Chief Engineer (Construction) vs Keshava Rao (D) By Lrs on 9 March, 2005

Equivalent citations: AIRONLINE 2005 SC 592, 2005 (11) SCC 229, (2005) 2 ESC 243, (2005) 2 LAB LN 81, (2005) 2 LAB LJ 479, 2005 SCC (L&S) 872, (2005) 105 FAC LR 378, (2005) 2 SCT 420, (2005) 2 CUR LR 112, (2005) 2 SCJ 642, (2005) 3 SERV LR 434, (2005) 3 SCALE 269, (2005) 3 JT 451, 2005 LAB LR 446, (2005) 2 SUPREME 604, (2005) 3 JT 451 (SC), (2005) 3 JCR 96 (SC), 1994 SCC (CRI) 1482, 1994 SCC (SUPP) 2 503

Bench: B.P.Singh, S.B.Sinha

CASE NO.:
Appeal (civil) 3791 of 2003

PETITIONER:
CHIEF ENGINEER (CONSTRUCTION)

RESPONDENT:
KESHAVA RAO (D) BY LRS.

DATE OF JUDGMENT: 09/03/2005

BENCH:
B.P.SINGH & S.B.SINHA

JUDGMENT:

J U D G M E N T B.P.SINGH, J.

This Appeal by Special Leave has been preferred by the Chief Engineer (Construction), Southern Railways against the judgment and order of the High Court of Karnataka at Bangalore dated 15th June, 2002 in Writ Appeal No.16 of 1999. The learned Single Judge, against whose judgment the aforesaid appeal was preferred, had set aside the award of the Tribunal and held that the services of the Respondent were illegally terminated. He was therefore, entitled to reinstatement with full back wages. While affirming the finding of the learned Single Judge that the ...2/-

services of the Respondent were illegally terminated, the Division Bench modified the direction with regard to payment of consequential benefits by directing that only 50% of the back wages from the date of termination till the date of death or date of superannuation of the Respondent, whichever is earlier, shall be paid. The facts of the case are that the Respondent was appointed on 16.7.1975 as a causal labourer by the Railways on payment of daily wages of Rs.4/- which was later enhanced to Rs.10.40. The case of the Appellant was that on 1.11.1977 the Respondent abandoned his work and did not report for duty thereafter. Consequently he was marked absent in the muster roll and being

a casual employee his name was deleted from the muster roll after five weeks continued absence from the alleged date of abandonment. About a year and 5 months later, on 4th April, 1979, the Respondent served a notice upon the Railways alleging that his services had been illegally terminated. In the said notice issued through an Advocate the Respondent stated that he had been appointed by an order of appointment dated 16.7.1975 as a Clerical Mate in the Southern Railways, Bangalore, on monthly wages of Rs.332.95. He was also ...3/-

issued a Casual Labour Service Card. It was alleged that despite satisfactory service rendered by him, he was illegally prevented from doing work without assigning any reason whatsoever. This amounted to wrongful termination of service and therefore, the Respondent was entitled to be reinstated with full back wages.

The reply of the Southern Railways is dated 11th April, 1979 in which it was stated that he had been engaged as an extra labour (Casual Labour) in the category of Clerical Mate on daily wage basis at Rs.4/- per day. He was deputed to work under the Inspector of Works (Doubling), Bangalore City. He was unauthorisedly absent from duty on his own accord from 1.11.1977. On 18.11.1977 he only came to receive his wages upto 31.10.1977. He made a request on 25.11.1977 to be re- engaged and though the Head Clerk (Stores) was willing to engage him as a fresh entrant on daily wage, he declined to accept the engagement. Thereafter he never turned up for work. Since he was unauthorisedly absenting himself from duty, under Rule 2505 of the Railway Manual his engagement stood automatically terminated. In view of the aforesaid rule the Respondent had no justifiable claim either for re-engagement or for ...4/-

back wages. Since the Respondent had voluntarily abandoned his service there was no question of issuance of notice to him. Thus, the case of the Respondent was that he had been prevented from working on 1.11.1977, and the case of the Appellant on the other hand was that the Respondent voluntarily abandoned his service and therefore, in accordance with the relevant rules his name was struck off from the muster roll.

The dispute was ultimately referred to the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, being Central Reference No.65 of 1988. It is worthwhile noticing that the Reference was made almost 10 years after the date of alleged abandonment of service and/or termination of service of the Respondent. Before the Tribunal the Respondent examined himself as a witness whereas the Railways examined its Office Superintendent. Some documentary evidence was also produced such as muster rolls. The Respondent produced no documentary evidence in support of his case.

The Tribunal found that the Petitioner was employed as a casual labourer on a project and, therefore, was not ...5/-

entitled to temporary status. The Tribunal recorded this finding on the basis of the evidence led by the Railways that he had been employed in connection with project work and was not entitled to temporary status. The Respondent as a witness before the Tribunal did not deny the fact in his evidence that he was engaged for project work. The Tribunal considered the relevant Rules in this

regard and came to the conclusion that since the Petitioner was employed in connection with project work as a causal labourer, the Rules did not entitle him to be granted temporary status.

The Tribunal also considered the evidence on record and after examining the muster rolls (Exhibits M-1 to M-30) recorded a finding of fact that from 1st November, 1977 onwards the Respondent had not worked even for a single day. Long thereafter he set up a claim for reinstatement. The Tribunal also found that the plea of the Respondent was not justified and that he in fact, had abandoned his service with effect from 1.11.1977. Accordingly, the Tribunal rejected the Reference. The Respondent thereafter preferred a writ petition before the High Court of Karnataka at Bangalore which came to be disposed of by a learned Judge of the Court. The ...6/-

learned Judge noticed the finding of fact recorded by the Tribunal that the Respondent had voluntarily abandoned his service but found the finding to be perverse. The learned Judge observed that though the Respondent is said to have been appointed as a causal labourer against a project, it was not the case of the Management that the project work was over and therefore, he was no more required. The only question therefore, which arose for consideration was whether this was a case of termination of service as contended by the Respondent- Workman, or whether it was a case of voluntary abandonment of service as contended by the Appellant.

The learned Judge further observed that merely on the basis of the muster rolls the Tribunal could not have jumped to the conclusion that the Respondent had abandoned his service. The High Court laid considerable emphasis on the fact that his name was deleted from the muster roll only five weeks after the date of abandonment. According to learned Judge subsequent conduct of the Respondent assumed considerable significance inasmuch as on 4.4.1979 the Respondent got a notice issued through an Advocate which was duly replied by the Executive Engineer. In that notice ...7/-

he demanded reinstatement to his original post together with back wages. The learned Judge observed that the reply by the Executive Engineer is not to the effect that the Petitioner voluntarily abandoned his service, but the said reply sought to justify the termination. It was therefore, clear that within a reasonable time after the relevant date namely the date of abandonment of service as per the employer and the date of termination as pleaded by the Appellant, the Workman got issued a notice claiming that his service had been terminated and he should be reinstated with back wages. To this notice the Appellant replied justifying the termination which clearly established the fact that it was a case of termination of service and not a case of voluntary abandonment of service. Therefore, the Tribunal's conclusion to the contrary was perverse.

We have carefully perused the notice given by the Respondent and the reply thereto given by the Appellant. No doubt, about a year and 5 months after the alleged termination of service, such a notice was served upon the Appellant by the Respondent. The High Court has observed that within a reasonable time the Respondent had claimed reinstatement on the ground that his service had been ...8/-

illegally terminated. In the first instance the period of 1 year and 5 months does not appear to be reasonable time for asserting the factum of termination of employment. However, what is more important is the fact that in its reply the Appellant did not justify the termination as has been observed by the learned Judge. In its reply the Appellant asserted that the Respondent was unauthorisedly absent from duty on his own accord from 1.11.1977 and that since he had remained unauthorisedly absent beyond the prescribed period of 3 days, as provided under Rule 2505 of the Railway Manual, his engagement stood terminated and he had no claim of reinstatement or back wages. It was, therefore, stated that in view of the unauthorised absence of the Respondent which amounted to voluntary abandonment of service, the question of issue of notice, charge sheet etc. did not arise.

It will thus appear from the reply to the Notice dated 11.4.1979 that the Appellant's reply did not justify the order of termination, but only asserted the fact that the Petitioner had voluntarily abandoned his service and therefore, his name had to be deleted from the muster roll.

...9/-

In our view the High Court has completely mis-read the Appellant's reply to the Respondent's notice.

The learned Judge further held that since the Petitioner had been appointed as Casual labourer on 16.5.1975 and had continuously worked till end of 1977 it followed that the Petitioner had put in continuous service as contemplated by Section 25B of the Industrial Disputes Act. Since there was non-compliance of the provisions of Section 25F of the Industrial Disputes Act, the termination of his service was not legally sustainable. Such a contention was not raised before the Labour Court, but the learned Judge recorded the aforesaid finding in his judgment. In doing so the learned Judge has completely lost sight of the fact that the initial burden of establishing the factum of continuous work for 240 days in a year rested with the Respondent. Unless the said initial burden was discharged, and the Appellant failed to produce evidence in rebuttal, such a finding could not have been recorded by the learned Judge. The Appellant preferred an appeal which came to be disposed of by a Division Bench of the High Court which affirmed the order of the learned Judge but directed that ...10/-

instead of full back wages only 50% of the back wages shall be paid. We may notice the fact that the Respondent died sometime in the year 2000, and therefore, the direction was to pay 50% of the back wages from the date of termination till the date of superannuation or till the date of death whichever was earlier.

We are of the view that this Appeal should be allowed. The Labour Court recorded two crucial findings of fact namely, that the Respondent was engaged as a causal labourer in connection with project work, and secondly, that he had abandoned his service and the allegation that he was prevented from joining his duties on 1.11.1977 was not true. These were findings of fact recorded by the Tribunal on the basis of evidence on record. The muster roll, no doubt, supported the case of the Appellant that after 1.11.1977 he did not report for duty. We cannot lose sight of the fact that

thereafter till 4.4.1979 the respondent did nothing to assert his right of reinstatement. The delay of a year and 5 months in issuing a notice appears to us to be significant. Apart from this no evidence was led by the Respondent-Workman that he had made any effort to seek reinstatement or complained against ...11/-

the action of the Management to anyone. There is no material whatsoever to suggest that he had made a grievance about it before any authority or before the Workers' Union.

We have further found that the learned Judge, whose finding was affirmed by the Division Bench, fell into an error in thinking that the reply given by the Appellant to the notice of the Respondent justified the order of termination. As we have noticed earlier, the learned Judge mis-read the reply given by the appellant-Railways in which it was clearly asserted that the Respondent had abandoned his service and therefore, in terms of the Rules his name was deleted from the muster roll. There is nothing in the reply to the notice which is even suggestive of the fact that the appellant accepted the fact that the services of the Respondent were terminated, or that there was justification for such termination. The finding of the Tribunal therefore, did not suffer from the vice of perversity or unreasonableness. In fact the High Court was in error in interfering with the findings of fact recorded by the Tribunal.

...12/-

We therefore, allow this appeal, set aside the impugned judgment and order of the High Court dated June 15, 2002 and restore the award of the Industrial Tribunal-cum-Labour Court, Bangalore dated June 28, 1991.

No order as to costs.