

T.D. Vasantha Kumar Vs. the Assistant Executive Engineer and anr.

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Court : Karnataka

Decided On : Jun-24-2009

Reported in : 2009(5)KarLJ489; (2010)ILLJ17Kant

Judge : N. Kumar and ;B. Sreenivasa Gowda, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 17B and 25F

Appeal No. : Writ Appeal Nos. 101 and 102 of 2009

Appellant : T.D. Vasantha Kumar

Respondent : The Assistant Executive Engineer and anr.

Advocate for Pet/Ap. : V.S. Naik, Adv.

Disposition : Appeal dismissed

Judgement :

N. Kumar, J.

1. The appellant has challenged in this appeal the order passed by the learned Single Judge who has modified the order of the Labour Court which had granted reinstatement with 50% back wages to that of a monetary benefits.

2. For the purpose of convenience, the parties are referred to as they are referred to in order of the learned Single Judge.

3. The facts leading to this dispute are as under:

The petitioner was working as a daily wager with the respondent. He was a Diploma holder in Engineering. His services came to be terminated as on 1-10-1987. He raised an industrial dispute contending that he had worked for more than 240 days, his termination is contrary to Section 25F of the [Industrial Disputes Act, 1947](#). The Labour Court after enquiry found that the workman had worked for 240 days and therefore his termination was contrary to Section 25F of the Act. It also took note of the fact that there was a delay of 9 years in raising the dispute. Therefore, it awarded reinstatement with 50% back wages from the date of reference. Aggrieved by the said award, both the workman as well as the management preferred writ petitions challenging that portion of the award which is against them. Both the writ petitions were heard together and the learned Single Judge following the judgment of the Apex Court held that in a case of wrongful termination of a daily wager it would not be appropriate to grant reinstatement, instead, what is appropriate is, to grant monetary compensation. Accordingly, the learned Single Judge set aside the order of reinstatement with 50% back wages and substituted the same with monetary compensation of Rs. 85,000.00, taking into consideration the fact that during the pendency of the writ petition the workman was paid the wages under Section 17B of the Industrial Disputes Act. Aggrieved by the said order of the learned Single Judge, the workman has preferred this appeal.

4. Sri V.S. Naik, learned Counsel for the appellant assailing the judgment of the learned Single Judge, contended that when termination was held to be illegal, as a rule, a workman is entitled to reinstatement with full back wages. However, taking into circumstances the delay in approaching the Labour Court coupled with the fact the workman was a daily wager, the Labour Court awarded reinstatement with only 50% back wages from the date of reference which was just and the learned Single Judge was not justified in interfering with the said award. Even otherwise, if compensation is to be paid, Rs. 85,000.00/- awarded, is no compensation and the workman is entitled to higher compensation.

5. We do not see merit in either of these contentions. The facts are not in dispute. The status of the workman is that of a daily wager. Even though his termination is held to be illegal, he cannot be ordered to be reinstated in the same post, is the law declared by the Apex Court. Because his termination was illegal, he had worked for more than 240 days preceding the year of termination, he is entitled to compensation by way of damages which is called as monetary compensation. That is how the learned Single Judge has modified the order of the Labour Court.

6. Normally in a case of this nature a lakh of rupees is awarded as compensation. In the instant case, the workman was awarded Section 17B wages. Taking into consideration the same, the learned Single Judge has fixed the compensation as Rs. 85,000.00/-. Therefore, it is just and proper. In that view of the matter, we do not see any merit in this appeal. Accordingly it is rejected.

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