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Court : Karnataka

Decided On : Nov-23-2015

Judge : A.S. Bopanna

Appeal No. : W.P. No. 82025 of 2011 (L-TER)

Appellant : Appasab

Respondent : The Asst. Executive Engineer, Karanja Project

Judgement :

1. The Petitioner is before this Court assailing the Award dated 2.11.2009 passed in Reference No.270/2004.

2. The Petitioner had raised a dispute alleging that he was illegally terminated from the service of the Respondents on 22.4.1982 though he was appointed as Literate Mazdoor on 7.4.1979. The Respondents had appeared and disputed the claim of the Petitioner. The Labour Court on taking note of the evidence tendered by the Workman as WW1 and the documents relied upon as Exs. W1 to W3 and also evidence tendered on behalf of the Respondents as MW1 and the documents at Exs. M1 to M37 has arrived at a conclusion that case as put forth by the Petitioner cannot be accepted as such, the Reference has been rejected.

3. The learned Counsel for the Petitioner, while assailing the Award passed has referred to the documents relied on and also finding rendered by the Labour Court. In that light, it is contended that the documents available on record has not been

properly appreciated by the Labour Court and in any event, strict rule of evidence should not have been taken into consideration by the Labour Court to come to a conclusion with regard to the proof of the documents in that light. It is contended that when the Petitioner had indicated that he was initially appointed and was terminated thereafter, it was the burden of the Respondent-Management to establish that the engagement as made was not for a period of more than 240 days. It is contended that the document at Exs. W1 and W2 would indicate that he had worked for more than 240 days. Therefore, the Labour Court ought to have taken into consideration the claim as put forth by the Petitioner.

4. The learned Additional Government Advocate would also refer to the documents and the reasoning adopted by the Labour Court and would point out that the Labour Court in that light has taken into consideration the aspect with which such a dispute had been raised and the nature of employment that was claimed by the Petitioner and the documents as relied not being established and had thereafter come to a conclusion that the claim as put forth cannot be accepted. It is also contended that the Labour Court has also taken note of the fact that the dispute had been raised after 22 years. Even though the Labour Court arrives at the conclusion that the claim made is not stale, the same is not justified in view of subsequent view taken by the Hon'ble Supreme Court.

5. Having noticed the rival contentions, though an issue has also been raised with regard to the dispute having been raised belatedly and the conclusion reached and reference is also made to the conclusion reached by the Labour Court with regard to the dispute not being stale, the position of law is clear that there is no limitation prescribed under the Industrial Disputes Act. However, the Hon'ble Supreme Court has repeatedly held that the ultimate consideration that is required to be made is as to whether the dispute as raised is no stale that it cannot be considered as live dispute at the point when the consideration is made. It is in that view the learned Additional Government Advocate has relied on the decision of the Hon'ble Supreme Court in the case of Woods Beach Hotels Limited v. Mapusa Urban Cooperative Bank of Goa Limited and others, 2009 (13) SCC 748, to contend that in the said case Hon'ble Supreme Court had held that delay of 14 years which had arisen therein was stale dispute.

6. Be that as it may, since the Labour Court has concluded that the instant dispute as raised by the Petitioner cannot be considered as stale, in my opinion, what would arise for consideration in the instant case is to take note of the materials that were sought to be relied on by the parties, more particularly the documents that were called upon by the Petitioner to be produced by the Respondents and in that light, the fact that if a dispute raised at distant point in time, whether the documents would be available with the Management is also consideration which would have to be kept in view to come to a conclusion as to whether dispute as raised is stale and in that light whether consideration could be made. If this aspect is taken into consideration as claimed by the petitioner, alleged termination was on 22.4.1982, the Reference was made in the year 2004. Though the exact date on which Conciliation proceedings was set in motion is not available on record, in any event, it would be in the year round about 2004.

7. In the background, the Petitioner herein while tendering his evidence has relied on the documents at Exs.W1 to W3. The documents relied upon therein is an Experience Certificate said to have been issued in favour of the Petitioner and the Consolidated List of NMRs for a period from 1.4.1979 to 22.4.1982. Insofar as the documents as noticed from the evidence as tendered, the Workman in his cross-examination no doubt has admitted that it does not contain the details with regard to the outward number and the name of the Officer, who has signed. Even if the same is relegated to the background, what is also to be taken into consideration is that Petitioner in order to establish that he had worked during the period from 1.4.1979 to 22.4.1982 had also sought that the Management be directed to produce Nominal Muster Rolls and it is in that view, the documents at Exs. M1 to M37 were produced by the Respondents. Having secured the records from the Labour Court and having perused the said documents produced, the said document does not contain the details of the Workmen, who had worked during the said period as it is incomplete.

8. In a normal circumstance, it would have been open for this Court to take note of that aspect of the matter and remit the matter to the Labour Court to enable the Respondents to produce the entire details relating to the NMR so as to enable the Labour Court to arrive at conclusion taking into consideration the names of

Employees contained in the said Register and to find out if the name of petitioner is also there. It is while taking note of these aspects the delay with which the dispute has been raised becomes material. Though the Labour Court by taking note of the decision of the Hon'ble Supreme Court has arrived at the conclusion that the dispute is not stale, certainly, it would not be appropriate to expect the respondents-Employers to retain the NMRs relating to Daily Wagers for nearly 22 years and thereafter to produce it before the Labour Court if the dispute was not live. If that be the position, merely because some lenience is to be shown to the Petitioner to enable him to raise dispute belatedly because ultimately the relief can be moulded, in the instant facts it would seriously prejudice the Respondents as the records relating to Daily Wager in any event cannot be expected to be maintained for more than two decades when there was no dispute raised at all relating to the said Employee during the long period.

9. Therefore, if these aspects are kept in view, neither any fault can be found with the Respondents in not filing any other documents other than the documents called upon by the Workman nor can they be held responsible to consider the came of the Petitioner when it is raised so belatedly. Hence, for all the above said reasons and the reasons as indicated by the Labour Court, I am of the opinion that the Award dated 2.11.2009 does not call for interference.

The Petition is accordingly disposed of.

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