

Sunil Vs. the Management of Kirloskar Electric Company Ltd.

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SooperKanoon Citation : sooperkanoon.com/381810

Court : Karnataka

Decided On : Jul-20-2005

Reported in : ILR2005KAR4449

Judge : N. Kumar, J.

Acts : Industrial Disputes Act - Sections 10(4A)

Appeal No. : Writ Petition No. 12941 of 2000

Appellant : Sunil

Respondent : The Management of Kirloskar Electric Company Ltd.

Advocate for Def. : B.C. Prabhakar, Adv.

Advocate for Pet/Ap. : M.S. Anandaramu, Adv.

Judgement :

ORDER

N. Kumar, J.

1. The petitioner joined the services of the respondent company in the year 1980 as a stipendary trainee. After the completion of the training he was continued as a clerk and was put on probation for a period of one year. After probation he was confirmed in the permanent post. The services of the petitioner came to be

terminated on the ground of his unauthorized absence in spite of a call notice being given to him to report to duty. The said order of termination was challenged by the petitioner before the Labour Court by filing an application under Section 10(4-A) of the Industrial Disputes Act. After contest the Labour Court set aside the order of termination, directed reinstatement and granted 50% back wages. Aggrieved by the said award of the Labour Court, the respondents preferred a Writ Petition before this Court in W.P.No. 24375/1999. This Court observed as under: -

'2... Even if the misconduct of unauthorised absence for the said period of less than two months is taken as duly proved for the first time before the Labour Court, the punishment of dismissal from service was disproportionate and the denial of 50% of back wages that the Labour Court has resorted to could certainly be taken as an appropriate lesser punishment for the said proved misconduct. Looking at this angle, there is no infirmity in the impugned award. Sri Anandramu for the respondent submits that the respondent would accept the award as it is and would not question the denial of 50% of back wages.'

2. Aggrieved by the said award the respondents preferred a Writ Appeal which also came to be dismissed. When the said award of the Labour Court was not implemented the petitioner was constrained to file a contempt petition. On such contempt petition being filed, the award has been obeyed by the respondents. It is thereafter the petitioner has preferred this Writ Petition against the award of the Labour Court regarding the portion where he was denied 50% back wages.

3. Respondents are served. They are represented by a Counsel.

4. Learned Counsel appearing for the petitioner contends, as the respondent did not comply with the order passed by the learned single Judge of this Court, preferred an appeal and made the petitioner to file a contempt petition, they are entitled to file this Writ petition challenging the award of the Labour Court seeking for 50% of the back wages which has been denied to them.

5. Per contra, the learned Counsel for the respondent submits it is on submission of the petitioner's Counsel that he would not challenge that portion of the award denying 50% of the back wages the said order came to be passed and, therefore,

it is not open to the petitioner to prefer a Writ Petition challenging the said award.

6. Though the learned Counsel for the petitioner who made the aforesaid submission before the learned single Judge has not reserved the right of the petitioner to challenge the award of the Labour Court in the event of the respondents not complying the award within two months period, it is open to the petitioner to challenge the award on that ground. Whether the Court would entertain such a Writ Petition is altogether a different matter. But, the petitioner cannot be found fault with.

7. But, in para 1 of the Writ Petition having made averments to the effect that,

'That on 20-7-1999 the respondent Management made a categorical statement that if the petitioner does not file a separate writ petition seeking grant of 100% backwages the award passed by the Labour Court will be implemented, in its, entirety, within two months from the date of the receipt of the Order. Since the petitioner was suffering without any job over a period of more than 10 years he was under the bonafide impression that the Award passed by the Labour Court will be implemented faithfully with due regard and respect.'

in para 6 of the Writ Petition he could not have stated as under :-

'It is respectfully submitted that at no point of time neither the petitioner nor the Counsel appearing for the petitioner made any statement or filed any memo to the effect that the petitioner will not claim 100% back wages. No such undertaking was given by the petitioner to this Hon'ble Court. Even otherwise the petitioner respectfully submits that the learned single Judge cannot prevent the petitioner legally seeking enhancement of the back wages to the extent of 100%.'

8. It is to be noted that the present Writ Petition is filed by the very same counsel who made the statement before the learned single Judge. Now an attempt is made to wriggle out of the said submission made before the learned single Judge. If according to them the learned single Judge cannot prevent the petitioner to challenge enhancement of the back wages, it was always open to him to challenge the order of the learned single Judge and get that portion of the order quashed.

Admittedly, no Writ Appeal is filed against the order of the learned single Judge. As stated in para 6, if at no point of time neither the petitioner nor the Counsel appearing for the petitioner made any statement or filed any memo, or no undertaking was given by the petitioner and if the learned single Judge records incorrectly, it was always open to them to make an application before the learned single Judge for deletion of the same. Admittedly, that has not been done.

9. Therefore, it is clear the petitioner has deliberately made a false statement at para 6 of the writ petition. The Counsel who drafted the writ petition is the counsel who made the said submission in the earlier proceedings. Therefore, the conduct of the petitioner as well as the counsel is not fair and cannot be appreciated. This tendency has to be curbed as otherwise there will be no solemnity attached to these judicial proceedings. It becomes impossible for the Courts to function on the submissions made by the Counsels. Always it is not possible to insist that memos have to be filed in writing to avoid such contingencies. Certain amount of trust is a must for the proper working of this judicial system. An advocate is an officer of the Court. His submissions have to be given due weight and cannot be suspected. Correspondingly they also cannot make reckless allegations against the Court. If any of his submissions are wrongly recorded, he owes a duty to bring it to the notice of the Court at the earliest such errors, and get the Court record corrected. To Err is human. Mistakes do happen. Only in the event of the Court refusing to correct the mistake he can agitate the matter in the higher or other forum. Good will and mutual respect which exists between the Bar and the Bench cannot be allowed to be spoiled, on account of these solitary instances. However in order to see that such instances do not multiply, they have to be handled firmly to discourage such tendencies. Under these circumstances, I pass the following order: -

10. Writ Petition is dismissed. Petitioner is directed to pay a cost of Rs. 5,000/- for his conduct in these proceedings.