

(2004) 09 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 52316 of 2003

Shakunthala

APPELLANT

Vs

Akhila Bharatha Billawara Union and Another

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2004) ILR (Kar) 4709 : (2004) 6 KarLJ 93 : (2004) 4 KCCR 503 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : S. Ganesh Shenoy, for the Appellant; P.D. Viswanath and O.I. Bhat, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—Petitioner was working as a Lecturer in Political Science in the college run by the respondents herein. She was terminated from her service by the respondents-College Authorities on 2-7-1992. Aggrieved by the action of the respondents-College Authorities, the petitioner was before the Educational Appellate Tribunal (I Additional District Judge, Dakshina Kannada, Mangalore) in EAT.MA. No. 50 of 1992. The learned appellate Judge, after detailed consideration of the facts and the law pleaded by both the parties, had allowed the appeal and had directed the respondents-College Authorities to reinstate the appellant before him as a Lecturer in Political Science and to pay salary to her from 1-6-1992. The order made by the learned District Judge reads as under.--

"The appeal is allowed.

The order of termination of the appellant dated 10-6-1992 is set aside.

The respondents are directed to reinstate the appellant as Lecturer in Political Science and to pay salary to her from 1-6-1992".

2. Aggrieved by the said aforesaid order passed by the learned appellate Judge,

the respondents herein had carried the matter by way of a revision petition before this Court in CRP No. 1918 of 2000. This Court by its order dated 22-7-2002, rejected the revision petition and confirmed the orders made by the learned appellate Judge. This Court, has observed in its order as under.--

"The Tribunal has recorded a positive finding in answer to Point No. 1 holding that termination order was not justified by the petitioner. Consequently, relief sought for has been awarded in favour of first respondent after setting aside the order of dismissal directing the petitioner to re-instate her as Lecturer in Political Science and also to pay the salary from 1-6-1992. The said order is also strictly in conformity with law on points. Hence, I do not find any ground to interfere in this revision petition. The petitioner must fail.

Accordingly, the CRP is dismissed".

3. The respondents-College Authorities not being satisfied with the orders passed by the learned Single Judge of this Court in the aforesaid revision petition, had carried the matter in an appeal before the Apex Court in SLP No. 21909 of 2002. The Apex Court by its order dated 10-1-2003 has rejected the Special Leave Petition.

4. In view of the orders passed by the Appellate Tribunal, the petitioner had approached the respondents-College Authorities to reinstate her in the service as Lecturer in Political Science and pay her salary with effect from 1-6-1992. Since no responsible person was available in the College to accept her duty report, she had no other alternative except to send her duty report by registered post with acknowledgement due. The communication made by her in this regard with the College Authorities reads as under.--

"In obedience to the above orders, I am hereby reporting to my duty today morning i.e., on 7-4-2003. Kindly, accept my duty report and allow me to perform my duty".

5. Surprisingly, the respondents-College Authorities in the guise of implementing the orders passed by the appellate Court, this Court and the Apex Court, by their communication dated 5-4-2003 had directed the petitioner to report for duty. The conditions imposed in the communication runs counter and contrary to the directions issued by the Appellate forum and which was confirmed by this Court in the revision petition. The communication reads as under.--

"Under the circumstances we permit you to report for your duties as a Lecturer in Political Science from 7-4-2003 as a reliever Lecturer in Political Science provided you report for your duty accordingly on the same service conditions which were prevailing at the time of termination of your service, with effect from 1-6-1992 as applicable to you at the relevant time namely as on 1-6-1992 including your last drawn monthly salary as on 1-6-1992 provided you accept the same service conditions, on your reinstatement.

Since there is no vacancy now available in the College for the post of Lecturer in

Political Science, you are permitted to report for your duties as a Reliever Lecturer in Political Science as a stand by Lecturer in Political Science on a monthly salary of Rs. 1,000/- (Rupees one thousand only) (all inclusive) unit and unless we give you specific instructions in writing otherwise. You will not take up any classes as a Lecturer in Political Science in the absence of vacancy and you will sit in the office room during duty hours on all working days as spare hand in our office and you will be provided with a table and chair and you will be under the control and supervision of our Principal".

6. If this is not an attempt by the respondents-College Authorities to overreach the orders passed by the Courts, I do not know what else it could be. Be that as it may. The petitioner had filed a contempt petition against the respondents-College Authorities before this Court bringing to its notice the communication issued by the respondents-College Authorities to her on 5-4-2003 and the Division Bench of this Court has observed that since the petitioner can execute the decree passed by the learned I Additional District Judge, Dakshina Kannada, Mangalore, they do not intend to entertain the contempt petition.

7. After the dismissal of the contempt petition, the petitioner has filed Execution Petition No, 58 of 2003 before the learned Principal District Judge, Dakshina Kannada, Mangalore. In that she has claimed a sum of Rs. 13,35,974/- as arrears of salary payable by the respondents-College Authorities from 1-6-1992 till the date of filing of the execution petition.

8. After service of notice of the execution petition, the respondents-College Authorities have filed their counter-statement and also a memo and in that they have stated that they are enclosing Account Payee Cheque dated 11-8-2003 for Rs. 1,33,000/- drawn on Union Bank of India in favour of the Principal District Judge, Dakshina Kannada, Mangalore, deposited towards arrears of salary of the decree-holder calculated at the rate of Rs. 1,000/- p.m. as directed by the Appellate Court in EAT.MA. No. 50 of 1992 on 17-2-2000 and with a further prayer not to release and pay the same to the decree-holder till the disposal of the execution petition.

9. In the execution proceedings, the petitioner has filed an application u/s 151 of the Code of Civil Procedure, requesting the Execution Court to release the amount deposited by the respondents College Authorities in her favour, without prejudice and keeping open the contentions of both the sides. In the affidavit filed along with the application, she has also stated the difficulties that she is facing due to financial constraints. Her further statement in the affidavit is that the respondents-College Authorities have been continuously harassing her for well-over a decade and she would need funds to perform the marriage of her daughter whose engagement has taken place very recently. The request made in the application is resisted by the respondents College Authorities by filing their objections.

10. The learned Judge of the Executing Court after considering the request made

by the petitioner in the application filed, has rejected the same vide its order dated 30-10-2003. For rejecting the said application, the learned Judge, to say the least, has assigned very strange reasons. The learned Judge is of the view that the appellate forum while setting aside the order of termination passed by the respondents-College Authorities had only directed the College Authorities to reinstate the decree-holder and to pay salary from 1-6-1992 onwards, but the order does not specifically speak as to whether the said direction of payment of salary is with regard to scale of U.G.C. or in the scale in which the applicant was appointed etc., or on the scale she had last drawn and secondly, though there is an order of reinstatement, it is not clear as to whether the decree-holder had opted herself to be reinstated or not and these issues requires to be adjudicated in the execution petition and therefore, the decree-holder, as a matter of right is not entitled for the entire amount deposited by the judgment-debtor-College Authorities.

11. It is not in dispute that the petitioner was terminated from her service on 2-7-1992 by the respondents-College Authorities. The petitioner while filing the executing petition had claimed a salary as a Lecturer in Political Science and she was of the view that she is entitled for pay scale fixed by the UGC and therefore, she has calculated that the amount payable by the respondents-College Authorities to her from 1-6-1992 is in a sum of Rs. 13,35,952/-. The respondents-College Authorities are of the view that in view of the orders passed by the Tribunal in EAT.MA. No. 50 of 1992, dated 17-2-2000, the petitioner/decree-holder may be entitled for arrears of salary at the rate of Rs. 1,000/- p.m., from 1-6-1992 and to prove their bona fides, they have deposited a sum of Rs. 1,33,000/- by drawing a cheque in favour of the Principal District Judge, Mangalore. As I have already stated that termination of the .petitioner from service was on 1-6-1992 and the appellate Tribunal had directed the respondents-College Authorities to reinstate the petitioner into service from 1-6-1992 and the order made by the Tribunal has become final in view of the rejection of the SLP filed by the respondents-College Authorities, and the execution petition was filed sometime in the month of 2003, claiming a sum of Rs. 13,35,974/- from the judgment-debtors. Even assuming for a moment that the petitioner is entitled for arrears of salary at the rate of Rs. 1,000/- p.m., from the date of termination of service till the date of filing of the execution petition, as a matter of right, she would be entitled for a sum of Rs. 1,33,000/- which the judgment-debtors themselves have calculated and deposited before the Executing Court. Therefore, firstly, the learned Judge could not have come to the conclusion that as a matter of right, the petitioner is not entitled for the amount deposited by the judgment-debtors. The issues like whether the petitioner would be entitled for payment of salary as provided in UGC pay scales or whether she is entitled in the scale in which she was appointed are matters that are irrelevant before the Executing Court for the purpose of considering a very reasonable request made by the petitioner in her application filed in the Executing Petition and those issues may have relevance only at the time of final adjudication of Execution Proceedings.

Even the other reason assigned by the learned Judge that it is not clear whether the petitioner opted herself to be reinstated or not pursuant to the orders made by the Tribunal clearly demonstrates the total ignorance of the learned Judge to the facts of the case and the proceedings that have taken place before this Court and the correspondence exchanged by the parties to the execution proceedings.

12. There was a time in human evolution when law was an integral part of ethics and religion of morals and values, philosophy and consciousness, Indianness. This Country was known for its benevolence and help to the needy and the poor were accepted and practiced norms. This must have been one of the high tradition of the country which must have weighed in the mind of the Apex Court while explaining the concept of right to life enshrined in Article 21 of the Constitution of India. The Supreme Court in Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, has observed that the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much than the physical survival. The right to life includes the right to live with human dignity and all that goes along with it. An equally important fact of that right is the right to livelihood because no person can live without the means living, that is the means of livelihood.

13. In the present case, a teacher is deprived of her livelihood by a Private Management by terminating her services. That action of the Management was taken exception to by all the Courts and a direction is issued to the Private Management to reinstate the petitioner into service and also to pay arrears of salary from 1-6-1992 till the date of reinstatement. The Private Management in the guise of implementing the orders of the Tribunal had directed the petitioner to report for duty not as a Lecturer in Political Science but as a reliever Lecturer and further, had directed her not to take up any class as a Lecturer in Political Science in the absence of vacancy and will sit in the office room during duty hours on all working days as a spare hand and she will be provided with a table and a chair and will be under the control and supervision of their Principal. The harassment that is meted out to a poor teacher should have been taken note of by the learned Judge of the Executing Court and further should have taken the judicial notice of the intention of the respondents, that the easiest way of depriving a person of his right to life would be to deprive him/her of his/her means of livelihood to the point of abrogation, instead of approaching the problem in a most inhuman way. Since by the impugned order, a grave injustice is done by the learned Judge, the interference with the said order in exercise of my powers under Article 227 of the Constitution is required.

14. Accordingly, the following.--

ORDER

I. This writ petition is allowed.

II. The impugned order made by the learned Principal District Judge, Dakshina Kannada, Mangalore, on the application I.A. No. 2 in Ex. P. No. 58 of 2003, dated

30-10-2003 is set aside.

III. A direction is issued to the learned Principal District Judge, Dakshina Kannada, Mangalore, to withdraw the amount deposited by it in the Nationalised Bank and the interest accrued thereon, pursuant to its order dated 30-10-2003 and issue a cheque to the decree-holder within a week's time from the date of receipt of a copy of this Court's order, subject to the final result in the execution petition. Ordered accordingly.