

d;

SLP(C)No. 12278 OF 2000

ITEM No.203

Court No. 6

SECTION XV  
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.12278/2000

(From the judgement and order dated 25/11/1999 in WA 4939/99  
of The HIGH COURT OF KARNATAKA AT BANGALORE)

ASSISTANT EXECUTIVE ENGINEER, KARNATAKA

Petitioner (s)

VERSUS

SRI SHIVALINGA

Respondent (s)

(With prayer for interim relief and office report)  
( With Appln(s). for c/delay in filing SLP )  
( For Final Disposal )

Date : 05/10/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s)

Mr. Sanjay R. Hegde,Adv.

For Respondent (s)

V.N. Raghupathy,Adv.

UPON hearing counsel the Court made the following

O R D E R

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Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed  
order.

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Charanjit

[ Om Prakash ]  
Court Master

[ Signed order is placed on the file ]

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7028/2001@@  
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( arising out of SLP(C) 12278/2000 )

Assistant Executive Engineer, .. Appellant  
Karnataka

Vs.

Sri Shivalinga .. Respondent

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Delay condoned.  
Leave granted.

This appeal is directed against an order made by the High Court in which an order made by the Labour Court was challenged.

The Labour Court noticed that the services of the respondent were terminated on 25.5.1985. He approached the Labour Officer on 17.3.1995 and thereafter reference was made by the Government to the Labour Court. There is a delay of more than 9 years in approaching the Labour Officer. The Labour Court noticed that it would be impossible to maintain records for such a long period and place them before the Labour Court. In those circumstances, it found that the delay of nine years would be fatal to the case and on that basis rejected the reference against which the writ petition was filed.

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The learned Single Judge allowed the Writ Petition and stated that the delay in approaching the Labour Court would not be fatal to the case and the ends of justice would be met by reinstatement with continuity of service and 50% back wages. The matter was carried in appeal by the appellant and that appeal was partly allowed by stating that though the order regarding reinstatement was to be maintained, that portion of the order which granted back wages was to be deleted. It is against that order this appeal is filed.

Learned Counsel for the Appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the respondent relied upon two decisions of this Court in Ajaib Singh Vs. The@@

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Sirhind Co-Operative Marketing-cum- Processing Service@@  
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Society Ltd. & Anr.- 1999 AIR SCW 1051 and in Sapan@@  
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Kumar Pandit Vs. U.P. State Electricity Board & Ors.-@@  
CC  
2001 (6) SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or

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the Industrial Tribunal can properly mould the relief by refusing or awarding part payment of back wages. It is no doubt true that in appropriate cases as held by this Court in aforesaid two decisions such steps could be taken by the Labour Court or the Industrial Tribunal as the case may be, where there is no such dispute as to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter we think two decisions relied upon by the learned counsel have no application to the case on hand. Proceeding on the facts of the case we think the High Court is wrong in having interfered with the award made by the Tribunal. The order made by the High Court in

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Writ proceedings, therefore, shall stand set aside and the award made by the Labour Court shall stand restored. The appeal is allowed accordingly.

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[ S. RAJENDRA BABU ]@@  
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[ DORAISWAMY RAJU ]@@  
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New Delhi,@@  
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October 5, 2001 @@  
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