

(2010) 05 KAR CK 0053
In the Karnataka High Court
Case No : Writ Appeal No. 353 of 2010

Ramakrishna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Citation : (2011) 2 KarLJ 424 : (2011) 4 KCCR 460 SN

Hon'ble Judges : V.G. Sabhahit, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : R. Sharath Chandra, for the Appellant; Sriyuths Vijayakumar, A.G.A. and M.R.C. Ravi, for the Respondent

Judgement

V.G. Sabhahit, J.—This writ appeal is filed by the Petitioner in W.P. No. 29392 of 2009 being aggrieved by the order dated 26-10-2009.

2. It is the contention of the writ Petitioner-Appellant herein that he is the employee in the third Respondent-Bangalore City and Rural District Milk Producers Association Union. That on attaining the age of 58 years on 31-7-2009 he was relieved from services forthwith. However, the age of retirement of the State Government employees has been increased from 58 years to 60 years by order dated 28-7-2008 and the same is applicable to the Appellant and the Respondent was not justified in relieving the Appellant on attaining the age of 58 years. The learned Single Judge dismissed the writ petition holding that there is delay and laches on the part of the writ Petitioner which is unexplained and also held that notification dated 17-9-2008 is prospective with effect from 17-9-2008 and the Petitioner had retired from services on 31-7-2009. Being aggrieved by the said order, this appeal is filed by the unsuccessful writ Petitioner.

3. Notice was issued to the Respondents. The learned Counsel appearing for the third Respondent has filed statement of objections contending that the Appellant has suppressed the material fact in the impugned writ petition. He submitted that in W.P. No. 10701 of 2008 writ Petitioner was Petitioner 1 and the relief that

is sought for in the impugned writ petition has already been sought in the said W.P. No. 10701 of 2008 along with other writ Petitioners and the said writ petition was allowed and the Petitioner has been reinstated who is now in the employment of the third Respondent. He further submitted that for having suppressed the material fact and also having regard to the fact that the Appellant has sought for the same relief which is not maintainable, the Appellant may be imposed with exemplary cost.

4. Learned Counsel appearing for the Appellant submitted that since he was not instructed about the fact of order having been passed in W.P. No. 10701 of 2008, dated 28-1-2010. W.P. No. 29392 of 2009 is filed by mistake and it is unnecessary to impose cost as filing of writ petition and writ appeal is due to bona fide mistake.

5. We have given careful consideration to the contention of the learned Counsel for the parties and scrutinised the material on record.

6. The material on record would clearly show that in view of Annexure-R1 which is produced along with statement of objection filed by Respondent 3, the Appellant herein who is Petitioner in W.P. No. 29392 of 2009 was also first Petitioner in W.P. No. 10701 of 2008 and the relief sought for in W.P. No. 29392 of 2009 is similar to the relief that is sought for in the writ petition filed in Writ Petition No. 10701 of 2008. W.P. No. 29392 of 2009 is dismissed and this appeal is filed against the said order. The second writ petition seeking for the same relief is not maintainable, when the Petitioner has already been reinstated and continued in service. Learned Counsel appearing for the Appellant does not dispute that passing of the order in W.P. No. 10701 of 2008, dated 28-1-2010 was not averred in the Writ Petition No. 29392 of 2009 out of which this appeal arises. Having regard to the fact that the Appellant having suppressed the material fact and filed another writ petition when relief had already been granted in the earlier writ petition, the writ Petitioner would entail imposition of cost to deter persons who are similarly situated from approaching this Court by filing unnecessary writ petitions by suppressing material facts. Accordingly writ appeal is disposed of as the Appellant has already been reinstated pursuant to the order passed in W.P. No. 10701 of 2008, dated 28-1-2010 and the Appellant shall pay cost of Rs. 10,000/- to the Respondents.

Learned Counsel appearing for the Appellant submits that cost may be ordered to be deducted from the salary of the Appellant. The third Respondent shall deduct cost of Rs. 10,000/- payable to it as per the order of this Court, imposed as cost in two monthly installments at the rate of Rs. 5,000/- per month from the salary to be paid to the Appellant commencing from the month of June 2010.

Writ appeal is disposal of accordingly.