
(2011) 11 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 8658 of 2011 (L-RES)

Woshully Estate, M/s Tata Coffee Ltd.

APPELLANT

Vs

Smt Lingamma

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

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

Citation : (2011) 11 KAR CK 0022

Hon'ble Judges : H. N. Nagamohan Das, J

Bench : Single Bench

Advocate : PD Vishwanath, for the Appellant; MA Appaiah, for the Respondent

Final Decision : Allowed

Judgement

H. N. Nagamohan Das

1. In this writ petition, petitioner has prayed for a writ in the nature of certiorari to quash the award dated 14.12.2009 in I.D.A. No. 3/2001 passed by the Labour Court at Madikeri.

2. Respondent was working in the petitioner - estate as a regular Mazdoor from the year 1994. Without enquiry, without notice and without complying section 25F of the Industrial Disputes Act, 1947 [for short ID Act"], orally the petitioner refused employment; to the respondent from 29.1.2001. Despite oral request and notice, petitioner refused to provide employment. Thereafter, the respondent raised a dispute before the Labour Court u/s 10(4A) of the ID Act. Petitioner entered appearance before the Labour Court and filed statement of objections, inter alia, contending that they have not refused employment to the respondent. On the other hand, the respondent unauthorizedly remained absent. On the basis of the pleadings, the Labour Court framed the following issues for its consideration.

1. Whether the I party proves that she was refused work by the II party w.e.f. 29.01.2001 illegally?

2. If so, to what relief is she entitled for?

3. Before the Labour Court, Petitioner examined two witnesses as MW. 1 and MW. 2 and got marked Exhibits. M1 to M6. Respondent examined herself as WW. 1 and got marked Exhibits. W1 to W2.

4. The Labour Court on appreciation of the pleadings, oral and documentary evidence, held that the petitioner refused employment to the respondent. Consequently, under the impugned Award, the Labour Court directed reinstatement with 50% back wages and continuity of service. Hence this writ petition.

5. I heard the arguments on both the side and perused entire writ petition papers.

6. On the one hand, petitioner contends that the respondent unauthorizedly remained absent from duty with effect from 29.1.2001. On the other hand, respondent contends that from that date the petitioner refused work. On this rival contention, both the parties adduced oral evidence and produced certain documents. The Labour Court on appreciation of this material on record, held that the petitioner has refused work to the respondent. This finding of the Labour Court is supported by evidence on record and I find no justifiable ground to interfere with the same

7. It is seen from the record that during the pendency of the proceedings before the Labour Court, petitioner has reinstated the respondent on 18.7.2009. The Labour Court by considering this development, granted 50% back wages for the period from 29.1.2001 to 18.7.2009. Admittedly, during this period, the respondent has not worked in the petitioner estate and absolutely there is no contribution. It is settled position of law that grant of back wages is not a matter of right. Grant of 50% back wages for the period from the year 2001 to 2009 will be huge financial burden on the petitioner. At the same time, for no fault of the respondent, she was denied employment in the circumstances, it is necessary to balance the interest of both the parties. I am of the considered opinion that grant of 30% back wages will meet the ends of justice in place of 50% back wages.

8. For the reasons stated above, the writ petition is partly allowed. The impugned Award dated 14.12.2009 passed in IDA No. 3 of 2001 is hereby modified, directing payment of 30% back wages in place of 50% back wages. Remaining all other aspects, the impugned Award remains undisturbed.