

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 28TH DAY OF FEBRUARY, 2017

BEFORE

THE HON'BLE MRS. JUSTICE RATHNAKALA

WRIT PETITION NO. 80419/2012 (L-TER)

BETWEEN:

AHILLYABAI
D/O TUKARAM
AGE : 43 YEARS
R/O H.NO.5-3-126,
BASAVESHAR CHOWK,
KARANJA ROAD,
BHALKI,
DIST.BIDAR.

... PETITIONER

(BY SRI. P. VILASKUMAR, ADV.)

AND:

1. THE ASST. EXECUTIVE ENGINEER
KARANJA PROJECT
CANAL CONSTRUCTION SUB-DIVN.
NO.3, BHALKI,
DIST.BIDAR – 585 101.
2. THE EXECUTIVE ENGINEER
KARANJA PROJECT
CANAL CONSTRUCTION
DIVN. NO.2, BHALKI,
DIST.BIDAR – 585 101.

3. THE SECRETARY,
IRRIGATION DEPARTMENT
M.S. BUILDING,
BANGALORE - 560 001.

... RESPONDENTS

(BY SMT. ARCHANA P. TIWARI, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE AWARD OF THE LABOUR COURT GULBARGA PASSED IN REF.NO.171/2008 DATED 06.09.2010 WHICH IS AT ANNEXURE-A IN SO FAR AS DENIAL OF REINSTATEMENT, GRANTING OF BACK WAGES AND ALSO CONTINUITY OF SERVICE AND ALL OTHER CONSEQUENTIAL BENEFITS.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is aggrieved by the Award of the Labour Court whereby even after holding her termination as illegal instead of reinstating into service, she is awarded monitory compensation of Rs.20,000/-.

2. The facts not in dispute between the parties is the petitioner - claimant was working as a Literate Mazdoor in the office of the 1st respondent on daily wage basis with effect from 01.07.1981 and she was retrenched on 01.04.1983 abruptly without following the procedure contemplated under Section 25 (F) of the Industrial Disputes Act (for short 'Act').

3. The petitioner raised a dispute in the year 2008 and the matter on failure of the conciliation proceedings, was referred for adjudication to the concerned Labour Court. The 2nd party contested the claim. After a detailed enquiry, learned Labour Court passed the Award granting monitory compensation as noted supra.

4. Sri.P. Vilaskumar, learned counsel for the petitioner submits that once the Labour Court found that the termination was illegal, then only consequence is her reinstatement into service with continuity of service and back wages. In the case on hand, the trial Court on appreciation of the evidentiary material has denied the relief of reinstatement

on the ground that she was working as Anganwadi worker after her reinstatement. Mere working to eak out livelihood would not enable the management to wash off its hands from reinstating the workman. At the most she could have been denied back wages and nothing short of it placing reliance on the Judgments of Hon'ble Apex Court reported in ***MANU/SC/0060/2010*** in the case of ***Harjinder Singh Vs. Punjab State Warehousing Corporation & MANU/SC/0426/2011*** in the case of ***Devinder Singh Vs. Municipal Council, Sanaur,*** learned counsel vehemently submits that the termination without following the mandatory provisions of Section 25 (F) (a) is null and void, hence illegal and the delay in raising the dispute not being the real issue in controversy between the parties, she has to be reinstated into service.

5. Smt.Archana P. Tiwari, learned AGA for the respondents while seeking to sustain the Award of the Court below submits that the Judgements of the Apex Court cited for the petitioner cannot be applied directly to the case on hand

and the facts and circumstances of the present case stands distinguished from that of the facts that were before their Lordship's of the Apex Court. Admittedly, the petitioner had worked for a period of 2-3 years and slept over the matter for 25 years. As on the date, the matter was referred to the Labour Court. There was no subsisting industrial dispute between the parties. The workman since was working for gain, she had no financial constraints to rise the dispute also. The Labour Court relying on the earlier Judgments of this Court and on the application of mind to the facts of the case has rightly ordered the monitory compensation which would subserve the ends of justice being met and the award does not warrant any other modification in the writ jurisdiction of this Court. In the light of the above rival submissions, the short question that warrants to be addressed is about a appropriate relief for the workman in the backdrop of her termination against the mandatory provisions of Section 25 (F) of the Industrial Dispute Act ?.

6. Looking to the cross examination, evidence of the workman before the trial Court, it emanates that for 21 long years, she slept over the matter and raised the dispute by suppressing the material fact that she was appointed as Anganwadi worker since 1993. Though delay is not contemplated as a hurdle for the workman to seek the benevolent provisions of Section 11(A) of the Industrial Dispute Act, the hard reality that delay frustrates the cause, cannot be lost sight of.

7. The Labour Court while fixing the compensation amount has relied upon the Judgment of Hon'ble Supreme Court reported in **2005 (106) FLR 607**, wherein compensation of Rs.40,000/- to each of the workman was granted, thus granted compensation of Rs.20,000/- to the workman. Applying the same analogy, which operated in the mind of the Court, in the cases cited supra, it would serve the ends of justice if the workman herein is also awarded Rs.40,000/- compensation instead of Rs.20,000/- as ordered by the Labour Court.

With these observations, the petition is allowed in part.

The Award of the Labour Court is modified to the extent that the respondent shall pay compensation of Rs.40,000/- to the workman instead of Rs.20,000/-. The rest of the Award shall remain intact.

**Sd/-
JUDGE**

SGS