

(2015) 04 KAR CK 0161

In the Karnataka High Court

Case No : Writ Petition No. 17468/2010 (S-RES)

K. Jayarama Balyaya

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 4 AKR 125 : (2015) ILR Kar 2406 : (2015) 4 KarLJ 67 : (2015) 3 KCCR 2857 : (2015) LabIC 3983

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : A.R. Holla, for the Appellant; V.K. Narayana Swamy, CGC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Petitioner is seeking for the following relief:

"Direct the respondents to consider the period of service of the petitioner from 24.08.1987 to 09.09.2003 as on duty and extend all service benefits to the petitioner accordingly, in pursuance of his representations dated 24.10.2009 and 08.02.2010, Annexure-W and Annexure-X respectively."

2. Petitioner was appointed as temporary Research Assistant in the second respondent - Coffee Board on 04.09.1982. He was subsequently appointed as Assistant Cuptaster on 12.09.1983 against vacancy reserved for Scheduled Caste/ Scheduled Tribe. On raising suspicion with regard to the caste certificate dated 30.11.1981 produced by the petitioner at the time of appointment which certified that petitioner belongs to "KANIYAN" caste categorizing it as "Scheduled Caste", matter came to be referred to CID, Civil Rights Enforcement Cell by second respondent. The report which came to be submitted indicated that caste claimed by petitioner does not belong to Scheduled Caste but belongs to Other Backward Castes (OBC), Disciplinary Proceedings came to be initiated against petitioner in the year 1987. After conducting a domestic enquiry, by order dated 19.05.1989,

petitioner came to be dismissed from services by the Disciplinary Authority and appeal filed by the petitioner against said order of dismissal was rejected by the appellant authority namely, first respondent by order dated 12.02.1990 (Annexure-G). Being aggrieved by said order, petitioner approached this Court in W.P. No. 9220/1990 which came to be dismissed by order dated 06.08.1991 (Annexure-H). However, it was observed by the co-ordinate Bench of this Court as under:

"6. Having regard to these circumstances, this writ petition is dismissed. But the dismissal of this writ petition will not preclude the petitioner from seeking his remedy before an appropriate forum."

Undisputedly, said order has become final.

3. However, it requires to be noticed at this stage that petitioner had also produced caste certificate dated 17.09.1988 issued by the Tahsildar, Puttur Taluk, Dakshina Kannada District certifying that he belonged to "KANIYAN" caste categorised as Scheduled Tribe in Karnataka State, which certificate was doubted and it was referred to the Director, Social Welfare Department, Government of Karnataka by the second respondent -Coffee Board and said authority by communication dated 22.11.1988 had called for an explanation from Tahsildar, Puttur Taluk who in response to said communication, by order dated 21.01.1989 cancelled the caste certificate dated 17.09.1988 issued to the petitioner.

4. In view of the report having been submitted by the CID, CRE Cell, criminal prosecution was launched against petitioner in CC No. 1587/1987 and after trial, petitioner was acquitted by the jurisdictional Magistrate by order dated 26.11.1992 on the ground that it cannot be held that caste certificate obtained by the petitioner was by deceitful means. Based on the said order passed by jurisdictional Magistrate, petitioner is said to have given representation to second respondent and an undertaking was also submitted by petitioner on 18.07.2003 undertaking thereunder that he would not claim any seniority, promotion, backwages etc. as more specifically stated therein. Considering the plight of petitioner, second respondent by order dated 09.09.2003 reinstated the petitioner on the conditions stipulated thereunder which was preceded by order dated 25.07.2003.

5. In view of the liberty having been granted to petitioner by this Court while dismissing Writ Petition No. 9220/1990 by order dated 06.08.1991 (Annexure-H), petitioner approached the District Caste Verification Committee, Dakshina Kannada District since caste certificate issued by the jurisdictional Tahsildar had been cancelled. The District Caste Verification Committee, Dakshina Kannada District, Mangalore by proceedings dated 18.10.2004 (Annexure-R5) held that since petitioner is native of Panaji village, Puttur Taluk, the benefit extended under the reservation policy of the Government would be inapplicable and cannot be extended to the petitioner. Aggrieved by this order, appeal was filed by the petitioner before the Director of Scheduled Tribe Welfare and Appellate Authority,

Bangalore in appeal No. CR. 19/2005 and appellate authority by order dated 31.12.2007 set aside the proceedings dated 18.10.2004 of the District Caste Verification Committee, Dakshina Kannada District and directed the Tahsildar, Puttur Taluk, Dakshina Kannada District to re-examine the caste certificate issued to the petitioner on 17.09.1988 whereunder he had issued caste certificate to the petitioner categorizing the caste "KANIYAN" as "Scheduled Tribe".

Learned Advocate appearing for respondents has made available copy of the order dated 01.10.2013 passed by the Tahsildar, Puttur Taluk whereunder claim of petitioner has been negated and held that petitioner does not belong to Scheduled Tribe on the strength of his claim that he belongs to "KANIYAN" caste, but on the other hand, he belongs to "BALYAYA" caste which is categorized under the Other Backward Castes ("OBC").

6. Grievance of Sri A.R. Holla, learned Advocate appearing for petitioner is that under the list of castes indicated in the order issued by Government of India, "KANIYAN, KANYAN" has been classified as belonging to Scheduled Tribe and contends that caste "KANYAN" which is followed by the words "in Kollegal Taluk of Mysore District" presently Chamarajanagara District, is to be restricted only to that caste namely, KANYAN caste and KANIYAN caste is to be construed as applicable to the entire State of Karnataka.

7. On the other hand, Sri M.R.C. Ravi, learned Advocate appearing for respondents-2 and 3 contends that mere use of "comma" after the word "KANIYAN" and before the word "KANYAN" cannot be read disjunctively but it has to be construed as indicating the said caste called by different names and it has to be read as applicable only to Kollegal Taluk of Mysore District and now Chamarajanagara District and as such, petitioner would not be entitled to contend that he belongs to Scheduled Tribe. He would also contend that even otherwise, petitioner had undisputedly given caste certificate at the first instance declaring himself to be "Scheduled Caste" and has tried to improvise his version by furnishing one more certificate issued by Tahsildar, Puttur that petitioner belongs to "KANYAN" categorised as Scheduled Tribe which certificate has also since been set aside or cancelled on 21.01.1989 and as such, petitioner would not be entitled to claim backwages for the period "dies-non" namely, for the period from 24.08.1987 to 09.09.2003. He would also elaborate his submission by contending that when petitioner has given an undertaking that he will not claim backwages and other benefits as more specifically indicated therein, petitioner cannot now contend that he is still entitled for service benefits for the period claimed in the writ petition. On these grounds, he prays for dismissal of writ petition.

8. Having heard the learned Advocates appearing for parties and on perusal of case papers, it would emerge that undisputedly, petitioner had obtained appointment in second respondent by claiming reservation benefit namely, by claiming to be a candidate belonging to Scheduled Caste community. At the first

instance, he furnished caste certificate dated 30.11.1981 issued by Tahsildar, Mangalore whereunder he has certified that petitioner belonged to "KANIYAN" caste categorised as Scheduled Caste in Karnataka State and subsequently, petitioner produced one more certificate issued by Tahsildar, Puttur Taluk dated 17.09.1988 certifying that petitioner belonged to "KANIYAN" caste categorised as Scheduled Tribe in Karnataka State.

9. The bone of contention of learned Advocate appearing for petitioner in this writ petition relates to caste to which petitioner belongs to. As per list of Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976 (for short "Act, 1976) caste "KANIYAN and KANYAN" has been classified as Scheduled Tribe and listed at Sl. No. 18 in Part VI -Karnataka under the heading "Scheduled Tribes" and it reads as under:

"18. Kaniyan, Kanyan (in Kollegal taluk of Mysore District.)"

At the cost of repetition, it requires to be noticed that two castes namely, KANIYAN and KANYAN are classified as Scheduled Tribe as per the list appended to Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976 issued in exercise of the power conferred under sub-section (2) of Section 1 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Pursuant to the said notification, State Government has clarified that KANIYAN caste is classified as both in the Scheduled Tribe caste list by the Government of India in the year 1977 and also in the OBC caste list published in the year 1995 by the Government of Karnataka. It is not in dispute that petitioner hails from Dakshina Kannada District in the State of Karnataka in which District caste KANYAN has been classified under category 2A in OBC as per the list published in the year 1995 by State Backward Class Commission.

10. Whether Kaniyan or Kanyan caste indicated in the order issued by Government of India has to be held or to be read as applicable throughout State of Karnataka or to be construed as one restricted to the Kollegal District of Mysore District requires to be examined. For the said purpose, when PART-VI and PART-VII of the order is perused, it would indicate under the category of Scheduled Castes, caste referred as "BANT" at Sl. No. 13 it has been restricted to Belgaum, Bijapur, Dharwar and North Kanara Districts only. Likewise, caste categorised at Sl. No. 4 namely, "ADIYA has been restricted to Coorg District only. When we turn our attention to the caste categorised under Scheduled Tribes, Part-VI - Karnataka under the caste "KAMMARA at Sl. No. 17 it has been restricted to South Kanara District and Kollegal Taluk of Mysore District and so also under the caste "MARATHA" at Sl. No. 35 it has been restricted to Coorg District only and for the caste "MARATHI" at Sl. No. 36 it has been restricted to South Kanara District only. However, in respect of other castes, which is either single or more than one, no restriction is placed as can be seen from the list itself. In other words, in respect of the caste "KOLI DHOR, TOKRE KOLI, KOLEH, KOLGHA at Sl. No. 22 is treated as generic in nature and there is no restriction placed insofar as its applicability in the State of Karnataka is concerned or in

other words, persons belonging to these castes through out Karnataka would fall under Scheduled Tribe category. Likewise, in respect of caste VITOLIA, KOTWALIA, BARODIA at Sl. No. 48, there is no restriction insofar as its applicability to entire State of Karnataka or in other words, it indicates that all these castes would fall under Scheduled Tribe category in the entire State of Karnataka.

11. However, as already noticed herein above, in respect of caste Kaniyan, Kanyan at Sl. No. 18 of Part-VI has been restricted to Kollegal Taluk of Mysore District. At this juncture itself, it is appropriate to deal with the contentions raised by Mr. Holla, learned Advocate appearing for petitioner that since there is punctuation namely, comma before the caste KANYAN, caste indicated as KANYAN is to be read as applicable to the entire State of Karnataka. It cannot be said universally that punctuation can be looked for the purpose of instructions at all times or in other words, Courts cannot have any regard to punctuation for construing previous enactments. If the words are read without commas inserted in the print, Courts are required to give the meaning as it unfolds from the very reading of the words. Hon''ble Apex Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, AIR 1952 SC 369: (1953) 4 SCR 1 has held that punctuation is after all a minor element in the construction of a statute and very little attention is to be paid. It has been held by Hon''ble Apex Court to the following effect:

"57. The contention of Mr. Ghosh is that on a proper construction of the language of the clause, the whole of the Bar Councils Act and not merely those provisions in it, which relate to disabilities attaching to Advocates of other High Courts, must be deemed to be eliminated, so that the right of practising that is conferred by the section is to be exercised without the restrictions or limitations flowing from any of the provisions of the Bar Councils Act. In support of his contention that the whole of the Bar Councils Act is excluded by the opening clause, Mr. Ghosh lays great stress on a comma, which separates the Bar Councils Act and the figures and words that follow, from the expression "or in any other law" which comes immediately after that.

He says further that under the ordinary rules of interpretation the adjectival phrase "regarding the conditions etc." should be taken to apply to the word or phrase immediately preceding it and not to the remoter antecedent term or expression. These arguments, though they have an air of plausibility about them, do not impress me much. Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English Courts. Cockburn C.J. said. in *Stephenson v. Taylor* (1861) 1B and S.101 "On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies". It seems, however, that in the Vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio, see Craies on Statute Law, p. 185. When a statute is carefully punctuated and there is doubt about its

meaning, a weight should undoubtedly be given to the punctuation, vide Crawford on Statutory Construction, p. 343. I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text (ibid)."

12. It is no doubt true that when the statute is carefully punctuated and when there is doubt about its meaning, the weight should undoubtedly be given to the punctuation. However, there cannot be any straight jacket formula for applying this principle and it depends upon facts and circumstances of particular case. Keeping the dicta laid down by the Hon"ble Apex Court in the above referred judgment in mind, when I turn my attention to the facts on hand, the caste indicated at Sl. No. 18 of PART-VI of Act, 1976 it would indicate that in between two castes, punctuation - comma has been used. Punctuation in this context is to be read as to mean and include both the words and they cannot be read disjunctively as sought to be contended by Mr. Holla but on the other hand, these two words have to be read conjunctively inasmuch as, if the intention of the Parliament was to indicate that KANIYAN caste is to be held as applicable to the entire State of Karnataka, it would have found either distinct entry or the restriction as sought to be placed in the entry itself would not have found a place. In other words, clarification found at entry No. 18 indicating that it would be applicable in Kollegal Taluk of Mysore District is to be held as applicable to both the words or castes namely, KANIYAN and KANYAN insofar as those areas alone. This view is also fortified by the fact as already noticed herein above in respect of Scheduled Caste enumerated or categorised at Part-VII, restriction of which is applicable to the caste as indicated in the Districts which have been noticed herein above and even in respect of Scheduled Tribe, it has been clarified that it is applicable in respect of certain Districts only. Whereas, in respect of other castes, there is no such restriction placed which would also indicate that it is applicable to the entire State of Karnataka. In that view of the matter, contention raised by Sri Holla, learned Advocate appearing for petitioner cannot be accepted.

13. In view of the fact that petitioner at the time of seeking for reinstatement into service by virtue of acquittal in the criminal case has unequivocally undertaken thereunder agreeing to abide by his undertaking, same requires to be noticed and petitioner"s undertaking reads as under:

"(1) Any backwages from the date of dismissal till the date of the Order of Reinstatement in the Board"s service of the Deptt. of Commerce;

(2) I will not claim any seniority, promotion, incremental benefits in the post held by me prior to termination of my services;

(3) I will not claim any other financial or leave benefits from the date of my dismissal till reinstatement;

(4) I will not claim any benefit out of my caste certificate till the issue is decided

by the competent Authority."

Hence, petitioner having undertaken not to claim any financial or leave benefits from the date of dismissal till reinstatement, he cannot be permitted to resile from the said undertaking and contend that dehors such undertaking furnished, he would still be entitled to claim service benefits for the period 24.08.1987 to 09.09.2003.

14. Hence, for the reasons aforestated, I do not find any merit in the contentions raised by learned Advocate appearing for petitioner. Accordingly, I proceed to pass the following:

ORDER

- (1) Writ petition is hereby dismissed.
- (2) Rule discharged.
- (3) No order as to costs. Ordered accordingly.