

(2013) 04 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeal No. 2948 of 2013 (Arising out of Special Leave Petition (C) No. 27031 of 2011) and Civil Appeal No. 2949 of 2013 (Arising out of Special Leave Petition (C) No. 27130 of 2011)

B.T. Krishnamurthy

APPELLANT

Vs

Sri Basaveswara Education Society and Others
Sri
Basaveswara Education Society and Another Vs T.D.
Viswanath and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 5 AD 87 : AIR 2013 SC 1787 : (2013) AIRSCW 2199 : (2013) 2 CGBCLJ 238 : (2013) 137 FLR 689 : (2013) 2 JLJR 354 : (2013) 6 JT 400 : (2013) 3 KarLJ 632 : (2013) LabIC 2684 : (2013) 3 PLJR 14 : (2013) 5 SCALE 449 : (2013) 4 SCC 490 : (2013) 2 SCC(L&S)

Hon'ble Judges : Surinder Singh Nijjar, J;M. Yusuf Eqbal, J

Bench : Division Bench

Advocate : P. Vishwanatha Shetty, P.S. Patwalia, C.M. Angadi, Vijay Kumar, Rameshwar Prasad Goyal, Bipin Kalappa, Krishma, Ajay Singh, Tushar Bakshi, N. Ganpathy, S.N. Bhat, D.P. Chaturvedi, N.P.S. Panwar, Ravi Panwar and V.N. Raghupathy, for the Appellant;

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Leave granted.

2. Since these two appeals arose out of the common judgment and order dated 11.07.2011 passed in Writ Appeal Nos. 1812 of 2006 and 1865 of 2006, the same have been heard and disposed of by this common judgment.

3. By the impugned judgment and order, a Division Bench of the Karnataka High Court dismissed the appeals and affirmed the order dated 20 of 2006 passed by a learned Single Judge in Writ Petition Nos. 52603 of 2003 and 54201 of 2003 and the order dated 03.12.2002 passed by the Education Appellate Tribunal in EAT No. 16 of 1996.

4. The facts of the case lie in a narrow compass:

5. Respondent No. 1 T.D. Viswanath, in Civil Appeal arising out SLP (C) No. 27130 of 2011 (in short Respondent No. 1) alleged to have been appointed as a Lecturer in Sri Basaveswara Junior College (in short, 'the college') run by Sri Basaveswara Education Society (in short, 'the Society'). According to the said Respondent No. 1, since the date of appointment i.e. 28.06.1990 he continuously worked as a Lecturer in the College run by the Society. It was alleged that all of a sudden on 22.07.1995 the Society/College issued oral directions directing Respondent No. 1 not to attend the College and take classes on the ground that his services have been terminated.

6. It appears that on 19.06.1995, the Society issued an advertisement in the newspaper inviting applications for appointment on the post of Lecturer in History in the said College. Pursuant to the said advertisement, Respondent No. 1 applied for the said post and was called for interview, but he was not selected and in his place one T.S. Malleshappa was selected for the said post. The said T.S. Malleshappa joined the said post of Lecturer, but within a year he left the service and joined M. Phil Course. Subsequently, the Society issued another advertisement dated 03.05.1996 inviting applications from eligible candidates for the post of Lecturer (History). Again after interview, one R. Siddegora was appointed as a Lecturer (History) for a period of two years. In the meantime, Respondent No. 1 filed a writ petition being No. 31770 of 1995 before the Karnataka High Court seeking a mandamus directing the Society of the College to reinstate him in service with all consequential benefits and further direction was sought not to make any appointment in his place. The said writ petition was dismissed on 29.10.1996 by the High Court on the ground of alternative remedy of appeal available before the Education Appellate Tribunal (in short, the 'Tribunal').

7. Respondent No. 1 thereafter filed an appeal before the Tribunal challenging his termination/removal from the post of Lecturer. Along with the said appeal, an application for condonation of delay was also filed. Pending appeal, the Tribunal passed interim order dated 17.12.1996, restraining the Society and the Principal of the College from appointing any person to the post of Lecturer.

8. In the year 1998, Director of Pre-University Education Board by communication dated 24.08.1998 asked the Society to fill up the remaining three posts from reserved category in order to obtain the approval for the teaching staff. Consequently, posts were advertised and one B.T. Krishnamurthy, who is Appellant in Civil Appeal arising out of the SLP No. 27031 of 2011 was appointed as Lecturer.

9. However, the Tribunal by order dated 03.12.2002, allowed the appeal filed by Respondent No. 1 and directed the Society to reinstate Respondent No. 1 in service w.e.f. 23.07.1995 and to pay him all pecuniary benefits w.e.f. 23.07.1995. The Tribunal further directed the Society to regularize the services

of Respondent No. 1. The Tribunal further declared the appointment of B.T. Krishnamurthy as illegal and improper.

10. Aggrieved by the aforesaid order of the Tribunal, the Appellants herein-the Society and B.T. Krishnamurthy filed separate writ petitions challenging the order passed by the Tribunal. The High Court dismissed the writ petitions by judgment and order dated 20.09.2006 and refused to interfere with the order passed by the Tribunal. The Society and B.T. Krishnamurthy then preferred intra-court appeals before the Division Bench of the High Court which were heard and dismissed in terms of the impugned judgment and order dated 11.07.2011. Hence, these appeals.

11. The case of Respondent No. 1, T.D. Viswanath before the Tribunal was that he was appointed to the post of Lecturer in History on 28.06.1990 against a clear vacancy available in the College. From the date of appointment, he was assigned the work for development of literacy and other curriculum. It was alleged that during the year 1995 when the institution was admitted for grant-in-aid by the Government he was working in the same institution. However on 22.07.1995, without any previous notice, the Appellant-institution called upon him and directed not to come for duty in future.

12. Respondent No. 1 first filed a writ petition before the Karnataka High Court, but the same was dismissed with liberty to him to approach the competent forum i.e. Education Appellate Tribunal. Accordingly, Respondent No. 1 approached the Tribunal and prayed for regularization of his services.

13. The case of the Appellant-institution was that the institution had not issued any appointment order either permanently or temporarily appointing him to work in the institution. As a matter of fact, Respondent No. 1 was allowed to serve the institution temporarily on the post of Lecturer purely on ad hoc basis. For the first time in the year 1995, several posts of Lecturers in the College were advertised. Pursuant to that, Respondent No. 1 T.D. Viswanath also applied for the post of Lecturer in History on 22.06.1995, but he was not selected for the said post,. Consequently, a writ petition was filed before the High Court and thereafter an appeal before the Tribunal seeking regularisation of his services.

14. The Tribunal proceeded on the basis of some entries made in different registers of the College and the certificate dated 27.04.1991 allegedly issued by the Principal of the College certifying that the Respondent T.D. Viswanath worked as part-time Lecturer in the institution from July 1990 to March 1991. The Tribunal also noticed the certificate said to have been issued on 22.07.1995 certifying that T.D. Viswanath was working as Lecturer in History in the College on part time temporary basis. In the prospectus of the College for the years 1992-93 and 1993-94 the name of Respondent finds place as a Lecturer. The Tribunal further noticed the relevant provisions of the Education Act and finally came to the conclusion that the Respondent was serving the College as temporary part-time Lecturer which is evident from the attendance register

maintained by the College. The Tribunal, therefore, held that even presuming that the Respondent was a temporary employee he was to be removed from service by passing appropriate orders and that by reason of the passage of time the Respondent acquired right for regularization in service. The Tribunal further held that Respondent No. 1 was in service till 22.07.1995 on which date he was asked not to come to College again. In that view of the matter, the Respondent was entitled to reinstatement retrospectively from that date. Finally, the Tribunal held that B.T. Krishnamurthy cannot be allowed to occupy the vacancy and inasmuch as his appointment was illegal and it is for the management to absorb him in any other subject. According to the Tribunal, the appointment of B.T. Krishnamurthy has to be held as illegal and improper. On these findings, the Tribunal passed the following order:

The appeal filed by the Appellant stands allowed. The Respondent No. 1 and 3 are directed to reinstate the Appellant in service from 23.7.1995. The Appellant will be entitled to all service and pecuniary benefits attached to service. However, the management shall pay to him retrospectively from 23.7.1995 salary in the scale of pay that was being paid to him and his services shall be regularized and he shall be paid salary at the Government scale of pay admissible to the employee of that cadre.

In view of this order, the appointment of Shri B.T. Krishnamurthy is held to be illegal and improper and therefore the management i.e. Respondents 1 and 3 are required to take consequential action to comply with this order.

However, it is observed that in case B.T. Krishnamurthy could be absorbed as a lecturer in any other subject in the institution. The management shall explore all opportunity to continue his employment.

As the consequence of this order as services of Shri B.T. Krishnamurthy will stand terminated therefore I feel it is appropriate to grant two months time to the management to do the needful.

In the circumstances, there is no order to costs.

Pronounced in open Court by dictating to the judgment-writer on this 3rd day of December 2002, then transcribed, computerized and print out taken by him, and after correction, signed by me.

15. The aforesaid order and award of the Tribunal was challenged by both the Appellants herein namely, the Society and B.T. Krishnamurthy before the High Court. The learned Single Judge without analyzing the finding recorded by the Tribunal dismissed both the writ petitions on 20.09.2006. Para 8 and 9 of the order passed by the learned single Judge is as under:

The tribunal, having arrived at findings of fact on an elaborate consideration of the pleadings and material placed before it, it cannot be said that it has committed an error which would warrant interference by this Court in its writ jurisdiction. I do not find any ground for interference and though an argument is

canvassed as regards the appeal having been entertained without condoning the delay in the first instance, neither of the Petitioners have sought to raise any such ground in the petitions and hence, it would not warrant consideration. In any event, the tribunal having proceeded to pass an award after taking into consideration that the question of limitation was kept open and having rendered a positive order in favour of the Respondent No. 4, it is to be deemed that the delay in filing the appeal was condoned.

Accordingly, I do not find any ground for interference. The petitions in W.P. No. 52603/2003 as well as W.P. No. 54201/2003 are hereby dismissed.

16. Both the Appellants preferred intra-court appeals before the Division Bench of the High Court against the order passed by the learned Single Judge dismissing the writ petitions. The Division Bench also proceeded on the basis that Respondent No. 1 worked as a History Lecturer from 28.06.1990 to 22.07.1995 pursuant to the Notification dated 26.05.1990. However, in the said notification nothing was mentioned that the appointment is made for the post of History Lecturer on part-time basis or temporary arrangement. The Division Bench also considered the fact that the State Government by its Notification dated 21.04.1995 had made it clear that the reservation policy of the State Government regarding appointment of teaching and non-teaching employees was to be left undisturbed. The Division Bench, however, not disputed the fact that neither appointment order nor termination letter was issued in the case of the Respondent No. 1. There was also no evidence to show that the appointment of Respondent No. 1 was temporary or on part-time. On the basis of those facts, the Division Bench refused to interfere with the order passed by the learned Single Judge.

17. We have heard Mr. P. Viswanatha Shetty and Mr. P.S. Patwalia, learned senior advocates appearing for the Appellants and also Mr. S.N. Bhat, learned Advocate appearing for the Respondents.

18. Mr. P. Viswanatha Shetty learned senior counsel at the very outset submitted that Appellant B.T. Krishnamurthy was appointed on reserved category and it has nothing to do with the other appointments made by the Society. Learned Counsel submitted that the Tribunal has committed serious error of law in setting aside the appointment of the Appellant. Learned Counsel further submitted that Respondent No. 1 T.D. Viswanath has failed to prove that he was regularly appointed in 1990 on the post of Lecturer in History. He did not even examine himself before the Tribunal. Learned Counsel further submitted that the Respondent No. 1 has even not challenged the appointments of Malleshappa and Siddegara made in the year 1995-1996. Nothing has been produced by Respondent No. 1 to show that he was appointed either permanently or temporarily on the post of Lecturer in the said college. In the absence of any such document, the Tribunal and also the High Court have committed serious illegality in directing reinstatement of Respondent No. 1 in service.

19. Mr. P.S. Patwalia, learned Senior Advocate appearing for the Society and the College, apart from the aforesaid submissions made by Mr. Shetty, submitted that in the year 1995 pursuant to the advertisements issued by the College for appointment of Lecturer, Respondent No. 1 participated in the selection process, but he was not found suitable for the said post and was not selected. The said selection was not challenged by Respondent No. 1. On the contrary, he approached the Tribunal after one and half years. Learned Counsel submitted that both the Tribunal and the High Court have not correctly appreciated the facts of the case and the law applicable thereto.

20. Mr. S.N. Bhat, learned advocate appearing for Respondent No. 1 T.D. Viswanath on the other hand, submitted that the findings recorded by the Tribunal are based on various documents and entries made in different registers maintained by the College and, therefore, the findings cannot be held to be perverse or without any basis. Learned Counsel submitted that the Tribunal also noticed the interpolation made in various registers of the College to make out a case that the said Respondent was not continuously working in the said College.

21. We have carefully considered the submissions made by the Learned Counsel appearing on either side.

22. Indisputably, the Respondent T.D. Viswanath, alleged to have worked on the post of Lecturer in History in the year 1990 and continued as such for a few years, but before his appointment neither the post was advertised nor any selection process was followed. No appointment letter was issued by the Society appointing him either permanently or temporarily in the said post. It is also not in dispute T.D. Vishwanath did not receive any letter of termination or relieving order from the Society. According to him, the Society orally directed him not to continue in the College.

23. It is also not in dispute that on 19.06.1995, the Society issued advertisement in the newspaper for appointment on the post of Lecturer in History and pursuant to that Respondent No. 1 along with other candidates participated in the interview conducted by the College. After the selection process and interview, Respondent No. 1 was not selected rather one T.S. Malleshappa was selected for the said post. The said Malleshappa joined and continued for about a year and thereafter he left service and joined M. Phil Course. Thereafter, the Society issued another advertisement dated 03.05.1996 inviting applications from eligible candidates for the post of lecturer and one R. Siddegora was appointed as Lecturer in History on probation for a period of two years. Curiously enough, Respondent No. 1 did not challenge the selection and appointment of the above-named two candidates, Malleshappa and Siddegora. Instead a writ petition was filed by the Respondent No. 1 seeking regularization of his services on the post of Lecturer in History with all consequential benefits. The Respondent No. 1 ultimately approached the Tribunal. As noticed above, the Tribunal on the basis of some entries made in the registers maintained by the College passed the impugned order for regularization of the services with all monetary benefits. It is

worth to mention here that the Tribunal although came to the conclusion that the certificate produced by Respondent No. 1 goes to show that he was in the College as temporary and part-time employee even then the Tribunal held that due to passage of time the Court will be justified in directing the College/Society to regularize his services. The Tribunal although directed regularization as mentioned hereinabove but in the subsequent paragraph the Tribunal further directed reinstatement of the Respondent in service. Para 43 of the order passed by the Tribunal is quoted herein below:

The other aspect is that the Appellant is out of service. The date of his retrenchment is shown as 22.7.1995, by the Appellant, whereas the management disputes that aspect. On the basis of the material discussed above, I am constrained to hold that the Appellant was in service till 22.7.1995, on which date he was asked not to come to the college again. Thus that become the material date for decision about his reinstatement. The Appellant will be entitled to reinstatement retrospectively from that date and as it is shown that such a situation was created due to acts of the management, the management cannot absolve itself from discharging its consequential liabilities. The consequential liabilities to pay are loss of pay to the Appellant from that date. Thus, the Appellant would also be entitled to reinstatement in service as a lecturer in history from 23.7.1995 and he will also be entitled to emoluments, which he was entitled to receive.

24. In our considered opinion, the Tribunal completely misdirected itself in passing such an order of regularisation and reinstatement in a case where the Respondent allegedly worked in the College as part-time Lecturer without any appointment letter and without any selection process. Since the Society never issued any letter of appointment a letter of termination was also not served upon the Respondent.

25. As stated above, in the absence of any appointment letter, issued in favour of the Respondent as he was temporary/part-time lecturer in the College, there cannot be any legitimate expectation for his continuing in the service. This was the reason that when in the years 1995 and 1996, two persons were appointed one after the other on the post of Lecturer in History, the Respondent did not challenge the said appointments. Even assuming that the Respondent was permitted to work in the College as part-time lecturer for some period, the action of the management of the college asking him to stop doing work cannot be held to be punitive. The termination simpliciter is not per se illegal and is not violative of principles of natural justice.

26. After giving our anxious consideration in the matter and analyzing the entire facts of the case, we are of the view that the impugned order passed by the Education Appellate Tribunal and the High Court cannot be sustained in law and are liable to be set aside.

27. For the reasons aforesaid, these appeals are allowed and the impugned

orders are set aside.