(2013) 06 KAR CK 0128

Karnataka High Court (Dharwad Bench)

Case No: W.A. No. 31091 of 2012 (L-TER)

D.N. Shivaraj	APPELLANT
Vs	
The Commissioner, Belgaum Urban Development Authority and Another	RESPONDENT

Date of Decision: June 24, 2013

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(oo)(bb), 25F

Citation: (2013) ILR (Kar) 3345

Hon'ble Judges: D.H. Waghela, C.J; N.K. Patil, J

Bench: Division Bench

Advocate: Mallikarjunaswamy Hiremath, Sri. Prakash S. Humbi and Sri. Ramesh B. Chigari, for the Appellant; M.A. Hulyal, Advocate for R1 and Smt. K. Vidyavathi, AGA for R2, for the Respondent

Judgement

Waghela, C.J.

The appellant-workman has called into question order dated 5-9-2012 of Learned Single Judge of this Court; whereby his petition challenging the award and order of the Labour Court, Hubli, in Reference No. 13/2005, has been dismissed. The case of the petitioner-workman before the Labour Court was that he was appointed as a Work Inspector on 6-8-1990 by respondent Nos. 1 and 2 and he had served under them till the termination of his service on 13-1-1995. According to the appellant, the termination of his service was oral and in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short ''the Act''). The case of the respondents accepted by the Labour Court was that the appellant was temporarily appointed on contract basis for a stipulated work and on a consolidated payment for the purpose of preparation of final map of the revised Comprehensive Development Plan of Belgaum City in the year 1991. Representations of the appellant for regularisation of his service or for grant of permanent status were rejected and the petitions filed by

him for that purpose were also dismissed. However, the evidence placed on record before the Labour Court, based on the data of respondents themselves, revealed that the appellant was retained in service by successive orders for employment or payment of wages to him right upto February, 1993 (Ex. W1 to Ex. W. 19). Thereafter, by documentary evidence (Ex. W. 20 to Ex. W. 35) attendance of the appellant for the period from April, 1993 till December, 1994 was proved before the Court. There is no serious dispute about the actual working days on which the appellant worked or that the number would exceed 240 days in the year preceding the date of termination of his service.

2. In those facts and in absence of any evidence of compliance with the provisions of Section 25F of the Act, the inevitable conclusion would have been that the termination of service of the appellant was not only illegal but void and non est; regardless of his right or claim for regularisation in service. In view of the mandatory provisions of Section 25F of the Act and the conditions laid down therein being conditions precedent for a valid and effective termination of service, the oral termination of service of the appellant could not be sustained in law and as a necessary consequence, he would be entitled to reinstatement in service.

3. According to the scheme and express provisions of the I.D. Act, 1947, "retrenchment" means termination by the employer of the service of a workman for any reason whatsoever except by way of punishment or retirement or on the ground of continued ill-health. In order to avail the exception provided in the provisions of Section 2(oo)(bb) of the Act, the existence of a contract with a fixed term of employment or a stipulation in respect of termination of contract has to be proved by the party who asserts that the exceptional clause applied in the facts of the case. Failing that, the provisions of Section 25F have to be applied and enforced with their full rigour and non-fulfillment of the requirements of that provision would necessarily result into the termination being void and the service of the workman being continuous despite the attempted termination by the employer. These mandatory provisions of the Act cannot be diluted or made ineffective by any extraneous considerations such as the nature of employment or the work assigned to a workman while he was employed. Nor can any service conditions be inferred by implication in absence of proof of valid conditions in the contract of service between the employer and workman.

4. Therefore, the observation and conclusion of the Labour Court in the impugned award that even if the workman had put in more than 240 days of service, he did not become permanent and could not seek continuation of the service on temporary basis for any further period is perverse and illegal. It was also irrelevant to consider whether the original appointment of the workman was in terms of relevant Rules or that it was a contract appointment in view of the facts as aforesaid.

5. Under the circumstances, the appeal has to be allowed so as to set-aside the award of the Labour Court as well as the impugned order of Learned Single Judge

which also is based on similar misconception of law and facts.

6. The next question, upon allowing the appeal, would be that of granting appropriate relief in the peculiar facts of the case wherein the termination is alleged to have been effected on 13-1-1995 and the industrial dispute has been referred to the Labour Court as late as in the year 2005. It was rightly submitted by Learned Additional Government Advocate appearing for the respondent that the period between the year 1995 and 2005 has to be ignored for the grant of any relief and in absence of any evidence on either side about alternative employment of the appellant, full back wages ought not to be awarded to the appellant. It was however submitted for the appellant that he had remained unemployed throughout the period from the year 1995 till 2013 and the appellant having reached ripe old age by now, he was unlikely to get any employment Be that as it may, it was ultimately fairly conceded that a small part of the back wages may have to be awarded to the appellant in the facts and circumstances and the percentage of back wages to be awarded was left to the Court.

7. Accordingly, the appeal is allowed, the impugned award and order of the Labour Court is set-aside and the appellant is ordered to be reinstated with continuity of service and back wages at the rate of 25% for the last eight years, within a period of two months from today. It is clarified that this order shall not amount to granting any special status, regularisation or permanence in service to the appellant and it will be open for the respondents to terminate his service in accordance with law, if his services were not required or if, he has crossed the age of superannuation. The 1st respondent is directed to pay Rs. 3,000/- to the appellant by way of cost.