
(2001) 07 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 37730 of 1998

The Accountant-General (A and E), Karnataka, Bangalore and
others

APPELLANT

Vs

S. Srinivas and another

RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2001) 5 KarLJ 537 : (2001) 4 KCCR 191 SN

Hon'ble Judges : Chidananda Ullal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri Ashok Haranahalli, for the Appellant; Sri S. Sridhara, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Accountant-General (A and E), Karnataka, Bangalore and two others have filed this petition questioning the order passed by the Central Administrative Tribunal, Bangalore (for short, "the Tribunal") dated 10th March, 1998 in Review Application No. 8 of 1998 (Annexure-A) and the order passed in Contempt Petition No. 40 of 1998, dated 10-11-1998 wherein the petitioners have been directed to comply with the orders passed by the Tribunal Annexure-B.

2. Facts.--S. Srinivasan (hereinafter referred to as "the respondent") filed O.A. No. 906 of 1996 before the Tribunal seeking a writ of mandamus directing the petitioners to re-employ him and to give the benefit of temporary status and all other benefits flowing from conferment of such a status. It was averred in the application that he was employed as a canteen worker in September 1991 in the Accountant-General's Office Canteen, Bangalore and continued to work as such till 15th July, 1996. On 15th of July, 1996 he was orally told not to attend the canteen duties. It was averred that he was continued in the canteen with periodical increase in the rate of daily wage from Rs. 8/- to a daily wage of Rs. 30/-. No formal order had been issued to him and he had been denied the

benefit of casual leave, earned leave etc. He had also produced the certificates in support of his claim, that he had been working as a casual labourer in the canteen. In spite of the representation made by him several times, required pay scale was not given to him.

3. Central Government had issued an order on 10th of September, 1996 to give required timescale of pay which was also denied to him. The scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme" was promulgated and had come into effect from 1-9-1993 and the scheme was applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of the orders. The scheme was not applicable to the casual labourers working in Railways, Department of Telecommunication and Postal Department, as these departments had their separate schemes. Under the scheme a casual worker was entitled to be conferred with the temporary status. Temporary status was to be conferred on all casual labourers who were in employment on the date of issuance of the O.M. and who had rendered a continuous service of one year. That they must have been engaged for a period of 240 days (206 days in the case of offices observing 5 days week). Conferment of temporary status was to be with reference to the creation/availability of regular Group "D" posts. Conferment of temporary status would have entitled to the casual labourer, to certain benefits. On these pleadings the respondent prayed for the relief for re-employment and the conferment of a temporary status.

4. Petitioner contested the claim of the respondent and contended that the respondent had not put in continuous service of 240 days and that the respondent was being employed of and on.

5. The Tribunal prima facie came to the conclusion that the respondent had put in 240 days of continuous service and was in employment on the date the scheme was promulgated. As a consequence thereof Tribunal accepted the application and disposed it of with the following directions:

"In the facts and circumstances of the case, we direct the department to consider the case of the applicant for being considered for conferment of temporary status within the provisions of para 4(1) of the Casual Labourers (Grant of Temporary Status and Regulation) Scheme. If on such consideration, the applicant is found to qualify because of his having served for 240 days, he will have to be reinstated, and further consequences, by way of temporary status, conferment and even regularisation may follow. This exercise may be carried out within a period of four months from the date of receipt of a copy of this order. No costs".

6. By this order the Tribunal had directed the petitioner to consider the case of the respondent for being considered for conferment of temporary status as per the provisions of the scheme. Petitioners filed Review Application No. 8 of 1998 stating that the respondent had not worked for 240 days. Tribunal rejected the review application. While rejecting the petition Tribunal observed:

"On the other hand, there was record available by way of daily wage payment statement which accounts for an engagement for more than 250 days during 1993-94, and almost 340 days during 1992-93. No specific averment by the department regarding the date of engagement was available and therefore, the day of engagement had to be inferred based on the payment voucher and calculation on the basis of daily wage rate then available. There is, thus, no error apparent in regard to facts in the order".

7. Petitioner filed W.P. No. 13707 of 1998 on 23rd of April, 1998 (after the passing of the order in the review application) questioning the order dated 17-12-1997 passed in O.A. No. 960 of 1996. In the petition it was specifically mentioned that the review petition had been filed but the same was dismissed. Writ petition was dismissed by a Division Bench of this Court on 27th of May, 1998 by observing that the Tribunal had only directed the consideration of the case of the respondent in accordance with scheme and therefore it did not require any interference.

8. Subsequent to the dismissal of the writ petition appellant passed an order dated 15-10-1998 to the effect that the respondent was not entitled to the conferment of temporary status under the provisions of para 4.1 of the scheme and that he was not qualified for reinstatement.

9. Respondent thereafter filed Contempt Petition No. 48 of 1998 with the averment that the Tribunal in its original order as well as in its review order had recorded a finding that on the basis of the data furnished by the department itself the relief sought for by the respondent had to be considered under casual labourer scheme and his prayer had to be allowed and that the respondent had worked for the requisite number of days entitling him to conferment of temporary status; that the petitioner had understood the order of the Tribunal passed in the original application that the respondent had not put in requisite number of days of work and that is why they had filed the review petition seeking for clarification of the order passed in the original application. The Tribunal in the review application had specifically recorded a finding that the respondent had been engaged for almost 250 days in 1993-94 and 340 days in 1992-93. Having invited the order dated 10-3-1998 in the review application regarding the number of days which the respondent had put in the last two years immediately preceding the promulgation of the scheme, it was not open to the petitioner to again assert that the respondent had not worked for the requisite number of days in a year to entitle him to the conferment of temporary status.

10. The Tribunal found substance in what was stated in the contempt petition. Plea raised by the appellant that if the respondent was aggrieved by the order passed on his representation then he could file another application before the Tribunal for conferment of the temporary status, was rejected by observing that the respondent could not be driven to file another application because then there would be no end to the litigation. Factual findings already recorded, could not be allowed to be reopened by the method adopted by the petitioners. It was

observed that:

"It is obvious that respondents have only tried to circumvent the order passed by this Tribunal by trying to make it appear that it has been complied with, without complying with the same in reality and in substance".

11. In spite of recording of this finding the Tribunal held that at this stage it could not be held that the appellant disobeyed the order passed by the Tribunal deliberately. That there was an outside possibility of the petitioners believing that in view of the High Court orders they could still dispute the number of days for which the respondent had worked in a year and on that basis refused the conferment of temporary status and declined to reinstate the respondent. The contempt petition was adjourned to 31st of December, 1998 to give one more opportunity to the appellant to comply with the orders passed by the Tribunal in the original order after taking into consideration the specific finding recorded in the order of review,

12. Petitioners have filed this petition challenging the order of the Tribunal in Review Application No. 8 of 1998 and the order passed in Contempt Petition No. 40 of 1998, dated 10-11-1998.

13. Emergent notices were issued in response to which reply has been filed by respondent 1.

14. Apart from contesting the petition on merits and reiterating the points which had been raised by the respondent before the Tribunal, the respondent has taken a preliminary objection that the writ petition was liable to be dismissed as not maintainable because the same was barred by principle of constructive res judicata. That the order passed in the review application had come into existence prior to the filing of the earlier Writ Petition No. 13707 of 1998. It was specifically mentioned in the writ petition that the review application had been dismissed. The petitioners did not challenge the order passed in the review petition. In case they were aggrieved by the order passed in the review petition, then they should have challenged the same in the earlier writ petition (W.P. No. 13707 of 1998). The challenge to the order dated 10-3-1998 in the review application is therefore barred by principles of constructive res judicata on merits. It was stated that the respondent had put in more than 240 days and that he was in employment when the scheme was promulgated and therefore, he was entitled to the conferment of the temporary status and re-employment.

15. Counsels for the parties have been heard at length.

16. Parliament enacted Administrative Tribunals Act, 1985 (for short, "the Act of 1985"), to provide for the adjudication or trial by the Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India and for matters connected

therewith or incidental thereto. u/s 15 Administrative Tribunals were conferred with the jurisdiction to exercise on or from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to recruitment and matters concerning recruitment, to any civil service of the State or to any civil post in the State. u/s 17, the Tribunal was conferred with the power to punish for its own contempt. Tribunal was given the same powers for punishing for its own contempt as had been given to the High Court under the Contempt of Courts Act, 1971 (for short, "the 1971 Act"). Section 17 of the 1985 Act conferring powers on the Tribunal to punish for its own contempt reads:

"17. Power to punish for contempt.-- A Tribunal shall have, and exercise all the jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (Act 70 of 1971), shall have effect subject to the modifications that.-

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the references to the Advocate-General in Section 15 of the said Act shall be construed.-

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established".

17. Section 17 of the Act of 1985 thus provides that wherever the words "High Court" occurs, the word "Tribunal" has to be read for the purpose of Administrative Tribunals Act, 1985. Under the Contempt of Courts Act, a right to file the appeal is provided. Where the order or decision is that of the Single Judge to a Bench of not less than two Judges of the Court and where the order or decision is that of a Bench to the Supreme Court of India. Section 19 of the Contempt of Courts Act reads as follows:

"19. Appeals.-- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the Appellate Court may order that-

- (a) the execution of the punishment or order appealed against be suspended;
- (b) if the appellant is in confinement, he be released on bail; and
- (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed-

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case or an appeal to the Supreme Court, within sixty days, from the date of the order appealed against".

If the word "Tribunal" has to be read in place of the words "High Court" u/s 19 of the 1971 Act, then the right to file an appeal from the order of the two member Bench of the Tribunal would lie to the Supreme Court of India and the writ petition to challenge the order passed in the contempt petition would not be maintainable. Petitioner should have approached the Supreme Court of India by way of an appeal in case the petitioners were aggrieved by the order passed by the Tribunal in the contempt petition. The writ petition in this Court to challenge the order of the Tribunal in Contempt Petition No. 40 of 1998 would not be maintainable.

18. The challenge to the order passed in review petition would be barred by the principles of res judicator/constructive res judicata. Review application had been filed and decided before the filing of W.P. No. 13707 of 1998 in this Court. Petitioners were aware of the order passed in the review application. In the said writ petition, the petitioners had made a specific mention of the order passed in the review application and did not choose to challenge the same. The order passed in the review application in the present case would be in the nature of continuation of the earlier order passed by the Tribunal. The petitioner ought to have challenged the order passed by the Tribunal in the earlier writ petition. Explanation IV to Section 11 of the CPC reads:

"Explanation IV.--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit".

As the petitioner could and ought to have challenged the order passed by the Tribunal in the review application, in the earlier writ petition which it failed to do, the present petition to challenge the order passed by the Tribunal in the review application would be barred by the principle of constructive res judicata. It would be deemed to be a matter directly and substantially in issue in the earlier petition and the second petition on the same cause of action would be barred by the principle of constructive res judicata. Accordingly it is held that the challenge in

the present writ petition to the order passed in review application dated 10-3-1998 is not maintainable.

19. Writ petition against the order passed in the review petition and the contempt petition would be hit by the misjoinder of causes of action as well. The causes of action in the review application and the contempt petition are different. Against the review petition a writ would lie to this Court whereas against the order passed in the contempt petition, the appeal would lie before the Supreme Court of India.

20. For the reasons stated above, this petition is dismissed with no order as to costs.