

(2002) 07 KAR CK 0062
In the Karnataka High Court
Case No : Writ Appeal No. 711 of 1999

Karnataka State Bar Council and Another	APPELLANT
Vs	
P. Janakiram	RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Karnataka Advocates Welfare Fund Act, 1983 — Section 16 (3), 21

Citation : AIR 2003 Kar 1 : (2002) ILR (Kar) 4363 : (2002) 5 KarLJ 357 : (2002) 4 KCCR 2892

Hon'ble Judges : Kumar Rajaratnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : S.S. Joshi, for the Appellant; B.V. Krishna, for the Respondent

Final Decision : Allowed

Judgement

K. Bhakthavatsala, J.—This writ appeal is directed against the order dated 29-10-1998 passed in W.P. No. 4235 of 1994 on the file of this Court.

2. The brief facts of this case leading to the filing of this writ appeal may be stated as under:-

The respondent herein as a member of the Karnataka Advocates' Welfare Fund, filed an application for payment of retirement benefits under the Scheme. The appellants considered the application at Annexure-A in the meeting held on 6-3-1993 and passed the following Resolution No. 41 of 1992-93 at Annexure-B.

"Resolution No. 41 of 1992-93

It is resolved to communicate the applicant that he is not eligible to the retirement benefits as he intends to continue practice and it is not the case of cessation of practice, hence, it is rejected".

3. Aggrieved by the resolution at Annexure-B the respondent-Advocate preferred an appeal u/s 21 of the Karnataka Advocates' Welfare Fund Act, 1983 (hereinafter referred to as "the Act"). The appeal was disposed off on 18-9-1993

holding that the Trust Committee Resolution was correct and passed following resolution at Annexure-D.

"Resolution No. 106 of 1993, dated 18-9-1993

Trustee Committee Resolution is approved. Order to be passed accordingly".

4. Being aggrieved by Annexures-B and D the respondent-Advocate preferred the writ petition.

5. The writ petition came to be disposed off finally after hearing the learned Advocates. The learned Single Judge allowed the petition and quashed the impugned resolution at Annexures-B and D, and directed Karnataka Advocate Trustee Committee to reconsider the application filed by the Advocate on 24-11-1992. This is impugned in this writ appeal.

6. Heard arguments.

7. The learned Counsel for the appellants vehemently submitted that as per the Karnataka Advocates' Welfare Fund Act, 1983, and the rules framed thereunder the respondent-Advocate is not entitled for any benefit as he has not indicated the date of retirement or cessation of practice as required in the prescribed form. In other words it is contended that as against Sl. No. IX of the prescribed form Form VIII the respondent-Advocate has not mentioned the date of retirement/cessation of practice.

8. The learned Advocate appearing for the appellants drew our attention to Section 16(3) of the Act. Section 16(3) of the Act reads as follows:-

"A member of the fund may opt for retirement benefits at anytime after five years of his admission as a member of the fund, but he shall be eligible for readmission to the fund as a new member subject to such conditions as may be prescribed".

9. Thus, it is clear that the respondent who is the member of the Advocate Association is entitled to the benefit of Section 16(3) of the Act in the event of cessation of practice or retirement. In the instant case the learned Advocate has not mentioned the date of retirement or cessation of practice. Under such circumstances, the 2nd appellant-Committee was justified in passing the resolution at Annexure-B holding that the respondent-Advocate was not entitled for retirement benefits.

10. The case of the respondent is nothing but seeking retirement benefits under the Scheme without taking retirement from the legal practice, which is contrary to the very object of the Act.

11. The learned Single Judge has not interpreted Section 16(3) of the said Act with reference to the object of the enactment. In short, Section 16(3) of the Act is intended for those persons cease or retire from practice, but the intention of the respondent is not so.

12. The preamble of the Act reads as follows.-

"An Act, to provide for the Constitution of a Welfare Fund for the payment of retirement benefits to Advocates in the State of Karnataka and for matters connected therewith or incidental thereto.

Whereas, it is expedient to provide for the Constitution of Welfare Fund for the payment of retirement benefits to Advocates in the State of Karnataka and for matters connected therewith or incidental thereto.

Be it enacted by the Karnataka State Legislature in the thirty-fourth year of the Republic of India as follows".

13. Section 16(1), (2) and (3) of the Act which are relevant to this case reads as follows.-

"16. Payment from the fund on cessation of practice.--(1) A member of the fund shall, on cessation of practice, be entitled to receive from and out of the fund an amount at the rate specified in the schedule.

(2) In the event of the death of a member, the amount shall be paid to his nominee or, where there is no nominee, to his dependents or heirs in equal share.

(3) A member of the fund may opt for retirement benefits at anytime after five years of his admission as a member of the fund, but he shall be eligible for readmission to the fund as a new member subject to such conditions as may be prescribed:

Provided that a member suffering from permanent disablement shall be allowed to retire within five years of his admission to the fund".

14. As can be seen from Section 16 a member of the fund is entitled to receive from and out of the fund certain amount as specified in the schedule on condition that the member ceases to practice. In the case of a death of a member the legal heirs are entitled to certain benefits. Section 16(3) gives the option to a member to retire from practice anytime after five years of his admission as a member of the fund. The benevolent part of Section 16(3) is to the effect that he shall be eligible for readmission to the fund as a new member subject to the conditions as may be prescribed. In other words, even if the benevolent portion of Section 16(3) is read independently as was suggested by the learned Single Judge the member ought to declare his intention to retire from practice. There is no such declaration made by the member in the form of seeking the benefit. By no stretch of imagination can it be said that a member can receive the benefit under the fund even if he does not choose to retire. The scope of Section 16(3) is only to enable a person after retirement to change his mind and resume practice and on resumption of practice can seek readmission to the fund as a new member. It can never be said that Section 16(3) can lead to the mischief of a member continuing to practice and seek the benefit under the fund. That in our view would go against the spirit of the legislation. The whole legislation has to be read

harmoniously as a legislation meant for providing welfare fund for an Advocate on retirement. In that view of the matter the learned Judge was in error in holding that Section 16(3) gives an Advocate the right to continue practice and to claim retirement benefit without declaring his intention to retire.

15. In that view of the matter the writ appeal is allowed and the order dated 29-10-1998 in W.P. No. 4235 of 1994 is set aside and the writ petition is dismissed. No costs.