

**Channappa Vs. the Assistant Executive Engineer**

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**Court :** Karnataka

**Decided On :** Mar-18-2005

**Reported in :** ILR2005KAR2416; 2005(4)KarLJ422

**Judge :** Ram Mohan Reddy, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 10(1), 11 and 25N

**Appeal No. :** W.P. No. 9654 of 2005

**Appellant :** Channappa

**Respondent :** The Assistant Executive Engineer

**Advocate for Pet/Ap. :** R.A. Shiraguppi and ;S. Pujari, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

**Ram Mohan Reddy, J.**

1. The dispute with regard to the alleged termination of service of the petitioner by the respondent having been referred to the Labour Court by the Govt. of Karnataka under Section 10(1)(c) of the [Industrial Disputes Act, 1947](#), for short the Act, was registered as Ref. No. 123/1994. The petitioner filed a claim statement

alleging that he was appointed on daily wages w.e.f. 21.9.1983 and having served continuously for more than 240 days in a year, was illegally terminated on 24.9.1991 in violation of the provisions of Section 25(N) of the Act.

2. The claim statement was opposed by the respondent by filing the statement of objections inter alia contending that there was no relationship of employer and employee and in addition, that the respondent was not an industry within the meaning of the said term in the Act. Further, it was contended that the claim was barred by limitation. Though issues were framed and sufficient opportunities extended for over a period of 10 years from 1994 onwards, the parties failed to place relevant material, in the absence of which, the Labour Court proceeded to pass the award dated 18th May, 2004, Annexure 'E', rejecting the reference. Hence, the writ petition by the claimant/ workman calling in question the said award.

3. Sri Shiraguppi, learned Counsel for the petitioner submits that the petitioner being a daily wage earner, was not in possession of the documents to support his claim and therefore, he preferred an application, Annexure 'C' under Section 11 of the Act before the Labour Court, for a direction to the respondent to produce the documents and in addition, made a request in writing Annexure 'D' addressed to the respondent to produce the records or furnish certified copies of N.M.Rs and other related records for the year preceding the date of termination and as the records were not made available, the petitioner could not adduce his evidence before the Labour Court. It is next contended that the Counsel by name. Sri M. A. Limbikai was permitted to retire from the case by the Labour Court, though no notice was issued to the petitioner. On the aforesaid contentions, the learned Counsel would submit that the Labour Court was not justified in closing the case and rejecting the reference.

4. The application Annexure 'C' filed by the petitioner under Section 11 of the Act, without obtaining orders thereon from the Labour Court directing the respondent to produce the records, is not a substantial legal ground, not to appear before the Labour Court and adduce evidence in support of the claim statement. The petitioner having not secured the certified extracts of the alleged material

documents from the respondent though he alleges to have made a request on 29.11.2000, Annexure 'D' which was also not placed before the Court, the contention that the Labour Court had committed an illegality cannot be countenanced. It would not be out of place to mention that the reference made to the Labour Court was in the year 1994 and even as on 18th May, 2004, the petitioner had done precious little to place substantial legal evidence in support of his claim. The Labour Court having extended sufficient opportunities to the petitioner for over an extended period of 10 years, in my considered opinion, granted more than sufficient and reasonable opportunity to the petitioner. The petitioner having not availed of the opportunities extended to him by the Labour Court has exhibited negligence and disinterestedness and therefore, cannot be heard to contend that there is failure on the part of the Labour Court in not extending reasonable opportunity.

5. The petitioner by not placing the relevant material before the Labour Court, which might throw light upon the matter in question, was really to obtain a decision from the Labour Court in the absence of material and information which a properly informed decision required, in short to obtain a decision on imperfect knowledge. The extreme impropriety of such a course could not be made too plain.

6. No exception can be taken to the finding of the Labour Court as recorded in Paragraph 7 of the impugned award which reads thus:

'Both claimant and the respondent, inspite of sufficient opportunity failed to adduce any sort of evidence, accordingly, the evidence of parties taken as closed and the case has been posted for argument, on 20.4.2004, Sri MAL Advocate filed a Memo of retirement and he is permitted to retire from the case.'

7. The grievance of the petitioner that the Labour Court permitted his learned Counsel Sri M.B. Limbikai to retire from the case, is without merit. The order of the Labour Court states that permission to retire was granted to the learned Counsel on the basis of the memo filed by him. It goes without saying if the petitioner is aggrieved by the conduct of his learned Counsel who allegedly did not issue notice of retirement, although there is no titer of evidence to substantiate the same, it is open for him to take such legal action against the learned Counsel as is

permissible in law and not make a grievance of the same in this proceedings. This contention too is without any merit and is rejected.

Writ petition is devoid of merit and is accordingly rejected.

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