

SUPREME COURT OF INDIA

Bangalore Metropolitan Transport Corpn.

Vs.

T.V. Anandappa

C.A.No....of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ)

16.04.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court dismissing the writ petition filed by the appellant. Challenge in this writ petitions was to the award passed by the Labour Court, Bangalore setting aside the order of removal of the respondent (hereinafter referred to as the `workman') and directing his re- instatement with continuity of seniority in the list of Badli Conductors but without back wages.

3. Factual scenario is almost undisputed. The respondent was appointed as Badli Conductor and disciplinary enquiry was conducted against him with regard to his unauthorized absence from duty. His name was ordered to be removed from the list of Badli Conductors by order dated 19.12.1995. A Claim Petition in terms of Section 10(4-A) of the *Industrial Disputes Act, 1947* (in short the `Act') was filed. The same was withdrawn and dispute under Section 10(1-C) of the Act was raised which was referred to the Labour Court, Bangalore. After recording evidence of the parties the Labour Court came to the conclusion that the absence from duty on the part of the respondent was on account of ill health and indisposition . Placing reliance on the medical certificates produced and the reasons assigned for his absence the Labour Court held that the respondent was entitled to re- instatement as Badli Conductor and order of his removal was not justified.

Order of Labour Court was challenged before the High Court.

4. The stand in the writ petition was that there was delay of about 4 years in raising the dispute while filing the application under Section 10(4- A) of the Act and although a specific objection was raised in this regard before the Labour Court the same was not considered. The charge framed against the workman about his unauthorized absence from duty intermittently

for a long period of time has not been considered by the Labour Court while passing the award.

5. The workman contended that the Labour Court was justified in holding that because of his ailment he could not join duty and had remained absent.

6. So far as the delayed approach is concerned the respondent-workman contended that there was no evidence adduced regarding delay or gainful employment. The High Court was of the view that there was no material to show that the workman was gainfully employed anywhere. That being so, the writ petition was dismissed.

7. Learned counsel for the appellant submitted that being Badli worker the question of any protection under the Act does not arise. The Labour Court seems to have proceeded on the basis that since the medical certificates were submitted, he should not have been removed.

“Admittedly, his name was struck off on 19.12.1995. For the first time a grievance was raised in 1999. The respondent filed claim statement and ultimately arguments were heard and reference was made. Learned counsel for the respondent supported the judgment of the Labour Court as affirmed by the High Court.”

8. Learned counsel for the appellant is right in his submission that there was no protection available under the Act to the respondent.

9. In view of what has been stated in *Karnataka State Road Transport Corporation and Anr. v. S.G. Kotturappa and Anr.*¹ the respondent had no right under the Act. The Labour Court should not have therefore adjudicated the dispute. In essence, the reference made to the Labour Court was incompetent. In the peculiar facts of the case there is no scope for inclusion of the name of the respondent in the Badli Conductors and there is no question of any continuity of service.

10. The appeal is allowed to the aforesaid extent.

¹(2005 (3) SCC 409)