
(2003) 05 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : LPA No. 147 of 2000

State of Jammu & Kashmir and Others	APPELLANT
Vs	
Muhammad Akbar Mir	RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Citation : (2003) 3 JKJ 486

Hon'ble Judges : V.K. Jhanji, Acting C.J.; Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : A.H. Naik, AG, for the Appellant; M.A. Qayoom, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, A.C.J

1. This Letters Patent Appeal is direct against order dated 28.9.2000 passed by the learned Single Judge whereby the writ petition filed by the

writ-petitioner, namely, the respondent herein, was accepted and the respondents therein, i.e the appellants herein, were directed to make payment

of the unpaid salary to the respondent for the period for which he had worked, i.e. from August 1995 to ending July, 1996 as well as to pay him

the pensionary and gratuity benefits in accordance with the provisions of the Civil Service Regulations. The respondents were also held liable to

pay interest at the rate of 12% per annum on the unpaid amount from the date of the order till the payment was made.

2. In brief, the facts are that the respondent was working as Deputy Registrar in the Co-operative Department. His date of birth in the service

book on the basis of Matriculation certification was recorded as 2nd July, 1936. As per the recorded date of birth, he was to retire on

superannuation from service on 31st July, 1994. The respondent filed a suit in the court of II Additional Munsiff, Srinagar, against the Board of

School education praying therein that his date of birth be declared as 2nd July, 1938 instead of 2nd July, 1936. The appellants, who were the

employers of the respondent, were not made party to the suit. The suit was decreed ex-parte. The Board of School Education was directed to

make necessary correction in the date of birth of the respondent. The Government issued order dated 17th November, 1993 directing that the

respondent shall from service w.e.f. 31st July, 1994. The said Government order was challenged by the respondent in a civil suit filed by him in the

court of IV Additional District Judge, Srinagar. An ex-parte order dated 29th July, 1994 was passed by the learned IV Additional District Judge,

directing the appellants not to retire the respondent. On 26th June, 1995, the respondent was attached with the office of Additional registrar,

Cooperatives. The order of attachment was challenged by the respondent before the civil court and he obtain an ex-parte order dated 29th June,

1995. The said order was vacated by the High Court in revision petition filed by one of the affected parties. The respondent was not paid salary

from July, 1995. In The month of July, 1996, the respondent filed writ petition No. 1791/96 praying therein that the respondents (appellants

herein) be directed to pay salary to the petitioner from the month of August, 1995 up to ending July, 1996 and to sanction pension gratuity and

other benefits to him as envisaged by the Civil Service Regulations on his attaining the age of superannuation with the end of the month of July,

1996. By the impugned order the learned Single Judge allowed the aforesaid writ petition which order is subject matter of this appeal.

3. As notice above, in the writ petition, the respondent claimed arrears of salary and pensionary benefits by taking his date of birth to be 2nd July,

1938.

4. It is not in dispute that the suit in which the date of birth was ordered to be corrected, the appellants, who were the employers of the

respondent, were not impleaded as party. It was pursuant to that decree that he challenged the order dated 17th November, 1993 issued by the

Government ordering retirement of the respondent from service with effect from 31st July, 1994. He was able to obtain an ex-parte injunction and

he continued to render service till July, 31, 1996. The question before the learned Single Judge was whether the ex-parte judgement dated 28th

March, 1994, passed by the II Additional Munsiff, Srinagar against the Board, was binding upon the appellants as they had not been made party in

the suit. However, the learned Single Judge did not touch this point at all. Without deciding as to whether the said decree was binding on the

appellants, the respondent was not entitled to any relief, whatsoever, including the salary for the period from August 1995 to July, 1996 because

he continued to remain in service on the basis of ex-parte order of injunction. The judgement dated 28th March, 1994 passed in the civil suit was a

judgement in personam and by no stretch of imagination the same could be made binding on the appellants who were not party to the civil suit. The

correction of Matriculation Certificate on the basis of the decree did not entitle the respondent to the corresponding correction in the service book

because such correction is not permitted under the service rules.

5. The Supreme court in Director of Technical Education and another Vs. Smt. K. Sitadevi, has clearly laid down that in a suit in which the

Government was not a party, such decree is not binding on the Government and the Government is not obliged to correct the date of birth in the

service records of the employees. The Supreme Court observed that the decree can only be treated as a piece of evidence.

6. In view of the above, we are of the considered view that the respondent is not entitled to the pensionary benefits for the period from 31.7.1994

to 31.7.1996, that is, the period during which the petitioner rendered service in pursuance of the court orders.

7. As regards the salary for the period August, 1995 to July 1996, it deserves to be noticed that the Letters Patent Bench in LPA No. 38/96, filed

against the order of a learned Single Judge, on 6th March, 2000 directed the appellants to deposit the salary of the respondent from August, 1995

to July, 31st, 1996 in the court and, pursuant to that direction, the amount was deposited and has since been withdrawn by the respondent. In the

facts and the circumstances; we would not make any order for the recovery of the same. But this is only in this case and will not be taken as a

precedent in any other case.

8. By interim order dated 28th August, 2001, retiral and pensionary benefits in

respect of the respondent upto 31st July, 1994 were directed to be processed and paid to him and we have no manner of doubt that the same must have been paid to him by now. In case the same has not been done, then the appellants are directed to pay the pensionary benefits as admissible upto 31st July, 1994 within three months from the date of receipt of a certified copy of this order failing which they shall be liable to pay interest at the rate of 9% on the expiry of the time period of three months till the payment is made.

9. The appeal is allowed and the order of the learned Single Judge is set-aside only to the extent indicated above.