(2002) 11 KAR CK 0035

In the Karnataka High Court

Case No : Civil Revision Petition No. 235 of 2001

Badavara Ballaga Gandhi Ashrama APPELLANT

Vs

N. Gowramma RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2)
Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978 — Rule 5

Citation : (2003) 3 KCCR 1864

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : H. Subramanya Jois, for Vagdevi Associates, for the Appellant; S. Vasantha Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The Petitioner is an educational institution. It has filed this revision petition against the order passed by the Executing Court dismissing the application filed under Order 1, Rule 10(2) CPC over-ruling the objections by it and directing payment of the amount claimed in the execution case by the Respondent.

2. The execution case is filed by the Respondent to execute the judgment and award dated 27.10.1988 passed by the Educational Appellate Tribunal in M.A (EAT) No. 22 of 1986. In the execution case the Respondent claimed a sum of Rs. 3,63,192/- towards arrears of salary consequent upon her reinstatement pursuant to the Award. The claim was resisted by the Petitioner on the ground that the Respondent was appointed temporarily on a consolidated salary of Rs. 200/- which was raised to Rs. 250/- per month; that her appointment was not approved by the Government and hence she cannot claim the salary on par with the permanent employees. The Petitioner also filed an application for impleading the Director of Public Instruction as Petitioner being aided institution, the salary

is being drawn from the Government and hence the proposed Respondent was a necessary and proper party. the Executing Court rejected the application and over-ruled the objections raised by the Petitioner. That made the Petitioner to file this revisions petition.

3. Mr. H. Shubramanya Jois, learned Senior Counsel for the Petitioner vehemently argued that Rule 5 of the Karnataka Private Educational Institutions Rules, 1978 has no application to the present case. He relied upon the decisions reported in A.I.R 1990 SC 415 : A.I.R 1987 SC 111 : A.I.R 2001 SC 2836 : A.I.R 2002 SC 1313. According to Mr. Jois, the rejection of impleading application was not proper as the Petitioner being an aided institution, the amount, if any, payable to the Respondent should be paid from the amount drawn under grant-in-aid.

4. Per contra, Mr. S. Vasantha Kumar, learned Counsel for the Respondent argued justifying the order under revision placing reliance upon the decisions reported in 1998 (3) Kar. L.J. 293 : I.L.R 1985 Kar. 3779. The learned Counsel contends that since the Petitioner did not file the impleading application before the Tribunal, it has waived its right and hence the Executing Court has rightly rejected the impleading application.

5. The operative portion of the order passed by the Tribunal in the Appeal filed by Respondent is quoted by the Executing Court and it reads thus:

... The impugned order in question is set-aside. The Respondent is directed to reinstate the Appellant into service as before and further the Respondent is directed to give all the consequential benefits including the arrears of salary etc., as applicable to her during the relevant period. The Appellant is entitled to the costs of this appeal ....

From the above it is clear that the Petitioner was directed to reinstate the Respondent and to give all the consequential benefits including arrears of salary etc., C.R.P. No. 38 of 1989 field against the aforesaid judgment and Award of the Tribunal was dismissed by this Court on 18.10.1993, thereby the order of the Tribunal became final. Therefore, the Decree holder filed execution petition for implementation of the Judgment and Award passed by the Tribunal in so far as back salary and other consequential benefits as the same was not paid to her eventhough she was reinstated. According to the Petitioner, she is entitled to the salary which was drawn by her prior to the order of termination passed by the Petitioner. The correctness of the same has to be tested with reference to the provisions of the Karnataka Private Educational Institutions Act, and Rules of 1978 and the operation portion of the judgment and Award.

6. The contention of the learned Senior Counsel on behalf of the Petitioner is that Respondent is temporary employee and her appointment is not approved, cannot be accepted. The order under revision reveals that the Tribunal has considered the contention and answered in favour of the Respondent/employee. Since the findings so recorded by the Tribunal became final, rightly the Executing Court has

declined to consider the same contention. Therefore, this Court need not go into the same once again.

7. The Respondent claimed the back salary payable in pursuant to the Judgment and Award on the approximate basis applicable to permanent employee. The Petitioner did not file objections to the same. In the case of S.S. Anand and Others Vs. The Management of Mahatma Gandhi Vidya Peeta (Regd.), Bangalore and Another, this Court has held that employees of private educational institutions are entitled to same scales of pay and privileges as are available to their counterparts in Government educational institutions. It is further held that Rule 5 of Karnataka Private Educational Institutions Rules, 1978 squarely apply to the case of the Respondent/employee. Hence, the Petitioner is entitled to the same pay scale as that of her counter-parts in Government educational institutions. The Executing Court rightly directed the Petitioner for payment of the claim made by the Respondent towards the back salary and other monetary benefits on the basis of the Judgment and Award passed by the Tribunal.

8. The rejection of impleading application by the Executing Court was justified for the following reasons. The lis is between the Petitioner and the Government to claim the amount. In the latter decision cited by the learned Counsel for the Respondent, which is reported in ILR 1985 Kar. 3779 mentioned at paragraph 4 of this order, it is held that the principal employer is primarily liable to pay the salary. That being so, it is for the Petitioner which has to comply with the direction issued for payment of salary. The Director of Public Instructions is neither a necessary nor a proper party to the execution proceedings for the reason that the Executing Court cannot go behind the Judgment and Award of the Tribunal and pass orders, even if it is impleaded and therefore it has rightly rejected the application. It has also observed that the Petitioner may prepare a bill and submit to Government towards disbursement of the amount payable to the Respondent/employee and get it reimbursed from it.

9. For the reasons stated above, the revision petition is dismissed.

10. Before parting with the case, it should be observed that having regard to the nature of the reliefs granted by the Tribunal in favour of the Respondent, the interim order to pay Rs. 600/- per month to the Petitioner, the nature of duties performed by the Respondent and the time consumed by the litigation, parties took time to settle the matter in relation to quantum of back-salary. But the Petitioner was not willing to come forward to settle the matter with reasonable offer, eventhough the Respondent/employee was fair and reasonable regarding settlement of the claim.

