

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4055 OF 2001

NAGANATH & ORS.

Appellant (s)

VERSUS

COMMON CADRE COMMITTEE, KARNATAKA & ORS.

Respondent(s)

(With office report)

Date: 28/07/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s)

Mr. Naveen R. Nath,Adv.

For Respondent(s)

Mr. Sanjay R. Hegde,Adv.

Mr. Anil Kumar Mishra,Adv.

Mr. A. Rohen Singh,Adv.

Mr. Rajesh Mahale,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed to the extent indicated i

n

the signed judgment. No costs.

(Neena Verma)

(Vijay

Aggarwal)

Court Master

Court Ma

ster

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4055 OF 2001

Naganath and Ors.

...Appellant

Versus

The Common Cadre Committee and Ors.

...Respondents

O R D E R

Heard learned counsel for the parties.

Challenge in this appeal is to a judgment rendered by a Division

Bench of the High Court of Karnataka holding that the appellants before it were

not workmen and with that conclusion, setting aside the order of learned Single

Judge, who had directed the Labour Court to adjudicate the basic issue as to

whether the writ petitioners, appellants herein were workmen and whether the Industrial Disputes Act, 1947 (in short 'the Act') was applicable to their case. The writ petitioners-appellants in the present appeal had raised a dispute in terms of Section 33-C(2) of the Act claiming certain benefits. The Labour Court, Gulbarga, by Award dated 15.03.1997 held that the application of the 166 applicants was to be allowed. They were entitled to minimum bonus @ 33% from the date of their appointment on the basis of annual wages from the Common Cadre Committee, Bidar represented by the President of the District Central Cooperative Bank Limited. Several writ petitions were filed which were heard by a learned Single Judge, who disposed of the writ petitions by a common order dated 26th May 1998. He was of the view that the basic issue was to whether the claimants were workmen and same was to be adjudicated by the Labour Court and, therefore, remanded the matter to the Labour Court permitting the parties to place materials in support of their respective stands. It is to be noted that the Bank had questioned the claim of the claimants taking the stand that they were either workmen nor entitled to any relief under the Act.

Appeals were preferred by the claimants and their appeal was numbered as Writ Appeal No.5084 of 1998. Another writ appeal was filed by the Common Cadre Committee which was numbered as Writ Appeal No.4390 of 1999. The appeal filed by the Common Cadre Committee was dismissed on the ground of limitation as well as lack of merits by order dated 05.02.1999. Writ Appeal

No.5084 of 1998 was disposed of subsequently by order dated 26th September, 2000 which is the impugned judgment.

The Division Bench held that the claimants were not workmen. Since the High Court had undertaken the exercise whether they were workmen, there was no necessity for a remand, as done by learned Single Judge.

Stand of the appellants essentially is that the challenge made by the Common Cadre Committee before the High Court questioning their claim to be workmen was, in fact, dismissed in Writ Appeal No.4390 of 1998 which was much earlier to the impugned judgment, and order of remand made by learned Single Judge was maintained. Without taking note of the same, the High Court, by the impugned judgment, went into questions or issues which were never raised by the claimants. In fact, in their appeal, the High Court could not have recorded a finding contrary to what had been decided in their favour, particularly, when the appeal filed by the Common Cadre Committee was earlier dismissed. We find substance in this plea. Unfortunately, there is no reference to the order passed in writ appeal No.4390 of 1998 in the impugned judgment. What would have been the effect of it, has not been considered by the High Court. Furthermore, in the appeal filed by the claimants, the High Court was not justified in upsetting the findings which were recorded in its favour. Learned Single Judge had rightly remitted the matter to the Labour Court to record a finding on the basis issue as to whether the claimants were workmen and consequentially whether any relief

could be available to them under the Act.

In the circumstances, we set aside the order of the Division Bench in writ appeal No.5084 of 1998. The order of learned Single Judge remanding the matter to the Labour Court stands restored. Since the matter is pending since long, it would be appropriate if the Labour Court, after permitting parties to place materials in support of their stands, decides the matter as early as practicable. We make it clear that we have not expressed any opinion on the basic issue as to whether the claimants are workmen, as claimed by them.

The appeal is, accordingly, allowed to the aforesaid extent. No costs.

.....J.

(ARIJIT PASAYAT)

J.

.....
(H.K. SEMA)

New Delhi,
July 28, 2005.