
(1998) 05 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 1246 of 1992

K. Moodalappa

APPELLANT

Vs

The Karnataka State Tourism Development Corporation
Limited, Bangalore

RESPONDENT

Date of Decision : 25-05-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 C (2)
Karnataka Civil Services Rules, 1974 — Rule 99, 99-A

Citation : (1999) 81 FLR 33 : (1998) ILR (Kar) 3592 : (1998) 6 KarLJ 443

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri H.L. Sridhara Murthy, for the Appellant; Sri N.B. Bhat, for the Respondent

Judgement

1. In this petition the petitioner has sought for (1) quashing of the order at Annexure-F dated 8/10-5-1991, (2) for issuance of a mandamus directing the respondent to pay the entire arrears of salary and allowances from 14-8-1980 upto his reinstatement with all consequential benefits without any deduction in any manner and (3) to direct the respondent to consider his case for promotion retrospectively from date his juniors were promoted to higher posts.

2. Petitioner was an employee of the respondent. His services came to be terminated by an order dated 14-8-1980 after holding a departmental enquiry. It is to be observed at this stage itself that the charge-sheet was issued by an incompetent officer and even the order of dismissal was passed by an incompetent officer. The said order of dismissal was the subject-matter in O.S. No. 8719 of 1980 in the Civil Court, Bangalore. After contest, the suit came to be decreed declaring that the order of dismissal was null in the eye of law. R.F.A. No, 388 of 1987 filed against the said judgment and decree was dismissed by this Court. There is a categorical finding in the judgment passed in the appeal as mentioned above. In spite of the judgment and decree passed in the suit and affirmed in the appeal, the respondent did not reinstate the petitioner, Therefore,

petitioner was compelled to file W.P. No. 11094 of 1987 seeking appropriate reliefs. The said petition was allowed by an order dated 19-11-1990 giving the following directions to the respondent.-

"7. Accordingly, I make the following directions to the Corporation.-

(i) to restore the petitioner forthwith;

(ii) to pay to the petitioner a sum of Rs. 5,000/- as ad hoc measure with liberty to set off the same against the balance of payment, if any, to be made to the petitioner;

(iii) to investigate into and make an appropriate determination of the financial liabilities of the Corporation vis-a-vis the petitioner flowing from the order reinducting him into the service of the Corporation which has to be done as if his services had never been done away with. As this direction involves mathematical calculation etc., the Corporation shall embark upon and conclude the same within three months from the date of the order".

The above order had become final as the same was not challenged by the respondent.

3. In spite of the aforesaid order, the respondent by impugned order has calculated the salary and hack wages of the petitioner by restricting them only for a period of three years preceding the date of reinstatement. It is also held that petitioner is not entitled to draw arrears of increments for the back period; that no bonus/ex gratia shall be paid for the period spent on dismissal till the reinstatement. Aggrieved by this order, the petitioner has filed this writ petition seeking the reliefs mentioned above.

4. In the statement of objections filed on behalf of the respondent it is contended that this Court in W.P. No. 11094 of 1987 did not hold that the petitioner is entitled to full back wages but the Corporation was only directed to investigate into the liability and make appropriate determination of back wages payable to the petitioner, It is stated invoking Rules 99 and 99-A of the Karnataka Civil Service Rules only three years back wages had been paid to the petitioner. One of the stands taken is that this Court is not the proper forum to determine the back wages payable to the petitioner and the same has to be determined in proceedings u/s 33-C(2) of the Industrial Disputes Act.

5. Mr. H.L. Sridhara Murthy, learned Counsel for the petitioner submits that since the respondent has not implemented the orders of this Court, the petitioner has approached this Court. According to him, it amounts to non-compliance of the order of this Court in the earlier writ petition. It is stated that payment of back wages only for three years and denial of promotion is arbitrary exercise of power. It is argued that decision rendered in relation to the order of dismissal was on merits and not on technicalities.

6. Per contra, Sri N.B. Bhat, learned Counsel for the respondent argued that the

Civil Court passed the judgment and decree in the suit solely on the ground of violation of principles of natural justice. Keeping this aspect of the matter, the learned Judge had cautiously given the direction (iii) extracted above in the writ petition to investigate and make proper determination of the financial liability of the respondent flowing from the reinstatement of the petitioner into service. He submits that in strict conformity with the said direction a notice as per Annexure-D was issued to the petitioner and since the reply submitted thereto was not satisfactory, the impugned order at Annexure-F was passed. He therefore submits that issuance of direction for payment of full back wages does not arise. He has reiterated the stand taken in the objections that the quantification of back wages has to be done as provided u/s 33-C(2) of I.D. Act.

7. As regards relief (3) relating to promotion sought for by the petitioner, in paragraph 6 of the statement of objections the respondent has fairly stated that the seniority lists of the respondent-Corporation have since been finalised and published on 11-1-1994. It is further stated that the case of the petitioner for promotion will be considered in accordance with the Rules and Regulations of the Corporation, depending upon the vacancy position. In view of this, there is no necessity to give any direction in this regard. However, learned Counsel for the petitioner submitted that some of the juniors of the petitioner mentioned in Annexure-G have been promoted way back in the year 1985-86 and therefore petitioner is entitled for promotion from the dates on which his juniors were promoted and he should be placed above them in the seniority list. The respondent-Corporation shall take necessary steps in this regard and grant promotion or promotions to the petitioner at appropriate stages and his seniority shall be fixed accordingly.

8. So far as the first two prayers relating to quashing of Annexure-F and direction for payment of entire arrears of back wages is concerned, I have perused the judgment and decree passed by this Court in R.F.A. No. 388 of 1987. In paragraphs 3 and 4 of the judgment there is a categorical finding that the charge-sheet had been issued by an incompetent officer and the order of dismissal had been passed by an incompetent person, which is without jurisdiction or authority of law. The decision of the Civil Court that the order of termination is null and void had been upheld. The effect of this has been considered in W.P. No. 11094 of 1987 and in para 2 of the order passed therein it is clearly held that after quoting the relevant portion of the judgment in the appeal, has held that "it becomes evident that the order terminating the services of the petitioner was non est in that it did not exist in the eye of law at all. In view of this clear findings of this Court, it cannot be said that the judgment and decree of the Civil Court declaring the termination as null and void was based only on the technicality of violation of principles of natural justice and not on merits. It has been concurrently held in the regular appeal and in the earlier writ petition that the charge-sheet was issued by incompetent officer, which means the initiation of disciplinary proceedings against the petitioner was ab initio void. Since this finding goes to the very root of the matter, it should be construed that

the decisions rendered were on merits and not merely on technicalities, as sought to be made out by the learned Counsel for the respondent.

9. At the end of paragraph 2 of the order in W.P. No. 11094 of 1987, it is clearly held that "to state it more parenthetically, he has to be treated as if he was never removed". In the beginning of paragraph 4, it is again in unequivocal terms held that "undoubtedly the petitioner is entitled to all service benefits, seniority, improvement in emoluments etc., that has taken place all these years of his non-employment in the Corporation". It was directed to consider all these aspects after the petitioner was reinstated into service. In view of these clear findings of the Court, there was no necessity for the respondent to issue the notice at Annexure-D to the petitioner. In fact, it ought to have calculated the back wages and other emoluments payable to the petitioner bearing in mind these findings. Instead of doing so, the Corporation proceed to make its own interpretation of the decisions of this Court in a wrong manner, the result of which is the impugned order. In the circumstances, the impugned order as also the notice at Annexure-D are illegal, arbitrary and contrary to the decisions of this Court in the regular first appeal and the earlier writ petition and the same cannot be sustained in law.

10. In view of what has been observed above, question of respondents invoking Rule 99 or 99-A of K.C.S. Rules or petitioner approaching the forum under the Industrial Disputes Act for getting quantification to be made of the amount payable to him does not arise. In the light of the finding in the earlier writ petition undoubtedly the petitioner is entitled to all service benefits etc., no more orders or clarification is required for the respondent-Corporation in the matter of payment of full back wages from the date of termination till his reinstatement as it has been clearly held that he has to be treated as if he was never removed and that the order of termination did not exist in the eye of law.

11. Rule is made absolute. Writ petition is allowed. The impugned order at Annexure-F is hereby quashed. The respondent is directed to pay all the back wages to the petitioner from the date of dismissal till his reinstatement with all other consequential benefits together with interest at 6% per annum until payment is made. The amounts already paid to the petitioner shall be deducted from the total amount payable.

Further, the respondent-Corporation shall consider the case of the petitioner for promotion as observed hereinabove and fix his seniority at the appropriate place.

Time for compliance is three months from the date of receipt of a copy of this order.

Since this is the third round of litigation, it is made clear that the respondent-Corporation shall not drive the petitioner to any further litigation in the matter.