

KARNATAKA POWER TRANSMISSION
CORPORATION LTD. AND ANR.

v.

THE AMALGAMATED ELEC. CO. LTD. AND ORS.

DECEMBER 15, 2000

[S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.]

Labour Laws :

Industrial Disputes Act, 1947—Sections 25-FF, 25-F—Labour dispute—Workmen abstained from duty—Company taken over by Board—Reinstatement of workmen and back wages—Held, on facts, workmen to be reinstated with 40% back wages as they were illegally denied employment—Karnataka Electricity Undertaking (Acquisition) Act, 1974.

In 1971, there were labour disputes relating to lockout by Respondent-company, which resulted in some workers abstaining from work. The company re-started the business with about 65 workmen. The disputes were referred to Industrial Tribunal. In the meantime, pursuant to passing of the Karnataka Electricity Undertaking (Acquisition) Act, 1974, the company was taken over by the Appellant-Board. Some workmen who abstained from work offered to work with the Board but were refused on the ground of pending Industrial Dispute. In 1978, the Tribunal passed an award holding that there was no lockout declared by the Company. With the passing of the award, the workmen again demanded the Board to permit them to duty. The workmen were not allowed to join duty and a fresh Reference was made to the Industrial Tribunal as to whether the management of the company and the Board were justified in refusing employment to the workmen with effect from 25.3.1971. The Tribunal held that the workers are entitled to reinstatement with 50% of the back wages from 7.10.1978. The Board challenged the award of the Tribunal before the High Court. Since the High Court declined to interfere, the Board has preferred the present appeals.

It was contended by the Board that there was an illegal strike by the workmen and the workers refused to join duty despite the offer made by the appellant; that at the time of acquisition and taking over of the management of the Company, the workmen were not workers of the Company and that the

A Board has no legal obligation to reinstate them in service; that in view of the earlier Reference in 1971, the second Reference was unjustified and the principles of *res judicata* would apply; that there was a delay of several years in raising the dispute and that the Tribunal should not have directed reinstatement of all the workers.

B The workmen contended that there was an illegal lockout and in spite of the workers willing to work, they were denied employment from 25.3.1971 onwards.

Dismissing the appeals, the Court

C HELD: 1.1. The second Reference was warranted in view of the stand taken by the Company and the Board that the workmen were not entitled to join duty. Therefore, the principles of *res judicata* does not apply in the instant case. The workmen were not working in the Company at the time when the management of the Company was taken over by the Board as they were

D illegally denied employment. Nevertheless, the Company when it was legally bound to reinstate the workmen as the award of the Tribunal shows that they were illegally denied employment with effect from 25.3.1971. When the Board took-over the management of the Company, the workers made themselves available for work but were not allowed to join duty by the Board. [699-A, D, E]

E 1.2. The entire assets and liabilities of the Company were taken over by the Board. As per Section 25FF of the Industrial Disputes Act, 1947, where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law from the employer in relation to that undertaking to a new employer, every workman who has been in continuous

F service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25F of the Act. The workers were not paid any such compensation as per Section 25F. The services of the workmen should be deemed to have been not interrupted by such transfer. Had the Company been

G functioning, the Company would have been legally bound to engage the workers as their workmen by virtue of the award passed by the Tribunal. The Board, being the successor-in-interest, is bound to reinstate the workers as per the award passed by the Tribunal, meet the ends of justice. [699-E, F, G]

H 1.3. Having regard to the facts and circumstances of the case, payment of 40% of back wages would meet the ends of justice. [700-B]

2. Some workers have either retired or died. The legal representatives of the deceased workers are entitled to get back wages till the respective dates of death of the deceased workers. The workmen who have retired shall be entitled to get back wages from 7.10.1978 till the notional date of their retirement. [700-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1808-10 of 1998.

From the Judgment and Order dated 04.09.1977 of the High Court of Karnataka at Bangalore in Writ Appeal Nos. 3218, 3804 and 3805 of 1997.

Kumar Ram Apte, S.K. Kulkarni, Ms. Sangeeta, Sunil Dogra, Ms. Monica Sharma, S.A. Shroff & Co., Sunil Kumar Verma, S.M. Jadhav, Sayali Phatak and Manu Nair for the appearing parties.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. Decision of the Karnataka High Court is challenged in these appeals. The first respondent, the Amalgamated Electricity Company Ltd., was engaged in supply of electricity in Belgaum city. In the year 1971, there arose some labour dispute. According to the workmen the Company declared a lockout, whereas the management of the first respondent Company contended that some of the workers had resorted to strike and refused to come for work. By the end December, 1971, the management of the first respondent-Company started the business with about 65 workmen and the other workers were not allowed to join duty. The first respondent-Company contended that these workers were offered employment, but they refused to join duty. Disputes relating to these issues were referred to the Industrial Tribunal and in I.D. No. 11/71, the Industrial Tribunal, Bangalore, passed an award on 17.2.1978 and it was held that there was no lockout declared by the first respondent-Company. Meanwhile, on 18.12.1974, pursuant to the Karnataka Electricity Undertaking (Acquisition) Act, 1974, the management of the first respondent, Amalgamated Electricity Company Ltd., was taken over by the Karnataka Electricity Board whereby all the assets and liabilities of the Amalgamated Electricity Company Ltd. vested with the Karnataka Electricity Board. According to the workmen, 29 employees offered themselves to work with the Karnataka Electricity Board, but they were not allowed to work. The appellant, Karnataka Electricity Board, contended that these workers could not be allowed to join duty in view of the then pending Industrial Dispute. After the passing of the award in I.D. No. 11/71, the workmen again made a

A demand that they must be permitted to join duty in the Karnataka Electricity Board. However, the workmen were not allowed to join duty and in view of the demand made by the workers, a fresh Reference was made as to whether the management of M/s Amalgamated Electricity Company Ltd., Belgaum and the Karnataka Electricity Board, were justified in refusing employment to the 29 workmen named therein, with effect from 25.3.1971. The Industrial Tribunal at Hubli passed its award on 6.3.1991. It held that except one worker, K.S. Shinde, who was in gainful employment elsewhere, all other workers were entitled to reinstatement and 50% of the back wages from 7.10.1978 till their reinstatement.

C The award of the Industrial Tribunal was challenged before the High Court and the learned Single Judge refused to interfere with the award. In an appeal filed against the judgment of the learned Single Judge, the Division Bench also refused to interfere with the award passed by the Tribunal. Hence these appeals.

D We heard the learned counsel for the appellant, Karnataka Electricity Board and also the counsel for the first respondent-Company. Learned counsel for the appellant contended that in view of the earlier Reference, namely, I.D. 11/71, the second Reference was wholly unnecessary and as it was on the same subject matter, the general principles of res judicata would apply. Therefore, he contended that the award passed in I.D. 32/86 is not enforceable in law. The 29 workers were admittedly the workers of the Amalgamated Electricity Company Ltd., which was engaged in the supply of electricity in Belgaum. The counsel for the appellant contended that there was an illegal strike and despite the offer made by the appellant, the workers refused to join duty. The learned counsel for the workmen, on the other hand, contended that there was an illegal lockout and in spite of the fact that these workers were willing to work, they were denied employment from 25.3.1971 onwards.

G In the Reference under I.D. No. 11/71, the dispute was whether there was a lockout or not by the first respondent-Company and it was held that there was no lock-out as alleged by the workmen. It may be noted that the workmen were not allowed to work right from 25.3.1971. Some of the workers were transferred and some of them are alleged to have been dismissed from service. Therefore, the dispute continued, and in the Second Reference, i.e. in I.D. 32/86, the question for consideration was whether the Amalgamated Electricity Company or its successor-in-interest, Karnataka Electricity Board, was justified in refusing employment to the workmen.

We do not think that the subsequent Reference under I.D. 32/88 had anything to do with the earlier Reference made as I.D. 11/71. The second Reference was warranted in view of the stand taken by the Amalgamated Electricity Company and the Karnataka Electricity Board that these workmen were not entitled to join duty. Therefore, we do not think that the principles of *res judicata* have got any application in the instant case.

It was further contended that there was a delay of several years in raising the dispute and, therefore, the Tribunal should not have directed reinstatement of all these workers. It was also contended that at the time of acquisition and taking over of the management of the Amalgamated Electricity Company, these workmen were not the workers of the Amalgamated Electricity Company and, therefore, the Karnataka Electricity Board has no legal obligation to reinstate them in service.

It is true that these workmen were not working in the Amalgamated Company at the time when the management of the Company was taken over on 18.12.1974 as they were illegally denied employment. Nevertheless, the Company was legally bound to reinstate these workers as early as from 25.3.1971. The award of the Tribunal shows that they were illegally denied employment with effect from 25.3.1971. When the Karnataka Electricity Board took-over the management of the Amalgamated Electricity Company, these workers made themselves available for work, but they were not allowed to join duty by the Karnataka Electricity Board. The entire assets and liabilities of the Amalgamated Electricity Company were taken over by the Karnataka Electricity Board. Even as per Section 25 FF of the Industrial Disputes Act, 1947, where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25 F thereof. These workers were not paid any such compensation as per Section 25 F. Their services should be deemed to have been not interrupted by such transfer. Had the Amalgamated Electricity Company Ltd. been functioning in Belgaum, the said Company would have been legally bound to engage these workers as their workmen by virtue of the award passed by the Tribunal. The Karnataka Electricity Board being the successor-in-interest is bound to reinstate these workers as per the award passed by the Tribunal.

In the instant case, the workmen sought reference of the dispute long

- A** after it arose between the parties. Therefore, the appellant Karnataka Electricity Board contended that the workers should not be allowed back-wages. It was also pointed out that this Court in similar cases had even awarded back wages only upto 25%. In the instant case, the back wages have been directed to be paid from 7.10.1978 till the date of reinstatement. Many of the employees have now crossed the age of superannuation and only few remain to be reinstated.
- B** Having regard to the facts and circumstances of the case, payment of 40% of back wages would meet the ends of justice. We are told that out of 29 workers, 8 persons have died. One K.S. Shinde, S. No. 28 in the Statement showing the service particulars of the respondent-workmen, was in gainful employment and held not entitled to get the back wages.
- C** Having regard to these facts, we direct the appellant, Karnataka Electricity Board to reinstate M.Y. Lohar (S.No. 8); P.P. Karadi (S.No. 10); K.S. Khade (S.No. 14); K.B. Chavan (S.No. 18); Prakash J. Naik (S.No. 19); P.P. Patil (S. NO. 20); B.S. Tamhankar (S.No. 21) and Pratap P. Jamadar (S.No. 22) in service within a period of one month. In the case of P. F. Gawali (S.No. 23)
- D** the claim for reinstatement is not pressed. The appellant, Karnataka Electricity Board is also directed to give back wages to these employees at the rate of 40% from 7.10.1978 till their reinstatement.

- E** Out of the 29 workers have either retired or died. We direct that legal representatives of the deceased workers are entitled to get back wages till the respective dates of death of the deceased workers. The workmen who have retired shall be entitled to get back wages from 7.10.1978 till the notional date of their retirement.

The appeals are dismissed accordingly with no order as to costs.

- F** B.S. Appeals dismissed.