

The Assistant Executive Engineer Vs. J. Mahadevaiah and anr.

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Court : Karnataka

Decided On : Nov-07-2003

Reported in : ILR2004KAR225; 2004(3)KarLJ367; (2004)IILLJ736Kant

Judge : R.V. Raveendran and ;H. Billappa, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 1, 2 and 10(1)

Appeal No. : Writ Appeal No. 4250-4251 of 2002

Appellant : The Assistant Executive Engineer

Respondent : J. Mahadevaiah and anr.

Advocate for Def. : K. Govindaraj, Adv.

Advocate for Pet/Ap. : Shobha Patil, AGA

Judgement :

Raveendran, J

1. The respondents herein claimed that they were appointed by the Assistant Executive Engineer, Zilla Panchayath Engineering Sub-Division, Nanjangud Taluk, Mysore, (Appellant herein on 1.6.1994 and 11.8.1995 respectively on daily wage basis and that their services were terminated on 30.8.1996 without complying with Section 25(F) of the [Industrial Disputes Act, 1947](#) ('Act' for short). A dispute was raised and the State Government referred the following disputes to the Labour

Court, Mysore, under Section 10(1)(c) of the Act.

(i) Whether the Assistant Executive Engineer, Engineering Sub-Division, Zilla Panchayat, Nanjangud, is justified in retrenching the service of J. Mahadevaiah and D.P. Babu with effect from 30.8.1996?

(ii) To what relief the workmen are entitled to?

The said reference was registered as Ref. No. 154 of 1998 on the file of the Labour Court, Mysore. In the said reference, the respondents were arrayed as I party and the appellant as II party. The respondents filed a claim statement praying for reinstatement with back wages. The appellant filed a counter contending that the reference was liable to be rejected on the following grounds: (i) that he had not appointed the respondents on daily wage basis; (ii) that the respondents had not worked for 240 days or more in a year as claimed; and (iii) that the appellant cannot be considered as an 'industry'.

2. On behalf of the respondents, first respondent was examined as WW.1 and Ex.W1 and W45 were marked. On behalf of the appellant no evidence was let in, though matter was adjourned for his evidence from 6.10.2000 till 14.5.2001. Therefore, the Labour Court proceeded on the basis that the appellant has forfeited his rights to lead evidence and posted the matter for arguments. At that stage, the appellant filed an application seeking permission to lead evidence. That application was allowed. But, the appellant again did not let in evidence. Therefore, the Labour Court noted that the appellant had no evidence and heard arguments and passed an award dated 19.2.2002 allowing the reference in part. It set aside the termination of service of the respondents and directed the appellant to reinstate the respondents in the position in which they were working when their services were terminated, with 50% of backwages from 20.3.1999 till the date of reinstatement with continuity of service.

3. The appellant challenged the said award in Writ Petitions No. 23210-23211 of 2002 reiterating the contentions urged before the Labour Court and in addition, contending that they should be given adequate opportunity to let in evidence. Learned Single Judge by an order dated 20.6.2002 dismissed the Writ Petitions on

the ground that the Labour Court had given sufficient opportunity and therefore, no ground was made out to interfere with the order of the Labour Court. That order is challenged by the appellant in this appeal.

4. The appellant has contended that the names of the respondents are not found in the muster roll, that there is no document to show that the respondents had worked for 240 days in a year, and that the certificates produced by the respondents in regard to the period of their employment is not genuine. The appellant had prayed for an opportunity to establish these facts before the Labour Court by letting evidence.

5. We may take notice of a disturbing trend in regard to such claims. We find that a large number of disputes are raised by persons claiming to be daily wage employees alleging wrongful termination. They allege that a 'Junior Engineer' or 'Assistant Executive Engineer' of a particular project or division is the 'employer'. Such disputes are raised several years after the alleged termination, that is after periods ranging from 5 to 12 years after the alleged termination. (Note: In this case, however, there is no such delay in seeking reference). Neither the state nor the Local Authority against whom they ultimately enforce the award is impleaded as a party. In most of these cases, the Junior Engineer or Assistant Executive Engineer impleaded as respondent does not appear or even if he appears, does not contest the matter. Neither documents are produced nor oral evidence is let in by such Junior Engineer or Assistant Executive Engineer. The alleged workmen invariably produces some letter or certificate stating that he had worked continuously for more than 240 days. As a consequence, the Labour Court allows such claims and orders reinstatement with back wages. Once the awards are made, even though the State Government or the Zilla Panchayat was not a party to the reference, the orders for reinstatement are enforced against them. Normally, it is at this stage, the matter comes to the notice of the Authority concerned. By then it is too late to contest. As a consequence, the State Government and the Zilla Panchayat are forced to reinstate such persons though there are no sanctioned posts, that too with continuity of service and also pay considerable back wages.

6. Section 2(g) of the Act defines 'employer' meaning, in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in that behalf, or where no authority is prescribed, the Head of the Department; and in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of such local authority. The State or the Local Authority is put to a great disadvantage, where the departmental head or Chief Executive Officer is not made a party, and a claim is prosecuted against an Assistant Executive Engineer or a Junior Engineer in some project or division. In view of the periodical transfers of such officers, if a claim is made six or seven years later, or for the matter even three years after the alleged termination, the incumbent of the office will have no knowledge about the matter. If the appointment was for a short period, purely ad-hoc or stop gap, no records will be available. Many a time, service certificates are produced without examining the person who issued the certificate and those certificates are acted upon as proof of the employee having served for such period. Instances are legion where there has been collusion leading to issue of false service certificates. This results in a large number of back door entries into Government service, apart from exposing the Government to heavy expenditure by way of back wages. Though Supreme Court has repeatedly held that short daily wage employment will not entitle the daily wage employees to regularisation, the Labour Courts have been ordering reinstatement with continuity of service after 10 to 12 years, on the basis that the employee had served for 240 days. Grant of such continuity of service in turn spawns claims for regularisation.

7. Having regard to Section 2(g) of the Act, if any person claiming to be a workman seeks reference of any dispute to adjudication or where a reference is made under Section 10(1)(c) or (d) of the Act, it is necessary that the prescribed authority or the Head of the Department should be made the party, if the claim is against the State Government, and the 'Chief Executive Officer' should be made the party if the claim is against a local authority. If the 'employers' as defined is not impleaded and only a sub-ordinate who is not authorised to represent the State/Local Authority is impleaded, the State/Local Authority will be entitled to challenge the award as not binding on them as they did not have an effective opportunity to defend the claim, and in some cases, they may also contend that the Award is not

executable against them. In that event the Union or the workman concerned may have to establish that the concerned Authority authorised to represent the State/Local Authority had notice and knowledge of the proceedings and had in fact contested the matter before the Labour Court, though the person impleaded as party. Be that as it may.

8. The present case is a typical example. The person against whom the relief is claimed is the Assistant Executive Engineer, Zilla Panchayath Engineering Sub-Division. Nanjangud Taluk, Mysore District. But, the claim is in effect of against the Mysore Zilla Panchayat, which is a local Authority and its Chief Executive Officer ought to have been impleaded. As the Chief Executive Officer of the Zilla Panchayat has not been impleaded, the Zilla Panchayat did not have due opportunity to contest the claim. Therefore interests of justice requires that the matter should be remitted to the Labour Court so that the Mysore Zilla Panchayat, can defend itself against the claim. Both the parties should be given an opportunity to let in evidence.

9. The appeal is allowed. The order of the learned Single Judge is set aside and the Writ Petition is allowed and the award of the Labour Court is set aside. The matter is remitted to the Labour Court. The Labour Court shall decide the matter in accordance with law after giving due notice to the Chief Executive Officer of the Mysore Zilla Panchayat and after giving fresh opportunity to the parties to let in evidence. Parties to bear respective costs.

10. We direct the Registry to send a copy of this order to the Secretary, Department of Labour, to ensure that the Departmental Head or the Chief Executive Officer as the case may be, is made a party while making the reference in regard to disputes relating to the State/ Local Authority.