

(2015) 06 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 45501 of 2003 (S-RES)

Eric Christopher Lobo

APPELLANT

Vs

Fr. Mullers Charitable Institutions, Registered Society and
Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Citation : (2015) 6 KarLJ 95

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Ashok Haranahalli, Advocate, for the Appellant; Subha Ananthi, Advocate for Kasturi Associates, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This petition was disposed of by order dated 24-6-2011. The respondents had then preferred an appeal in W.A. Nos. 15040 and 15041 of 2011 which has been disposed of by a judgment dated 18-3-2015, whereby the Division Bench has thought it fit to allow the appeal and set aside the order passed by this Bench and has directed that the matter be reconsidered. Heard the learned Counsel for the petitioner, and the learned Counsel for the respondents.

2. The facts of the case were as follows:

The petitioner was a Masters Degree Holder in Medical Bio-Chemistry and was appointed as a Bio-Chemist in an institution namely, Father Mullers Charitable Institution-the first respondent, which is a registered society running several institutions including Father Mullers Institution of Medical Education and Research which offers courses in Physiotherapy and Medical Laboratory Technology. The petitioner was said to be appointed on 30-6-1994 and at the end of one year, the petitioner was reappointed by order dated 10-6-1995 as a Bio-Chemist and Lecturer. He was required to teach students pursuing the course of Physiotherapy

and Medical Laboratory Technology. The appointment order indicated that he was appointed as a Bio-Chemist. It was clearly understood that as a Lecturer, he was required to teach Physiotherapy and Medical Laboratory Technology subjects. He was thus working as against a permanent post on a time scale of pay. This was reflected in the application seeking affiliation submitted to the Rajiv Gandhi University of Health Sciences by the respondents, wherein they had described him as a permanent employee in their application. However, this was contrary to the appointment order wherein he was only shown as having been appointed for a period of three years even though he was given a permanent appointment. The employment was not on a contract basis and this was also evident in the application for affiliation made by the respondent-institution to the University and he was thus treated as a permanent employee in the eye of law, though in fact, he was being exploited by paying pittance though he was discharging his duties as a permanent employee. The respondents however, by letter dated 4-5-1998 had indicated that the appointment of the petitioner was only on contract basis and that he was being removed with effect from 20-6-1998. This, according to the petitioner, was impermissible as he was in fact appointed against a permanent vacancy and there was no provision in the rules and regulations binding the institution to provide for contract employment. The various kinds of employees contemplated under the rules and regulations did not include a contract employee, but on the other hand, the only kind of employees that could be engaged were permanent employees, casual employees, substitute employees, part time employees or temporary employees. On the other hand, as already stated, the petitioner was appointed as against a permanent vacancy. Therefore, the order of termination was challenged by the petitioner before the Educational Appellate Tribunal. The Tribunal by its order dated 14-6-2001, had held that the appeal was not maintainable on the ground that there was no termination of the petitioner's service. The petitioner had then challenged that order by way of a revision petition questioning the order of the Tribunal. During the pendency of the revision petition before the Competent Authority, this Court, in a Full Bench judgment, had held that a revision petition, such as the present one, would not lie against an order passed by the Tribunal. Therefore, the revision petition was dismissed by order dated 18-9-2003 reserving liberty to the petitioner to file a writ petition. Immediately thereafter, the present writ petition was filed. The Counsel for the petitioner was heard at length and the Counsel for the respondents were heard. It is thereafter that the order dated 24-6-2011 was passed.

3. On a consideration of the facts of the case, the sequence of events and the impugned order, this Court had proceeded to address the case. The Tribunal has rejected the appeal primarily on the ground that the appeal was not maintainable and as against such judgment, since the petitioner was without any remedy, the writ petition having been entertained, was accordingly considered. It cannot therefore be said that this Court has not addressed the case or reasons assigned by the Tribunal nor can it be said that this Bench has passed the order without

any basis. In the opinion of this Bench, the order dated 24-6-2011 speaks for itself. It is asserted that the opinion expressed by this Bench is perfectly in order and the same is reiterated:

"2. The facts are as follows:

The petitioner holds a Masters Degree in Medical Bio-Chemistry and was appointed as a Bio-Chemist in the first respondent-institution namely, Father Mullers Institute of Medical Education and Research, which offers a course in Physiotherapy and Medical Laboratory Technology. He was appointed on 30-6-1994 and after a period of one year, he was appointed as a Bio-Chemist/Lecturer and he was required to teach students. Though the order of appointment indicated that he was appointed as a Bio-Chemist, he was required to teach the students as aforesaid.

2.1 It is the petitioner's case that he was working against a permanent post on a time scale of pay. In this regard, reliance is placed on Annexure-C, where the respondents have described the petitioner as a permanent employee in their application for affiliation submitted to the Rajiv Gandhi University of Health Sciences. Though the appointment order indicated that his appointment was for a period of three years, this was only to discourage the petitioner from claiming the actual salary to which he was entitled, though he was for all purposes treated as a permanent employee insofar as the University was concerned.

2.2 The respondent, by its letter dated 4-5-1988, had indicated that his appointment was on contractual basis and therefore, he was removed from service with effect from 20-6-1998. It is in that background that the petitioner had approached the Educational Appellate Tribunal questioning the order of termination. The Tribunal, by its order dated 14-6-2001, has held that the appeal was not maintainable as there was no termination or dismissal or reduction in rank, which alone would have enabled the petitioner to file an appeal. Aggrieved by this, the petitioner had preferred a revision petition questioning the order of the Tribunal before this Court. During the pendency of the revision petition, a Full Bench of this Court, held that a revision petition does not lie against an order of the Tribunal and hence, the revision petition was dismissed with liberty to file a writ petition. Hence, the present petition is filed.

3. The learned Counsel for the petitioner would submit that the Tribunal placing reliance on a judgment of this Court in Shankarappa Sharanappa Gaure Vs. The Deputy Director of Public Instructions, Bidar and others, , holding that an appeal of an employee could be entertained only against the orders of punishment passed in disciplinary proceedings awarding major penalties of dismissal, removal and reduction in rank, has been misinterpreted insofar the present petitioner is concerned, holding that since there was no such penalty imposed, the appeal could not be entertained. It is the Counsel's endeavor to contend that the mere nomenclature employed by the respondent or the device that it had followed in issuing the appointment order, as if for a period of three

years and thereafter having removed him from service on the ground that it was contractual employment for a period of three years, while indicating to the University, as per statutory requirements, that the petitioner was a permanent employee, would indicate the devious methods adopted by the respondents in seeking to deny his status as a permanent employee and to terminate the services of the petitioner summarily. The learned Counsel would submit that the intention was plain that the respondents sought to exploit the services of the petitioner for a paltry sum of Rs. 3,790/- per month whereas the actual pay that was payable to an employee holding a similar position would be about Rs. 9,000/- per month and hence, the Tribunal not having taken the circumstances into account in the right perspective, the petitioner seeks interference of this Court.

4. While the learned Counsel for the respondents would contend that the petitioner himself has produced a copy of the appointment order, which on the face of it, would indicate that the appointment was only for a period of three years and hence any contention to the contrary would be self-defeating, as the document speaks for itself. It was immediately on expiry of a three years period, that the petitioner was informed that his services were no longer necessary. He was not a permanent employee. The mere fact that by inadvertence, the petitioner may have been shown as a permanent employee in the application filed with the University while seeking affiliation of its courses, by itself, would not establish that the petitioner was employed as a permanent employee and hence would seek dismissal of the petition.

5. In the above facts and circumstances, this Court made an attempt to conciliate the dispute and pursued the respondents to pay lump sum compensation as full and final settlement in favour of the petitioner and the respondents however, made reluctant offers of small amounts of money, which was not upto the expectation of the petitioner and therefore, there was no conciliation. Hence, the question that requires to be addressed in the present petition is, whether the Tribunal was justified in its view that the petitioner was on contractual employment and therefore could have been terminated from service immediately upon expiry of the term specified under the contract.

5.1 Though, on the face of it, it does appear that the appointment of the petitioner was for a period of three years, the respondents having disclosed to the University from which it was seeking affiliation, that the petitioner was a permanent employee, is in compliance with as statutory requirement and therefore, would be held bound by such a declaration that the petitioner was a permanent employee and in the order of appointment, indicating that the petitioner was appointed only for three years, was apparently in order to restrict the petitioner's claim to any amount that was actually paid to him, for otherwise, if the petitioner was treated as a permanent employee, it would have been obliged to pay the actual remuneration that would be payable to a permanent employee. This is apparent and the respondent is estopped from denying that

the petitioner was not a permanent employee. In that view of the matter, the Tribunal having taken a view only with reference to the appointment order would ignore the harsh reality, which faces employees such as the petitioner time and again. This is not the first instance in which an institution has sought to exploit its employee by recourse to such a modus operandi. Hence, this Court would not hesitate to hold that the petitioner was, for all purposes, a permanent employee of the respondent-institution. Hence, the termination of the petitioner, summarily, without there being any cause for such termination would have to be termed as illegal termination.

5.2 The next question that arises is as to what relief the petitioner ought to be conferred. Though the petitioner has been out of employment of the respondent in past several years, to confer the benefit of back wages by way of compensation for the entire period, would not be fair to the respondents as the petitioner had not rendered any service with the respondents. It cannot also be said that the petitioner has survived without other gainful employment, which he would have been compelled to secure if he had to survive. In that view of the matter, it would be just to restrict the amount of compensation to a nominal amount and in view of the fact that the respondents are in a position to offer at least Rs. 60,000/- as compensation, the respondents cannot resile from paying that amount as compensation to the petitioner for illegal termination. Further, the respondents are directed to reinstate him into service with all consequential benefits except back wages.

Therefore, the petition stands allowed. The judgment of the Tribunal is set aside. The respondents are directed to reinstate the petitioner into service as a permanent employee and pay compensation of Rs. 60,000/- with all consequential benefits."

Therefore, the Division Bench having taken a view that the order does not disclose any reasoning or basis is refuted. It was always open for the Division Bench to have dealt with the order in the fashion that it thought best. Therefore, this Bench stands by its order passed on 24-6-2011. The writ petition is allowed in terms thereof. Further, a Full Bench of this Court in *Town House Building Co-operative Society Ltd. Vs. Special Deputy Commissioner*, , addresses the following question of law:

"Whether a Division Bench hearing a writ appeal against an order of a Single Judge has power to remand the case to the Single Judge concerned or not?"

The same was answered thus:

Per Prem Chand Jain, C.J.:

".....As a result of the aforesaid discussion, the answers to the questions referred to us may be stated as follows:

(i) That there is an inherent power in the Division Bench hearing writ appeal against an order of a learned Single Judge to remand the case to be decided

afresh by a learned Single Judge;

(ii) That a remand order may be passed in cases where a writ petition has been dismissed for non-prosecution or in limine or on the ground of delay or maintainability or on some question of law without going into merits, etc., However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are the ones in which the Appellate Bench may exercise its power of remand; and

(iii) That where a writ petition has been disposed of on merits by an order made by a learned Single Judge, a Division Bench on appeal would have no jurisdiction to remand such a case to a learned Single Judge for fresh decision on merits and the appeal has to be disposed of on merits by the Division Bench itself."

Per M. Rama Jois, J.:

"On reconsideration of the matter in the light of the judgment of the Supreme Court in Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , I am of the view that if a writ petition has been dismissed for non-prosecution or in limine on grounds such as delay, maintainability etc., and not on merits by a learned Single Judge and such an order is taken in appeal and the Division Bench sets aside such an order, the writ petition gets restored. As a consequence, in view of Section 9 of the Act and the Rules, the writ petition has to be posted for preliminary hearing or final hearing, as the case may be, before a learned Single Judge. It is in this manner and to this extent, it appears to me it can be said that the Division Bench has the inherent or incidental power to bring about a remand of the writ petition by a learned Single Judge."

And per K. Shivashankar Bhat, J.:

"An appellate power necessarily includes a power to remand the cause to be decided by the original authority or Court. Such a power is inherent in the appellate power. Since the appellate power is conferred on a Bench of the same High Court here, while exercising the said appellate power necessarily the appellate Bench will have to be guided by principles of propriety while remitting a cause to the original side Bench. It is background I consider that the power to remit a cause to the original Bench by the Division Bench will have to be sparingly used when the situation absolutely warrants such a remand, as opined by my Lord the Chief Justice."

The petition having been decided on merits - the Division Bench was in error in remanding the matter in the light of the opinions expressed by the Full Bench as above.