

Management Of Vs. Smt C Sujatha

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Court : Karnataka

Decided On : Sep-22-2022

Judge : Suraj Govindaraj

Appeal No. : WP 29288/2018

Appellant : Management Of

Respondent : Smt C Sujatha

Judgement :

- 1 - WP No.33097 of 2018 C/W WP No.29288 of 2018 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF SEPTEMBER, 2022 BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.33097 OF2018(L-TER) C/W WRIT PETITION No.29288 OF2018(L-RES) IN WP NO.33097 OF2018(L-TER) BETWEEN: SMT. C. SUJATHA AGED ABOUT43YEARS D/O SRI. CHANDRAPPA, R/AT NO.35, 2ND MAIN ROAD, NEAR KRISHNA CHOULTRY MEENAKSHI NAGAR, BENGALURU-560079 PETITIONER (BY SRI. NAIK V.S.,ADVOCATE) AND: THE MANAGEMENT OF KARNATAKA STATE SEEDS CORPORATION LTD., BEEJA BHAVAN BELLARY ROAD HEBBAL BENGALURU-24 REPRESENTED BY ITS MANAGING DIRECTOR RESPONDENT (BY SRI. R.S. HEGDE, ADVOCATE) - 2 - WP No.33097 of 2018 C/W WP No.29288 of 2018 THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR ENTIRE RECORDS FROM THE FIRST ADDL. LABOUR COURT,

BENGALURU VIDE ANNEX-A; QUASH THE AWARD DATED 05.04.2018 PASSED BY THE FIRST ADDL. LABOUR COURT, BENGALURU IN I.D. No.15 OF 2015 THE CERTIFIED COPY OF WHICH IS PRODUCED AND MARKED AS ANNEX-A, TO THE EXTENT THE PETITIONER IS AGGRIEVED AND ETC. W.P. No.29288 OF 2018(L-RES) BETWEEN: MANAGEMENT OF KARNATAKA STATE SEEDS CORPORATION LIMITED BEEJA BHAVAN, BELLARY ROAD, HEBBAL, BENGALURU - 560 024 REPRESENTED BY ITS MANAGING DIRECTOR SRI B. SHIVARAJU AGED ABOUT 56 YEARS S/O BORAI AH. PETITIONER (BY SRI. R.S. HEGDE., ADVOCATE) AND: SMT C. SUJATHA AGED ABOUT 44 YEARS D/O SRI CHANDRAPA R/AT No.35, 2ND MAIN NEAR KRISHNA CHOLTRY MEENAKSHI NAGAR BENGALURU - 560 079. RESPONDENT (BY SRI. NAIK V.S., ADVOCATE FOR C/R) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS FROM THE COURT OF I ADDL. LABOUR COURT, BENGALURU IN INDUSTRIAL DISPUTE NO.15/2015 AND BE - 3 - WP No.33097 of 2018 C/W WP No.29288 of 2018 PLEASED TO; QUASH THE IMPUGNED AWARD DATED 05.04.2018 PASSED BY THE PRESIDING OFFICER, I ADDL. LABOUR COURT, BENGALURU IN INDUSTRIAL DISPUTE NO.15/2015 VIDE ANNEXURE-B AND ETC. THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 The petitioner in W.P.No.33097/2018 who is the workwoman, is before this Court seeking for the following reliefs; i) "Issue writ of certiorari or any other appropriate writ or direction quashing the Award dated:

05. 04.2018 passed by the First Addl. Labour Court, Bengaluru, in I.D.No.15 of 2015 the certified copy of which is produced and marked as Annexure -A, of the extent the petitioner is aggrieved. ii) Issue a writ Mandamus or any other appropriate writ, or direction directing the Respondent to reinstate the Petitioner workwoman in her original post with full back wages, continuity of service and all other consequential benefits to meet the ends of justice

2. The petitioner in W.P.No.29288/2018 who is the employer is before this Court seeking for the following reliefs; - 4 - WP No.33097 of 2018 C/W WP No.29288 of 2018 i) "Call for the records from the Court of I Addl. Labour Court, Bengaluru in Industrial Dispute No.15/2015 and be pleased to; ii) Issue writ order or direction, in the nature of certiorari to quash the impugned award dated:

05. 04.2018 passed by the Presiding Officer, I Addl. Labour Court, Bengaluru in Industrial Dispute No.15/2015 vide Annexure - B and be pleased to; iii) Issue any other appropriate writ, order or direction as deemed just and proper in the facts and circumstances of the case, including award of costs of the proceedings in the interest of justice and equity".

3. The facts in both matters are common.

4. The employer is a Corporation and a Government of Karnataka undertaking under the Agricultural Department. The workwoman was appointed as a data entry operator by the employer with effect from 17.01.2007 at a consolidated salary of Rs.5,000/- p.m, after having worked with the employer for some time she was deputed to the Agricultural Department, (Planning 'B'Section), Karnataka Government Secretariat, M.S.Building to continue to work as a Data Entry Operator, where she continued to work till - 5 - WP No.33097 of 2018 C/W WP No.29288 of 2018 2013, in the meantime, her salary was increased from time to time to Rs.6,900/- p.m.

5. When she had on 25.10.2013 submitted a request to the Principal Secretary, Department of Agriculture, to raise salary and regularize her services as done in the case of one of her juniors, said representation, was forwarded to the Management of the Corporation for consideration and orders.

6. In the meanwhile, on 26.06.2015 when the petitioner had worked overtime on several occasions on account of on going legislative session had requested for leave at 5.30 p.m., the same was granted.

7. However, noticing that she was not available when called for, when was reported for work on the next day, she was informed that her services were no

longer required.-. 6 - WP No.33097 of 2018 C/W WP No.29288 of 2018 8. It is in that background that she had raised a dispute under Section 10(4-A) of the Industrial Dispute Act, 1947, which came to be numbered as I.D.No.15/2015. The Labour Court after recording of evidence and hearing the parties, came to a conclusion that if the corporation was directed to make payment of Rs.5,00,000/- as a consolidated compensation the same would serve the ends of justice. It is aggrieved by this order that both the workwoman and the Corporation are before this Court.

9. Sri.V.S.Naik, learned counsel appearing for the workwoman would submit that;

9.1. The workwoman worked from the year 2007 to 2015 as a Data Entry Operator though as a contract employee under different contractors and was rendering services which were required to be rendered to the employer.-. 7 - WP No.33097 of 2018 C/W WP No.29288 of 2018 9.2. Employer had in fact deputed the workwoman to the Secretariat. 9.3. If at all the workwoman was a contract employee the question of deputing to the Secretariat would not have arisen. 9.4. During the course of rendering services from the year 2007 to 2015 there was in many as four contractors under whom she was enrolled. Under M/s Novel Security Agency, Bengaluru from 19.01.2007 to 28.02.2008, M/s Balaji Enterprises, Bengaluru from 03.03.2008 to 31.07.2008 and 01.08.2009 to 31.01.2012, M/s Spy Well Detective Agency, Bengaluru, from 01.02.2012 to 30.09.2012 and thereafter, from 1.10.2012 to 26.06.2015 with M/s KEONICS Agency, Bengaluru until the termination of her services.-. 8 - WP No.33097 of 2018 C/W WP No.29288 of 2018 9.5. He submits that the respondent-Corporation has been resorting to dubious methods of hiring contract employees and passing them on to different contractors, so as to not make payment of due amounts which have been duly paid to the regular employee of any Corporation. 9.6. This aspect has not been taken into consideration by the Labour Court which has granted compensation of Rs.5,00,000/- which is very nominal. The Labour court ought to have considered the representation and regularized the employment of the petitioner-workwoman. The petition in WP No.33097/2018 filed by the workwoman has to be allowed and the petition in WP No.29288/2018 filed by the Corporation has to be dismissed.

10. Per contra, Sri.R.S.Hegde, learned counsel appearing for the respondent-Corporation would submit that; - 9 - WP No.33097 of 2018 C/W WP No.29288 of 2018 10.1. There is no direct employer and employee relationship between the Corporation and the workwoman and the services have been engaged through various contractors. Any amount which is required to be paid and or any claim that workwoman may have is against the contractor and not against the Corporation. 10.2. When the contract has been terminated, the question of payment of any compensation would not arise. 10.3. As such, the Labour Court could not have granted a compensation of Rs.5,00,000/- with 9% interest. 10.4. Neither the State Government nor the Service provider have been made a party and as such, the above proceedings are not maintainable.-. 10 - WP No.33097 of 2018 C/W WP No.29288 of 2018 10.5. On the above grounds, he submits that the petition filed by the Corporation is to be allowed and the petition filed by the workwoman is to be dismissed.

11. Heard learned counsel appearing for the parties. Perused the records.

12. The manner in which the workwoman has been engaged for services to be rendered at the Corporation from the year 2007 to 2015 is clear from the documents that has been produced by the Corporation itself. Inasmuch as, the Corporation has before the Labour Court contended that the employee is not a direct employee but employee of a contractor/service provider. There have been various service providers over a period of time and if at all any claim made by of the employee, the same is against such service provider.-. 11 - WP No.33097 of 2018 C/W WP No.29288 of 2018 13. It is rather shocking that from the year 2007 till the year 2015 during which the workwoman has been engaged at the Corporation to render her services as a Data Entry Operator, the said workwoman has been onboarded to different contractors over a period of time as observed above.

14. It is one thing to say that the contractor has changed and employee of that contractor was engaged (which would necessary entail different sets of employees working under different contractors) and another thing to say that the same employee is an employee of different contractors and continues to render services

at the corporation for a period of 8 years from 2007 to 2015, when there were four contractors engaged.

15. I am unable to accept that the workwoman who continued to work with the Corporation was onboarded with different service providers while - 12 - WP No.33097 of 2018 C/W WP No.29288 of 2018 discharging the same services to the employer. It is not known in what manner tenders were invited by the authorities for the contract. Whether there was verification of who were the employees of that contractors/service providers, was a list of workers provided along with the bid. When the workwoman was onboarded to the different contractors whose details are not placed on record by the Corporation. Without the said details being placed, I am unable to accept the submission of Sri. R.S.Hegde that the petitioner in the present case is not directly related to the Corporation but she is an employee of different service providers.

16. This more so, when the corporation in the present case is a Government undertaking attached to the Department of Agriculture in pursuance of which the workwoman was deputed to the Secretariat under which the Corporation comes.-. 13 - WP No.33097 of 2018 C/W WP No.29288 of 2018 17. The Hire and Fire policy which has been resorted to by the Corporation without following any procedure does not bode well for the Corporation which is an instrumentality of the State.

18. Though, the submission made by Sri. R.S.Hegde is that the Government and or the independent contractor for service provider is not made a party on account of observation made hereinabove, when the employee has continued to be working for the corporation despite the change of the Contractors, I am of the considered opinion that the arraying of the independent contractors would not make any material difference. If at all, the payments would always be directed to be paid by the Corporation through the independent service provider. Since the independent service provider would be acting under the instructions of the Corporations being an agent of the corporation.-. 14 - WP No.33097 of 2018 C/W WP No.29288 of 2018 19. In view of the above, I am of the considered opinion that the orders passed by the Labour Court in I.D.No.15/2015 on 05.04.2018 not

having taken into consideration all the above factors suffers from legal infirmity and therefore, requires to be quashed. The Corporation is directed to reinstate the workwoman to the original post considering that the workwoman has not worked with the Corporation to back seven years. I am of the considered opinion that back wages cannot be awarded. However, compensation has to be awarded for loss of pay during the last seven years, which is quantified at a sum of Rs.2,50,000/-.

20. In view of the above, I pass the following;

ORDER

i) Writ Petition in W.P.No.29288/2018 is dismissed. ii) Writ Petition in W.P.No.33097/2018 is partly allowed.-. 15 - WP No.33097 of 2018 C/W WP No.29288 of 2018 iii) The award dated 05.04.2018 passed by the Labour Court in I.D.No.15/2015 is set aside. iv) A mandamus is issued directing the respondent-Corporation to reinstate the petitioner - workwoman within a period of four weeks from the receipt of the copy of this order by providing continuity of service and other consequential benefits with additional amount of Rs.2,50,000/- as compensation which shall be paid within a period of eight weeks from today. v) Considering the nature of observations made hereinabove, I am of the considered opinion that there is also a need for an enquiry to be conducted by the Comptroller and Auditor General as regards the manner in which the contract labourers are being engaged by Respondent. Whether the same is a genuine bonafide transaction or is it a veiled - 16 - WP No.33097 of 2018 C/W WP No.29288 of 2018 methodology adopted by the respondent, and whether such a methodology goes against the principles of welfare State as enshrined in the preamble of the constitution of India. vi) The enquiry to be completed within a period of 12 months from today, and report is to be placed in this file. vii) The Registrar (General) is directed to forward a copy of this order to the office of the Comptroller and Auditor Generals office for doing needful and on receipt of the report to place it on the records of this file. viii) Thought the above matter is disposed, re list on 15th October 2023 for receipt of the enquiry report. Sd/- JUDGE RU - 17 - WP No.33097 of 2018 C/W WP No.29288 of 2018 IN THE HIGH COURT OF KARNATAKA AT BENGALURU [SMT. C SUJATHA VS. THE MANAGEMENT OF KARNATAKA]. SGRJ2709.2022 (VIDEO CONFERENCING / PHYSICAL

HEARING)

ORDER

on For Being Spoken To

1. The above matters have been disposed of on 22.09.2022. Today, when the matter is moved for Being Spoke To, a memo is being filed by the counsel for the petitioner, signed by the counsel for the petitioner and the petitioner in W.P.No.33097/2018.

2. Sri.V.S.Naik, learned counsel for the workwoman would submit that the petitioner has recently joined M/s.KEONICS, who is a Service Provider who has deputed her to e-Governance Department, M.S.Building, Bengaluru from March 2022. If that be so, direction issued at Sl.No.4 in the order dated 22.09.2022 cannot be implemented. In view thereof, I am of the considered opinion that the award passed by the Labour Court in I.D.No.15/2015 - 18 - WP No.33097 of 2018 C/W WP No.29288 of 2018 would have to be confirmed in its entirety. As such, direction at Sl.Nos.3 and 4 is modified by following: The award dated 05.04.2018 passed by the Labour Court in I.D.No.15/2015 is confirmed. Needless to say that additional amount of Rs.2,50,000/- as contained in direction No.4 need not be paid. Time period for payment of the amounts as awarded by the Labour Court is extended for a period of eight weeks from today. Sd/- JUDGE MPK List No.:

1. Sl No.: 1

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