

(2016) 01 KAR CK 0116

In the Karnataka High Court

Case No : Writ Petition No. 36319/2015 (S-RES)

G. Hemana Gowda

APPELLANT

Vs

Maruthi Proudashala Bodhakara and Poshakara Sangha
(Regd.) and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2016) 01 KAR CK 0116

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

Bench : Single Bench

Advocate : Harish Kumar M.S., Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—1. The petitioner is aggrieved by the order dated 10th July 2015 passed by the Prl. District Judge, Shimoga, whereby the learned Judge has recalled the attachment order dated 15.9.2012 issued by the learned Judge in Execution No. 52/2012, and has dismissed the Execution Petition against the Judgment Debtor Nos. 3 to 5.

2. Briefly the facts of the case are that the petitioner was appointed as a Hindi teacher in 1998 in the Maruthi High School, Shiralakoppa, Shikaripura Taluk of Shimoga District. Subsequently, the post of Hindi Teacher was admitted to grant-in-aid on 22.10.1991. However, in 1994, without any rhyme or reason, the Management of Maruthi Proudashala Bodhakara and Poshakara Sangha, respondent No. 1, dismissed the petitioner from service without holding any enquiry in accordance with law. Aggrieved by the said dismissal order, the petitioner filed M.A. No. 39/1994 before the learned District Judge, Education Appellate Tribunal, Shimoga.

Subsequently, realising the mistake made by the Management, and in order to show that it had held an enquiry against the petitioner, it passed an order on

6.3.1996 dismissing the petitioner from service. Since the petitioner was aggrieved by the order dated 6.3.1996, he filed a Miscellaneous Appeal No. 22/1996 before the Educational Appellate Tribunal & Prl. District Judge, Shimoga. Subsequently, both the appeals, namely, M.A. No. 39/1994 and M.A. No. 92/1996 were clubbed together and decided by a common order. By order dated 10th of March 2003, both the appeals were allowed. The order reads as under:

" Both the appeals M.A.(EAT) No. 22/96 and M.A.(EAT) No. 39/94 are allowed.

The order passed by the respondents 1 and 2 in No. 30/95-96, dated 6.3.1996 in dismissing the appellant with immediate effect is set aside with a further direction to the respondents to reinstate the appellant to service with all consequential back wages, allowances and service benefits w.e.f. 11.7.1994 and he is also entitled for the salary from December 1992 up to June 1993.

The respondents 1 and 2 are at liberty to conduct fresh inquiry against the appellant if they so desire.

In the circumstances of the case, no order as to costs.

Keep the original order in M.A.(EAT) No. 39/04 and the copy in M.A.(EAT) No. 22/96."

Pursuant to the order dated 10.3.2003, the Management reinstated the petitioner and sought the necessary permission from the Deputy Director of Public Instructions. Subsequently, the permission was granted by the Deputy Director. Although the petitioner was reinstated, he has not been paid the arrears of salary from 1.12.1992 till 1.6.1993. Since the respondents failed to pay the back wages, the petitioner initiated execution case, namely, Execution Case No. 52/2012 before the learned Judge in order to execute the order passed by the learned Tribunal and in order to see that the arrears of Rs. 6,99,823/- be paid to him. The Executing Court issued a notice to the judgment debtor Nos. 1 and 2, namely, the respondent Nos. 1 and 2 before this Court. The respondent Nos. 1 and 2 filed their objections and took a stand that in fact the arrears needs to be paid by respondent Nos. 3 to 5 (judgment debtors 3 to 5) and not by the respondents 1 and 2.

Despite the service of notice on respondents 3 to 5, they did not appear before the Executing Court. Therefore, the learned Judge issued an attachment warrant against respondents 3 to 5. Aggrieved by the order of attachment, the judgment debtor No. 5 (respondent No. 5 before this Court) filed an application under Section 151 of CPC before the learned Judge. After hearing both the sides, by the impugned order dated 10.7.2015, the learned Judge has passed the order as mentioned above. Hence, this petition before this Court.

Mr. Harish Kumar, the learned counsel for the petitioner, has raised the following contentions before this Court: firstly that the decree was passed by the learned Tribunal against all the respondents, including respondent Nos. 3 to 5. Therefore, they too were duty bound to implement the said decree. Since they did not pay

the arrears of salary to the petitioner, the petitioner was entitled to received the same through the Executing Court. Hence, the Executing Court is not justified in recalling the order of attachment, and in dismissing the execution proceedings against respondent Nos. 3 to 5.

Secondly, the learned Judge is not justified in relying upon Rule 22 of the Karnataka Educational Institutions (Aided Private Primary & Secondary Institution Appointment & Service Conditions) Rules, 1999. For, the petitioner was dismissed prior to the Rules of 1999 coming into force. He has challenged both the dismissal order passed in 1994 and in 1996 prior to coming into force the Rules of 1999. Therefore, the learned Judge is unjustified in holding that Rule 22 of the Rules of 1999 does not impose a duty upon the Government to pay the arrears of salary. According to the learned counsel, the present case is covered by the Rules of 1975. Therefore, the impugned order deserves to be interfered with.

Heard the learned counsel, perused the impugned order and considered the order dated 10th of March 2003 passed by the learned Tribunal.

The order passed by the learned Tribunal has already been reproduced herein above. A bare perusal of the order would clearly reveal that the learned Tribunal has set aside the order passed by respondents 1 and 2 dated 6.3.1996. It has further issued a direction to "the respondents". Hence, the article "the" clearly indicates that the direction is given only to respondent Nos. 1 and 2. The said direction does not extend to respondents 3 to 5. Therefore, the contention raised by the learned counsel is unjustified as the learned Tribunal has used the article "the" purposefully. Hence, the direction issued by the learned Tribunal is limited only to respondents 1 and 2 to reinstate the petitioner, with all consequential benefits, including back wages, allowances, service benefits with effect from 11.7.1994 and to pay the salary for the period from December 1992 to June 1993. Hence, this particular direction was never meant for respondent Nos. 3 to 5. Thus, the decree cannot be executed against respondent Nos. 3 to 5. The decree was meant specifically for respondents 1 and 2.

As far as the second contention is concerned, admittedly the petitioner was dismissed from his post in 1994 and again in 1996. However, before the dispute could be resolved before the learned Tribunal, the Rules of 1999 had come into force. Therefore, the decree will have to be implemented keeping in view the Rules of 1999. Rule 22 of the Rules of 1999 clearly provided that "whenever an order of disciplinary authority proposing a penalty of dismissal or removal or compulsory retirement or reduction in rank etc., is subsequently set aside by the Court or Appellate Authority, the Government shall not be liable to pay salary arrears and such arrears shall be paid by the management only." Thus, Rule 22 of the Rules of 1999 absolves the Government of the responsibility of paying the arrears of salary, and clearly imposes a duty upon the Management to pay the same. In fact the decree has been passed by the learned Tribunal keeping Rule 22 of the Rules of 1999 in mind. It is specifically for this reason the learned Court

has used the article "the" respondents. Therefore, even the second contention raised by the learned counsel for the petitioner is untenable.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order dated 10.7.2015. This Petition, being devoid of any merit, is hereby dismissed.