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Court : Karnataka Gulbarga

Decided On : Jun-04-2014

Judge : The Honourable Mrs. Justice Rathnakala

Appeal No. : W.A. No. 50396 of 2013 (L-TER)

Appellant : Rajesh

Respondent : The Secretary and Others

Judgement :

(Prayer: This writ appeal is filed under Section 4 of the Karnataka High Court Act, by the advocate for appellant praying that this Hon'ble Court to, allow the appeal and set aside the common order of the single judge dated: 05.08.2013 passed in W.P.No. 83523/2011 (L-TER) connected with W.P. No. 81114/2011 (L- TER) and order for the reinstatement of the appellant into service with full back wages, contiguity of service and all other consequential benefits, in the interest of justice and law.)

1. Appellant was engaged as a daily wager. He worked from 01.08.1984 to 01.01.1998 in the Minor Irrigation Department, Bidar. He was allegedly removed from, service orally with effect from 01.01.1998. He raised a dispute after lapse of 10 years from the date of alleged removal from service. The matter was referred by the State Government to the Labour Court.

2. The Labour Court, based on the pleadings, framed issues for consideration as to whether the workman proved that he worked continuously for more than 240 days or an year before termination and whether the termination was in violation of Section 25F of the Industrial Disputes Act, 1947 (for short 'the Act'). Another issue with regard to the claim made after lapse of 10 years from the date of termination was also framed.

3. The Labour Court found that appellant-workman was able to establish that he was illegally terminated from service by an oral order of termination dated 01.01.1998. It further found that there was no justification for the appellant-workman to keep quiet without raising a dispute within a reasonable time and that due to the delay of nearly 10 years in approaching the Court, the relief was required to be properly moulded and therefore, instead of directing reinstatement, the workman was awarded compensation. Accordingly, the reference was partly allowed setting aside the order of termination dated 01.01.1998 with a direction to the respondent to pay a sum of Rs. 30,000/- as compensation within a period of two months. This order passed by the Labour Court was challenged before the learned Single Judge.

4. The learned Single Judge, after considering the contentions of both the parties and placing reliance on the judgments of the Apex Court in the case of BHARAT SANCHAR NIGAM LIMITED V/S MAN SINGH - (2012) 1 SCC 558 AND RAJASTHAN DEVELOPMENT CORPORATION AND ANOTHER v/s GITAM SINGH - (2013) 5 SCC 136, has held that as the appellant-workman had raised the dispute after lapse of 10 years from the date of termination and the delay had not been satisfactorily explained, it was just and proper to affirm the award passed by the Labour Court by enhancing the quantum of compensation to Rs. 60,000/- instead of Rs. 30,000/- awarded. It is this order passed by the learned Single Judge that is challenged in this writ appeal.

5. It is contended by the counsel for the appellant that once it is held that the termination is illegal on account of non- adherence to the provisions contained in Section 25F of the Act, the inescapable conclusion would be that the employee becomes entitled for reinstatement with appropriate quantum of back wages. In

this connection, he has drawn our attention to the judgment of the Apex Court in the case of R.M.YELLATTI V/S ASSISTANT EXECUTIVE ENGINEER - 2006 (108) FLR 213. It is Urged by him THAT MERELY BECAUSE THE APPELLANT-WORKMAN WAS ENGAGED AS A DAILY WAGER, IT CANNOT BE HELD THAT HE WAS NOT ENTITLED FOR REINSTATEMENT. HE URGES THAT THERE CANNOT BE ANY DISTINCTION BETWEEN A DAILY WAGER OR A REGULAR EMPLOYEE IN THE MATTER OF GRANTING RELIEF, ONCE IT IS HELD THAT THE TERMINATION WAS ILLEGAL. IT is his further contention that in the case of rajasthan DEVELOPMENT CORPORATION AND ANOTHER V/S GITAM SINGH - 1(2013) 5 SCC 136, the Apex Court has not considered the earlier judgments wherein no distinction was made between a daily wager and a regular employee in the matter while examining the legality and correctness of the order of termination passed without adhering to the provisions contained under Section 25-F of the Act and while granting the relief including reinstatement and back wages.

6. We have carefully considered the contentions urged by the learned Counsel for the appellant Sri VilasKumar Marthand Rao. The facts of the present case disclose that without any justification, the appellant-workman has kept quiet for a period of 10 years. He was a daily wage employee. There can be no doubt that as he had completed 240 days of continuous service, even though he was a daily wage employee, he could be terminated from service by following the provisions contained in Section 25F of the Act, But, it cannot be said that once it is found that a daily wage employee has been illegally terminated, the relief to which the said workman is entitled is reinstatement and payment of back wages only and not anything other than that.

7. The provisions contained in Section 11A of the Act,, confers had the discretion to grant relief of reinstatement with full back wages or any other lesser relief depending on the facts and circumstances of the case. The adjudicating authority would certainly take note of several factors one of which would be the delay on the part of the employee in approaching the Court, apart from the nature of the employment and the nature of the service he has rendered. In the present case, the fact that appellant raised the dispute after lapse of 10 years has persuaded the Labour Court to deny the relief of reinstatement and to grant him only

compensation. This approach of the Labour Court cannot be characterized as perverse or illegal. In fact, grant of an order of reinstatement in such circumstances will not be justified because after lapse of 10 years there would have been whole range of changes in the administrative set up and one cannot expect the authorities to accommodate such employee on daily wage basis unmindful of the changes in the meanwhile.

8. Learned Single Judge has referred to the judgment in the Case Of RAJASTHAN DEVELOPMENT CORPORATION AND ANOTHER V/S GITAM SINGH REPORTED IN (2013) 5 see 136, wherein the Apex Court has stated that delay in raising industrial dispute is one of the relevant circumstances which has to be considered by the adjudicating authority while granting relief in an industrial dispute. The judgment on which the learned Counsel for the appellant has placed reliance does not, in any manner, lay down a proposition which is contrary to the one that is laid down by the Apex Court in the case of RAJASTHAN DEVELOPMENT CORPORATION AND ANOTHER V/S GITAM SINGH REPORTED IN (2013) 5 SCC 136.

9. Therefore, we are of the view that there is no error in the judgment rendered by the learned Single Judge. Hence, the writ appeal being devoid of merits is dismissed.

Since we have dismissed the appeal on merits, I.A.2/2014 filed seeking condonation of delay is also dismissed.

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