due procedure for appointment and as such, no relief could have been granted to them. In that light, it is contended that the Labour Court has committed a serious error in directing reinstatement and the award is liable to be set aside.

3. Learned counsel for the respondent-workmen would seek to sustain the award passed by the Labour Court. It is pointed out that the issue with regard to the nature of the work rendered by the respondents in a normal circumstance could be considered as an industrial employment is no more *res Integra*. It is further pointed that in any event, the matter has been remanded to the Court below for consideration at the first instance and in that circumstance, such a contention cannot be urged at this juncture. Insofar as the nature of employment, it is pointed out that a finding of fact has been recorded by the Labour Court with regard to the respondents having rendered continuous service of 240 days in a calendar year, in such circumstance, the only conclusion that could be reached by any Court is to direct reinstatement. In that view, it is contended that the award does not call for interference.

4. In the light of the rival contentions, I have perused the petition papers including the award impugned herein. At outset, it is to be noticed that as recorded during the course of the award, the matter had arisen for consideration before this Court at an earlier instance in W.P. No. 10692/2010 and W.P. No. 10691/2010. At that point, this Court had taken into consideration the contention as to whether the petitioner-School could be considered as an industry and this Court after referring to the decision in the case of *Miss A. Sundarambal v. Govt, of Goa, Daman and Diu and Others*, (, 1989 1 LLJ 61) had arrived at the conclusion that the proceedings before the Labour Court would be maintainable and the consideration on merits is required to be made. If that be the position, the petitioner in any event cannot raise the said issue once over again in the same proceedings. Hence, to that extent, the Labour Court has not committed any error.

5. The next question for consideration is with regard to the contention that the Labour Court could not have granted reinstatement when the respondents were not recruited against a vacant post. The said contention in my opinion would not arise for consideration in the scope of the proceedings on hand. The grievance of the respondents was that they were working continuously in the petitioner-school, but they were terminated from services with effect from 15.06.2003 without following due process of law. If that be the position, the consideration that is required is, to find out as to whether the respondents had rendered more than 240 days of service in a calendar year and if so, whether the procedure contemplated in law is followed before terminating?

6. To that extent, the Labour Court has referred to the very evidence tendered

on behalf of the petitioner herein as M.W. 2. The said witness has clearly stated that the respondents were engaged for cleaning the College from the date of inception of the College and they were being paid Rs. 600 per month and later in the year 2003, it was enhanced to Rs. 1,000. When such categorical statement has been made by the witness who had been examined on behalf of the petitioner, the contention of the respondents that they had continuously worked from the year 2000 till their services were terminated will have to be accepted.

7. If that be the position, when there is a finding of fact recorded based on the evidence that they have rendered more than 240 days of service, the respondent-Workmen could not have been dismissed without complying the due process of law. There is no material on record to indicate that the termination was made after complying with the provision of law. Hence, the only consideration that could be made is to put back the respondents to the position in which they were working earlier. In that light, the relief as granted by the Labour Court requires to be taken into consideration. It is seen that the Labour Court has directed that they be reinstated to the position to which they were working at the time of their termination. If these aspects of the matter are kept in view, I do not see any error committed by the Labour Court. When a finding of fact has been recorded by the Labour Court based on the evidence, the said award cannot be termed as perverse so as to call for interference in the limited scope available to this Court while examining such award under Article 227 of the Constitution of India.

Hence, the petition being devoid of merit stands disposed of.