

(2006) 02 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 25927 of 2005

Akhila Bharatha Billavara Union and Another

APPELLANT

Vs

Smt. Shakunthala

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 8

Citation : (2006) 109 FLR 997 : (2006) ILR (Kar) 1523 : (2006) 2 KarLJ 459 : (2006) 2 KCCR 889

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Somashekhar, for S.N. Murthy Associates, for the Appellant; S. Ganesh Shenoy, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petition by an employer who is complaining that a certain judgment and award which the petitioner suffered before the Educational Appellate Tribunal, in exercise of Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 by its judgment dated 17-2-2000 (copy at Annexure-D), while being executed, the executing Court, in terms of the order dated 20-10-2005, a copy of which is produced at Annexure-A to the writ petition, has gone beyond what was provided under the judgment and award passed by the Tribunal itself and therefore this writ petition, seeking for interference and to restrain the executing Court.

2. The respondent, who had been terminated from service came to be reinstated in terms of the judgment and award in the following terms:

The appeal is allowed.

The order of termination of the appellant dated 10-6-1992 is set aside.

The respondents are directed to reinstate the appellant as Lecturer in Political Science and to pay salary to her from 1-6-1992.

3. The executing Court while giving effect to this judgment and award has directed the petitioner to pay the salary of the respondent on par with the salary drawn by a colleague who was in service on the date the respondent's services were terminated and also having fixed certain emoluments for the period after 5-3-2003 upto 13-11-2005 at the rate of 50% of the salary payable for this period, are the two aspects which are sought to be projected as an action by the executing Court which travels beyond the judgment and award, and on such premise the present writ petition.

4. Submission of Sri Somashekar, learned Counsel for the petitioner is that the executing Court could have at the best, fixed the salary for the period from 1-6-1992 upto 5-4-2003, at the rate the respondent was drawing salary as on 1-6-1992 at the fixed rate and not on par with a colleague, who perhaps continued in service and earned increments etc., and further that the Tribunal had no competence to award any salary or wages for the period on and after 5-4-2003 upto 13-11-2005, the period which is not the subject-matter of the order of the Tribunal in terms of its judgment and award.

5. In support of such contention, learned Counsel for the petitioner submits that it is well-settled principle that the executing Court cannot travel beyond the judgment and award/decreed of the Court passing the decree; that it is a well-settled position in law as emphasised by the judgments of the Supreme Court that the concept of back wages as a definite meaning concept and back wages are awarded only as a consequential benefit and until and unless it has been so given, the executing Court has no authority or function to infer that the back wages had been awarded, as has been done by the executing Court under the order impugned in this writ petition. Sri Somashekhar, learned Counsel for the petitioner relied upon the following decisions of the Supreme Court in support of this argument:

(1) Rameshwar Das Gupta Vs. State of U.P. and Another, ;

(2) State of M.P. Vs. Mangilal Sharma, ;

(3) Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, ; and

(4) A.P.S.R.T.C. and Another Vs. S. Narsagoud, .

6. Learned Counsel for the petitioner also contends that though the petitioner in fact had reinstated respondent into service in terms of its communication dated 5-4-2003, the respondent had not resumed the work, but on the other hand went on disputing one aspect or the other and because of this, after the respondent was notified yet again and it is only on and after November 2005 that the respondent has been working and at any rate there is no justification for the respondent not to have worked for the period from 5-4-2003 upto 13-11-2005 and assuming such claim has any merit in law, nevertheless such a claim cannot be the subject-matter of the proceedings before the executing Court while

executing the judgment and award of the Tribunal and therefore to this extent awarding of wages in favour of the respondent for the period on and after 5-4-2003 upto 13-11-2005 is without jurisdiction and calls for interference.

7. The respondent having put on notice has entered appearance through Counsel. Submission of Sri S. Ganesh Shenoy, learned Counsel for the respondent, is that the executing Court has quantified the emoluments payable to the respondent only in terms of the judgment and award of the Tribunal; that the Tribunal had indicated that the respondent was entitled to, on being reinstated, to be paid the salary from 1-6-1992 and if that was so, it cannot be urged that the Tribunal had not awarded salary for this period, though the word "back wage" is not used, the word "back wage" is not used in the present context, but what is important is what is awarded by the Tribunal in favour of the respondent, which is clearly the salary for the past period.

8. It is also the submission of learned Counsel for the respondent that for the purpose of computing this salary, the Tribunal had taken the salary drawn by a colleague who was serving in the institution during the relevant period and it cannot be said that the Tribunal has exceeded its jurisdiction.

9. Insofar as the second limb of submission of the learned Counsel for the petitioner, it is the submission of Sri Shenoy that the Tribunal was necessitated to look into the payment of salary for the period between 5-4-2003 upto 13-11-2005, as the petitioner itself had prevented the respondent from performing her work; that the petitioner did not allow the respondent to report to duty etc.; that till the petitioner allowed the respondent to work in terms of the order passed by the Tribunal, that part of the order had not been given effect to and therefore the executing Court has jurisdiction for this period also and it was within the domain of the executing Court to quantify the same.

10. Insofar as the first limb of argument of the learned Counsel for the petitioner is concerned, there cannot be any doubt that the Tribunal had in terms of its order dated 17-2-2000 did award salary for the past period in favour of the respondent and such past period was from 1-6-1992. Non-use of the words "back wages" or "consequential benefits" cannot make any difference particularly when the order is more explicit by saying that the petitioner was liable to pay salary from 1-6-1992. The decisions relied upon by the learned Counsel for the petitioner cannot in any way have any bearing on the facts and circumstances of the case to conclude that the course of action taken by the executing Court for quantifying the salary payable for the period 1-6-1992 upto 5-4-2003, to be that as was paid on par to any other colleague who had worked in the post held by the respondent during the relevant period is one without jurisdiction.

11. In view of this admitted factual position and the settled legal position, the duty of the executing Court was to ensure that the respondent was paid the salary upto the date of reinstatement i.e., 5-4-2003. I do not think the method

adopted by the executing Court for quantifying the salary during the period from 1-6-1992 to 5-4-2003 is either not warranted in terms of the judgment and award dated 17-2-2000 nor is it beyond the jurisdiction of the executing Court. In fact it was the function of the executing Court to workout the same.

12. However, insofar as the quantification of the amount payable on and after 5-4-2003 upto 13-11-2005 when both the parties admitted the respondent not only reported for duty but also working much subsequent to this date, is concerned, I am of the view that it was not within the domain of the execution Court to examine the emoluments payable for this part of the period, as it is an action subsequent to the period covered by the judgment and award, particularly as when once the respondent is reinstated into service, when the reinstatement part of the judgment is complied nothing more is required thereafter. There is nothing else for the executing Court to execute that part of the order any further. If in fact as contended by the learned Counsel for the respondent, the respondent had been prevented from doing work notwithstanding the order dated 5-4-2003, it perhaps could have given separate cause of action to the respondent, which could have been agitated separately but not in the guise of executing the judgment and award dated 17-2-2000. To this extent the executing Court if has embarked upon to quantify any emoluments payable to the respondent for the period 5-4-2003 upto 13-11-2005 that is an action without jurisdiction, beyond the scope of the judgment and award and therefore without jurisdiction and cannot be sustained.

13. To this extent the order of the executing Court requires to be quashed. A writ of certiorari issued for such purpose. In respect of all other aspects, the order of the executing Court is left in tact.

14. It is made clear that insofar as the emoluments payable for the period on and after 5-4-2003 upto 13-11-2005, the date of joining duty or permitting to join duty is a disputed aspect, it is open for the respondent to agitate and workout for the same in any other manner known to law and not by seeking execution of the judgment and award dated 17-2-2000.

15. Writ petition is allowed in part to the extent indicated above. Rule issued and made absolute. Parties to bear their respective costs.