
(2002) 12 KAR CK 0059
In the Karnataka High Court
Case No : Regular First Appeal No. 78 of 2001

Dr. K.T. Shivaiah	Vs	APPELLANT
G. Puttaswamy Gowda and Another		RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2003) ILR (Kar) 2199

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Y. Rajendra Prasad, for the Respondent

Final Decision : Partly Allowed

Judgement

Gururajan, J.—This appeal is filed by one Dr. Shivaiah, party in person, challenging the judgment and decree dated 7.10.2002 in so far as rejection of declaration with regard to deemed continuance and with regard to denial of consequential benefits in terms of the judgment and decree.

2. Facts in brief as under;

Dr. Shivaiah, was appointed as Honorary Secretary on 24.1.1992 by the Karnataka State T.B. Association (for short "the association") in terms of a resolution. His appointment was ratified in the meeting held on 30.4.1992. He was carrying on his duties as per stipulations contained in the Rules and Regulations. An order was passed ordering termination of the services of the appellant by the association. Appellant challenged the same by way of seeking a declaration and an injunction. Respondents entered appearance. They contested the suit. They have stated that no relief can be granted to the plaintiff. Plaintiff's remedy if at all is only for damages. They wanted the suit to be dismissed. The learned Judge after evidence has passed the following order;

"The suit of the plaintiff is partly decreed with costs.

The impugned order bearing No. MHPW/H/N/8258 dated 25.9.1992 ratified by the second defendant association on 10.12.1992 is hereby declared as null and void.

The prayer of the plaintiff for declaration that he should be deemed to have continued in service as Honorary Secretary of the Association and is entitled to all consequential benefits till he hands over the charge of the association to the person who is duly appointed as per rule under Rule 19(a) of the defendant-2 association Rules, thereby enabling him to recover all the records, etc., forcibly seized by the agents of the first defendant from him and the same be handed over to his successor to avoid future contingency and embarrassment, is not maintainable in law and hence dismissed.

The parties to bear their own costs. Advocate's fee is fixed at Rs. 500/-."

This order is challenged in this appeal.

3. Appellant appears in person. He is, as on today, 76 years old. He took me through the pleadings to contend that the learned Judge has denied the declaration of reinstatement. His further case is that the learned Judge is not correct in denying consequential benefits. He has also narrated to me the treatment meted out to him after an order of this Court in MFA. Per contra, the defendants counsel took me through the orders to contend that the suit is rightly dismissed. The remedy if at all is only for damages. He also relies on the judgment of the Supreme Court in the case of INTEGRATED RURAL DEVELOPMENT AGENCY v. RAM PYARE PANDEY 1995 (3) SCC 495.

4. After hearing the learned Counsel and the party in person, I have perused the judgment and decree. The contention before the learned Judge was with regard to an order dated 25.9.1992 passed by the association against the plaintiff/appellant. Plaintiff got himself examined as PW-1 and defendant got himself examined as DW-1. Four documents were marked on behalf of the plaintiff and eight documents were got marked on behalf of the defendants. Learned Judge in the light of the material available on record has framed as many as ten issues.

5. Issue No. 1 deals with the ratification of the appointment. Learned Judge notices the evidence on record. He refers to ExP-1 and notification issued by the then Minister for Health and Family Welfare. He also refers to Ex.P-2 and also the payments made to the plaintiff/appellant. After noticing these facts he has answered the issue in favour of the plaintiff appellant.

6. In so far as issue No. 2 is concerned, it is with regard to whether the plaintiff/appellant was working as a secretary on the date of the suit. Here again the learned Judge has noticed the evidence in addition to a statuesque order passed by the Court. After noticing the same and in the light of the admitted facts, the learned Judge held that the plaintiff/appellant was not working as a Honorary Secretary on the date of the suit.

7. Issue No. 3 deals with the validity of Annexure-A. Annexure-A is admittedly an

order at Ex.P-3 passed by the Association with immediate effect. It is a notification terminating the services of the plaintiff. Plaintiff/appellant has questioned the authority of the respondent/defendant No. 1. After noticing the same, learned Judge has ruled that the said termination is without opportunity and without notice and he has ruled that the said order is arbitrary and illegal. In so far as termination and the discharge of service is concerned, the learned Judge holds in favour of the appellant.

8. Issue No. 4 and 5 were also answered in favour of the appellant.

9. Issue No. 6 deals with the appointment being temporary and that has been answered against the association.

10. Issue No. 7 is also answered against the association.

11. Issue No. 8 deals with the conduct that has also been answered against the association.

12. While considering issue No. 9 learned Judge notices the contention and the evidence and thereafter taking into consideration the judgment of the Supreme Court in Integrated Rural Development Agency Vs. Ram Pyare Pandey, , holds that the plaintiff is entitled for declaration that his termination is illegal, but is not entitled for a further declaration that he is entitled to continue in his appointment till his term expires. However he has denied the consequential benefits.

13. From a reading of the judgment what is clear to me is that most of the issues have been held in favour of the appellant. Those findings have not been challenged by the Association. They have accepted those findings. The learned Judge has answered against the appellant the issue with regard to a declaration of deemed continuance and with regard to consequential benefits. It is a well settled principle that once the termination is held to be illegal, the plaintiff appellant is entitled for all consequential benefits. No material is placed before this Court or before the trial Court to show that the plaintiff/appellant was gainfully employed. It was also not the case of the defendant at any point of time. Therefore even without granting declaration of deemed continuance, the Court ought to have granted consequential benefits, in the light of the Court holding that the termination order is null and void. Once the order of termination is set aside, he is deemed to be in service of the association, particularly in the case on hand when there is no challenge to any one of the findings. In these circumstances, the denial of consequential benefits in my view requires my interference.

14. The learned trial Judge is very much influenced by the judgment of the Supreme Court in Integrated Rural Development Agency Vs. Ram Pyare Pandey, referred to above. That was a case of challenge by the employer. In the case on hand, the employer has not challenged any of the findings and the employer has accepted all the adverse findings and therefore that judgment is not applicable to

the facts of this case. Moreover, that was not a case of State undertaking. In the case on hand, the Government has some control over the affairs of the association. Though there is not much of evidence, to avoid remand and to end the litigation, I am of the view that the compensation would be ideal factor in the given set of facts.

15. I must also notice a subsequent judgment of the Supreme Court in the case of Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another, . The Supreme Court has considered the scope of Specific Relief Act. The Supreme Court noticing the judgment in the case of INTEGRATED RURAL DEVELOPMENT AGENCY v. RAM PYARE PANDEY (supra) has ruled that a declaratory suit is maintainable taking into consideration the character of the employer. In the case on hand, I have mentioned earlier that the respondent cannot said to be totally a private employer as understood in law. This Court in somewhat identical circumstances has ruled that in the absence of any positive action on the part of the respondent in the light of the decree the workman is deemed to be in employment and is entitled for his wages. In these circumstances, the grant of compensation is ordered in this case.

16. I must also notice the contention of the appellant that he should continue in the services in the light of this order. In the normal circumstances, he is entitled for reinstatement. In the case on hand, I see that the appellant has joined the services in his capacity as a Honorary Secretary. He was paid a sum of Rs. 1,500/-p.m. There seems to be some difference of opinion between the parties. The appellant is also now aged 76 years. No useful purpose would be served by ordering reinstatement in the given set of circumstances particularly taking into consideration the age of the appellant and the material on record. In so far as the consequential benefits are concerned, it is nothing but a payment payable on account of the order being null and void. The order is dated 25.9.1992. Ten years are over. Ten years salary works out to $1,500 \times 12 \times 10 = 1,80,000/-$. But in the case on hand, the respondent is an association meant for the welfare of the TB patients. The association has been formed with the laudable object of controlling the TB and also for the better benefits to the TB patients. It is maintained by Government Officials. It may to a certain extent partake the status of State under Article 12. In these circumstances without going in to the arithmetic calculations, I am of the view that a lump-sum of Rs. 1,00,000/- would meet the ends of justice, particularly in the light of the age of the appellant and the status of the association being a public body. This amount is in full and final settlement of the compensation payable to the plaintiff appellant on account of illegal termination by the association. Respondents are directed to pay this amount within four weeks from today, failing which the said amount would attract interest at 12% from the date of default. This would be a modifying factor of the judgment in the given set of facts.

17. In these circumstances, this appeal is partly allowed. The judgment and decree is modified in so far as consequential benefits are concerned. Appellant is

entitled for a sum of Rs. 1,00,000/- payable by the respondent association within four weeks from today, failing which interest at 12% is payable from the date of default. Appellant is also entitled for legal expenses quantified at Rs. 3,000/ - payable by the Association within four weeks.