

(2013) 10 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition No. 2526 of 2012S-KSRTC

Varadaraju

APPELLANT

Vs

The Divisional Controller and The Accounts Officer

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2014) 1 LLJ 543

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K. Srinivasa, for the Appellant; Hareesh Bhandary, for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner, a driver in the respondent Road Transport Corporation when terminated from service by order dated 20.11.1999 for proved misconduct, that order was subject matter of Industrial adjudication before the Labour Court, Mysore in I.I.D. No. 42/2000. By award dated 21.2.2005, the order of termination was set-aside and a direction issued to the respondent corporation to reinstate the petitioner with continuity of service and consequential benefits and 75% of the back wages. That award when called in question by the respondent corporation by filing W.P. No. 18921/2005, was disposed of by order dated 8.6.2007 reducing the back wages from 75% to 25%. Respondent corporation, it is alleged, paid Rs. 44,363/- towards back wages though entitled to Rs. 3,06,309/-, hence initiated criminal proceeding, whence, the respondent corporation paid Rs. 1,75,291/- on 11.7.2008, while consequential benefits such as leave encashment, arrears of full wages for 8 months 19 days from the date of the award till reinstatement was not paid. Petitioner asserts that on termination from service during the year 1989, respondent corporation paid Rs. 94,130/- as gratuity and when reinstated during the year 2005, corporation did not call upon him to redeposit Rs. 94,130/-. In the proceeding of the 7th meeting of KSRTC Employees Group Gratuity Trust held on 16.7.1998, it is said, a resolution was passed whereunder, in case reinstated

employee repays the entire amount in one lumpsum, no interest is leviable. But if employee proposes to repay the amount in instalments, then, will have to pay interest on the said sum.

2. It is the allegation of the petitioner, that after reinstatement during the year 2005, respondent corporation did not extend him the option to either pay the gratuity amount in one lumpsum or in instalments and having kept quiet for about five years, is disentitled to claim interest on the said sum and therefore the claim of Rs. 2,39,086/- as arrears of gratuity and interest is without authority of law.

3. On an earlier occasion, petitioner approached this Court in W.P. No. 6241/2011 to quash the order/communication dated 20.10.2010 and for a direction to consider his representation dated 19.11.2010, whence, this Court quashed the order and directed the respondent to redo the order by considering the petitioner's representation. There afterwards, respondent corporation is said to have issued an endorsement dated 2.9.2011 calling upon the petitioner to pay Rs. 2,45,400/- after deducting the amounts already recovered and the balance being Rs. 1,78,980/-. Hence, this writ petition.

4. Petition is opposed by filing statement of objections of the respondent inter alia contending that though the petitioner was fully aware that on reinstatement, he has to repay the gratuity amount of Rs. 4,130/- together with interest at 14% p.a., nevertheless, did not make payment and therefore is liable to pay said sum together interest at 14% p.a. from 1.1.2000 to 31.7.2007 and at 11% p.m. from 1.8.2007 to 31.12.2003.

5. Learned counsel for the petitioner files an affidavit dated 10.10.2013 of the petitioner stating that the gratuity amount since recovered in instalments the balance is Rs. 49,675/-, which may be deducted from out of his monthly salary in the next five months commencing from October 2013 to February 2014 and that Rs. 25,000/- be recovered towards interest from out of the terminal benefits/gratuity amount, on retirement.

6. In the factual matrix noticed supra which is not in dispute, undoubtedly petitioner failed to repay the amount received as gratuity on the date of dismissal, immediately on reinstatement during the year 2005 resulting in recovery of the principal sum of gratuity, in instalments from out of the wages of the petitioner. In view of the resolution of the Gratuity Fund Trust Annexure-C, it is needless to state that petitioner having not repaid the gratuity amount in lumpsum and while it is sought to be recovered in monthly instalments from the salary, is liable to pay interest on unpaid sum towards gratuity at the rate of 14% p.a. for the period noticed supra and 11% p.a. there afterwards upto February 2012, whence a circular was issued by the respondent corporation not to charge interest on the gratuity amount not repaid.

7. In that view of the matter, it is not possible to accept the plea of the petitioner that Rs. 25,000/- be deducted towards interest from out of his gratuity/terminal

benefits.

This Court on 17.9.13, passed the following order:-

Respondent-Corporation to place before Court, a calculation along with products with regard to the refund of gratuity with interest @ 10% per annum after adjusting the amounts, which have been deducted from out of the salary of the petitioner, for the period from 6.1.2000 upto 27.2.2012.

List on 23.9.2013.

The purpose of the aforesaid order was to assist the employee-petitioner in the event he agrees to repay the amount in lumpsum which when not accepted is disentitled to the said relief. Respondent corporation to recalculate the interest at the rates of 14% and 11% for the periods mentioned supra, on the amounts due by the petitioner and thereafter to issue necessary endorsement in that regard and recover the same from the gratuity/terminal benefits payable to the petitioner.

Petition is ordered accordingly.