

(2011) 11 KAR CK 0330

In the Karnataka High Court

Case No : Writ Petition No. 16872 of 2007 (S-RES)

S.A. Syed Mahmood

APPELLANT

Vs

Karnataka Silk Industries Corporation Ltd.

RESPONDENT

Date of Decision : 19-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11 A

Citation : (2011) 11 KAR CK 0330

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : A.R. Holla and P. Ravindra, for the Appellant; H.M. Muralidhar, Advocate; Shri. Sreeranga Associates, Advocates for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. Heard the learned counsel for the petitioner and the respondents.
2. The controversy in the present petition turns on a narrow (sic)mpass. The petitioner was earlier before this Court challenging the order of dismissal from employment. This Court had allowed the petition by its order dated 3.11.2000 with an observation that the punishment imposed was disproportionate with the alleged misconduct and the respondents were directed to reconsider imposition of a lesser punishment. Since this was not completely complied with by the respondents, the petitioner was compelled to approach this Court by yet another writ petition in W.P.35335/02, which was disposed of by an order dated 30.3.2007 with a fresh direction to the respondents to reconsider the case of the petitioner in the light of the observations made earlier, as already pointed out. Pursuant to which, the present impugned order has been passed whereby the respondents have held that the petitioner shall be reinstated placing him in the minimum pay scale in his cadre without back wages and without continuity of

service as an electrical supervisor and it is treated as purely a fresh appointment for all other purpose. The petitioner being aggrieved by this is before this Court.

3. The learned counsel for the petitioner would point out that by virtue of the respondent having held that the reduction of the petitioner to the lower stage in the time scale and denial of back wages adequately punishes the petitioner for his alleged misconduct and the further observation that it is treated purely as a fresh appointment, would deny the pensionary benefits and other dues which the petitioner would be entitled on the basis of his length of service, which is completely taken away by the respondent treating the petitioner's reinstatement as a fresh appointment. It is this limited ground on which the present petition is filed and therefore seeks an appropriate direction to take the petitioner's past services into account for pensionary and other benefits that may be due to the petitioner.

4. The learned counsel for the respondent, on the other hand, would vehemently oppose the petition, said would submit that any such modification as prayed for by the petitioner would result in the penalty being completely nullified. This Court having held that the quantum of punishment was disproportionate but not having held that the findings against the petitioner were void and invalid the only option of the respondent is to consider the ease of the petitioner for reinstatement, treating it as a fresh appointment. Otherwise, the petitioner suffers no punishment at all. It is in this background that reliance is placed on the decision of the Supreme Court in *J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another*, to hold that the petitioner would not be entitled to any such benefits having regard to the fact that he was being reinstated only on the ground that the quantum of punishment was held to be disproportionate by this Court and therefore, would submit that the petition be dismissed.

5. By way of reply, the learned counsel for the petitioner would insist that the petitioner had indeed worked from 1983 to 1988 and had earned increments and other benefits that were due to him. By virtue of the present punishment imposed that benefit is taken away, which would be unfair and this would have to be kept in view in considering the case of the petitioner insofar as future increments and other benefits that would be available, even if he is denied back wages from the date of dismissal till the date of reinstatement.

6. This contention may not be tenable in view of the authoritative pronouncement of the Supreme Court which reads as follows:-

But the cases referred to above where back wages were (sic) related to termination (sic) which were held to be illegal and invalid for non-compliance with statutory requirement or related to cases where the Court found that the termination was motivated or amounted to victimization. The decision relating to back wages payable on illegal (sic) or termination may have no application to the case like the present one where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a

departmental inquiry, and, the Court confirms the finding regarding misconduct but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act(or any other similar provision) exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the Court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The Court is merely exercising its discretion to award a lesser punishment Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a Court as being excessive, there can be either a direction for reinstatement or a direction for a normal (sic) sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or valid) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement In cases where the misconduct is held to be proved and reinstatement is itself a consequential benefit (sic) from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to recording of (sic) employee and punishing the employees for taking action for the misconduct committed by the employee. That should be avoided, Similarly, in such cases, even where continuity of service is directed, it should be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotion etc.

Having regard to the above observation, the petitioner being conferred the benefit such as increments and promotions etc, is not countenanced while he being reinstated in service by way of lesser punishment than the extreme punishment of dismissal from service. Therefore, the imposed order is modified only to the extent that though the petitioner's reinstatement is treated as purely a fresh appointment for all purposes, the petitioner's past services shall be taken into account for purposes of pensionary and retirement benefits.

7. With that observation the writ petition stands allowed in part.