

(2015) 08 KAR CK 0318

In the Karnataka High Court

Case No : Writ Petition No. 105001/2015(GM-CPC)

Jagadguru Moorusavirmath Vidya Vardhak Sangh

APPELLANT

Vs

Prakash and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0318

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; Anant P. Savadi, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.N. Phaneendra, J—The petitioner has approached this Court for quashing of the orders passed by the Principal District and Sessions Judge and Educational Appellate Tribunal, Dharwad, in Execution Petition No. 283/2014 dated 31/03/2015 vide Annexure "H".

2. Respondent No. 1 has entered caveat and is represented by counsel.

3. I have heard the learned counsel for the parties and perused the records.

4. The undisputed facts between the parties are that the decree holder-respondent No. 1 herein was working as a Principal of Sri. Jagadguru Moorusavirmath Vidya Vardhak Sangh. Due to certain acts of misconduct, he was removed from service. The said order was challenged in M.A.(EAT) No. 2/2012. The same was allowed and the judgment debtor was directed to reinstate the decree holder to his original post with full back wages within two months from the date of the judgment. The said judgment was called in question by the management before this Court in Writ Petition No. 78669/2013. This Court has dismissed the said writ petition vide order dated 30/06/2014. Being aggrieved, the management again preferred an appeal in Writ Appeal No. 100791/2014. The Division Bench of this Court, by order dated 15/09/2014, dismissed the said Writ

Appeal. The decree holder having succeeded throughout, filed a petition in Execution Petition No. 283/2014 and sought for recovery of dues from the management. The learned Judge allowed the parties to file memo of calculation and to lead their evidence. The judgment debtor as well as the decree holder filed their memo of calculations. The executing Court after considering the memo of calculations and also the grounds urged, ultimately, held that the memo of calculation filed by the judgment debtor was not correct and accepted the memo of calculation submitted by the decree holder thereby rejecting the memo of calculation filed by the judgment debtor No. 1. The said order is called in question before this Court by the management.

5. Sri. V.P. Kulkarni, learned counsel for the petitioner-judgment debtor, strenuously contended that the executing Court has not properly appreciated the memo of calculation submitted by the respective parties and has not specifically held by meticulously considering the details of the memo of calculation with regard to the amount for which the decree holder is entitled to. Secondly, he contended that the decree holder has not produced any material to show that, legally, he is entitled for enhancement of the salary on the basis of 5th and 6th pay commission and so also to the increments and interim relief granted by the Government from time to time. But as could be seen from the impugned order, the Court has considered this aspect in detail and held that when the employee has been reinstated to his original post, it is deemed that he is continued in the said post without any interruption and therefore when a wrong is on the part of the management, the same would enure to the benefit of the decree holder. Therefore, the Court has reiterated its own earlier order passed stating that the decree holder is entitled for reinstatement to the original post and is entitled for all the benefits as well as the increments and the benefit of 5th and 6th pay commission. I do not find any error committed by the Court in this particular aspect. Hence, I agree with the said observation made by the learned Judge.

6. So far as the second contention raised by Sri. Kulkarni, learned counsel for the petitioner is that the Court has not applied its mind meticulously with regard to the split up figures given by the decree holder in his memo of calculation with regard to 5th and 6th pay commission as well as the increments etc from the date of his dismissal till the date of filing of the memo of calculation, is concerned, the records disclose that the memo of calculation filed by the decree holder is not only a mere memo of calculation but it is fully supported by the evidence on record. The learned counsel for the decree holder has produced before this Court, the evidence led by him before the executing Court wherein he has categorically stated that he has calculated the salary and all the emoluments for which he is entitled to as per the 5th and 6th pay Commission, increments etc. He has specifically stated in the memo of calculation the details with regard to his salary, increments as well as enhancement in the salary by way of 5th and 6th pay commission. The learned counsel for the decree holder strenuously contends that the memo of calculation has been proved before the Court by means of leading evidence specifically by explaining the contents of the memo of

calculation. He further submits that PW-1-decree holder has not been subjected to cross-examination by the judgment debtor in order to elicit as to what is the defect in the calculation made by the decree holder. Therefore, in my opinion, the trial Court though has not specifically stated as to the details of the calculation made in the memo of calculation by the decree holder but has accepted the memo of calculation in toto submitted by the decree holder. I do not find any illegality or irregularity committed by the trial court when particularly PW-1 has not been subjected to cross-examination and also when the details mentioned in the memo of calculation are not subjected to contest by the other side. Under the above said circumstances, I do not find any strong reasons to interfere with the orders passed by the trial Court.

7. Be that as it may, the learned counsel for the petitioner contends that as PW-1 is not cross-examined, an opportunity may be given to the judgment debtor to contest the proceedings by cross-examining PW-1 to elicit if there are any wrong calculations or defects in the memo of calculation filed by the decree holder.

8. The learned counsel for the respondent No. 1 submits that subject to the condition that the petitioner-judgment debtor depositing the entire amount as calculated by the decree holder in the memo of calculation, an opportunity may be given to the respondents to cross-examine the witness and thereafter the court can pass appropriate orders whether any amount in excess is deposited by the management or if there is any deficit, by taking into consideration the cross-examination of the witness.

9. The matter is of the year 2012. Since then, the decree holder is running from pillar to post in the court. Therefore, in my opinion, as submitted by the learned counsel for the respondent that the amount which has already been paid to the decree holder in a sum of Rs. 2,50,000/- shall remain with him till the court gives its final verdict on the memo of calculation filed by the decree holder. However, it is made clear that the petitioner-judgment debtor before the executing court shall deposit 50% of the amount as per the memo of calculation filed by the decree holder before the executing court within one month from today and thereafter cross-examine PW-1-the decree holder. The executing Court is directed to permit the judgment debtor to cross-examine PW-1 on condition of depositing 50% of the amount as per the memo of calculation filed by the decree holder. The Executing Court shall also release an amount of Rs. 2,50,000/- which is already in deposit in favour of the decree holder forthwith subject to the condition that the said amount has to be adjusted towards the amount payable to the decree holder and if there is any excess amount deposited, the same has to be refunded by the decree holder after the final order.

With these observations, the petition is disposed off.