

(2015) 03 KAR CK 0396

In the Karnataka High Court

Case No : Writ Petition No. 7276/2006 (S-RES)

Karnataka University Employees' Co-operative Credit Society
Ltd.

APPELLANT

Vs

Channappa A. Burlagatti

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2015) 03 KAR CK 0396

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

**Advocate : K.L. Patil, for the Appellant; Madan Mohan M. Khannur, Advocates
for the Respondent**

Final Decision : Partly Allowed

Judgement

B.S. Patil, J.

1. The short question that falls for consideration in this writ petition is:

"Whether the 2nd respondent-Assistant Registrar of Co-operative Societies and the Karnataka Appellate Tribunal have committed any illegality in ordering that 1st respondent was entitled for full salary amounting to a sum of Rs. 22,198.28 ps along with interest at 15% p.a. during the period of his suspension?"

2. Facts necessary for the disposal of the case, stated in nutshell are that petitioner is a Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act. Respondent is an employee of the petitioner-Society. He was discharging his duties as a Secretary during the relevant period when the order dated 04.12.1982 suspending him from his services on the basis of certain allegations was issued.

3. Alleging that he was not paid suspension allowance, respondent No. 1 filed a writ petition before this Court in W.P. No. 499/1983. He sought for a writ of

mandamus against the respondent-Society to pay the subsistence allowance from 02.12.1982 in accordance with law. During the pendency of this writ petition, Society revoked the suspension of 1st respondent as per Resolution dated 31.10.1985. It was made clear in the said Resolution which is produced at Annexure-B that for the period of suspension, he would be only entitled for subsistence allowance and not for full salary and that he would not be entitled for annual increments for the period he was kept under suspension. Employee moved the Labour Officer. The Labour Officer vide his communication dated 21/04/1986 produced at Annexure "D" directed the petitioner society to pay the salary and increments to which the respondent-employee was entitled for the period of suspension.

4. Thereafter, petitioner-society, based on the communication issued by the Labour Officer, passed a resolution dated 04/06/1986 resolving to give full salary and increments to the respondent-employee. However, on 05/06/1989 the petitioner-society passed one more resolution there by modifying the previous resolution by denying the respondent employee, benefits of the resolution earlier passed.

5. A dispute was raised by the respondent under Section 70 of the Karnataka Co-operative Societies Act, before the Assistant Registrar. The Assistant Registrar passed an order dated 02/03/1991 allowing the dispute and directing payment of interest at 15% to respondent.

6. It is necessary to notice here that after the first resolution dated 04/06/1986 was passed by the petitioner-society granting the benefits to the petitioner, the respondent-employee withdrew the Writ Petition No. 499/1983 stating before the Court that grievance made by him in the writ petition did not survive for consideration. Recording his submission, this Court dismissed the writ petition on 25/02/1987 as per Annexure "C".

7. The order passed by the Assistant Registrar on 02/03/1991 was challenged in appeal before the Karnataka Appellate Tribunal (hereinafter referred to as the "KAT", for short). The KAT remanded the matter for fresh consideration observing that the effect of the order passed in Writ Petition No. 499/1983 dismissing the same as withdrawn had not been considered by the Assistant Registrar.

8. After remand, the Assistant Registrar passed an order dated 10th August 2001 holding that the respondent-employee was entitled for difference in the salary for the period during which he was suspended. The Assistant Registrar has referred to the resolution dated 04/06/1986 passed by the Management resolving to grant full salary and the annual increment to the employee. He held that based on the said resolution, employee was taken back to duty and therefore subsequent action of the Management in again taking a stand that the employee could not be granted full salary and annual increment, was not justified. This order was again challenged by the Management before the KAT. The KAT by its

order dated 04/03/2005 vide Annexure "G" has dismissed the appeal confirming the order passed by the Assistant Registrar. This order is challenged in the writ petition.

9. Learned counsel for petitioner, Sri. K.L. Patil, contends that though the KAT on the earlier occasion while remanding the matter had specifically directed the Assistant Registrar to take note of the effect of the order dismissing the Writ Petition No. 499/1983 as withdrawn, the Assistant Registrar failed to take note of the same nor the KAT has considered the said aspect. He also contends that the KAT had also observed that the Assistant Registrar had to consider the effect of the respondent-employee joining his duties without raising any objections to the conditions imposed by the society in its first resolution. He has next contended that the Labour Officer did not have any power or jurisdiction to issue any direction to pay full salary and increments and it is because of this, the Management had to reconsider its decision and modify the resolution.

10. Having heard learned counsel for both parties, I find that withdrawal of the writ petition by the employee cannot be regarded as a factor that could come in the way of the employee raising a dispute before the Assistant Registrar or resulting in waving his rights. It is so because at the time when he withdrew the writ petition, the Management had already passed a resolution dated 04/06/1986 granting relief to the employee.

11. However, there is some substance in the contention of Sri. Patil that the respondent-employee had availed the benefit of reinstatement even in the face of the conditions imposed in the resolution dated 31/10/1985, however, he had brought pressure from the labour officer subsequently to secure full salary and increment for the period in question.

12. Be that as it may. It is clear that petitioner society has subsequently modified the previous resolution on 05/06/1989 i.e., after a lapse of nearly 3 years from the date of granting the benefits vide resolution passed in the year 1986. Therefore, it cannot be said that the respondent-employee would not get any cause of action to re-agitate the matter before the Assistant Registrar. It is because of the changed stand of the Management that the respondent-employee was aggrieved.

13. The respondent-employee has also contributed to the dispute because having got the full benefit of reinstatement he has kept the dispute alive by approaching the Labour Officer and thereafter agitating the matter before the Assistant Registrar. Therefore, while I find that the order passed by the Assistant Registrar confirmed by the KAT granting the benefit of full salary and increment for the period of suspension cannot be found fault with, interest awarded at the rate of 15% per annum on the said amount, for the reasons stated above, cannot be justified. The rate of interest deserves to be reduced to 9% per annum from 15%.

14. In all other aspects, the orders under challenge are sustained making it clear that interest payable would be 9% per annum on the amount ordered to be paid by

the authorities. Writ petition is accordingly allowed in part.
Parties to bear their respective costs.