(1985) 06 KAR CK 0038

In the Karnataka High Court

Case No : C.R.P. 3916 of 1984

Rajasekharaiah APPELLANT

Vs

President, Sri Jagadguru Annadaneshwara Samsthan Math RESPONDENT

Date of Decision : 25-06-1985

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 10, 10 (4) (c) (i), 10 (4) (d)

Citation : (1985) ILR (Kar) 3080 : (1985) 2 KarLJ 464

Hon'ble Judges : Venkatachala, J

Bench : Single Bench

Advocate : L.S. Chaikkanagoudar, for the Appellant; R.H. Chandangoudar, for the Respondent

Final Decision : Allowed

Judgement

Venkatachala, J.—The question, which arises for decision in this revision petition, is of the executability of a decree made u/s 10 (4) (c) (i) of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (for short ''the Act'').

2. Briefly slated, the facts are these: The petitioner here held the post of the Head Master in Jagadguru Annadaneshwara Samskritha Pathasala, Mundargi - a private educational in institution run by Jagadguru Annadaneshwara Samsthana Mutt. Respondent-1 here and respondent-2 here are respectively the President and the Secretary of the Managing Committee of that Mutt. That Managing Committee, by its order dated 2-8-1982, dismissed the petitioner from his Head-Mastership. The petitioner impugned that order by presenting an appeal u/s 8 of the Act before the Court of District Judge at Dharwad - the Educational Appellate Tribunal (for short ''the Tribunal'') constituted by the State Government for the purpose as provided for u/s 10 of the Act. That appeal was enquired into by the Tribunal and allowed by its order dated 13-12-1982, That order''s operative portion read :

"Therefore, I allow the appeal and set aside the impugned order. The appellant will he deemed to have continued in service and should be entitled to all unpaid emoluments and other monetary benefits."

The petitioner, with a view to obtain from the respondents his unpaid emoluments and other monetary benefits as per the order made in appeal, sought to execute it before the Tribunal by filing an execution petition. But, the respondents resisted that execution raising an objection, to wit, that the order under execution entitling the petitioner to emoluments and monetary benefits, was declaratory in its nature and hence inexecutable. By its order dated 2-10-1984, the Tribunal having sustained the objection so raised, dismissed the execution petition itself as unmaintainable. Two reasons, which, as seen from its order, appear to have weighed with the Tribunal in sustaining the objection as to the in executability of the order under execution, are : (i) that the fixing of amount of emoluments and other monetary benefits payable under it (appellate order) to the decree-holder (petitioner here) not being a simple matter of calculation, required fresh investigation and decision; and (ii) that the decree holder (petitioner) can obtain payments of his emoluments and monetary benefits payable to him, by having recourse to the ordinary remedy of a suit in a Civil Court, inasmuch as such a remedy was not barred under the Act. It is that order of the Tribunal dismissing the execution petition of the petitioner, on the reasons given therefore, which has been assailed in this revision.

3. It was argued for the petitioner that the Tribunal, in dismissing the execution petition, had failed to exercise a jurisdiction which was vested in it u/s 10 (4) (d) of the Act and that the reasons, which have weighed with the Tribunal for holding that the order under execution was inexecutable, totally ignore the nature of the order (decree) under execution and the duty required to be performed by an executing Court in executing an order of the kind sought to be executed.

4. By the order of the Tribunal made u/s 10 (4) (c) (i) of the Act, as seen from its operative portion excerpted earlier,

(i) the order by which the petitioner, a Head Master of a private educational institution, had been dismissed, is set aside ;

(ii) the petitioner is treated as having continued as Head Master despite the order of his dismissal ; and

(iii) the petitioner is held to be entitled to all his unpaid emoluments and other monetary benefits.

5. Relief in item (i) above is of a declaratory nature, while relief in item (ii) above is of mandatory nature, in that it has the effect of directing reinstatement of the petitioner in the post held by him at the time of his dismissal. But, relief in item (iii) above, which entitles the petitioner to un-paid emoluments and other monetary benefits, cannot be understood to be anything other than a direction given by the Tribunal to the Management to pay to the petitioner his unpaid

emoluments and other monetary benefits respecting the period during which the order of dismissal was operating against him (petitioner) before it was set aside.

6. If relief granted under item (iii) is understood as above the objection raised for the Management that that relief is merely declaratory in its nature, falls to the ground. The Tribunal, as was rightly pointed out for the petitioner, is vested with full powers u/s 10(4)(d) of the Act to execute its own orders as a Civil Court executing its decrees under the Code of Civil Procedure, 1908 (for short ''Code''). Significantly, the Tribunal has not refused to execute its order relating to relief of unpaid emoluments and other monetary benefits granted to the petitioner thereunder, on the ground that such relief was not at all granted to the petitioner by the Tribunal under its order. The reasons given by the Tribunal for refusal to execute the order relating to unpaid emoluments and other monetary benefits to the petitioner, are, as stated earlier, that (i) the calculation of such unpaid emoluments and other monetary benefits is not a matter of simple calculation, but one which requires investigation and decision; and (ii) the petitioner can as well get such unpaid emoluments and other monetary benefits by filing a suit in a Civil Court inasmuch as that remedy is not barred under the Act. Sustainability of these reasons requires an examination now. The second reason shall be taken up for such examination, first.

7. This reason is difficult of comprehension when the Tribunal, in its order under revision, does not even state that the relief of unpaid emoluments and other monetary benefits is not granted to the petitioner by its order under execution. When, u/s 10(4)(c)(i) of the Act, the Tribunal is specifically empowered to grant an employee of a private educational institution, the relief relating to payment of salary and other allowances from the date of dismissal till the date of reinstatement while setting aside an order dismissing such person from service without being required to pay Court fee on such emoluments and other allowances as in a suit in a Civil Court, the possibility of such person recovering his salary and other allowances by filing a suit in a Civil Court, even if is there, should not be the reason to drive him to the necessity of filing such suit. Besides, driving such person to the necessity of filing a suit may, in fact, amount to denying him the benefit of obtaining relief without payment of Court fee under a beneficial enactment, like the Act, as provided therefore, Moreover, it can-not be said with certainty that in a case as the present one, it is not open to the management to raise a plea of implied bar of such a suit in a Civil Court in view of the provision in Section 10(4)(c)(i) of the Act, which empowers the Tribunal setting aside an order of dismissal, to grant also the arrears of salary and other allowances to the employee concerned. However, in the instant case, the question of seeking such relief relating to salary and allowances (emoluments and other monetary benefits) by the petitioner from the management of the private educational institution by filing a suit in a Civil Court, can never arise as I have already held that such relief has, in fact, been granted by the order under execution, itself.

8. Coming to the first reason given by the Tribunal that the relief relating to unpaid emoluments and other monetary benefits granted in the order under execution to the petitioner, is not a matter of simple calculation, but is one which requires investigation and decision and hence such relief cannot be secured to the petitioner from the management in the execution of that order, the same cannot be sustained for the reasons which I shall presently state.

9. When, in the order under execution, it is slated that the petitioner is entitled to unpaid emoluments and other monetary benefits, it only means that he is entitled to obtain from the management the emoluments and other monetary benefits which remained unpaid during the period of operation of the order of dismissal against him. When the date on which the order of dismissal was made by the management, that is, 2-8-1982, and the date on which that order of dismissal was set aside by the Tribunal, that is, 13-12-1982, and the monthly emoluments and other monetary benefits Which would have been paid to the petitioner if he had been working as a Head Master but for the order of dismissal, can never become matters of dispute, it is ununder standable how the ascertainment of total emoluments and other monetary benefits payable to the petitioner for the duration of his dismissal, could be anything other than a mere calculation to be made having recourse to simple arithmetic. To hold otherwise would be to regard the preparation of salary bills of employees on the basis of rules and other orders by Accountants, as something which involves not a mere simple calculation, but an investigation and decision. What is of significance in this context, is that every aided institution will have to claim or claimed such emoluments and other monetary benefits from the Government for being paid to an employee of the petitioner''s kind.

10. Civil Court''s decree relating to costs does not become inexecutable merely because of non-specification of the amount of costs, therein. Civil Court''s award in a land acquisition case relating to payment of interest on compensation on land from the date of taking possession till the date of payment, does not become inexecutable merely because of non-mention of the date of taking possession of such land, therein or arbitrator''s award relating to payment on a specified item does not become inexecutable merely because of non-specification of the amount payable under that item, therein. It is so, for the reason and on the principle that where a decree or award indicates a firm basis upon which the amount made payable thereunder, could be computed by having recourse to simple arithmetic, it is the legal duty of the executing Court to ascertain such amount and secure to the decree or award holder, the payment of such amount. This duty of an executing Court is overlooked by the Tribunal in refusing to execute its order by which the management was required to pay the unpaid emoluments and other monetary benefits to the petitioner for the period during which the order of dismissal operated against him. Thus, it has failed to exercise the powers of a Civil Court executing the decree under the Code, as required u/s 10(4)(d) of the Act. Consequently, the order of the Tribunal questioned in this Revision Petition, refusing to execute the order for payment of unpaid

emoluments and other monetary benefits, has to be regarded as one made by it without exercising its jurisdiction u/s 10(4)(d) of the Act.

11. In the result, the Revision Petition is allowed, the order questioned therein is set aside and the case is remitted to the Tribunal with a direction to take back the execution petition to its file, ascertain the emoluments and other monetary benefits payable to the petitioner under the order under execution, for the period between 2-8-1982 (date of the order of dismissal) and 13-12-1982 (date of setting aside the order of dismissal) both days inclusive, as indicated in the body of this order, and secure payment of the same from Jagadguru Annadaneshwara Samsthana Mutt (Management) represented by Respondents here, to the Petitioner.

