

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE P.G.M. PATIL

W.A.No.30329/2013 (L TER) DATED:13-08-2019

S P SATYANARAYANA S/ O. SHRI S.T. PUTTANAIAK, VS. THE MANAGEMENT OF KIRLOSKAR ELECTRIC COMPANY LTD., DHARWAD.

JUDGMENT

S.N.SATYANARAYANA, J,

The petitioner before learned Single Judge in W.P.No. 17464/2007 has come up in this intra Court appeal impugning the order dated 14/2/2013 where the learned Single Judge has considered compensating the petitioner with 10% of the back wages from the date of termination till the date the workman attained the age of superannuation, i.e. 57 years age pursuant to the terms of memorandum of settlement dated 18/1/2001 in the organization of appellant herein.

2. The brief facts leading to writ petition are as under:

The petitioner herein was working as gardener in the respondent-Management Company where the Management found that he was involved in certain activities which were detrimental to the interest of the company, accordingly an enquiry was ordered to consider several charges alleged against him.It is seen that, in the said enquiry charges alleged against him were held to be proved.Hence, he was dismissed from service as on 2/2/1995.The said order of dismissal was subject matter of challenge before the Karnataka Industrial Tribunal in KID 20/1995 & KID 21/1995 before the Industrial Tribunal, Hubli, which were disposed of by common award dated 19/4/2007 wherein the order of dismissal was set aside.However, since the appellant herein had attained the age of superannuity at that time, an order was passed granting him all the privileges which were attached to his office except back wages for the period when he was discharged from service till disposal of the dispute before the Tribunal.

3. The said Order of Tribunal, though it was partially in favour of the appellant herein, was challenged by him before the learned Single Judge of this Court in W.P.No. 17464/2007. The grievance of the petitioner before the learned Single Judge is mainly, not considering his prayer for back wages. Though his grievance before the writ Court is non payment of back wages, admittedly, he did not either plead or establish before the Tribunal and also learned Single Judge that during the interregnum period from 1995 till the disposal of the dispute before the K.I.D. on 19/4/2007, he was not gainfully employed elsewhere; that he did not have any source of income. It is in the aforesaid background, the learned Single Judge specifically observed in paragraph 7 of its order dated 14/2/2013 as under:

" he has not pleaded that he was not gainfully employed from the date of his termination. He has not adduced any evidence also with regard to his non employment and not having any income.

The initial burden of proof with regard to the non employment and not having any income from the date of termination is upon the workman. In the instant case, workman has neither pleaded that he was not gainfully employed from the date of his termination nor has produced any evidence with regard to he having not earned any income. The pleading taken in the application filed for interim relief cannot be treated as the main pleading. "

Heard the learned counsel for the appellant as well as as contesting contesting respondent. Perused the order of the learned Single Judge as well as various judgments referred therein and also judgment relied upon by the learned counsel for the appellant in this proceedings, which is in the matter of Tapash Kumar Paul Vs. BSNL and Another reported in AIR SC 2015 0357. The said judgment is relied upon by the counsel for the appellant on the ground that the law laid therein would support his claim for payment of back wages.

4. However, on perusal of the entire material available on record it is clearly seen that, though the Labour Court has held that the charges against delinquent employee is not proved, after considering the fact that the employee has already completed the age of superannuation of 57 years, felt that he should be entitled to all benefits except backwages.

5. It is in challenge to said finding, the employee has preferred the writ petition in W.P.No. 17464/2007 where the learned Single Judge in the factual matrix felt that the Order of Tribunal so far as it pertains to denial of backwages is justified on the ground that neither in the proceedings before the Labour Court nor in the writ petition filed before the learned Single Judge, there is no pleading nor evidence to substantiate that the delinquent employee was unemployed; that he did not have any source of income during the interregnum period; and that he has suffered monetary loss.

6. Per contra, it is observed that there was attempt on the part of respondent management to demonstrate that the employee was running a business in the name of his wife and that he had sufficient income, when such pleading and evidence was placed before the Court below by the employer, the employee has not made any attempt to deny the same. It is in this background, the learned Single Single Judge has considered his prayer after looking into the various judgments rendered in the matter of Reetu Marbles Vs. Prabhakant Shukla reported in 2010 (2) SCC 70 and J.K.Synthetics Ltd. Vs. K.P.Agarwal and Another reported in 2007-II-ILR-128 and Airport Authority of India and Others and Shambhu Nath Das a S.N.Das, reported in 2008-III-LLJ-353 (SC) and after giving appropriate reason has held that the appellant herein who is petitioner before the learned Single Judge has not made out any case to reconsider the Judgment of Labour Court which has denied the relief of backwages.

7. However, the learned Single Judge was benevolent in making an attempt to compensate the employee by modifying the order of Labour Court in granting 10% of the back wages to the employee from the date of

termination till the date he attained the age of superannuation which is 57 years. The said order of learned Single Judge, being well reasoned and also equitable in nature, the same does not call for interference of this Court in this intra Court appeal. Accordingly, this writ appeal is dismissed.