

The Executive Engineer and Another Vs. Sri Zulfegar Ali

The Executive Engineer and Another Vs. Sri Zulfegar Ali

SooperKanoon Citation : sooperkanoon.com/935178

Court : Karnataka Gulbarga

Decided On : Jul-14-2011

Judge : K. Sreedhar Rao

Appeal No. : Writ Petition No. 1855 of 2006 (L TER) C/w etc.,

Appellant : The Executive Engineer and Another

Respondent : Sri Zulfegar Ali

Advocate for Pet/Ap. : For the Petitioner: M. Kumar, AGA. For the Respondent: Ameet Kumar Deshpande, P. Vilas Kumar, S.B. Mukkannappa, Ashok Patil, A. Santosh, Sanjay M. Joshi, R.B. Aneeppanavar, S.S. Patil Kulageri, P. Vilas Kumar, M. Kumar, K. Ravindra, B.R. Patil, Advocates.

Judgement :

All the petitions involve similar questions of fact and law. Hence, all the petitions are considered together for common disposal.

In W.P.No.1855/2006, the respondent was working in the office of Executive Engineer, KPC WRD Division, Bidar as a watchman on daily wage basis from 03.10.1997 to 1.9.1998. The petitioner was terminated from service orally on 1.9.1998. The Government made reference on 21.11.2002. There was delay of 4 years and 2 months in making reference. The Labour Court passed an award on 17.5.2005 directing reinstatement with continuity of service from 1.9.1998.

In W.P.No.9982/2007, the respondent was working as typist in the office of Asst. Director Horticulture, Raichur on daily wage basis during the period 1988-89. He was orally terminated from service on 31.10.1989. The Government made reference. There was delay of 11 years in making reference. The Labour Court passed an award on 29.11.2004 directing reinstatement without continuity of service without back-wages.

In W.P.No.11392/2007, the respondent was working as Junior Engineer in the office of Executive Engineer, Minor Irrigation, Bidar on daily wage basis from 1.12.1987 to 31.7.1992. The respondent was terminated from service on 31.7.1992. The Government made reference to the Labour Court. There was delay of 10 years in making reference. The Labour Court passed an award directing reinstatement with continuity of service and 25% back-wages from 12.11.2002 to 12.2.2003 and full wages from 12.2.2003 till the date of actual reinstatement.

In W.P.No.11395/2007, the respondent was working as Graduate Engineer on daily wage basis from 1.2.1990 to 1.11.1992. The respondent was terminated from service on 1.11.1992. The Government made reference. There was delay of 10 years in making reference. The Labour Court passed an award on 13.7.2006 directing reinstatement without back-wages and full wages from 03.10.2006 till the date of actual reinstatement.

In W.P.No.11397/2007, the respondent was working as Watchman in the office of Executive Engineer, Minor Irrigation, Bidar on daily wage basis from 1.8.1985 to 10.1.1988. The respondent was terminated from service on 10.1.1988. The Government made reference. There was delay of 11 years in making reference. The Labour Court passed an award on 16.5.2005 directing reinstatement without continuity of service and back-wages.

In W.P.No.20399/2007, the respondent was appointed as Literate Mazdoor on daily wages basis in the office of Executive Engineer, Minor Irrigation, Gulbarga from 26.11.1986 to 25.6.1989. He was terminated from service on 25.6.1989. The Government made reference. There was delay of 14 years in making reference. The Labour Court passed an award on 18.4.2007 directing reinstatement without back-wages and without continuity of service.

In W.P.No.8561/2008, the respondent was working as Gangman on daily wage basis in the office of Asst. Executive Officer, P.W.D sub Division, Shorapur from 1.6.1984 to 1.12.1984. He was terminated from service on 1.12.1984. The Government made reference. There was delay of 14 years in making reference. The Labour Court passed an award on 22.5.2006 directing reinstatement without continuity of service and without back-wages.

In W.P.No.9481/2008, the respondent was working as Majdoor on daily wage basis in the office of Executive Engineer, Minor Irrigation, Hebbal, Dist. Gulbarga from the year 1981 to June 1983. He was removed from service on June 1983. The Government made reference. There was delay of 15 years in making reference. The Labour Court passed an award directing reinstatement without continuity of service and without back-wages.

In W.P.No.80167/2009, the petitioner was working as Labourer on daily wage basis in the office of Asst. Director Sericulture, Jewargi from 1.10.1979 to 21.4.1985. He was terminated from service on 21.4.1985. The petitioner raised dispute U/s.10(4-A) of the I.D. Act with delay of 15 years in making reference. The Labour Court passed an award on 26.8.2002 directing reinstatement without continuity of service and without back-wages.

In W.P.No.82271/2009, the respondent was working as a daily wage-worker in the office of Asst. Director Sericulture, Bijapur from 1999 to 2000. The respondent was terminated from service in the year 2000. The respondent approached the Labour Court U/S. 10(4-A) of I.D. Act. The Labour Court passed an award directed reinstatement without continuity of service and without back-wages.

In W.P.No.82272/2009, the respondent was working as daily wage-worker from 1982 to 30.9.1987 in the office of Sericulture Extension Officer, Bijapur. The respondent was terminated from service on 30.9.1987. The Government made reference. There was delay of 18 years in making reference. The Labour Court passed an award directed reinstatement without continuity of service and without back-wages.

In W.P.No.82957/2009, the respondent was working as daily wage-worker in the office of Executive Engineer National Highway, Bijapur from 1.1.1988 to 31.3.1999 on which day the respondent was terminated from service orally. The Government made reference. There was delay of 16 years in making reference. The Labour Court passed an award directing reinstatement with continuity of service and no back-wages.

In W.P.No.81044/2009, the respondent was working as daily wage-worker in the office of Asst. Executive Engineer, Raichur from 1992 to 30.4.1997 and he was removed from service orally on 30.4.1997. The Government made reference in the year 1998. The Labour Court passed an award directing reinstatement and awarded Rs. 25,000/- as back-wages and Rs.2,000/- towards cost.

In W.P.No.81211/2010, the respondent was working as Graduate Engineer in the office of Executive Engineer, Minor Irrigation, Chincholi from 1.1.1986 to 7.3.1991 and he was removed from service by oral orders. The Government made reference. There was delay of 16 years in making reference. The Labour Court passed an award on 30.12.2009 directed reinstatement with continuity of service without back-wages.

In W.P.Nos.81335-81337/2010, these 3 petitions are filed by 3 different officers of the Government in spite of the same award passed by the Labour Court. Hence, 3 separate numbers have been given. In all 3 petitions the respondent was working as Graduate Engineer on daily wage basis from 7.6.1984 to 31.3.1987. He was removed from service orally. The respondent has filed petition U/S. 10(4-A) of the I.D. Act. There was delay of 11 years in filing the petition. The Labour Court passed an award on 4.4.2002 directing reinstatement without back-wages.

In W.P.Nos.81338-81339/2010, these 2 petitions are filed by 2 different officers of the Government in spite of the same award passed by the Labour Court. Hence, 2 separate numbers have been given. The respondent was working as daily wage basis from 1985 to 25.4.1985. He was removed from service orally. The respondent made an application U/S.10(4-A) of the I.D. Act. There was delay of 11 years in filing the petition. The Labour Court passed an award on 20.2.2000 directing reinstatement with 50% back-wages from 16.10.1999 till the date of

reinstatement with continuity of service.

In W.P.No.82078/2010, the respondent was working as daily wager from 1985 to 1.1.1987 in the office of Asst. Director of Sericulture, Bijapur. The respondent was removed from service orally. The Government made reference. There was delay of 12 years in making reference. The Labour Court passed an award on 3.12.2009 directed reinstatement without continuity of service and without back-wages.

In W.P.No.84525/2010, the respondent Nos.1 and 2 was appointed as daily wage worker in the office of Asst. Executive Engineer, P.W.D. Gulbarga from the year 1992 to 1.8.2001 and they were removed from service by oral orders. The Government made reference. There was delay of 4 years in making reference. The Labour Court passed an award directing reinstatement without continuity of service and without back-wages.

In W.P.No.7636/2008, the respondent was working as Mazdoor on daily wages basis from 1.1.1981 to 31.12.2004 in the office of Asst. Executive Engineer, Lingasugur. He was orally removed from services. The Government made reference. There was delay of 20 years in making reference. The Labour Court passed an award on 7.4.2007 and directed payment of monitory compensation of Rs.25,000/-, the relief of reinstatement is rejected.

In W.P.No.82161/2009, the respondent was working as Watchman on daily wage basis from June 1998 to 21.8.1999 in the office of Land Forest Officer, Muddebihal. He was removed from service by oral orders. The Government made reference. There was delay of 11 years in making reference. The Labour Court passed an award on 14.8.2008 directing monitory compensation of Rs.75,000/-, the relief of reinstatement is rejected.

In W.P.No.82956/2009, The respondent has served and remained absent. The respondent was working as Daily wage-worker from 1987 to 1.7.2000 in the office of Asst. Conservator, Forest, Bijapur. The respondent was removed orally from service. The Government made reference. There was delay of 3 years in making reference. The Labour Court passed an award directed payment of monitory compensation of Rs.75,000/- and rejected the relief of reinstatement.

In W.P.No.80655/2010, the respondent was working as daily wage-worker in the office of Executive Engineer, Bijapur from 1984 to 16.5.1987 and he was orally terminated from service. The Government made reference. There was delay of 14 years in making reference. The Labour Court passed an award directing payment of monitory compensation of Rs.75,000/- in lieu of reinstatement.

In W.P.No.11669/2007, the petitioner workman was working as Junior Engineer on daily wage basis from 1.3.1990 to 1.1.1993 in the office of Executive Engineer, Minor Irrigation, Bidar. The petitioner was orally terminated from service. The Government made reference. There was delay of 10 years in making reference. The Labour Court passed an award on 6.12.2006 directing monitory compensation at the rate of 15 days wages per year from 1990 to 2006 in lieu of the reinstatement.

In W.P.No.11670/2007, the petitioner workman was working as tracer on daily wage basis in the office of Executive Engineer, Minor Irrigation, Bidar from 1.1.1986 to 1.8.1987 and he was orally terminated from service. The Government made reference. There was delay of 15 years in making reference. The Labour Court passed an award on 6.12.2006 directing monitory compensation at the rate of 15 days wages per year from 1.1.1986 to 13.11.2006 in lieu of the reinstatement.

In W.P.No.80395/2010, the petitioner workman was working as Gangman on daily wage basis from 1994 to 1.3.2002 in the office of Executive Engineer P.W.D., Gulbarga. He was orally terminated from service. The Government made reference. There was delay of 6 years in making reference. The Labour Court passed an award directed monitory compensation of Rs.50,000/- in lieu of back-wages.

In W.P.No.80394/2010, the petitioner was working as Gang lady on daily wage basis from 1994 to 1.3.2002 in the office of Executive Engineer, P.W.D. Gulbarga. She was orally removed from service. The Government made reference. There was delay of 6 years in making reference. The Labour Court passed an award directing compensation of Rs.50,000/- in lieu of reinstatement.

2. The Government aggrieved by the order of reinstatement in some cases and grant of compensation in some cases has filed petitions challenging the order of the Labour Court. The workmen aggrieved by the orders of Labour Court in some cases granting compensation in lieu of reinstatement have filed petitions challenging the order of the Labour Court.

3. It is the contention of the Government/Appellant that in some cases under consideration, there is inordinate delay of 4 to 18 years in raising the disputes. The dispute had become stale and there was no dispute existing as on the date of reference. The Labour Court overlooking the said plea has directed reinstatement in some cases and compensation in some cases which is bad in law.

4. In the three of the writ petitions, the respondent/workman had directly approached the Labour Court U/s. 10(4-A) with a delay ranging more than 6 months to 10 years. The Labour Court ought not to have entertained the dispute on the ground of delay. In view of the decision of this Court in Khaleel Ahmed vs. KSRTC, ILR 2002 Page 3827.

5. Sri M. Kumar, Government Advocate referred to the decision of the Supreme Court in Ravikumar Vs. KBJNL, 2010 (1) SCC (LandS) 295. It is held in the decision that the rejection of reference by the Labour Court on the ground that reference is made with undue delay of 15 years is sound and proper, since the dispute had become stale.

6. The decision of the Supreme Court in Incharge Officer and Another vs. Shankar Shetty, 2010 (2) SCC (LandS), 733 is relied on to contend that in case of violation of requirements U/s. 25(f) of I.D. Act, the workman would be entitled to only compensation instead of the reinstatement. The paras 3 and 4 of the decision in Jagbir Singh Vs. Haryana State Agriculture Mktg. Board, makes reference to the above observations which is extracted hereunder:-

“3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely UP State Brassware Corpn. Ltd. v. Uday Narain Pandey. Uttaranchal Forest Development Corpn. V. M.C. Joshi, State of M.P. v.

Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sitaram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsaha, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows:

7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

4. Jagbir Singh has been applied very recently in Telegraph Deptt V. Santosh Kumar Seal, wherein this court stated (SCC P.777 para II)

7. The counsel for the Government further relied on decision of Supreme Court in case of Telecom District Manager and Others Vs. Keshab Deb, 2008 (2) SCC (LandS) 709 wherein it is held that in case violation of Sec.25(f), the employee is entitled to compensation as prescribed U/S. 25(f) of I.D. Act and grant of compensation more than what is required to be payable U/s. 25(f) would be incorrect and contradictory to mandate of law.

8. It is submitted that after incorporation of Sec.10(4-A) to the I.D. Act by the Karnataka Government, it would be wholly redundant and inappropriate for the Government to make reference U/s. 10(1)(c). When once the workman is conferred with a right to approach Labour Court directly without recourse to arduous and delayed process U/s. 10(1)(c) it would be wholly unnecessary to approach the Government for reference. The implications of incorporation of Sec.10(4-A) would take away the jurisdiction of the Government to make reference U/s.10(1)(c) since such a course would only give duplicity of remedy giving raise to arbitrariness on the part of Government in making selective reference U/s.10(1)(c).

9. Sri Vilaskumar, counsel for some for the respondents and petitioner/workman submitted that the Labour Court has no jurisdiction to the reject the reference on the ground of delay. In this regard relied on the decision of the Supreme Court in Karansingh Vs. Executive Engineer, Haryana State Marketing Board, AIR 2007 SCW 6293. In para 9 the following observations are made:.

“9. In the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. (2000) 1 SCC 371) it has been held vide para 24 that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject matter of reference for adjudication to the Industrial Tribunal under section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier, the Income Tax Officer must have reason to believe escapement of income. This “reason to believe” is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim, then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground. In the present case, the Industrial tribunal has held that the present case, the Industrial tribunal has held

that the employer has violated Section 25f. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25f of the Industrial Disputes Act, 1947.”

10. The Counsel also relied upon decision of Supreme Court in *Ajaib Singh Vs. Sirhind Co-op. Marketing-Cum-Processing Service Society Ltd, and Another*, 1999 Lab 1435 wherein it is held that Article 137 of the Limitation Act, 1963 is not applicable for the reference made U/s.10(l)(c). The decision of the Full Bench of the Punjab and Haryana High Court that the Government will have no jurisdiction to make reference of dispute beyond 5 years is held to be bad in law. In para 10 the following observations are made:

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour court or Board, dealing with the case can appropriately mould the relief by declining to grant back-wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases, direct the payment of part of the back-wages instead of full back-wages. Reliance of the learned counsel for the respondent - management on the Full Bench judgment of the Punjab and Haryana High court in *Ram Chander Morya v. State of Haryana*, 1999 (1) SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held “neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases.” However, it went on further to say that “reasonable time in the cases of labour for demand of

reference or dispute by appropriate Government to Labour Tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay". We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under the reference made or an application under Section 37-C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought it fit not to prescribe any period. The Court admittedly interpret law and do not made laws. Personal views of the Judges presiding the Court cannot be stretched to authorize them to interpret law in such manner which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the Courts/Boards and Tribunal under the Act."

11. In the light of the above observations, it is argued that the Labour Court in the case of delay can mould the relief and deny part of back-wages instead of full wages.

12. The counsel relied upon decision of Supreme Court in Devendrasingh Vs. Municipal council Sanaur JT 2011 (5) S.C. 333. In the said case the earlier decisions on the point have been copiously discussed with regard to consequences of violation of Sec.25(f) of I.D. Act. It is held that non-compliance of Sec.25(f) renders retrenchment nullity. It is also held that reinstatement normally in case of violation of Sec.25(f) should ordinarily result in reinstatement. Further in paras 24, 25 and 26 has made the following observations:

"24. We are also convinced that the reasons assigned by the High Court for setting aside the award of reinstatement are legally untenable. In the first, it deserves to be noticed that the Respondent had engaged the Appellant in the back drop on the ban imposed by the State Government on the filling up of the vacant posts. The Respondent had started a water supply scheme and for ensuring timely issue of

the bills and collection of water charges, it needed the service of a clerk. However, on regular recruitment was not possible. Therefore, resolution dated 27.04.1995 was passed for engaging the Appellant on contract basis. The relevant portions of the resolution are extracted below;

Copy of Resolution No.30 Dated 27-04-1995.

It has been informed by the office to the house that one vacancy of Clerk in the office of Municipal Council, Sanaur is being vacant to the water supply branch. Due to ban imposed by the Punjab Government vacancy cannot be filled in at present. Municipal Council is operating two tubewells and is directly supplying water to the general public. At present municipal Council is operating two tubewells and is directly supplying water to the general public. Municipal Council has given about 1500 water connections. In respect of issuance of water bills and their respective deposit there is need of one Clerk. This vacancy can be filled in after receiving sanction from the government. Therefore, at present for the working of the office business as per the instructions of the Government, sanction may be kindly be accorded for employing a person as Clerk on contract basis on the consolidated salary of Rs. One thousand per month. This matter was discussed seriously by the house because to provide water to the general public in the summer season is very essential. Therefore, to run smoothly - the work of water supplying Shri Devinder Singh son of Shjri Hazura Singh of Mohalla Kanian, Sanaur is hereby engaged for a period of six months on contract basis on a consolidated salary of Rs. One thousand with effect from 02.05.1995. Resolution was unanimously passed.

Sd/- President

Municipal Council, Sanaru

Patiala.

25. In furtherance of the aforesaid resolution, the Respondent engaged the Appellant, who was already in its employment, as a Clerk for a period of six months on contract basis on consolidated salary of Rs.1,000/- per month. At the

end of six months, the Respondent passed another resolution dated 30-11-1995 and again employed the Appellant for a period of six months from 1.11.1995 to 20.4.1996. This exercise was repeated in 1996 and the Appellant's term was extended for six months from 1.5.1996. However, giving any notice or pay in lieu thereof and compensation as per the requirement of Clauses (1) and (b) of Section 25F of the Act. It is true that the engagement of the Appellant was not preceded by an advertisement and consideration of the competing claims of other eligible persons but that exercise could not be undertaken by the Respondent because of the ban imposed by the State Government. It is surprising that the Division Bench of the High Court did not notice this important facet of the employment of the Appellant and decided the writ petition by the recruitment rules and Articles 14 and 16 of the Constitution. We may also add that failure of the Director, Local Self Government, Punjab to convey his approval to the resolution of the Respondent could not be made a ground for bringing an end to the engagement of the Appellant and that too without complying with the mandate of Section 25F(a) and (b)."

13. After carefully considering the submission made at the Bar, the following questions arise for consideration.

- (1) Whether the Labour court can reject the reference on the ground of delay? If so, what are the guidelines?
- (2) Whether in the case of requirements of violation of Sec.25(f) whether the reinstatement is the rule or payment of compensation is the rule?
- (3) Whether Sec.10(4-A) in the I.D. Act by Karnataka Amendment Act excludes the jurisdiction of the Government to make reference U/s.10(1)(c)?
- (4) Whether the Labour Court U/s.10(4-A) has jurisdiction to condone the delay in respect of disputes filed beyond 6 months?

14. The questions 3 and 4 which have bearing on the facts in issue and have significant academic importance are taken up as primary points for consideration. The provisions of Sec.10(1)(c) and 10(4-A) are extracted herein for convenient

reference:

10(1)(c) - refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to a Labour Court for adjudication;

10(4-A) - Notwithstanding anything contained in Section 9-C and in this section, in the case of a dispute falling within the scope of Section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-section (1).”

15. The definition of industrial dispute includes employment, non-employment and termination of employment. The dismissal, removal and termination is considered as a part of non-employment. The definition of retrenchment U/s.25(2)(oo) is as follows:

“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health.

16. The termination of service of workman other than for exceptions noted U/s.2(oo) should be preceded by compliance of Sec.25(f). The workman prior to incorporation of Sec.2(A) had to necessarily depend upon the mercy of the trade unions to espouse his case for seeking reference U/s.10(1)(c). The incorporation of Sec.2(A) by amendment although a belated remedy had come as a saviour to the workmen to approach the govt. directly to seek reference U/s.10(1)(c) in the case of dismissal, termination or removal from service.

17. The operational experience of Sec.10(1)(c) reveals that a workman removed from service had to undergo undue ordeal and unreasonable delay to get the dispute referred U/s.10(1)(c) by lobbying with the trade union for its indulgence. The legislature in its wisdom had remedied the grievance of workman by incorporating Sec.2(A). The problem of the dismissed workman was not fully solved by incorporation of Sec.2(A) because in order to seek reference U/s.10(1)(c), an individual workman had to go around people with influence to lobby with the Government for reference which involved inordinate delay and was an expensive affair for a poor workman who has lost his job. The Karnataka Legislature in its wisdom has a comprehensive solution to the problems faced by the dismissed workman incorporated Sec.10(4-A) whereunder the workman is enabled to directly approach the Labour Court for the relief without recourse to Sec.10(1)(c).

18. The provisions of Sec.10(4-A) declares that a Labour Court shall dispose of such application in the same manner as a dispute referred U/s.10(1)(c). The provisions of Sec.10(4-A) however stipulates that the workman should file an application within 6 months. The application so filed shall have to be disposed of by the Labour Court as though it is a reference made U/s.10(1)(c).

19. On stern considerations of the content of the provisions U/s.10(4-A) it makes it explicit that the aggrieved workman has been conferred with the right to approach the Labour Court directly in case of dismissal, termination or removal. When such a right is given to the workman, it is unnecessary and unwarranted for the Government to exercise of the powers of reference U/s.10(1)(c). An interpretation permitting dual remedies to the workman to pursue U/s.10(1)(c) and 10(4-A) would

lead to unpleasant and undesirable consequences of arbitrary exercise of power by the Government to refer Stale claims for extraneous consideration.

20. Sec.10(4-A) stipulates that the application should be made within 6 months. This Court in *The KSRTC Central Offices and Anr. Vs. Govinda Setty and Anr.* ILR 1997 KAR 983 held that limitation of 6 months prescribed is only directory and not mandatory. In the present case, some of the workmen whose case are barred by limitation had made application to the Labour Court based upon the ratio laid down by this Court in *Govinda Shetty's* case. The Labour Court also in view of the said ratio, entertained the claims. The later decision of this Court in *Khaleel Ahmed Vs. KSRTC (Supra)* has held that limitation of prescribed is mandatory and that the Labour Court has no jurisdiction to condone the delay.

21. The provisions of Sec.5 of Limitation Act is made applicable to all appeals and applications in the proceedings before the Court. The Labour Court obviously a court within the meaning of Sec.5 of Limitation Act. Therefore, the Labour Court will necessarily have jurisdiction to condone the delay in filing the application beyond 6 months for sufficient cause. In the *Khaleel Ahmed's* case, the question of applicability U/s.5 of Limitation Act is not argued and considered and the said aspect being *res integra* it is to be held that the Labour Court will have jurisdiction to entertain the applications filed U/s.10(4-A) beyond 6 months and condone the delay for sufficient cause in view of Sec.5 of Limitation Act.

22. In view of the reasons and discussions made above, it is to be held that the Government will have no jurisdiction to make reference U/s.10(1)(c) after incorporation of Sec.10(4-A) and that the labour court will have jurisdiction to entertain the application filed beyond 6 months and condone the delay for sufficient cause. Accordingly, the question 3 and 4 is answered in affirmative.

23. With regard to jurisdiction of the Labour Court to reject the references made U/s.10(1)(c) on the ground of delay, the decision of Supreme Court in *Ravikumar's* case has only upheld the order of rejection of reference made by the Labour Court on the ground of delay. There is no categorical ratio as such laid down to that effect. However, in *Karansingh and Shaji's* it is categorically as ratio down that the Labour Court has no jurisdiction to reject the reference on the ground of delay and

further it is held in Shaji's case that if termination is found to be illegal, if there is delay in making reference, the court can suitably mould the relief to the workman like denial of back wages, in part or in full as the case may be. Therefore, the contention of the Government that Labour Court ought to have dismissed the reference on the ground of delay is untenable. Therefore, the question No.1 is answered in the negative.

24. When the retrenchment is made in violation of Sec.25(f) whether the reinstatement is a rule or the payment of compensation is a rule perhaps has become a vexed question. The earliest decisions of the Supreme Court lays down that non-compliance of Sec.25(f) makes the retrenchment void and nullity. Therefore, normally reinstatement should be the relief to be granted. However, the Supreme Court in Incharge Officer and Another Vs. Shankar Shetty (Supra), refers to catena of decisions of the Supreme Court on the point and has laid down the law that case of noncompliance of Sec.25(f), normally should result in only payment of compensation. It is also further held by Supreme Court in Telecom Officer's case that the compensation to be payable to a workman should be in accordance with provisions of Sec.25(f) and grant of any higher compensation than what is prescribed U/s.25(f) would be bad in law.

25. The Supreme Court in Devendra Singh's case has taken a view that in the context of social and economic consideration prevalent in the country and in the backdrop of constitutional philosophy, the reinstatement should be the rule and not the payment of compensation. The fact situation available in Devendra Singh's case is similar to the one available in the facts on hand. In Devendra Singh's case it was found that the Government had banned the recruitments and permitted appointment on temporary and ad hoc basis. The respondent/municipality because of the ban appointed the appellant/workman in that case on daily wage basis. It was also found that the services of appellant was very much needed and could not be discontinued because there was no regular recruited employees appointed to discharge the said duties. In the State of Karnataka, the situation is almost similar. There is a ban on the departments to recruit the employees to the vacant posts and the Government departments and the local bodies are permitted to appoint employees on contract or on ad hoc basis. In some cases, the

Government indulges in outsourcing the services to the private individuals in order to avoid the risk of regularization or to overcome rigor of compliance of the labour welfare rules.

In the context of peculiar facts which are similar to the facts stated in the Devendra Singh's case, it is just and necessary that the order of reinstatement granted by the Labour Court is sound and proper. In cases where compensation is granted in view of reinstatement, the same is to be set aside and reinstatement to be ordered with continuity of service. It is however made clear that the workman should be reinstated only as daily wagers without back-wages till the date of award and should be paid full wages from the date of publication of the award till reinstatement.

Accordingly the above writ petitions are disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com