
(1994) 06 KAR CK 0026
In the Karnataka High Court
Case No : W.A. No. 2995 of 1991

H.S. Vasantasenaiah

APPELLANT

Vs

Divisional Controller, KSRTC

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) ILR (Kar) 2628 : (1994) 4 KarLJ 334 : (1995) 2 LLJ 835

Hon'ble Judges : Hari Nath Tilhari, J;Hakeem, J

Bench : Division Bench

Advocate : T.N. Raghupathy, for the Appellant; M.S. Narayan, for Ram Mohan Reddy for R-1, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—This Writ Appeal arises out of Judgment and Order dated 29-7-1991 delivered by the learned single Judge (Hon''ble Mr. Justice Shivaraj Patil) in W.P.No. 16141/1991 dismissing the petitioner's claim challenging the award of the Labour Court as regards back wages. The learned single Judge mentioned in the Order that he did not find any good ground to entertain that part of the claim.

2. The facts of the case in brief are that the petitioner-Appellant had been terminated by an Order dated 30-4-1980 by respondent-1. The petitioner filed a Writ Petition No. 7351/1980 challenging that Order of termination and that Writ Petition came to be dismissed as withdrawn on 21-3-1986. According to allegations in para-4 of the Writ Petition that during the pendency of the Writ Petition No. 7351/1980, when the Petition came up for hearing, there was some offer to settle the matter amicably and on certain assurances from the opposite side. So, the petitioner thought it fit to withdraw the Writ Petition and so the same was got dismissed as withdrawn. That later on, it appeared that settlement did not see the light of the day and according to the petitioner, the Corporation did not take any steps for reinstatement. The petitioner moved an application for

recalling the Order dated 21-3-1986. That application for recalling of Order dated 21-3-1986 was rejected by this Court by its Order dated 11-11-1986. Copy of its order had been annexed by the petitioner as Annexure-C. The operative portion of the order dated 11-11-1986 reads as under: -

"The reasons set out in the application I.A.II for recalling are not sufficient to recall the order of this Court dated 21-3-1986. I.A.II is dismissed.

The petitioner is at liberty to file a fresh petition if he is so advised."

The petitioner thereafter approached this Court by preferring W.P.No. 1478/1987 under Article 226 and this Court by its order dated 21-6-1988 dismissed the Petition on the ground of availability of alternative remedy. The petitioner did not challenge that order and the said Writ Petition came to be dismissed reserving liberty to the petitioner to approach the Labour Court for necessary reliefs. The petitioner did not file any appeal challenging this order, instead, the petitioner availed the remedy u/s 10(c) of the Industrial Disputes Act. The Labour Court by its Award dated 5-1-1991 particularly allowed the claim of the petitioner and set aside the order dated 30-4-1980 passed by respondent-1. The Labour Court directed the reinstatement of the petitioner with continuity of service but did not grant back wages or consequential benefits. The operative portion of the Award contained in para-7 reads as under: -

"In the result the reference is allowed in part. The order of dismissal dated 30-4-1980 passed by the It party is hereby set aside, The II party is directed to reinstate the I party with continuity of service and without back wages or other consequential benefits. No costs."

3. Feeling aggrieved by the Award rejecting the petitioner's claim for back wages and for other consequential benefits, the petitioner filed W.P.No. 16141/1991 giving rise to this Writ Appeal. As mentioned earlier, the learned single Judge of this Court has dismissed the Writ Petition giving rise to this Appeal at the stage of Preliminary Hearing holding that the back wages and other consequential benefits have been rightly refused. Having felt aggrieved from the Judgment of the learned single Judge of this Court, the petitioner-workman has filed this Writ Appeal.

4. We have heard Sri T.N. Raghupathy, learned Counsel for the appellant as well as Sri M.S. Narayan (for respondent-1) who is holding brief for Sri Ram Mohan Reddy, Counsel for respondent.

5. On behalf of Appellant, learned Counsel for the Appellant has submitted before us that the Tribunal had illegally refused to grant back wages and other consequential benefits and that the order of refusal to grant back wages simply on the ground that the claim petition or the claim u/s 10 of the Act was filed in 1988 belatedly. Learned Counsel for the Appellant submitted that really this order of rejection of back wages and other consequential benefits was tantamount to denial of something which the appellant was entitled to which the

Labour Court could not refuse. As such, the refusal to grant the back wages and other consequential benefits was an act on the part of the Labour Court amounting to refuse to exercise the jurisdiction vested in it and as such, that part of the order suffered from jurisdictional error and was defective in nature and was not warranted by any provision of law. The learned Counsel submitted that the learned single Judge erred in law in refusing to entertain the Writ Petition and in dismissing the same.

6. Learned Counsel for the Appellant in support of his contention has made a reference to the Decision of their Lordships of the Supreme Court in the case of S.M. Saiyad Vs. Baroda Municipal Corporation Baroda, Learned Counsel for the Appellant has further made a reference to Achutha H.S. Vs. Chief Engineer (Chakra) and Others, in support of his contention that the availability of alternative remedy is no bar for invoking the jurisdiction of this Court under Article 226 and availing of a wrongful remedy and its perusal cannot be made a ground to penalise the Appellant since that would amount to depriving of his back wages. That once the order of termination is held to be illegal and void, the workman is entitled to get all consequential benefits including the back wages in full and other benefits.

6a. On behalf of the respondents, Sri M.S. Narayan submitted that when the termination order was passed in 1980, the petitioner should have approached the Labour Court u/s 10 of the Industrial Disputes Act, i.e. he should have availed the alternative remedy which was provided under the law and has submitted that when at an earlier stage, this Court dismissed the Writ Petition on the ground of alternative remedy, it did not commit any mistake because it is also settled in some cases by the Supreme Court that if law provides an alternative and efficacious remedy, the party should be compelled to avail that remedy and the Courts should be reluctant to exercise its jurisdiction under Article 226. The submission of the learned Counsel therefore is that he having approached the Labour Court u/s 10 of the Industrial Disputes Act and having delayed the matter, he was not entitled to back wages. Sri M.S. Narayan in support of his contention tried to invite our attention to the Decision of their Lordships of the Supreme Court in the case of Bhoop Singh Vs. Union of India and others, lastly very fairly submitted that in case this Court takes a opinion and comes to the conclusion against the respondent-Corporation in view of the order dated 16-12-1992, there will be no need to remand the case.

7. We have applied our mind to the contentions of the learned Counsel for the parties and have perused the record.

8. The admitted facts are that, as mentioned above, the termination order was passed on April 30, 1980; (b) that the petitioner approached immediately after the termination order to this Court by filing a Writ Petition No. 7351/1980, though it was dismissed as withdrawn and subsequently, as mentioned earlier, in pursuance of the Order dated 11-11-1986, the petitioner filed another Writ Petition No. 1478/1987 which was dismissed on the ground of alternative remedy

and keeping the petitioner's alternative remedy to approach the Labour Court in accordance with the provisions of Section 10 of the Industrial Disputes Act and the petitioner did approach the Labour Court.

9. It is clear from the perusal of the Award itself that the order of termination has been found to be illegal and void ab initio. Relevant material portion of the Award at page-13 reads as under:-

"The termination of services of the I party is nothing but termination simpliciter amounting to retrenchment u/s 2 (oo) of the Industrial Disputes Act. The II party ought to have complied with the provisions contained in Section 25-F and 25-N of the Act. Admittedly no notice or notice pay or retrenchment compensation was given to the I party before the termination of his services. Hence the termination is illegal and void ab initio."

Thus, on account of the non-compliance with the provisions of Section 25-F and Section 25-N of the Industrial Disputes Act, i.e. non-issuance of notice as well as non-payment of notice pay or retrenchment compensation, the termination order had been held to be void because they are the pre-conditions thereof as mentioned. Once the order of termination had been found to be illegal, null and void, such an order of termination was non est to be operative to terminate the petitioner's employment and once it has been declared and held to be so, then the appellant submits that the petitioner continued to be in service inspite of the termination order. But he had not been given what he was entitled to. So. it was the duty of the Tribunal to have granted the petitioner all the back wages or the consequential benefits of the order, after quashing or setting-aside the order of dismissal, atleast from the date of award or atleast from the date when the reference application was moved. The reason which the Tribunal has given may be quoted from the order of the learned single Judge and I may quote or recast the same:-

"It may be noted that the dismissal of the I party was as long back as in the year 1980. The I party could have immediately raised the dispute and got the reference made to Labour Court. But he did not do so. He approached the Hon'ble High Court by filing writ petition. He got it dismissed as withdrawn. Subsequently he filed I.A.No. 2 to recall the order of dismissal of the writ petition. The same was rejected. Thereafter he filed a fresh writ petition. The said petition also came to be dismissed with liberty to the I party to approach the Labour Court. In this proceedings 7 years have elapsed. It was only in 1988 the I party has raised the industrial dispute and got the reference made to this court. Since the I party has wrongly approached the Hon'ble High Court by filing writ petition, the II party cannot be held liable for the laches on the part of the I party. The delay can be solely attributed to the I party. Under the circumstances the II party cannot be called upon to pay back wages to the I party."

In our opinion, the reason on the basis of which the petitioner-appellant had been deprived of the benefit of the setting-aside of the order of his dismissal

dated 30-4-1980 have been irrelevant and had no connection. The reasoning that the petitioner had approached the High Court, he got dismissed the Writ Petition and thereafter again filed the second Writ Petition which was dismissed on the ground of alternative remedy and then he approached the Tribunal, the Tribunal attributed all fault to the petitioner-appellant. In our opinion, the Labour Court erred in law in attributing that fault to the petitioner-appellant. Under Article 226, this Court has got power to entertain the Petitions and to grant the relief, where, in its opinion the order appears to be illegal or suffering from error of law apparent on the face of record or the order appears to be suffering from error of jurisdiction and the like, the Doctrine of Alternative Remedy does not by itself create a bar in the Courts exercising jurisdiction under Article 226.

10. In the leading case of STATE OF U.P. v. MOHAMMED NOOH AIR 1958 SC 86 their Lordships of the Supreme Court had been pleased to first pose a question and then to lay down the law as under: -

"If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of certiorari and if in a proper case it may be the duty of the superior Court to issue a writ of certiorari to correct the errors of an inferior Court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior Court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, e.g., by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior Court must deny the writ when an inferior Court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior Court or tribunal on appeal or revision? The case of 1889-22 OBD 345(C) referred to in Janardan Reddy and Others Vs. The State of Hyderabad and Others, furnishes the answer."

Their Lordships of the Supreme Court have been pleased to lay it down in paragraph-11 as under: -

"11. On the authorities referred to above it appears to us that there may conceivably be cases - and the instant case is in point - where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent & loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another

inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above, it has the power to do so and may and should exercise it. We say no more than that."

This view has been followed by their Lordships of Supreme Court in many other cases. This Hon"ble Court has as well laid down the principle of law on same line in the case of Achuta H.S. v. Chief Engineer (Chakra) and Ors.

11. Therefore, alternative remedy being no absolute bar and the workman being an illiterate person, who had to act on the advise of the Counsel and if he approaches the Court under Article 226 and particularly when it had been provided in the order of this Court as well while rejecting his application for recall of earlier order in W.P.No. 7351 of 1980 that petitioner is at liberty to file a fresh Writ Petition if he is so advised, the petitioner-appellant did not commit any error to approach this Court by filing a Writ Petition of 1987 which was dismissed no doubt on the ground of alternative remedy. When it is such a case in which it can be said that the Petition could be entertained though the Court refused to entertain the Writ and exercise the jurisdiction be it rightly or erroneously. The Decision rendered on the ground of alternative remedy is not a fault of appellant and did not at all fasten disqualification with the workman i.e., the petitioner-appellant and therefore the petitioner-appellant was illegally denied the benefit of back wages and other consequential benefits by the Labour Court and this act of Labour Court really amounted to be illegal refusal to exercise jurisdiction vested in it by taking an erroneous view of law by holding that: "Since Ist party i.e. the worker (appellant) has wrongly approached the Hon"ble High Court by filing the writ petition and IInd party cannot be held to be liable for the latches on the part of Ist party. The delay can be solely attributed to Ist party. Under such circumstances the IInd party cannot be called upon to pay back wages." Thus by the Labour Court on extraneous consideration wrongly assumed by the Labour Court and by the Single Judge as well, the petitioner has been illegally deprived of all that which the petitioner has legally been entitled in the circumstances of the case.

12. It will not be inappropriate to refer to a Decision of the Supreme Court, given the case in Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, In that case, dealing with the question of jurisdiction of the High Court as well as the jurisdictional error in the context of Section 115 of C.P.C., their Lordships of the Supreme Court were pleased to lay down the law as under:-

"IN Keshardeo Chamria Vs. Radha Kissen Chamria and Others, both these

Judgments of Privy Council as also the previous judgments in AMIR HASAN KHAN v. SHEO BAKSH SINGH 11 Ind. App. 237 (PC) and BALAKRISHNA UDAYAR v. VASU DEVA AIYER 44 Ind. App. 261 : AIR 1917 PC 71 were reviewed and it was held that Section 115 C.P.C. applies to matters of jurisdiction alone the irregular exercise or non exercise of it or the illegal assumption of it. Thus if a subordinate had jurisdiction to make an order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected ultimate decision then High Court has no power to interfere. But if on the other hand it decides jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested then power of interference u/s 115 C.P.C. become operative."

That as held in the above case as well as in the case of Br. KHANNA v. DHILLON AIR 1964 SC 397 jurisdiction of the Court u/s 115 of the Code, is supervisory and is confined to jurisdictional error i.e. if question of law or fact touching the jurisdiction, is wrongfully decided and on the basis of wrong decision thereof, the subordinate Court either usurps the jurisdiction not vested in it or refuses to exercise the jurisdiction vested in it then in exercise of its supervisory jurisdiction even u/s 115 of the CPC the High court can review the said finding and decision on jurisdictional fact or law and also in view of law laid down by the Supreme Court in S. Rama Iyer Vs. Sundarasa Ponnappaondar, Though revisional jurisdiction u/s 115 C.P.C. is narrower in scope than that of this Court under Article 226 of the Constitution but to define the jurisdictional error, we can apply these principles in the context of Article 226 of the Constitution, leaving aside the question of errors of law apparent on record. Therefore, there can be no dispute that the petitioner has made out a case for interference by this Court under Article 226 as the Tribunal in our opinion on illegal and wrong basis in law illegally deprived the petitioner-appellant of his back wages as well as of consequential benefits arising out of setting aside of termination order by refusing to exercise the jurisdiction to award the same and the learned Single Judge has in our view erred in opining that Labour Court has given valid reason as to why backwages are denied and in dismissing the appellants Writ Petition.

13, The conclusion arrived at by us that the petitioner has wrongfully and illegally been deprived of the benefits of the Tribunal decision whereby his termination order had been set- aside, finds support from the view expressed by their Lordships of the Supreme Court in the case of S.M. Saiyad. The material portion of the observations of their Lordships of the Supreme Court in the S.M. Saiyed v. Baroda Municipal Corporation, reads as under:

"The High Court declined to grant back wages for the period the appellant was seeking relief of reinstatement in Civil Court. It may be realised that the appellant has been reinstated in service meaning thereby that the dismissal of the appellant from the service of the respondent was found to be invalid and a declaration followed that the appellant continuing to be in service. It is in the context of these facts that we have to examine the submission that the High

Court was not justified in refusing the back wages on the only ground that the appellant sought relief from a forum which had no jurisdiction to grant the same. When the appellant was dismissed from service he was not a qualified lawyer. He must have sought assistance and advice from a qualified legal practitioner and then approached the Civil Court for relief of reinstatement. The appellant must have gone in search of justice to a forum to which he must have been advised to approach but ultimately because of complexities of the justice system, it transpired that he cannot get relief from that forum. He cannot be faulted for this outcome of technicalities of jurisdiction. Now if on this account the appellant is declined back wages he suffers double jeopardy through no fault of his, in that not only all wages are directed but also delay occurred in getting reinstatement. Is this denial justified when the appellant could not be blamed for approaching a forum under competent legal advice? This would amount to imposing a penalty which - with respect to the High Court - the appellant did not deserve. On this lean ground we find it difficult to depart from the normal rule that on dismissal order being found to be invalid and the direction for reinstatement having been given the workmen would be entitled to full back wages, unless the same can be denied on some relevant grounds. We are of the opinion that the denial of back wages for a portion of period for the reason that he was prosecuting remedy in a wrong forum would not be a relevant consideration for refusal of back wages."

14. The case relied upon by the learned Counsel for respondent-1 in *Bhoop Singh v. Union of India and Ors.* has no application to the facts of the present case. I may quote the observations of their Lordships in para-8 :

"There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief choose to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed."

A bare perusal of the above observations of their Lordships per se show that the facts of this case are distinct from above Supreme Court case of *Bhoop Singh supra*. The petitioner in the *Bhoop Singh*'s case slept for a period of 22 years and he approached the Court after 22 years without furnishing any plausible cause for laches. He simply states that the delay was due to some of his colleagues who had approached the Court and they got the relief and they have been reinstated, therefore, he is also entitled to the same benefits. Their Lordships of the Supreme Court therefore in those circumstances observed and held that there was no good ground to grant the relief to such a person who has approached the Court after 22 years and who was not vigilant and right to claim

relief under Article 226 is not available to such a person, while in the present case, the petitioner was although acting on the advise of the competent Counsel of this Court. In the present case, the appellant approached this Court under Article 226 on the advice of the learned Counsel and also considering the observations in the application for recalling the earlier order, that he may file another fresh Petition if he is so advised. If the appellant acts on the advise of the Counsel, he cannot be blamed for the delay caused due to his having approached a wrong Forum, if any on the basis of legal advice. When the petitioner approached the right Forum, we found that the Forum or Court has refused to exercise jurisdiction to grant him his back wages. But so far as appellant is concerned, in our opinion, it cannot be said the appellant has not shown sufficient cause. These above mentioned proceedings per se furnish a sufficient cause for delay in approaching the proper Forum and so he was wrongly denied back wages and or other consequential benefits by the Labour Court and Labour Court committed jurisdictional as well as error of law apparent on record in denying to grant him back wages on irrelevant considerations and the Hon''ble Single Judge erred in law in refusing to exercise its jurisdiction under Article 226. In this view of the matter in our opinion, the Appeal deserves to be allowed after setting aside the Decision of the learned Single Judge and by modifying the Award in the circumstances of the case.

15. The learned Counsel for the appellant has been very fair and he submitted that having regard to the constraints of the parties, it is not necessary to send the case back to the Labour Court. Learned Counsel for the appellant submitted that 50% of the back wages for the period from 30-4-1980 to 31-5-1988 be allowed and for subsequent period commencing from June 1, 1988 to 16-6-1991 i.e. upto the date of reinstatement, the petitioner- appellant be granted full back wages and other consequential benefits. In view of the fair concession given by the learned Counsel for the appellant to which post the learned Counsel for the respondent-1 also accede, we feel it proper to as well as do allow the Appeal and the Writ Petition and do direct the respondent-1 to pay petitioner''s back wages for the period commencing from April 30, 1980 to 31st May 1988 at the rate of 50% of what he actually would have been entitled had he actually been working in the Concern and for the period subsequent thereto from June 1, 1988 to June 16, 1991, the petitioner-appellant be paid full back wages with interest within a period of three months from to-day. The cost of the Writ Petition as well as the Appeal shall be borne by the parties as both the parties had been very fair in making their submissions.