

(2016) 06 KAR CK 0153

In the Karnataka High Court

Case No : Writ Petition No. 201050 of 2015 (S-RES)

Dr. Vijayakumar Puranik

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-06-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 23

Citation : (2016) 3 AirKarR 600 : (2016) 4 KCCR 524 : (2016) LIC 4371

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : P. Vilaskumar, Advocate, for the Petitioner; A. Syed Habeeb, AGA, for the Respondents

Final Decision : Dismissed

Judgement

Raghvendra S. Chauhan, J.—In pursuance of the order dated 15-6-2016, Mr. Bansal, the Deputy Commissioner, Kalaburagi, is present before this Court.

2. According to Mr. Bansal, the petitioner was hired on contractual basis. Although his salary was not paid on monthly basis, but it was paid in lump sum. The petitioner's salary for the month of March, 2014 was paid in the month of August, 2014. The statement made by Mr. Bansal, been agreed to by Mr. Vilaskumar, the learned counsel for the petitioner. The learned counsel for the petitioner Mr. Vilaskumar admits that the petitioner was, indeed, paid for March, 2014, in August, 2014.

3. The issue before this Court is whether the petitioner is entitled to be paid from April, 2014 till July, 2014 period, as admitted by the respondents that the petitioner had worked for these months although his contract came to an end on 31-3-2014 or not?

4. The respondent submits that from April, 2014 till July, 2014, the petitioner did not work for many days. According to them, this is evident from the Attendance Register kept for the month of April, 2014, where the petitioner's name been

shown at Item No.4. According to them, whenever the petitioner was absent, his absence is noted in green ink by writing letter "A". The respondent drawn the attention of this Court to the letter "A" made in green colour, within a circle. However, a perusal of the attendance register clearly reveals that the green circles contain overwriting. Although in certain columns, the letter "A" been written in green ink, but, there is overwriting with the letters "VP". There is no indication in the attendance register as to whether "A" was originally written and then overwritten by letter "VP" or the vice-versa. The respondent claims that the letters "VP" were overwritten by the petitioner despite the fact that his absence been noted by the officer-in-charge of the Community Health Centre. This Court asked the respondent whether any FIR had been filed against the petitioner by the concerned authority for have tampered with a Government document and for have committed forgery in the attendance register ? To this query, the respondent frankly conceded that although an order was passed on administrative side that the petitioner would be entitled to receive the salary on only for those days for which he had worked, but the administration not filed any FIR against the petitioner.

5. Considering the stand being taken by the respondent and especially considering the fact that no criminal action was initiated by the administration against the petitioner, the explanation being given by the respondent that the petitioner happened to be absent for certain days cannot be accepted by this Court. It is indeed a settled position of law that if there are two interpretations on same piece of evidence, then the interpretation which is in favour of the alleged delinquent officer would have to be accepted. Therefore, this Court is of the opinion that because of overwriting on letter "A", or an overwriting of letters "VP", it cannot be accepted that on those particular days, the petitioner was absent from his work.

6. Moreover, according to the Attendance Register, in April, 2014, the petitioner was continuously absent from 24-30th of April, 2014. If this were really so, then an explanation should have been called from him. But, according to the respondent no such explanation was ever called. This omission on the part of the concerned officer equally points to the fact that the petitioner was present from 24th to 30th April, 2014, but, an overwriting been made in green ink and the letter "A" been overwritten on the signature "VP".

7. Similarly, the petitioner claims that he had continued to work from August, 2014 to till October, 2014. Although respondent denied this fact, but, according to the Attendance Register for the months of August to October, 2014, the petitioner's presence been marked in the Attendance Register. Although according to the respondent, despite of the fact that the petitioner was not permitted to come to the Community Health Centre, he would forcibly enter the Community Health Centre and would sign the Attendance Register. However, even this explanation given by the respondent is unworthy of any credence. For, if the petitioner had un-authorisedly entered the Community Health Centre, the

concerned authority was free to file an FIR against the petitioner for criminal trespass and for disrupting the work of the officers present in the Community Health Centre. Yet, according to the respondent themselves, no such FIR ever been lodged against the petitioner. Therefore, the explanation being given by the respondent for the presence of the petitioner in the month of August to October, 2014 is clearly untenable, and, thus unacceptable.

8. The respondent also pleaded that even when the petitioner was present in the Community Health Centre, he did not carry out the work assigned to him as there are records which clearly indicate that he did not perform the operations in the Operating Theatre. However, considering the fact that in a Community Health Centre, operations may hardly be carried out, considering the possibility of the petitioner may be assigned duty in the out-door, it is not possible to accept the explanation being offered by the respondent. If the petitioner were not carrying out the duties assigned to him, surprisingly, no explanation was called for by the concerned authority from the petitioner. Therefore, this explanation that the petitioner was not fulfilling his duty, appears to be more of an afterthought than a reality.

9. Since the Attendance Register does show the presence of the petitioner from the month of April, 2014 till October, 2014, since Article 23 of the Constitution of India prohibits "forced labour", the respondent are legally bound to pay the petitioner's salary from April, 2014 till October, 2014.

10. Therefore, this Court directs the respondent to pay the petitioner's salary for the said period within a period of one month from the date of receipt of the certified copy of this Order.