

(1995) 06 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 29330 of 1993

Lakshmipathi

APPELLANT

Vs

Karnataka Legal Aid Board

RESPONDENT

Date of Decision : 15-06-1995

Acts Referred:

Karnataka Legal Aid Board Act, 1981 — Section 13

Citation : (1995) ILR (Kar) 2316 : (1995) 5 KarLJ 61

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : M.C. Narasimhan, for the Appellant; Sashidhar Karmadi, HCGP, for the Respondent

Judgement

Saldanha, J.—This case is illustrative of how persons who are closest to the Judicial System and who have spent their whole life in the process of assisting in the dispensation of Justice to all and sundry can themselves be at the receiving end when it comes to their own cases. It is a sad reflection on the working of our Government Departments for which I see absolutely no justification, that inane and meaningless objections are raised on utterly senseless considerations and that all of these arise in relation to disbursement of small amounts of money in situations that can never be justified. The "Babu mentality" that pervades a certain section of subordinate officers in the Government will have to be shed when it comes to dealing with these situations because it must be realised that it is a tremendous amount of waste of public and personal time getting into bureaucratic tussles on matters which are devoid of substance. Whether it is a question of reimbursing a Judge's Medical Bills or sanctioning and paying terminal benefits the situation has become both chronic and scandalous with the amount of harassment that the victim has to tolerate reaching staggering proportions. There is a charge, and to my mind not without substance, that where objections are raised without there being any justification that this is not done out of ignorance or stupidity but that it has its genesis in corrupt motives because a personal visit to the Department invariably results in some forms or

horse trading and the problem is overcome. If the victim stands his ground, very profound objections are put forward and he is even told to bring appropriate Court Orders knowing fully well how expensive and time consuming and unpredictable the situations are. These observations have become necessary because corrective action is essential.

2. The present petitioner started his career on 25.1.1950 as a Second Division Clerk in the II Munsiff's Court, Bangalore and after working in various Courts, was transferred to the High Court of Karnataka in 1958. He was an efficient employee who passed all the Departmental Tests and got promotion to the cadre of First Division Clerk, Senior Assistant and Section Officer. The petitioner was deputed to serve in the Legal Aid Board as Section Officer with effect from 1.1.1980. With effect from 5.3.91, the Karnataka Legal Aid Board was established as a statutory body. The Board moved the State Government for purposes of absorbing the services of the petitioner and after consultation with the Registrar of the High Court, an order dated 18.12.1985 was passed permitting the absorption in the public interest protecting all the accrued service benefits such as gratuity, pension etc. The petitioner's services having continued to be good, he was promoted to the cadre of Assistant Secretary carrying a pay scale of Rs. 2200-4070/-. The Petitioner thereafter attained the age of superannuation and retired from the services of the Board on the afternoon of 31.12.1989.

3. Then followed the inevitable struggle that almost every retired Government employee has to go through for purposes of obtaining his terminal benefits, The petitioner has set out the correspondence that ensued right upto January 1993 for over three years the controversy being that the Government proceeded on the footing that the petitioner has ceased to be its employee with effect from 18.12.1985 when he was absorbed by the Board. The contention of the Government was that it was required only to pay the petitioner upto that date and that for purposes of total length of service last salary drawn and all other issues relevant to the fixation of pension and terminal benefits that this would be the cut off date and that the Board was responsible for the payment in relation to the subsequent years of service.

4. The Karnataka Legal Aid Board which is an authority specially set up to render Justice to all those sections of society who are denied and deprived of Justice, in the case of its own Assistant Secretary presented a unique dilemma which if briefly summarised, was to the effect that however unjust the situation may seem, that the Board was helpless. In the first instance, it was pointed out that the requisite Service Regulations prescribing for the payment of such benefits were required to be framed and that, thanks to the inaction of the State Government, that these Regulations were still at the draft stage. The Officers of the State Government in their even more superior wisdom, pointed out the profound legal difficulty that even if the Regulations were framed, unless Section 31 was amended to give them retrospective effect, that they would not apply to

cases like that of the present petitioner whose services had come to an end prior to the date on which those Regulations saw the light of day. In other words, the petitioner's previous employer, namely the State Government, and his last employer, namely the Legal Aid Board, both put forward more substantial grounds on which in law neither of them was responsible for the payment of the petitioner's service benefits in relation to his tenure with the Board and the petitioner was virtually left in a state of limbo, his position being that of a poor employee who is left between two stools. With no option left, the petitioner finally moved this Court by way of the present Petition.

5. The petitioner's learned Advocate submitted that u/s 13 of the Karnataka Legal Aid Board Act 1981, there is a clear provision that all the Regulations that apply to Government employees in the State of Karnataka under the various Acts and Rules would apply to the employees of the Board and that consequently, it was wrong on the part of the State Government to make any artificial distinction. The learned Advocate submitted that the petitioner for all intents and purposes until the Board formulates corresponding Rules cannot be deprived of his service benefits as he has not committed any act of misconduct and more so because the Board is a public authority wholly funded by the State Government and therefore, that the petitioner will have to be construed as being on par with other employees of the State Government. The learned Advocate also drew my attention to a subsequent provision in Rule 247(2) of the Karnataka Civil Service Rules which deals with cases of Judicial Officers who are transferred to a civil position and in whose case, they shall be deemed for purposes of pensionable service as though the whole of their tenure had been served in the parent Department.

6. The learned Government Advocate who is representing the State Government and the Board submitted in the first instance, that the stand of the State Government is perfectly correct. To my mind, the position was quite indefensible but on behalf of the Board a detailed reply was filed containing elaborate legal submissions none of which are of any consequence basically justifying the position that the Board was helpless in so far as no Rules and Regulations had either been framed or finalised and that consequently as and when the position was rectified at some distant future point of time, the present case would be finalised by implication, a submission was canvassed that there is no intention to do any injustice to the petitioner and that corrective action will be taken as soon as the requisite Regulations were framed. It is ironical, that neither the Government nor the Board accepts the position that manifest injustice has already been done and that it is continuing and that the petitioner who is a retired old man, cannot be expected to wait indefinitely until the turn of the century, when hopefully, the State Government and the Board will get over their lethargy and frame the Regulations. To my mind, any responsible Government, ought to have framed the Regulations in the year 1981 and there was an equal responsibility on the Board to have ensured that this was done and for the Government to have clarified that during the interim period, the existing

Regulations that applied to Government employees would hold good. This is virtually a situation where the State Government is trying to take advantage of its own wrong and something which the law will not permit. The learned Government Advocate tried to convince the Court that the Board is a separate entity and that the effect of permanent absorption in the services of the Board on and from 18.12.1985 implies that the responsibility of the Government for payment of salary and service benefits ceased as and from that date. As far as the Board was concerned, he submitted that the petitioner's claim has never been refused and that his dues will be quantified and paid as soon as the requisite Rules are framed.

7. It is necessary on the facts of this case to clarify the position in law. The defence that the petitioner, after the date of absorption ceased to be a Government employee cannot be accepted for the reason that it is an artificial and not a real distinction. It may be that for administrative and accounting purposes the Board is a statutory and separate authority but the fact remains that it is set up and funded by the State for a specified purpose under the Constitution and is entitled to draw its officers from among the cadre of Government Officers. The absorption of the petitioner being in law therefore, on par with a transfer or deputation assignment, the only distinction being that on and from that date he lost his lien to come back to his parent Department signifying thereby that the void which had to be maintained in his place in the parent Department no longer had to be retained. In other words, the argument of the learned Government Advocate that the Government was no longer responsible for the salary and terminal benefits of the petitioner after that date is incorrect principally because the petitioner had at no time resigned from his service with the Government nor had those services been formally terminated. Had corresponding Rules been framed as they ought to have been, the argument would have been valid to the extent that those Rules would have applied on and from that date but in the absence of any such Rules the petitioner cannot be prejudiced nor can he be deprived of what the law normally entitles him to. It can well be argued that if the petitioner had been informed honestly by the concerned authorities that he would not be entitled to claim benefits for the remainder of his service, he would never have agreed to leave his parent Department. In this case, the record indicates that an administrative decision transferred the petitioner to the Board and that he had virtually no choice in the matter of his services being taken over there. Viewed at from any angle, the defence is unconscionable and unsustainable and cannot be upheld.

8. The position that emerges is that the petitioner shall be deemed for all intents and purposes to have retired from his parent Department and the Government shall be required to compute all his terminal benefits on that basis. The petitioner shall be entitled to the revision of his pension as though he had retired from Government Service as on 31.12.1989 and shall be entitled to receive the arrears in respect of his terminal benefits including his pension in that regard.

9. The Petition accordingly succeeds. The respondents are directed to compute and pay to the petitioner within an outer limit of four months from today the arrears in respect of his pension and all other benefits that will have to be recomputed on the aforesaid basis. The respondents are also directed with effect from 1.9.95 to pay to the petitioner the enhanced pension as a result of that re-computation. Since the withholding of these amounts from the petitioner is entirely due to the situation created by the respondents, they are directed to pay to the petitioner along with the aforesaid arrears, interest computed at the rate of 12% per annum on the aggregate amount from 31.12.1989 until the date of payment. If for any reason, the aforesaid arrears are not computed and paid within the prescribed period of time, the rate of interest payable shall be 18% per annum compounded quarterly. The two learned Advocates are directed to convey the substance of the Court's directions to the concerned Departments for purposes of computation and payment.

10. This Court has had occasion to observe the distressing state of affair whereunder a retired employee in the evening of his life has been required to file a Writ Petition incurring costs and to undergo two years of litigation only due to the fault of the respondents. Under the circumstances, it is directed that the costs of this Petition quantified at Rs. 2000/- shall be paid by each of the two respondents in equal proportion. Rule absolute accordingly.