
(1995) 10 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13204 of 1989

M. Premanandam

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 27-10-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1996) 1 LLJ 882

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : G. Raghuram, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

S.V. Maruthi, J.—The question involved in this writ petition is what is the effect of the judgment in W.P.No. 5924/85 dated September 21, 1988. It arises under the following circumstances.

2. The petitioner was appointed as Clerk-cum Cashier in the State Bank of India, Kollur. On November 16, 1984 a notice was issued to him stating that in the attestation form dated July 23, 1984 submitted by him, he did not mention that he was remanded to judicial custody on July 17, 1984 and that he was employed in the office of the Regional Provident Fund Commissioner, Guntur and he was asked to submit his explanation for suppressing the above facts. He made a representation on November 21, 1984 seeking one week time for submitting his explanation. However, without waiting for the explanation, the first respondent terminated the service of the petitioner by his proceedings dated November 23, 1984. The petitioner filed a representation on April 10, 1985 stating that the allegations made are not correct; that he was not taken into custody either by the police or under the orders of the Court and that when he heard that he was implicated in a criminal case, he voluntarily went to the Court on July 17, 1984 and executed a bond with sureties for his due appearance whenever required by

the Court which was accepted.

3. On the second allegation, he submitted that he was employed temporarily by the Regional Provident Fund Commissioner and it was not a regular appointment. In the representation he also requested the authorities to cancel the orders of termination. Since, the authorities did not heed to his request, he approached this Court by way of writ petition W.P.No. 5924/1985, which came up before a learned single Judge who allowed the same on the ground that the petitioner was not given a reasonable opportunity of representation and that the order was violative of Articles 14, 16(1) and 21 of the Constitution of India.

4. Pursuant to the judgments of this Court dated September 21, 1988, the second respondent by his letter dated November 30, 1988 reinstated the petitioner as clerk-cum-cashier in the Bank from the date of issuance of the proceedings. On a representation claiming consequential benefits, the petitioner was paid the salary for December, 1988 with the initial basic pay in the cadre and the allowances thereon and he accepted the same under protest. The first respondent by his proceedings dated July 19, 1989 confirmed the services of the petitioner with effect from January 30, 1989 and he was admitted to the Provident Fund. In the same proceedings, it is stated that the petitioner was not eligible for pension fund. The petitioner was not made eligible for pension fund in view of para 8(b) of the State Bank of India employees' pension fund which states that a person who is over 38 years of age is not eligible to be admitted as member of the fund. When the petitioner was originally appointed on November 16, 1984, he was only 36 years and therefore, he was eligible to the benefits of the pension fund, but by virtue of the illegal orders of termination and by virtue of his reinstatement to duty on November 30, 1988 by which date he attained 40 years of age, the respondent did not admit the petitioner to the pension fund. On receipt of the letter dated July 19, 1989, the petitioner made a representation requesting the first respondent and the second respondent to count his service between the date of termination till the date of reinstatement i.e., November 30, 1988, but the first respondent refused to grant the same. Challenging the above order, denying the petitioner the consequential benefits following the judgment of this Court in W.P.No. 5924/85, the present writ Petition was filed. The Counsel appearing for the petitioner raised the following contentions.

5. The orders of termination were in violation of principles of natural justice under Article 14 or 16 or 21 of the Constitution of India. An order which takes away or abridges the fundamental rights of citizens under Article 14 or 21 would be void and therefore non est (see *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*,).

6. Where the order of termination is illegal and void ab initio, it does not bring about a cessation of service of a workman and the workman continues to be in service (see *Mohan Lal Vs. Management of Bharat Electronics Ltd.*,).

The effect of the judgment in the earlier writ petition i.e., W.P.No. 5924/85 is that

for all practical purposes the order is ineffectual and nugatory and devoid of any legal force or binding effect. (See Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others,).

7. When once the order of termination was set aside as void ab initio, the petitioner should be declared as continuing in service and should have been granted all the benefits flowing from its declaration including the salary and allowance as if there was no break in service. (See Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora,). In various decisions, the Supreme Court while holding that the termination of service as illegal, directed reinstatement of the employee and payment of back wages provided there is no evidence of the employee being gainfully employed during the relevant period. (Refer to Maharaja Sayajirao University of Baroda and Others Vs. R.S. Thakar,) Maharaja Sayajirao University of Baroda v. R.S. Thaker; Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another, ; Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, .

8. Whereas the learned counsel appearing for the respondents submitted that in view of the judgment in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, holding that:

"in matters of employment while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi judicial proceeding of an administrative authority - not being a proceeding under the industrial/labour law before an industrial / labour tribunal culminating in dismissal of the employee, the High Court should ordinarily, in the event of dismissal being found illegal, simply quash the same and should not further give in a positive direction for payment to the employee full back wages. Such peculiar powers however can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court."

"Further more, whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the Tribunal. If after the termination of his employment the workman employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment.

9. Therefore, this court in exercise of extraordinary jurisdiction under Article 226 cannot grant the relief claimed by the petitioner. The Counsel submits that as long as the judgment in U.P. Ware Housing Corporation (supra) is not overruled, it will occupy the field and the petitioner is not entitled to seek any relief in this writ petition. His further contention is that grant of back wages is not automatic and the power under Article 226 of the Constitution of India is a discretionary power and since the learned judge while allowing the writ Petition 5924/1985,

did not grant the consequential relief, any interference at this stage would amount to reviewing the judgment in W.P.No. 5924/85 and that the present writ petition is barred under Order 2 Rule 2 CPC.

10. The judgment in U.P. Ware Housing Corporation (supra) is a reasoned judgment and it is a precedent as it decided the question of law which specifically arises for consideration. The counsel elaborated that-

"a decision is available as a precedent only if it decides a question of law. Merely because grounds are not mentioned in a judgment of the Supreme Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a Court whose judgment is not subject to further appeal and other Courts.".....

"The jurisdiction of the High Court, while dealing with a writ petition is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims of subjective sense of justice varying from judge to judge. Though the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision applications but this discretion has to be confined in declining to entertain petitions and refusing to grant relief asked for by petitioners, on adequate considerations, and it does not permit the High Court to grant relief on such a consideration alone." (Refer to State of Punjab v. Surender Kumar - 1992 (1) SCC 459).

11. Relying on Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, the Counsel submitted that the petitioner while filing the earlier writ petition abandoned his right to claim consequential benefits. Therefore, he should be prevented from agitating for the same relief again and again as the principle underlined above is based on public policy. The remedy under Article 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the earlier writ petition. In other words the judgment in U.P. Ware Housing Corporation (supra) is final word and this Court cannot grant any relief under Article 226 of the Constitution in view of the judgment in the earlier writ petition i.e. W.P. No. 5924/85.

12. The question therefore, is whether this Court can grant relief under Article 226 of the Constitution of India by granting the consequential benefits, it is true, in U.P. Ware Housing Corporation (supra) the Supreme Court held that in exercise of the power conferred under Article 226 of the Constitution, this Court cannot grant the relief of backwages or the consequential benefits and the power is confined only to declare the order of termination as void. It is also true that the judgment in U.P. Ware Housing Corporation (supra) is a reasoned judgment. According to the learned Judges, the High Court under Article 226 acts only in the supervisory capacity and not as an Appellate Tribunal. It is also true that the High Court, while exercising power under Article 226 acts only in the supervisory

capacity and not as an Appellate Tribunal. It is also true that the High Court, while exercising power under Article 226 is circumscribed by the limitation. However, the judgment in U.P. Ware Housing Corporation (supra) was by a bench consisting of two judges and that it was decided in 1980. I may point out in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, the Supreme Court while directing payment of back wages observed that:

"When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law, and not humour. It is not to be arbitrary, vague and fanciful but legal and regular."

It was also observed that:

"Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure."

13. Admittedly the order of termination was set aside and according to the various judgments referred in the above paragraphs, the order of termination was not only illegal but is void and is nonest from its inception. In other words it is as good as not having been issued at all. If that is the interpretation to be given to an illegal order of termination, the consequence would be that the petitioner is deemed to have been in service between the date of illegal order of termination and the order of reinstatement. Therefore, the respondent while reinstating the petitioner should have released all the consequential benefits as the normal rule in the payment of full back wages and the party objecting to it must establish the circumstances necessitating the departure. The respondents have not established any circumstance necessitating departure from the normal rule. The order of the respondent in not granting back wages and not admitting the petitioner to the consequential benefits suffers from unreasonableness and is unjust.

14. In U.P. Ware Housing Corporation (supra) it is observed that in exercise of the extraordinary jurisdiction under Article 226 of the Constitution, the High Court should simply quash the illegal order of termination and it should not give a positive direction for payment to the employee full back wages is a question of fact depending on the evidences as to whether the employee was gainfully employed or not. However, there seems to be a change in the trend of thinking in the later decisions atleast from 1984. It is necessary to refer to these decisions. In Inderapal Gupta v. The Managing Committee (supra) O. Chinnappa Reddy, A.P.S.E.N. and E.S. Venkataramayya, JJ. in a SLP arising under Article 226 of the Constitution where the orders of termination of the Principal of a school was challenged directed not only reinstatement of the Principal but also allowed all the consequent benefits flowing from the judgment declaring the orders of termination as illegal i.e, salary, allowances and continuity of service. The learned judges observed that the High Court erred in dismissing the writ petition

on the ground that the order of termination was an innocuous one.

15. Similarly in *Maharaja Sayajirao University of Baroda v. R.S. Thakar* (supra) *E.S. Venkataramayya and K.N. Singh, JJ.* were also considering a SLP filed by the employer against the judgment allowing a writ petition filed under Article 226 of the Constitution of India by the employee challenging the illegal orders of termination. The Supreme Court confirmed the judgment declaring the orders of termination as illegal and also reinstatement and payment of full back wages though no doubt it was observed that they do not want to interfere with the discretion exercised by the High Court under Article 226 of the Constitution of India.

16. *Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd.* (supra) is again a SLP against the judgment in a writ petition under Article 226. The Writ petitioner challenged the orders of termination directly under Article 226. The Supreme Court directed not only reinstatement but also back wages for deducting the amount earned by him in the period during which he was out of service.

17. It is true in none of these three cases, the judgment in *U.P. Ware Housing Corporation* (supra) was brought to the notice of the Supreme Court. However, the judgment in *Indrapal Gupta* was decided by three judges one of whom was justice O. Chinnappa Reddy who was also a party to the judgment in *U.P. Ware Housing Corporation Case*.

18. From the above, it appears that there is change in the thinking of the Supreme Court. Perhaps the reason for the change is that a just claim should not be thrown out on technical grounds. Further, the judgment in *Indrapal Gupta* was by three judges whereas the judgment in *U.P. Ware Housing Corporation* (supra) was by two judges. *Indrapal Gupta*'s case being a judgment of three judges and also a later judgment, it has to be followed.

19. It is true that the powers that are exercised by the Supreme Court cannot be exercised by the High Court and there cannot be any dispute about the proposition which the learned counsel for the respondents Sri K. Sreenivasa Murthy brought to my notice. The judgment in *Indrapal Gupta* is the answer to the argument of the learned counsel. While exercising discretion under Article 226, this Court is following the judgments of the Supreme Court in the later decisions. Therefore, the High Court in exercise of the power under Article 226 is competent to grant consequential reliefs provided that it is found that the order of termination is illegal, violative of Articles 14, 16(b) and 21 of the Constitution of India and also is in violation of the principles of natural justice.

20. However, it is not enough for the petitioner to succeed as till he has to cross the hurdle of bar under Order 2 Rule 2 CPC. In *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, , the Supreme Court considered the applicability of Order 2 Rule 2 CPC to a proceeding under Article 226 of the Constitution. It was observed that:

"The bar of Order 2 Rule 2 of the CPC on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Article 226 of the Constitution, but the High Court having disallowed the claim of the appellant for salary prior to the date of the suit, we do not think that we would be justified in interfering with the exercising of its discretion by the High Court."

21. It is true that the Supreme Court has not interfered with the discretion exercised by the High Court under Article 226 of the constitution while holding that the bar under Order 2 Rule 2 of C.P.C. is not applicable to high prerogative writs. Applying the above principle, the fact that this Court in the earlier writ petition did not grant relief or consequential benefits does not bar him from seeking relief in the present writ petition. Further it is a just claim of the petitioner and it should not be thrown out on the technical grounds. In fact, the respondent should have automatically granted him the relief instead of driving him to the Court once again. The Petitioner was driven to the Court on an earlier occasion on account of their illegal action which was set aside. The effect of the judgment was that there was no cessation of service. If there was no cessation of service the petitioner was deemed to have been in service discharging his duties. If he was deemed to have been in service he is entitled to the salary and other benefits and his legitimate dues. The respondents cannot deprive the petitioner of his legitimate dues in the absence of evidence that he was gainfully employed during the period in which he was out of service. Therefore, he is entitled to the relief of not only back wages but also the other consequential benefits namely, admitting him to the Pension Fund and other reliefs.

22. In the light of the above, the writ petition is allowed with costs Rs. 350/-