

(2017) 01 KAR CK 0163
In the Karnataka High Court
Case No : 4253 of 2011

SRI G.S. SHASHIDHAR Vs THE MANAGEMENT OF SRI SIDDAGANGA

Date of Decision : 03-01-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 01 KAR CK 0163

Hon'ble Judges : Jayant Patel, P.S.Dinesh Kumar

Bench : DIVISION BENCH

Advocate : V.S.NAIK, M. SHIVAPPA, M.SHIVAPPA

Judgement

1. The present appeal is directed against order dated 11.03.2011 passed by the learned single Judge in Writ Petition No.16266/2004 insofar as it relates to modifying the order of the Tribunal with regard to entitlement of the back wages for the period during which, the appellant remained out of service.

2. The short facts of the case appears to be that the appellant was appointed as a Lecturer on temporary basis in the Department of Civil Engineering vide appointment order dated 26.06.1984 in the pay scale attached to the post. The appointment of the appellant was renewed from time to time. As per the appellant, he was interviewed by the Staff Selection Committee and he was duly selected. As per the appellant, he pursued Master Degree and after completion of the Master Degree, he approached the respondent - Society for resumption of duty, but the respondent ultimately, vide order dated 07.11.1988 conveyed to the appellant that his request to take him back on duty cannot be considered. The appellant approached the Educational Appellate Tribunal by preferring the appeal in M.A.(EAT) No.2/1989 and the Tribunal ultimately vide order dated 17.02.1999, set aside the endorsement issued by the first respondent - Management and further directed the respondents therein to reinstate the appellant within a period of fifteen days from the date of the order and it also directed for payment of all consequential benefits including monetary benefits like arrears of salary, allowances etc., to which the appellant was entitled to. It

appears that against the aforesaid decision of the Tribunal, the respondent initially preferred civil revision petition, which remained pending for a period of about five years and no orders were passed. Thereafter, since the civil revision petition was not maintainable, it was withdrawn with a view to file writ petition. Under the circumstances, the respondents herein preferred Writ Petition No.16266/2004 before this Court. In the said writ petition, the learned single Judge ultimately passed the impugned order. Under the circumstances, the present appeal before this Court.

3. We have heard Mr.V.S. Naik, learned counsel appearing for the appellant and Mr.M.Shivappa, learned senior counsel appearing for respondent No.1. Respondent No.2 is served but none appears on his behalf.

4. Upon hearing the learned Advocates appearing for both sides and on perusal of the reasoning recorded by the learned single Judge at para No.7 of the impugned order, it appears that the learned single Judge has not interfered with the order passed by the Tribunal insofar as the direction for reinstatement is concerned. However, so far as the salary for the period as ordered by the Tribunal until reinstatement is concerned, the learned single Judge has modified the order of the Tribunal.

5. It is undisputed position that pending the writ petition, the appellant had approached before the Tribunal by way of execution proceedings in Execution case No.180/2004 and the Tribunal in the execution proceedings vide order dated 08.09.2005, allowed the claim of the appellant and directed the respondents to pay Rs.24,80,943/- towards the arrears of salary and allowances etc. It is also an undisputed position that the respondents have not initiated any separate proceedings for challenging the legality and validity of the aforesaid order passed by the Tribunal in execution proceedings No.180/2004. If we further consider the prayers made in the writ petition before the learned single Judge, they are all pertaining to challenge made to the legality and validity of the order dated 17.02.1999 passed by the Tribunal in M.A (EAT) No.2/1989.

6. Learned counsel appearing for respondent No.1 has not been able to show as to whether the subsequent order passed by the Tribunal dated 08.09.2005 in the execution proceedings was challenged by way of an amendment in the main writ petition or not. Under the circumstances, we need to examine as to whether the learned single Judge while examining the legality and validity of the order dated 17.02.1999, could nullify the effect of the order passed by the Tribunal dated 08.09.2005 in the execution proceedings or not.

7. Be it recorded that had it not been a separate order in the execution petition, on 08.09.2005 by the Tribunal, the matter could stand on different consideration because it is possible to contend by the respondents that the back wages could be claimed on the basis of the order of the Tribunal and when the very order of the Tribunal was under challenge, the aspects of back wages could also be considered. We are not inclined to accept the latter part for two reasons: one is

that, had there not been any separate proceedings taken out for execution and quantification of back wages and the order of the Executing Court, the same cannot be nullified unless the challenge is brought in the writ petition itself and another is that in the execution proceedings, there was contest to the effect that the appellant was gainfully engaged and the witnesses were examined and ultimately, the Executing Court did not accept the contention of the respondent for denying the back wages for the respective period. In our view, the additional aspect is that the petitioner - original respondent herein has not challenged the legality and validity of the order dated 08.09.2005 passed in the execution proceedings. Under these circumstances, we find that if the order of the Executing Court is not under challenge and is given a go-bye, it would result into nullifying the sanctity of the order passed by the Executing Court though it was dependent upon the main decree of the Tribunal.

8. Apart from the above, we find it appropriate to mention that though writ petition No.16266/2004 was a petition under Article 227 of the Constitution, the learned single Judge has treated the petition as if it was under Article 226 of the Constitution. It is hardly required to be stated that when a petition is under Article 227 of the Constitution, judicial scrutiny would be limited to subject matter, which was before the lower authority or the Tribunal. When the order dated 17.02.1999 of the Tribunal was passed, naturally, there was no proceeding for execution nor any order in the execution proceedings. Therefore, without examining the legality and validity of the order passed by the Executing Court, in a challenge brought before the Court under Article 227 of the Constitution in respect of back wages, such an exercise of power resulting into nullifying the order of the executing Court can be said as in excess of the jurisdiction or beyond the scope of the main writ petition.

9. A perusal of the impugned order passed by the learned single Judge shows that the learned single Judge was conscious of the order of Executing Court as also the defence taken in the execution proceedings by the respondent. However, nowhere, the learned single Judge has considered whether the order passed by the Executing Court in execution proceedings was also under challenge. Hence, we find that the impugned order insofar as it results into nullifying the order passed in execution proceedings could be said as beyond the scope of the main writ petition, which was subject matter before the learned single Judge.

10. Further, it appears that the principles of compensation in lieu of back wages, in normal circumstances is unknown to the service jurisprudence while exercising the discretion for awarding back wages. It was not a matter where the compensation was to be considered under the Industrial Disputes Act, 1947, where the termination could be effected by payment of retrenchment compensation or otherwise. In service jurisprudence, when the termination of a regular employee or temporary employee is found to be illegal, in normal course, he would be entitled for the regular salary for the period during which he has been kept out of service on account of wrongful termination or wrongful denial

for resumption of the duty. In the present case, the appellant was working as a Lecturer and he was getting regular pay scale as the Lecturer. He worked for a substantial period of time as a Lecturer. He was permitted to undertake study of Master Degree and after acquiring qualification, when he wanted to resume the duty, he was denied. Under these circumstances, the Tribunal had exercised the discretion of awarding full back wages in the interregnum period. It could not be said that the exercise of discretion by the Tribunal was perverse. In a petition under Article 226 and / or 227 of the Constitution unless the exercise of discretion by the Tribunal is found to be perverse, it may not be a case for interference by this Court.

11. In view of the aforesaid observations and discussion, the impugned order passed by the learned single Judge insofar as it relates to modification of the back wages awarded by the Tribunal is set aside. It is observed that the appellant would be entitled to all back wages as ordered by the Tribunal minus the amount already paid to the appellant pursuant to the interim order as well as the final order passed by the learned single Judge. The appeal is allowed to the aforesaid extent. Considering the facts and circumstances, no order as to cost.