

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No. 4390 OF 2025**

(Arising out of Special Leave to Appeal (C) No. 4303 of 2022)

**KV PATHROSE**

**...APPELLANT (S)**

**VERSUS**

**THE DIVISIONAL CONTROLLER**

**KSRTC**

**...RESPONDENT**

**ORDER**

1. Leave granted.
2. This appeal is directed against the judgment and order of the High Court of Karnataka<sup>1</sup> at Bengaluru dated 02.09.2021 passed in Writ Appeal No. 1046 of 2014 whereby (a) the order of the learned Single Judge dated 25.02.2014 was set aside to the extent it granted the benefit of continuity of service for the purpose of terminal benefits to the appellant and (b) the award of

---

<sup>1</sup> The High Court

the Labour Court dated 28.03.2011 in Reference No.17 of 2009 was quashed.

### **Background Facts**

**3.** Briefly stated the facts giving rise to the instant appeal are:

(i) The appellant was a workman under the respondent-corporation. On 28.02.1998 his services were terminated on ground of absence from duty. Aggrieved by the order of termination, the appellant preferred a departmental appeal before the appellate authority. When the appeal was not addressed, the appellant raised an industrial dispute which, on failure of the conciliation proceeding, was referred to the Labour Court, Bengaluru for adjudication under the Industrial Disputes Act 1947<sup>2</sup> wherein it was registered as reference no. 17 of 2009.

(ii) One of the issues framed by the Labour Court was whether the reference is bad on account

---

<sup>2</sup> ID Act

of inordinate delay of about 10 years. Answering the said issue in the negative, the Labour Court observed that the appellant had promptly preferred a departmental appeal and when it was not decided he raised an industrial dispute, therefore the delay was sufficiently explained. Claim of the appellant that departmental appeal was filed was accepted for the following reasons: (a) the copy of the appeal bore an endorsement of its presentation before the appellate authority; (b) the endorsement was not challenged by management as one not made by a person working in that office; and (c) the management did not produce the appeal register to demonstrate that no such appeal was presented.

(iii) The Labour Court had also framed a preliminary issue regarding validity of the enquiry which formed basis of the order of termination. This issue was decided in favour

of the workman (i.e., the appellant) *vide* order dated 29.09.2010. The Labour Court held that the domestic inquiry was not fair and proper and therefore it gave opportunity to the management to prove the charges levelled against the workman.

- (iv) Consequently, the management produced its witnesses to prove the charge of unauthorized absence from duty levelled against the appellant and the appellant produced evidence to show that absence from duty was not willful and that there were medical reasons for it and leave applications were submitted by the appellant.
- (v) After considering the evidence led by the parties, the Labour Court held that the workman had medical issues and he had applied for leave, therefore his absence could not be considered willful and unauthorized. Having held so, the following award was passed:

“Petition under Section – 10 (l)(c)&(d) of the Industrial Disputes Act, 1947 so referred to the court by the Labour Department in the matter of First Party (sic) the Second Party Management above named, is allowed and thereby order dated 28.02.1998 passed by the Second Party Management is set aside and by virtue of the same the Second Party Management is directed to reinstate the First Party workman into service, to the same old post, which he was holding at the time of dismissal, within one month from the date on which the award becomes enforceable, with continuity of service, without back wages and without any consequential monetary benefits, thereof and denial of back wages and consequential benefits shall be treated as punishment by invoking Section 11-A of the Industrial Disputes Act, 1947”.

- (vi) Aggrieved by the Labour Court award, the respondent filed a petition under Article 227 of the Constitution of India before learned Single Judge of the High Court. The Learned Single Judge, *vide* order dated 25.02.2014, partly allowed the writ petition. The operative portion of the order passed by the learned Single Judge reads thus:

“In the result, this petition is allowed in part. The award of the Labour Court, insofar as it relates to extending

continuity of service to the workman is modified disentitling the workman to continuity of service except for terminal benefits and in all other respects remains unaltered”.

- (vii) Reason for the aforesaid modification in the award is found in paragraph 8 of the judgment of the learned Single Judge, which is extracted below:

“Since there is a delay of nine years in invoking the conciliation machinery under the Act, seeking a reference of the industrial dispute for adjudication, undoubtedly, the workman is disentitled to continuity of service, except for terminal benefits”.

- (viii) The order of the learned Single Judge dated 25.02.2014 was challenged by the respondent-management before the Division Bench of the High Court by way of a writ appeal. However, no appeal/ cross-appeal was filed by the appellant.

- (ix) The Division Bench, *vide* impugned judgment and order, allowed the writ appeal in the following terms:

“ Writ Appeal is allowed; and Order dated 25.02.2014 passed in

W.P.No.16083/2012 is set-aside so far as granting continuity of service for the purpose of terminal benefits. Resultantly, writ appeal stands fully allowed and the judgment and award dated 28.03.2011 passed by III Additional Labour Court, Bengaluru, in Ref.No. 17/2009 is quashed. No costs”.

**(x)** Reasons for allowing the writ appeal are found in paragraphs 6 to 8 of the High Court’s judgment, which are extracted below:

“6. Respondent-workman was dismissed on 28.02.1998. He has initiated conciliation proceedings in the year 2009. The Hon’ble Single Judge has held in Para 8 of the impugned order that in view of delay of nine years in invoking the conciliation machinery the workman disentitled for continuity of service. However, he has allowed the writ petition in part modifying the award passed by the Labour Court and granted continuity of service so far as terminal benefits are concerned. Respondent has remained complacent for nine years and initiated conciliation proceedings.

7. It was argued by Shri Shekar that petitioner has worked between 11.06.2012 and 29.02.2020. Therefore, workman’s case may be considered for continuity of service. In reply, Smt. Renuka submitted that respondent was taken on duty pursuant to direction of the Court and he has remained in service due to pendency of the writ appeal. She argued that wages have been paid to the respondent for the said

period and terminal benefits have been settled.

8. Admittedly, appellant is the State-owned Road Transport Corporation and runs on public money. Awarding terminal benefits by giving continuity of service amounts to placing premium on the lapses on the part of the workman. Public money cannot be permitted to be used irrationally. Therefore, this appeal merits consideration and hence, the following...”

4. We have heard learned counsel for the parties and have perused the records.

**Submissions on behalf of appellant**

5. The learned counsel for the appellant submitted that there is no period of limitation prescribed for raising an industrial dispute. Explanation for the delay was there on record, therefore, there was no justification for the Division Bench to set aside the order of the Single Judge and quash the award particularly when clear finding was recorded by the Labour Court as regards sufficient explanation for the delay. In fact, finding of the Labour Court as well as the writ court in that regard was not even discussed. The Division Bench failed to consider that departmental appeal of the appellant was not

addressed by the appellate authority, therefore, after waiting for a reasonable time, the industrial dispute was raised, which could not have been thrown out on ground of laches. Further, the Labour Court had found enquiry bad in law and after giving opportunity to lead evidence, it found charge of unauthorized absence not substantiated. In these circumstances, if the appellant had not served for a long period, the benefit of continuity of service could not have been denied to him at least for the purposes of terminal benefits as was directed by the learned Single Judge of the High Court. The learned counsel therefore urged that the impugned order be set aside, and the award be restored.

### **Submissions on behalf of respondent**

6. Per contra, the learned counsel for the respondent submitted that the impugned order is correct in law because the appellant had barely worked for about three years before termination of his service and the reference was made after almost 9 years of termination, therefore, by that time, no dispute survived. This inordinate delay was fatal to the reference.

## **Analysis**

- 7.** Before we proceed to address the rival submissions we must remind ourselves of the well-settled legal position that Limitation Act, 1963 has no application to reference made by appropriate Government to Labour Court/ Industrial Tribunal for adjudication of existing industrial dispute though delay could be a factor in determining the relief to be granted to the workman.<sup>3</sup>
- 8.** In the instant case, the termination from service was a punitive order based on a charge of unauthorized absence from duty. The same was passed after holding an enquiry, which was found faulty by the Labour Court. This finding of the Labour Court has not been disturbed. In fact, the Labour Court thereafter gave opportunity to the management to prove the charges, which they failed to prove as the workman had medical reasons for his absence and had also applied for leave. In these circumstances, it cannot be said that the workman willfully absented himself from work.

---

<sup>3</sup> **See:** (a) Raghbir Singh v. General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301; (b) Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohan Lal, (2013) 14 SCC 543

**9.** As far as the delay in making the reference is concerned, the Labour Court found that a departmental appeal was filed by the appellant which remained unaddressed by the appellate authority. This finding was not disturbed by the High Court. Once such is the position, the workman was justified in awaiting decision on his appeal and when the same did not come he raised an industrial dispute. Hence, the workman-appellant cannot be penalized for the inaction on the part of the management in disposing his appeal. In these circumstances, the reference was not invalid on ground of delay and, therefore, in our view, the impugned order of the Division Bench is not legally justified.

**10.** On the question of what relief the appellant is entitled to, we must notice that the Labour Court justifiably denied back wages, which, in ordinary course, would have been available to him<sup>4</sup>, because there was delay in raising the dispute and the consequential reference. Moreover, the appellant did not challenge the award,

---

<sup>4</sup> Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324, paragraph 38

therefore he cannot now question denial of back wages in these proceedings.

**11.** Besides above, the learned Single Judge had modified the award to the extent that the benefit of continuity of service was confined to terminal benefits. Against the order of learned Single Judge, the appellant neither filed an appeal nor a cross-objection. Thus, the order of the learned Single Judge attained finality qua the appellant. In these circumstances, we are of the view that the appropriate course for us would be to restore the order of the learned Single Judge of the High Court.

**12.** At this stage, we may notice to reject another submission of the respondent's counsel, which is, that reinstatement ought not to have been allowed; instead, lump sum compensation ought to have been provided as there was inordinate delay in making the reference and the workman had worked for only few years. In our view, this submission might have been acceptable if it had been a case of termination simpliciter or retrenchment. Here, the termination was punitive and, that too, after enquiry, which was found faulty. The Labour Court after

receiving evidence found the charge not proved. In cases of wrongful punitive termination, the normal rule is reinstatement with benefit of continuity of service, though back wages may be denied dependent on facts of a case. Here, the Labour Court award declared the termination illegal and directed for reinstatement with benefit of continuity in service, though back wages were denied on ground of delay in making the reference.

- 13.** For the reasons recorded above, the appeal is allowed. The impugned judgment and order of the Division Bench of the High Court dated 02.09.2021 is set aside and the Labour Court award to the extent it was modified by the Learned Single Judge is restored.
- 14.** Pending application(s), if any, stand disposed of.

.....**J.**  
**(Manoj Misra)**

.....**J.**  
**(K.V. Viswanathan)**

**New Delhi;**  
**March 26, 2025**