

HIGH COURT OF KARNATAKA**Bench: The Hon'ble Ms. Justice Jyoti Mulimani**

Date of Decision: November 29, 2023

WRIT PETITION NO.5891 OF 2012 (L-TER)

1. EXECUTIVE ENGINEER, PANCHAYATRAJ ENGINEERING DIVISION,
2. ASSISTANT EXECUTIVE ENGINEER, PANCHAYAT RAJ ENGINEERING
SUB-DIVISION ...PETITIONERS

Versus

D.BASAVARAJ ...RESPONDENT

Legislation:

Article 226 and 227 of the Constitution of India
Section 10(4-A), 11A of the Industrial Disputes Act, 1947

Subject: Writ Petition filed under Articles 226 and 227 of the Constitution of India, challenging the award of the Labour Court in a dispute regarding the respondent's termination and the regularization of service, particularly addressing the rejection of the reference by the Industrial Tribunal and the erroneous reinstatement order by the Labour Court.

Headnotes:

Writ Petition – Challenge to the award of the Labour Court – Dispute regarding the respondent's termination and regularization of service – Industrial Tribunal's rejection of the reference on grounds that the respondent is not a workman and the Executive Engineer, Zilla Panchayat, is not an industry – Failure of the Labour Court to consider the rejection of the reference – Labour Court's erroneous reinstatement order – Unsustainability in law – The award of the Labour Court quashed through the Writ of Certiorari, as it contravened well-settled legal principles and the law laid down by the Court. [Para 3-8]

Referred Cases:

The Assistant Executive Engineer, Mangalore Vs. Karnataka State Government Daily Wage Employees Federation, Mangalore, ILR 2004 KAR 1619.

Representing Advocates:

Sri. B.J. Somayaji represented the petitioners.
Sri. Roopesh Kumar N.R. for the respondent.

ORDER

Sri.B.J.Somayaji., learned counsel for the petitioners has appeared in person.

2. When the matter is called, there is no representation on behalf of respondent, either personally or through video conferencing.

As could be seen from the daily order sheet, the petition was listed on 28.11.2023. On that day, learned counsel for the petitioners was present, there was no representation on behalf of respondent. This Court heard, the learned counsel for the petitioner and the petition was ordered to be listed on 29.11.2023 to hear counsel for respondent.

The petition is listed today. As already noted above, when the matter is called, there is no representation on behalf of respondent, either personally or through video conferencing. Hence, this Court proceeds to pass orders on the merits of the case.

3. The brief facts are these:
On 12.09.2003, the respondent filed an application under Section 10(4-A) of the Industrial Disputes Act, 1947 before the Labour Court, Mysore in I.I.D.No.125/2003 contending that his termination is bad. On 08.12.2003, he raised a dispute contending that his services may be regularized. The Government referred the matter to the Industrial Tribunal, Mysore in Reference No.02/2004. The Executive Engineer, being the second party in Reference No.02/2004, contested the case and the Tribunal vide award dated:31.10.2007 rejected the reference holding that the reference is not maintainable on the grounds that the respondent is not a workman and the Executive Engineer, Zilla Panchayat is not an Industry.

During the pendency of I.I.D.No.125/2003 before the Labour Court, Mysore, the petitioner filed a memo on 13.05.2008 enclosing the copy of the award passed in Reference No.02/2004 and brought to the notice of the Labour Court about the rejection of the Reference in No.02/2004. It was also brought to the notice of the Labour Court, Mysore in I.I.D.No.125/2003 that the first party D.Basavaraj is not a workman and the Executive Engineer, Zilla

Panchayat second party is not an industry and accordingly sought for rejection of the claim statement. The memo was placed on record and time was given to file objections to the memo and the case was adjourned to 20.06.2008 to hear on the memo. However, the Labour Court without passing orders on the memo, proceeded and adjudicated the dispute and partly allowed the reference vide award dated:11.07.2011 and directed the petitioners to reinstate the respondent with 50% backwages from 04.05.2003. It is this award that is called into question in this Writ Petition on several grounds as set-out in the Memorandum of Writ Petition.

4. Learned counsel for the petitioner has urged several contentions. Heard, the contentions urged on behalf of the petitioner and perused the Writ papers with utmost care.

5. The point that requires consideration is whether the award of the Labour Court requires interference.

6. The facts are sufficiently stated and do not require reiteration. It is not in dispute that the respondent sought reference seeking regularization of his service in Reference No.02/2004. The Industrial Tribunal vide award dated:31.10.2007 rejected the reference on the grounds that the respondent is not a workman and the Executive Engineer, Zilla Panchayat is not an industry. The rejection of the reference was brought to the notice of the Labour Court in I.I.D.No.125/2003. Despite filing the memo, the Labour Court, Mysore failed to appreciate and consider the rejection of the Reference in No.02/2004 and erroneously went ahead and ordered reinstatement. This is incorrect. The reason is quite apparent. The Executive Engineer working in Zilla Panchayat is a Government servant; working in the local body namely Zilla Panchayat, which is a statutory body. It is the contention of the respondent that he joined the service in the office of the Assistant Executive Engineer, Zilla Panchayat as a Literate Assistant and claimed right under the

Provisions of the I.D Act. This Court in the case of ***THE ASSISTANT EXECUTIVE ENGINEER, MANGALORE VS. KARNATAKA STATE GOVERNMENT DAILY WAGE EMPLOYEES FEDERATION, MANGALORE*** reported in ***ILR 2004 KAR 1619*** has held that Public Works Department cannot be treated as an Industry and hence dispute is not maintainable before the Labour Court. The award of the Labour Court is contrary to the law laid down by this Court. Furthermore, the Labour Court exercising power under Section 11A of the Industrial Disputes Act, cannot grant relief of reinstatement that amounts to regularization and appointment to the non-existing post, which is otherwise not permitted in law.

The Labour Court has failed to consider the well settled law and erroneously ordered reinstatement. This is unsustainable in law. When the respondent is not a workman and the Executive Engineer, Zilla Panchayat is not an industry, the question of adjudicating the dispute under the provisions of the I.D Act is totally unsustainable. For the reasons stated above, the award of the Labour Court is liable to be set-aside. Accordingly, it is set-aside.

7. The Writ of Certiorari is ordered. The award dated:11.07.2011 passed by the Labour Court, Mysore in I.I.D.No.125/2003 vide Annexure-D is quashed.

8. Resultantly, the Writ Petition is ***allowed***.

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