
(1996) 02 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 5871 of 1994

Gadagayya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 5 KarLJ 532

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. Heard petitioner's learned Advocate and the learned Government Advocate. The point involved in this petition is a very simple one insofar as the petitioner had been appointed in the year 1988 by the respondent 4-Institution which admittedly is a private aided institution. The post of Attender in that school was vacant and it is relevant to point out that one A.M. Patil had been occupying that post and the Government had reimbursed the salary of A.M. Patil right from 1979 to 1988. In view of the vacancy, the post was advertised. However since it was reserved for a Scheduled Tribe candidate, enquiries were made with the local employment exchange but no reserved category candidate was available. The petitioner was interviewed and subsequently came to be appointed and has been working in that post. It is the petitioner's case that despite the fact that his appointment was perfectly legal and despite numerous representations made by the petitioner as also by the management that the respondents have approved of the petitioner's employment with the endorsement that it is without aid. The petitioner consequently contended that though he is a poor Attender, that he has been deprived of his salary and that the respondents are duty bound to approve of his post with aid. The submission is that the respondents be directed to sanction the reimbursement of the petitioner's salary from the date of his appointment.

2. The learned Government Advocate has submitted that in the first instance it is left to the discretion of the authorities to either approve of a post with aid or without aid and since this was a reserved post wherein an open merit category

candidate has been appointed, that the authorities were justified in refusing to sanction the aid. This position cannot be upheld for the reason that the appointment of the petitioner was made only because the reserved category candidate was not available and after having made efforts to secure such a candidate. Petitioner's learned Advocate relies on one more circumstance namely that the Government nominee was present when the petitioner was interviewed but more importantly that the Government has approved of the petitioner's appointment. In the circumstances of the case, the conditional approval granted was wrong in so far as the post in question was a sanctioned post, it had to be filled up and if the petitioner was otherwise qualified, since the salary of the attender in that post has earlier been approved and sanctioned there was no ground on which the authorities could have refused to reimburse the petitioner's salary.

3. The learned Government Advocate has then raised another objection whereby he contends that this is not a writ petition filed by the management on the ground that they are not receiving the reimbursement. He contends that the primary responsibility of paying the petitioner's salary was that of the management and that this Court has earlier taken the view that since there is no relationship of master and servant between the petitioner and the Government, that this writ petition itself is liable to be dismissed. Reliance is placed on a Division Bench decision of this Court in the case of Shivaji High School v Prabhakar Jotiba Bamane, 1987(2) Kar. L.J. Sh. N. 142, wherein the Court had laid down the proposition that since there is no relationship of master and servant between the employee concerned and the Government, as far as private educational institutions go, the liability to pay the salaries is primarily that of the latter namely the management and that consequently they cannot ask the teachers to run after the Government to recover their dues. The Court did uphold the right of the management to claim the salary amount by way of advance grant or by way of reimbursement from the Government. Learned Government Advocate submitted that the proposition of law laid down by the Division Bench would totally debar the petitioner from claiming any relief in this case because the petitioner's remedy if any lies against his own management, if he has not received his salary and as laid down by the Division Bench it is the management which has the right at the highest to claim reimbursement from the Government. He therefore submitted that in view of the ratio of this decision, that the petitioner is disqualified from claiming any relief and that the petition requires to be dismissed. Petitioner's learned Advocate has distinguished the case on facts and he has also pointed out that the principle would not apply to the present case because this was not a new post in that sense and secondly, on the ground that there is no parallel between the two cases, on facts.

4. I need to record that the Division Bench judgment in question dealt with a disciplinary proceeding. The facts are definitely distinguishable and the petitioner's learned Advocate is right when he points out this very significant aspect of the matter to the Court. The proposition of law laid down by the

Division Bench in that case would therefore clearly be distinguishable from this case as the facts in this case are different. The fact that a teacher whose post had been approved of does not receive his salary gives rise to a cause of action as far as the teacher is concerned because once the approval of the post has been granted, there can be no question of refusing to pay the grant in aid unless there is some breach or condition that has not been complied with. Where the recruitment is in order and the employee is fully qualified and he is working in a particular post, if while approving the post, unreasonably and incorrectly an endorsement is made to the effect that the grant in aid is not sanctioned, it is certainly open to the aggrieved employee to move the Court for quashing of that order. In a given instance and having regard to the manner in which many of the smaller institutions function, the management may be unwilling to take up cudgels on behalf of a teacher in which case it would be incorrect to rule, particularly. Where the teacher is the aggrieved party, that the teacher is disqualified from enforcing rights. While it is true that the primary responsibility of paying the salary is that of the management as has been laid down by the Division Bench, it has also been clarified that the right to claim reimbursement of that salary does vest in the management. This principle presupposes a situation wherein the management will pay the salary and thereafter fight or insist upon the reimbursement but we are concerned with the present case which is characteristic of several others wherein the management hopelessly throws up its hands and forces the employee to approach the Court because the management is unable to pay the employee. It is this aspect of the matter that had not come up for consideration before the Division Bench because the Division Bench was only concerned with the facts of that case which emanated from a disciplinary proceeding and which are very different from the facts of the present case. The learned Government Advocate is therefore not correct in seeking to apply the ratio of that decision to the present situation.

5. On the facts of the present case, the respondents are clearly wrong in having denied the petitioner the benefit of the salary reimbursement. Under these circumstances and on the basis of the present record, the petition must succeed. Petitioner's learned Advocate advances a strong plea that where injustice has been done to the petitioner that the respondents be directed to reimburse the salary with effect from the date of his appointment. Unfortunately, the petitioner did not obtain any interim relief but in any event, the appointment dates back to the year 1988 and it would not be feasible to direct the respondents to reimburse the salary with retrospective effect since the financial provisions are made in the annual budget on a yearly basis. It is in these circumstances that the respondents 1 to 3 are directed to sanction and pay the petitioner's salary with effect from 1-4-1995. This is however provided the petitioner ensures that the bills and other paper work are completed by the management of the institution and forwarded to the authorities concerned within three weeks from today at the very latest. The learned Government Advocate shall communicate the Court's decision to the respondents. It is clarified that if for any reason, the respondents

default in complying with the Court orders and the payment is not received by 31-3-1996, that the respondents will be liable to pay interest at the rate of 18% per annum.

6. The petition is accordingly allowed. Rule is made absolute. No order as to costs. Learned Government Advocate is permitted to file memo of appearance within 3 weeks. Copy of the order to be furnished to learned Advocates forthwith.