

(2016) 11 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 12961 of 2015 (L-RES)

H.C. Jayaprakash

APPELLANT

Vs

General Manager, Vijaya Bank

RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2017) 1 AirKarR 434 : (2017) 1 CLR 516 : (2017) 153 FLR 352

Hon'ble Judges : Mr. A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Sri P. Udayashankar Rai, Advocate, for the Respondent; Sri K.B. Narayana Swamy, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. A.N. Venugopala Gowda, J. - Challenge in this petition is to an order passed by the Central Government Industrial Tribunal-cum-Labour Court, Bangalore ("Tribunal" for short).

2. The factual position in brief is as follows:

The petitioner was removed from service by the respondent. A dispute having arisen, reference was made by the Government to the Tribunal for adjudication of the following

"Whether the management of Vijaya Bank is justified by removing Shri H.C. Jayaprakash, Clerk from service w.e.f 27.9.2001? If not, what relief the workman is entitled to and from which date?"

3. The reference upon adjudication was answered by an Award dated 21.3.2007. It was held that the charge levelled against the workman is not established and hence the order of removal is illegal and void ab initio. As a consequence, the respondent was directed to reinstate the petitioner into service with full back wages from the date of dismissal (minus the amount already paid to him by way

of interim relief) till the date of reinstatement with continuity of service and all other consequential benefits. The Award, when assailed by the respondent, in W.P. No. 11437/2007, it was held that the Management failed to prove the charge levelled against the workman. While disposing of the petition, learned Single Judge being of the view that there would be financial burden, directed the employer to pay back wages at 60%, in place of full back wages. However, it was made clear that all other aspects of the award remain intact., and undisturbed. W.A. No. 1897/2011 filed by the Management was found to be devoid of merit and was dismissed by a Judgment dated 14.9.2011.

4. Certain consequential benefits having not been paid, the petitioner filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947. Application having been opposed and Tribunal being of the view that the petitioner is not entitled to encashment of 240 days of earned leave (maximum), passed the order of dismissal on 3.12.2014. This writ petition is directed against the said order.

5. Sri K.B. Narayana Swamy, learned advocate contended that there is a misdirection on the part of the Tribunal in passing the impugned order He submitted that the Award having entitled the petitioner to the benefit of reinstatement with continuity of service and all other consequential benefits and the award having been upheld in the writ petition, and the writ appeal having been dismissed, the impugned order is illegal. Learned counsel submitted that there being omission to consider the relevant materials and misreading of the record of the case by the Tribunal, impugned order is perverse and illegal.

6. Sri P. Udayashankar Rai, learned advocate, placed reliance on the judgment dated 8 11.2012 passed in W.A.No. 16714/2011 and contended that there being reduction of back wages to 60%, in place of full back wages, as per the Order dated 13.1.2011 passed in W.P.No.11437/2007 and the same having not been assailed by the petitioner, impugned order denying leave encashment benefit is justified. He submitted that the petitioner having not actually worked and earned the leave is not entitled to the leave encashment benefit.

7. Point for consideration is: "whether there is any misdirection by the Tribunal in the matter of consideration of the record of the case and consequently, the impugned order is perverse and illegal?"

8. Award in C.R.No.61/2002 dated 21.3.2007 of the Tribunal directed the reinstatement of the petitioner with a specific direction that there would be continuity of service with all the consequential benefits. Writ Petition filed against the said Award by the Management was disposed of by merely reducing the liability in the matter of payment of back wages to 60%, in place of full back wages, on the premise that there will be huge financial burden on the Bank. However it was made clear that the Award passed by the Tribunal in all other respects remains intact and undisturbed. The Bank having assailed the said order also, Writ Appeal was found to be devoid of merit and dismissed.

9. In the case of *BMTC v. G.V. Thimmappa* (W.A. No. 16714/2011), Division Bench having found that the Labour Court expressly denied the back wages and did not say anything about the consequential benefits and the direction was only to reinstate the employee with continuity of service and further having found that there was no direction to grant consequential benefits, such award having not been assailed by the employee, which was open to him, the employee was held not entitled to the consequential benefits.

10. In the present case, as already noticed, Award entitled the petitioner not only the reinstatement into service but also to all consequential benefits. The Award contains a specific direction in that regard. The said direction was specifically upheld by the learned Single Judge and was not interfered in writ appeal. Reduction of the back wages by the learned Single Judge was on account of the huge financial burden on the Bank and not otherwise, much less as a measure of punishment. It is to be stated that no finding of whatsoever nature, adverse to the workman has been entered, either by the Tribunal or in the writ petition by the learned Single Judge. The respondent having questioned the said award and also the order passed by the learned Single Judge, writ appeal has been dismissed, Hence, the Judgment in *BMTC's* case (*supra*), has no application and is clearly distinguishable.

11. From the record, it is clear that the misconduct alleged against the petitioner was not proved and order of punishment imposed was held as illegal and void ab initio by the Tribunal. The specific direction issued with regard to the entitlement of the petitioner to reinstatement with continuity of service and all consequential benefits was not interfered with either in the writ petition or writ appeal filed by the respondent. Hence, there is misdirection on the part of the Tribunal in the matter of consideration of the application filed under Section 33-C(2) of the Industrial Disputes Act, 1947. View of the Tribunal being opposed to record of the case and the settled position of law, that where there is direction for reinstatement accompanied by specific direction that the employee shall be entitled to all consequential benefits, the petitioner is entitled to benefit of leave encashment sought in the application filed under Section 33-C(2) of the Act. As the relevant and undisputed record has been omitted from consideration and the impugned order has been passed by the Tribunal, the finding has to be characterized as arbitrary, perverse and illegal.

12. Sri P. Udayashankar Rai submitted that the quantification of the amount at Rs. 2,74,328/- in the application filed is incorrect. He submitted that the quantification, when made correctly would be Rs. 2,66,808/- only. Learned advocate for the respondent conceded that the leave encashment benefit which the petitioner entitled to is:

23,300+10,051 x 240

3

= Rs.2,66808/-

In the result, writ petition is allowed and the impugned order is quashed. The petitioner is held entitled to the payment of earned leave encashment benefit of Rs. 2,66,808/-. The amount shall be paid by the respondent on or before 15.12.2016. In case of default, the amount shall carry interest at 9% p.a. till the date of payment. Parties to bear their respective costs.