

(2016) 06 KAR CK 0018

KARNATAKA HIGH COURT

Case No: Writ Petition No. 45558 of 2015 (L-RES) along with Writ Petition No. 5761 of 2016  
(L-TER)

Guruson Engineering  
Enterprises

APPELLANT

Vs

Girishappa K.G.

RESPONDENT

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Date of Decision: June 2, 2016

Citation: (2016) 3 CLR 601 : (2016) 151 FLR 595 : (2016) 4 KantLJ 602

Hon'ble Judges: Aravind Kumar, J.

Bench: Single Bench

Advocate: Sri Manjunatha B. Advocate. in Writ Petition No. 45558 of 2015 (L-RES), Sri V.S. Naik, Advocate. in Writ Petition No. 5761 of 2016 (L-TER), for the Appellant; Sri V.S. Naik, Advocate. in Writ Petition No. 45558 of 2015 (L-RES), Sri B. Manjunatha, Advocate

Final Decision: Dismissed

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Judgement

@JUDGMENTTAG-ORDER

Aravind Kumar, J.—Heard Sri B. Manjunatha, learned Counsel appearing for the petitioner-Management and Sri V.S. Naik, learned Counsel appearing for the respondent/workman and perused the records.

2. Since these two petitions are filed against the judgment and award passed in Ref. No. 6 of 2013, dated 27.9.2014, namely, W.P. No. 45558 of 2015 by the employer and W.P. No. 5761 of 2016 by the workman seeking for grant of back wages they are taken up together for final disposal by consent of the learned Advocates appearing for the parties.

3. The facts in brief, which has led to filing of these two writ petitions are as hereunder:

The workman alleging refusal of work by the management sought for reference of the dispute to the jurisdictional Labour Court by approaching the appropriate

Government. An order under Section 10(1)(c) of the Industrial Disputes Act, 1947 came to be passed by the appropriate Government and on registering the Reference No. 6 of 2013, notice came to be issued to the respondent/Management. Subsequently, claim petition has been received by the Reference Court and after considering the evidence tendered by the claimant, by impugned judgment and award dated 27.9.2014 (Annexure-D), reference has been allowed by holding that Management was not justified in refusing the work to the first party Workman and the refusal of work by the second party is without reason. The employer has been directed to reinstate the workman to the place he was holding immediately before refusal of employment on 29.5.2012 with continuity of service and all consequential benefits and back wages at 25% from the date of refusal till the date of reinstatement.

4. Management or the employer has filed W.P. No. 45558 of 2015 contending that on account of non-filing of the claim statement by the workman, the matter was reserved for orders on 11.10.2013 and subsequently, without notice to the second party, i.e., management/employer and at the instance of the workman, Labour Court has received the claim statement and an award has been passed behind the back of the employer and said award is in violation of the principles of natural justice and as such, an opportunity be extended to the management by permitting to file the objection statement and contest the matter on merits.

5. W.P. No. 5761 of 2016 has been filed by workman contending that jurisdictional Labour Court was not justified in granting only 25% back wages, particularly when it has been held that the management was not justified in withholding employment to the workman and as such, it should have awarded 100% back-wages.

6. The learned Counsel appearing for the petitioners have reiterated the grounds urged in the writ petitions and have prayed for allowing the writ petitions filed by them.

7. Having heard the learned Advocates appearing for parties and on perusal of records, it would indicate that labour Court has passed the judgment and award in question on a reference made by the appropriate Government in exercise of powers under Section 10(1)(c) of the Industrial Disputes Act. Second party-management and claimant were notified by the Labour Court and an opportunity was extended to the claimant/workman to file claim statement/counterstatement. After adjudication of same, impugned judgment and award dated 27.9.2014 Annexure-A came to be passed. A perusal of the same would indicate that notice to both the parties was served on 10.7.2013 and claimant had appeared through his Advocate. Subsequently, on 6.9.2013, management also appeared through its Advocate. For filing claim statement, the matter was adjourned from time to time commencing from 11.10.2013. Even on 11.10.2013, the workman had not filed claim statement and as such, noticing that neither the parties nor their Advocates were present, Labour Court, left with no other option, reserved the matter on 11.10.2013 for

passing of the award. It would be apt and appropriate to note at this juncture that no further date was notified on 11.10.2013 by the Labour Court.

8. It is thereafter, i.e., on 5.11.2013, workman filed an application to recall the order dated 11.10.2013. Said application is at Annexure-B, which came to be numbered as I.A. No. 1. Endorsement made on the said application would indicate that Labour Court had directed the registry to put up the records on 5.11.2013. Neither the second party management was informed of said date nor the copy of the application was served on the learned Advocate who was appearing on behalf of the second party management. In fact there is no application tiled for reopening of the case on seeking permission to file the claim statement. But, on the other hand, in the application filed under Section 11 of I.D. Act (Annexure-B), first party had not only sought for recalling the order dated 11.10.2013. under I.A. No. 1 but had also sought permission to file the claim statement. Hence, without notifying the contesting party who was duly represented by learned Advocate, said application could not have been entertained by the Labour Court or in the alternative, it should have at least directed the claimant to serve copy of said application on the learned Advocate who was representing the second party Management. This exercise, was also not undertaken by the Labour Court for reasons best known. This is the first step at which the Labour Court committed an error.

9. When the said application was taken up on the next date i.e., on 2.12.2013, Labour Court has allowed the application without hearing the opposite party, namely, the second party-management. At least, thereafter, the Labour Court could have directed the first party workman to serve a copy of the claim statement or it could have notified the date of hearing of the matter before proceeding to adjudicate the matter. Even this exercise was not undertaken. This is the second step the Labour Court committed an error.

10. Again, the matter came to be adjourned on various dates stretching to eight hearing dates commencing from 27.12.2013 till the workman tendered his evidence on 18.9.2014. At least, during these hearing dates, the Labour Court could have directed issuance of Court notice to five learned Advocate who represented the second party management. Even this procedure was not adopted by the Labour Court. This is the third step where the Labour Court committed an error. Second party-management had no opportunity to appear before the labour Court and as such, it cannot be said by the workman that management had notice of the proceedings.

11. In view of the same, this Court is of the considered view that impugned order passed by Labour Court is in violation of principles of natural justice. Having perused the order-sheet of the Trial Court meticulously it would clearly indicate that on all the dates of hearing commencing from 27.12.2013, it is not only management's Counsel who was absent but also the Counsel representing the first party-workman except when evidence on behalf of the claimant was tendered on

18.9.2014. As such, this Court is of the considered view that an opportunity requires to be extended to the respondent-second party-management to contest the claim petition on merits.

12. It has been vehemently contended by Sri V.S. Naik, learned Counsel appearing for the workman that there has been inordinate delay on the part of the Management in filing this writ petition and as such on the ground of delay writ petition is liable to be rejected. Contention of Sri V.S. Naik requires to be considered for the purposes of rejection, in as much as records would disclose, that undisputedly, second party management had no knowledge whatsoever as to what transpired before the Labour Court subsequent to order dated 11.10.2013. It is only for the first time when notice came to be issued by the Office of the Labour Commissioner, dated 22.5.2015 (Annexure-E), they came to know about the award having been passed. Though it is contended by the learned Counsel for the petitioner that immediately after the award came to be notified by the appropriate Government, the same was brought to the notice of the management on 16.12.2014, requires to be rejected inasmuch as there is no material brought on record to establish that the second party management was informed/intimated or delivered with the copy of the award dated 27.9.2014 on 16.12.2014. In that view of the matter, the issue of delay explained by the employer/management in paragraph No. 11 deserves to be accepted as it would constitute sufficient cause as held by the Hon"ble Apex Court in the case of Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, AIR 1987 SC 1353. It has been held that Courts should be liberal while considering an application for condonation of delay and where cause shown would constitute sufficient cause for being accepted than technicalities if any has to yield to substantial justice. In that view of the matter, this Court is of the considered view that cause for delay explained by the writ petitioner/management in paragraph No. 11 deserves to be accepted as it amounts to sufficient cause and as such, the delay even if any deserves to be condoned. Accordingly, it is condoned by rejecting the contention of Sri V.S. Naik.

13. In the light of aforesaid discussion, I proceed to pass the following:

#### ORDER

(i) W.P. No. 45558 of 2015 is hereby allowed and W.P. No. 5761 of 2016 is hereby dismissed.

(ii) Judgment and award dated 27.9.2014 passed in Reference No. 6 of 2013 by the First Additional Labour Court, Bengaluru (Annexure-D) is hereby set aside.

(iii) Ref. No. 6 of 2013 is remitted back to the First Additional Labour Court, Bengaluru for adjudicating the claim petition on merits and in accordance with law by extending opportunity to the petitioner/management to file statement of objections to claim petition.

(iv) Both parties are directed to appear before the Labour Court on 27.6.2016 without waiting for any further notice and the second party management shall file its objections within two weeks from the first date of hearing.

(v) No order as to costs.

14. Ordered accordingly.