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Court : Karnataka Dharwad

Decided On : Aug-03-2016

Judge : P.S. Dinesh Kumar

Appeal No. : Writ Petition No. 63085 of 2010 (L-TER)

Appellant : Executive Engineer and Another

Respondent : Shivakka

Advocate for Pet/Ap. : Sri. Hansi

Judgement :

(Prayer: This writ petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the award in ID No. 310/2003 dated 28/01/2010 In so far as directing the management to reinstate the respondent by the industrial tribunal hubli as per Annexure-A.)

1. This petition is filed by the Executive Engineer and the Assistant Executive Engineer of Hidkal dam project, Belgaum to quash the award passed by the Labour Court, Hubli dated 28.01.2010 in I.D. No.310/2003 as per Annexure-A.

2. Respondent presented a claim petition dated 31.12.2002 as per Annexure-B before the Additional Labour Court, Hubli, contending, inter alia that she was appointed as a daily wage employee by the second petitioner in the year 1984; and that she has worked continuously upto 15.11.1985. She prayed for allowing

the Reference and to direct the respondent No.2 to reinstate her with full back wages and other benefits.

3. The claim petition was contested by the petitioners. By the impugned Award. Annexure-A, the Labour Court has set aside the removal of respondent by oral directions on 15.11.1985 and directed them to take her back on duty within one month from the date of publication of the Award. The back wages claimed by respondent have been disallowed. Being aggrieved by the said award, petitioners have challenged the same in this writ petition.

4. Heard.

5. Sri Hansi learned counsel appearing for the petitioners made following submissions:

i. the specific case of the petitioners as mentioned in paragraph No.3 of the petition is that respondent was appointed in the 1984 and she worked continuously till 15.11.1985. But no cogent material is placed by the respondent to substantiate her claim;

ii. the Labour Court has taken note of the fact that the petitioners have produced documents to show that the respondent has worked only for a period of 101 days in 1984-85 but erred in granting relief to the respondent as the number of minimum required working days is 240;

iii. the Court below has recorded a finding that Management witness (M.W.2) has admitted in the cross-examination that the NMR registers for the months of April 1985, May 1985, July 1985 and November 1985 were not been produced. Even if full benefit of those four months is also given to the respondent, hypothetically, it would work out to only 120 days resulting in total number of days which the respondent may have worked to only 221 days. In the light of such unambiguous facts, the adverse inference drawn by the Labour Court to hold that the respondent has worked continuously for a period of 240 days is perverse and unsustainable in law.

6. He has placed reliance on the following judgments in support of his contentions:

- i. Assistant Executive Engineer, Karnataka v. Shivalinga, reported in 2002 (1) Labour Law Journal 457.
 - ii. Range Forest Officer v. S.T. Hadimani, reported in 2002 (1) Labour Law Journal 1053.
 - iii. H.U.D.A. v. Jagmat Singh, reported in 2006 (3) Labour Law Journal 152.
 - iv. Assistant Executive Engineer v. J Mahadevaiah and Another, reported 2004(2) Labour Law Journal 736.
7. Adverting to the judgment of the Hon ble Supreme Court in the case of Shivalinga supra, he submitted that it is not expected of petitioners to maintain and produce the records in the case of the respondent herein, who claims to have worked as a daily wage employee in the year 1984-85 and presented the petition in the year 2002. Seventeen years had elapsed from the year during which the respondent claims to have worked as a daily wage employee.
8. Adverting to the judgment in the case of Hadimani supra, he submitted that the burden to prove that an employee had worked for less than 240 days cannot be shifted upon the Management.
9. Placing reliance on the judgment in the case of Jagmat Singh supra, Sri Hansi submitted that it is held by the Hon ble Supreme Court that in cases where the employee fails to conclusively establish that he was worked for 240 days continuously he shall not be entitled for any relief.
10. Adverting to the ruling in the case of J. Mahadevaiah supra, he submitted that the petition was not maintainable in the absence of proper and necessary parties. Placing reliance on paragraphs No.5 and 6 thereof, he submitted that neither the Head of the Department nor the Government is a party in the proceedings before the Labour Court. Therefore, the claim of the respondent ought not to have been considered.
11. In sum and substance, he argued that perusal of claim petition shows that there is a delay of 17 years in presenting the petition; that the Labour Court has

erroneously drawn an adverse inference based on an admission in the cross-examination that NMR registers were not produced in respect of four months; even if the benefit of said four months is given in full, the total number of working days shall not cross 221. Therefore, the impugned award is unsustainable in law. With these submissions, placing reliance on the judgment referred to supra, he prays for allowing this petition.

12. Per contra, Sri Ravi Hegde, learned counsel appearing for the respondent submitted that in identical circumstances, a Division Bench of this Court vide judgment dated 25.08.2014 in W.A. No.100404/2014 has awarded compensation of Rs.1,75,000/- and by an order dated 30.06.2016 in W.A. No.100490/2015 same quantum of compensation has been awarded. Therefore, he prays that in consonance with the said orders of the Division Bench of this Court, suitable compensation be awarded to the respondent.

13. I have given my careful consideration to the submissions of the learned counsel for the parties, perused the material papers and the judgments and orders relied upon by the learned counsel for the parties.

14. The specific case of the petitioners in the claim petition is that respondent was appointed in the year 1984 and worked continuously upto 15.11.1985. The date of appointment is not forthcoming in the petition. The date of presentation of claim petition is 31.12.2002. It is precisely averred as follows in the claim petition.

3. It is further submitted that the claimant was appointed as a daily wage employee in the respondent no.2 in the year 1984. She has worked continuously upto 15-11-1985 in the respondent management. Admittedly, she has worked for more than 240 days prior to her termination from the service.

15. Admittedly claim is made after nearly 17 years. Therefore, what is relevant for consideration in the case on hand is the factual matrix with regard to the actual number of days worked by the respondent. The finding of fact recorded by the Labour Court based on the material before the Labour Court is that the respondent has worked for 101 days in 1984-85.

16. Labour Court has recorded a further finding that M.W.2 in the cross-examination has admitted that the NMR registers for the months of April 1985, May 1985, July 1985 and November 1985 were not produced. The Labour Court has also held that the documents produced by the respondent shows that she has worked for 50 days.

17. Learned counsel for the petitioners is right in his submission that even if full benefit of four months in respect of which the NMR registers were not produced namely, April May, July and November 1985, is given to the petitioner, the maximum number of days would increase only by 120 days and when the same are added to 101 days as recorded by the Labour Court, the total number would not cross 221 days. At any rate, it is less than 240 days. Therefore, in my view, the finding recorded by the Labour Court that there is evidence to show that the respondent had worked for 240 days continuously is perverse and not sustainable in law.

18. The Hon ble Supreme Court in the case of Shivalinga supra has held that where there is serious dispute or doubt in employee employer relationship, the records of the employer become relevant and the long delay would come in the way of maintenance of the same. It is precisely held as follows by the Hon ble Supreme Court:

6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh v. The Shrihind Co-operative Marketing-cum-Proceeding Service Society Ltd. and Anr.*, AIR 1099 SC 1351 : 1999(6) SCC 82 : 1999-I-LLJ-1260 and in *Sapan Kumar Pandit v. U.P. State Electricity Board and Ors.*, 2001(6) SCC 222 : 2001-II-LLJ-788 to contend that there is no period of limitation prescribed under the industrial Disputes Act, to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part payment of back wages. It is no doubt true that in appropriate cases as held by this Court in aforesaid two decisions, such steps could be taken by the Labour Court or the

Industrial Tribunal as the case may be, where there is no such dispute as to relationship between the parties as employer and employee. In cases where there is a serious dispute or doubt in such relationship and records of the employer become relevant the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think two decisions relied upon by the learned counsel, have no application to the case on hand. Proceeding on the facts of the case, we think the High Court is wrong in having interfered with the award made by the Tribunal. The order made by the High Court in writ proceedings, therefore, shall stand set aside and the award made by the Labour Court shall stand restored. The appeal is allowed accordingly.

(emphasis is by me)

19. In the cases of Hadimani and Jagmal Singh supra, the Hon ble Supreme Court has categorically held that fulfillment of continuous working of 240 days is a condition precedent to grant any relief to a daily wage employee.

20. With regard to the submission of the learned counsel for the petitioners, that the petition was not presented by impleading the Head of the Department or Government as party respondent, it is not forthcoming from the records whether such a plea was taken before the trial Court. However, in the light of the judgment of a Division Bench of this Court, the claim petition could not have been entertained by the Labour Court in the absence of proper and necessary parties.

21. The respondent has not produced any material before the Labour Court to establish that she had worked for 240 days continuously. In view of the judgments of the Hon ble Supreme Court in the three cases mentioned supra, and the discussion made hereinabove. I am of the considered view that the finding recorded by the Labour Court that the respondent had worked for a continuous period of 240 days is perverse. Therefore, the award is unsustainable.

22. So far as the order passed by the Division Bench of this Court in W.A. No.100404/2014 relied upon by the learned counsel for the petitioners is concerned, there is no finding with regard to the number of days, the claimant therein may have worked. In the order passed in W.A. No.100490/2015 there is a categorical finding in paragraph No.4 thereof that the Labour Court on consideration of the material on record had come to a conclusion that the claimant had worked for 240 days. Therefore, on facts, the said orders of the Division Bench of this Court are not applicable to this case.

23. In the result.

i) This Writ Petition is allowed.

ii) Rule is issued and made absolute.

iii) The award in I.D.No.310/2003 dated 28.01.2010 on the file of Labour Court, Hubli is quashed.

No costs.

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