

(1980) 02 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No"s. 4757 and 4758 of 1977

Tirurangadi Service Co-operative Bank Ltd.

APPELLANT

Vs

The Labour Tribunal and Another

RESPONDENT

Date of Decision : 06-02-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1980) 02 KL CK 0002

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : P.K. Shamsuddin, A.A. Abdul Hassan, S.K. Abdulla and K.K. Babu, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kochu Thommen, J.—The parties in both the O.Ps. are the same. The 2nd Respondent was an employee under the Petitioner. He was dismissed by order of the Petitioner, dated 25th September 1965. The order of dismissal was set aside by the Labour Court by order, dated 14th January 1969 in I.D. No. 72 of 1966 and the Petitioner was directed to reinstate the employee with full back wages. The order of the Labour Court was challenged by the Petitioner in writ proceedings but unsuccessfully. By the time the writ appeal filed by the Petitioner was dismissed by this Court, the employee had reached the age of superannuation on 14th October 1970. Finally pursuant to an order in the claim petition filed by the employee, the entire back wages had been paid to him. The matter did not however end there, for, the employee contended that he was entitled to bonus as well as cash value of leave. Accordingly he approached the Labour Court u/s 33C(2) of the Industrial Dispute Act, 1947. The Labour Court by the impugned orders, dated 1st October 1977 (Ext. P-2 in each of the two O.Ps.) held that the 2nd Respondent was entitled to bonus and cash in lieu of leave which he would have been entitled to receive had he not been kept out of work.

2. The only question that is urged before me against this finding by Counsel for the Petitioner is whether a person who did not work is entitled to bonus and leave for the period of his absence from duty. The employee did not work because he was prevented from working. The order of dismissal was declared to be invalid. It was so declared by the Labour Court and later by this Court in the writ proceedings, as a result of which the order of dismissal is deemed never to have been in existence. Consequently the employee, although he did not actually work, is deemed to have worked for the period during which he was prevented from working. He was so prevented for no fault of his as it has been finally held. In the circumstances the employee is entitled to all emoluments which he would have got had he worked. The total emoluments which he would have got would include not only his wages but also any other amounts payable to him in law. Bonus undoubtedly is payable to him under the statute. So is he entitled under the contract to convert into cash the period of leave. These are his entitlements. Consequently it is incumbent upon the employer to settle the claims of the employee in full inclusive of bonus and cash in lieu of leave. This is what was held by the Labour Court, and in my view rightly. The challenge against Ext. P-2 in each of these two petitions fails.

3. Counsel for the Petitioner placed before me a Division Bench decision of the Andhra Pradesh High Court in *The Management of Andhra Scientific Co., Masulipatnam v. The Presiding Officer, Labour Court Government of U.P. Guntur* 1971 Lab.I.C. 513 to the contrary. With the utmost respect I do not agree.

4. The O.Ps. are accordingly dismissed. No cost.