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Sri. Range Gowda Vs. The Divisional Controller

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Court : Karnataka

Decided On : Jan-18-2017

Judge : B.Veerappa

Appeal No. : WP 28307/2014

Appellant : Sri. Range Gowda

Respondent : The Divisional Controller

Advocate for Def. : Smt. H.R.Renuka

Advocate for Pet/Ap. : Sri. S.B. Mukkann

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE18h DAY OF JANUARY, 2017 BEFORE THE HONBLE MR. JUSTICE B. VEERAPPA WRIT PETITION No.28307 OF2014(L-KSRTC) R BETWEEN SRI. RANGEGOWDA, AGED ABOUT64YEARS, S/O LATE NEELEGOWDA, CHIKKACHAKANAHALLI, GADENALLI POST, DUDDA HOBLI, HASSAN TALUK AND DISTRICT -573201. . PETITIONER (BY SRI. G.S. NAVEEN KUMAR, ADV. FOR SRI. S.B. MUKKANNAPPA ADV.) AND THE DIVISIONAL CONTROLLER, K.S.R.T.C. HASSAN DIVISION, HASSAN57320. RESPONDENT (BY SMT. H.R. RENUKA ADV.) THIS WRIT PETITION IS FILED UNDER ARTICLES226& 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED AWARD DATED2802.2013 PASSED IN REF. No.127/05 BY THE INDUSTRIAL

TRIBUNAL AT MYSORE VIDE ANNEXURE- C AND CONSEQUENTLY REMAND THE REFERENCE TO THE INDUSTRIAL TRIBUNAL FOR ADJUDICATION2OF THE PUNISHMENT

ORDER
S AT SL.NO.1 AND2AND PASS AN AWARD IN ACCORDANCE WITH LAW. THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER
The petitioner workman is before this Court for a writ of certiorari to quash the award dated 28.02.2013 made in Reference No.127/2005 on the file of the Industrial Tribunal, Mysuru, rejecting the reference in respect of point No.4(2)(4) dated 15.09.1995.

2. It is the case of the petitioner that he was appointed as a conductor in the respondent Corporation and during the course of his employment as a conductor, on 15.09.1995 on certain charges, his basic pay was reduced by one incremental stage permanently. Subsequently, on 30.12.2000, the basic pay of the petitioner was reduced by one incremental stage for a period of five years. On 11.01.2002 again the basic pay 3 of the petitioner was reduced by two incremental stages permanently and on 06.11.2002 four increments were reduced from the basic pay of the petitioner permanently. Therefore, he raised a dispute before the Conciliation Officer. On failure of the Conciliation proceedings, the matter was referred to the Industrial Tribunal in the year 2005. The Industrial Tribunal after adjudication of the reference, by the impugned award dated 28.02.2013 rejected the reference. Hence the present writ petition is filed.

3. I have heard the learned counsel for the parties to the lis.

4. Sri G.S.Naveen Kumar, learned counsel for Sri S.B. Mukkannappa, learned counsel for the petitioner vehemently contended that the Tribunal, without reference to the merits of the case, has proceeded to reject the reference only on the ground of delay and laches. He further contended that there is no limit 4 prescribed to raise a dispute under the provisions of Section 10(1)(d) of the

Industrial Disputes Act, 1947, (Act for short). The Tribunal ought to have gone into merits of the case instead of rejecting the reference mainly on the ground of delay and laches. He further contended that the Tribunal has not considered the other three punishment orders passed by the respondent on different dates though it was referred for adjudication. Therefore, he sought to set-aside the impugned award passed by the Tribunal.

5. Per contra, Smt. H.R.Renuka, learned counsel for the respondent Corporation sought to justify the impugned award passed by the Tribunal and pointed out that the Tribunal had adjudicated only the reference pertaining to point 4(2)(4) dated 15.09.1995. In respect of other three punishment orders dated 30.12.2000, 11.01.2002 and 06.11.2002, the Tribunal by order dated 06.06.2012 dismissed the references as not 5 maintainable with liberty to the workman to challenge the said punishment orders separately as per law. The learned counsel further contended that the Tribunal considering the entire material on record, has recorded a specific finding that the workman has not given any explanation for the inordinate delay of nine years in raising the dispute. Therefore, she sought to dismiss the writ petition. In support of her contention with regard to delay, learned counsel sought to rely upon the dictum of the Honble Supreme Court in the case of NEDUNGADI BANK LIMITED .vs. K.P. MADHAVANKUTTY AND OTHERS reported in AIR 2000 SC839and also in the case of State of Karnataka vs. Ravi Kumar reported in 2009(13) SCC746 6. In view of the rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in the present writ petition is:

6. Whether the Tribunal is justified in rejecting the reference of the petitioner in the facts and circumstances of the present case?. 7. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

8. It is undisputed fact that the petitioner was appointed as a conductor in the Corporation and during the course of his employment, on certain charges, the basic pay of the workman has been reduced by one incremental stage permanently on 15.09.1995. Though Sri Naveen, learned counsel brought to the

notice of this Court that the Tribunal has not passed any orders in respect of other three punishments imposed by the 3rd respondent dated 30.12.2000, 11.01.2002 and 06.11.2002, it is pertinent to note that in paragraphs 3 and 19 of the award, the Tribunal specifically recorded a finding which reads as under:

7. 3. This reference is in respect of four Punishment Orders dated 06.11.2002, 11.01.2002, 30.12.2000 and 15.09.1995, which are referred to in the points of reference as Points 4(2)(1), 4(2)(2), 4(2)(3) and 4(2)(4) respectively. On 06.06.2012, the then Presiding Officer of this Tribunal passed an Order dismissing the Reference in respect of Punishment Orders referred to in points 4(2)(1) to 4(2)(3) as not maintainable, but by giving liberty to the first party to challenge the said Punishment Orders separately as per law. However, under the said order, a direction was given to both the parties to proceed in respect of the reference pertaining to point 4(2)(4) dated 15.09.1995.

19. As observed above, by an Order dated 06.06.2012, this Tribunal has dismissed the reference in respect of Punishment Orders pertaining to points 4(2)(1) to 4(2)(3). Hence, these points 4(2)(1) to 4(2)(3) do not survive for determination by this Tribunal. 9. 8 In view of the above, it is clear that the Tribunal has proceeded to adjudicate only with regard to the reference pertaining to point No.4(2)(4) dated 15.09.1995. The Tribunal, recorded a specific finding that in the entire claim statement or evidence of the workman examined as WW-1 no explanation is given about the inordinate delay of nine years in raising the dispute and considering the entire material on record, recorded a specific finding as under: Ex.M.48 and Ex.M.49, there is reference about imposing punishment on the first party by an Order dated 15.09.1995. But, as per Ex.M.47, records pertaining to the said punishment order are not available with the second party. As such, these documents fortify the evidence of M.W.3. The said evidence of M.W.3 remained unchallenged as the first party did not choose to cross examine her on the evidence. There is no reason to disbelieve the evidence of M.W.3., which is well fortified by Ex.M.47 to Ex.M.49. From the said evidence, it is clear that due to lapse of time and delay in raising the dispute, the second party 9 has lost valuable evidence in respect of punishment order under challenge in this dispute. 10. The Tribunal also observed that the alleged incident occurred on 07.03.1995 and at the

instance of the workman, Government referred the dispute for adjudication in the year 2005 and the trial started in the year 2007, as such, virtually the dispute is more than 12 years old and evidence pertaining to dispute is not available with the management since it is more than 12 years old matter and, therefore, rejected the reference.

11. The Honble Supreme Court while considering the delay in raising the dispute, in the case of Nedungadi Bank supra, at paragraph 6 held as under. 6. Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been 10 settled Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising 11 industrial dispute was ex facie bad and incompetent. 12. The Honble Supreme Court while considering the delay in raising the dispute, in the case of State of Karnataka and another vs. Ravi Kumar reported in 2009(13) SCC746 at paragraphs 5 to 10 held as under: 5. The Assistant Executive Engineer who was the sole respondent inter alia contended that the reference was stale having been made after 14 to 15 years and denied that respondent had served in his office. The Labour Court rejected the reference by its award dated 30.07.2001. The said award has been set aside by the High Court in a writ petition filed by the respondent, by order dated 23.03.2006 with a direction to the State Government

and the Assistant Executive Engineer to reinstate the respondent without any back wages. The said order is under challenge in this appeal by special leave.

6. This Court has repeatedly held that stale claims should not be referred-vide Nedungadi 12 Bank Ltd. V. K.P. Madhavankutty and Executive Engineer v Shivalinga. We may also refer to the decision in Regl.Provident Fund Commr. V. K.T. Rolling Mills (P) Ltd. Wherein this Court observed that(SCC p 182, Para 4): 4. When a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness.

7. In this case the respondent did not choose to challenge the termination for 14 years. Merely because some other daily wagers had got some relief, he belatedly approached the High Court in 1998.

8. The Writ petition was dismissed with an observation that the respondent was at liberty to make an application seeking reference. The contention of the respondent that reference was made on the direction of the High Court is therefore not correct. As the reference was stale, 13 it ought to have been rejected on that ground alone.

9. It is not possible to expect the Assistant Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work. Further when the state Government was not a party before the Labour Court, the respondent could not implead the State Government as a party in the writ petition challenging the award, nor can the High Court grant any relief against the State Government.

10. We, therefore, allow this appeal and set aside the impugned order of the High Court and restore the order of dismissal passed by the Labour Court, though on different grounds. 13. The material on record clearly indicates that the Tribunal has not considered the case on merits. The fact remains that either in his evidence or in his claim statement, the workman has not stated anything about 14 the cause for delay of more than nine years in raising the dispute nor he has produced any

record to show that there was no delay on his part. It is also not in dispute that though the law does not prescribe any limit for the appropriate Government to exercise powers under Section 10(1)(d) of the Act, it does not mean that power can be exercised at any point of time. The words at any time used in Section 10(1)(d) of the Act does not mean that law of limitation is not applicable to the proceedings under the Act. However, the policy of industrial adjudication is that, very stale claims should not be generally encouraged or allowed unless there is satisfactory explanation for the delay. In the present case, the Tribunal considering the entire material on record, recorded a specific finding that the workman has not stated anything about delay either in his claim statement or evidence. In the absence of the same, the Tribunal was justified in rejecting the reference. 15 14. The Honble Supreme Court in the case of PRABHAKAR .vs. JOINT DIRECTOR, SERICULTURE DEPARTMENT AND ANOTEHR reported in (2015)15 SCC1while considering the provisions of Section 10(1)(d) of the Act, held as under: 42.1 An Industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2-A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that any industrial dispute exists or is apprehended. The words industrial dispute exists are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No 16 doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/ apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. 42.2 Dispute or difference arises when one party

makes a demand and the other party rejects the same. It is held by this Court in a number of cases that before raising the industrial dispute making of demand is a necessary precondition. In such a scenario, if the services of a workman are terminated and 17 he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exists. 42.3 Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists?. Thus, not withstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of 18 the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as dead, then it would be non-existent dispute which cannot be referred. 42.4 Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not 19 evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. 42.5 Take another example.

A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. 42.6 In contrast, in those cases where there was no agitation by the workman against his 20 termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the Act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an existing dispute. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no Industrial dispute within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted. 15. In view of the above, the point raised in the present writ petition has to be answered in the affirmative holding that the Tribunal is justified in rejecting the reference on the ground of inordinate delay of nine years in raising the dispute. 21 16. For the reasons stated above, the impugned award passed by the Industrial Tribunal, Mysuru, dated 28.02.2013 made in Reference No.127/2005 is in accordance with law and the petitioner has not made out any ground to interfere with the impugned award passed by the Tribunal in exercise of powers under Articles 226 and 227 of the Constitution of India. Accordingly, Writ petition is dismissed. kcm Sd/- JUDGE

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