

M. Sham Singh

Vs

State of Mysore

Civil Appeal No. 802 of 1967

(K. S. Hegde, A. N. Grover, D. G. Palekar JJ)

11.08.1972

JUDGMENT

GROVER J. -

1. This is an appeal by special leave from a judgment of the Mysore High Court in a suit filed by the State of Mysore against the present appellant for recover of Rs. 40,000/- together with interest on account of the breach of the terms of bond, dated July 2, 1947, by virtue of which the appellant received certain amounts by way of scholarship and expenses for studies abroad.

2. The facts may be shortly stated. On September 11, 1946, the appellant applied to the State Government for an overseas scholarship and the same was sanctioned in his favour. The appellant was required to execute a bond which he did on July 2, 1947. In the bond (Ext. 5) it was stated inter alia that the scholar had to accept and be bound by all the conditions specified in the rules contained in the annexure to the Government proceedings mentioned therein. Clause 3 and 4 are reproduced below :

"3. That on the completion of such study or research course, the scholar shall return to the Mysore State, and if and when called upon to do so, serve the Government for a period of not less than five years, on such salary as Government may, in their sole discretion fix, provided that, if within six months after his return to Bangalore, Mysore State Government do not find employment for him they shall be deemed to have waived their right to claim his services as aforesaid and the scholar shall, thereafter, be at liberty to seek employment elsewhere.

4. That in case the scholar fails to fulfil any of the first two conditions herein set forth or specified in the aforesaid rules he shall refund to Government the amounts received by him as scholarship, passage money and all other amounts that may be advanced to him up to the date of his return to the Mysore State in connection with the aforesaid course of study or research with such interest not exceeding 5 per cent. per annum as Government may, at their option, fix and demand. But if he fails to fulfil the third condition, viz., joining duty under and serving the Government for a period of five years, after the completion of the terms of scholarship or deputation he shall pay on the aggregate amount to be refunded as aforesaid, enhanced interest at 9 per cent. per annum instead of 5 per cent. as mentioned above and a penalty of not less than one year's salary for each period of deputation (strike off the latter condition in the case of scholarship holders)."

After completing the formalities the appellant left for U.S.A. He joined the Polytechnic Institute of Brooklyn, New York in September 1949 for obtaining the diploma from that Institute in Electrical Engineering. On July 25, 1949, by a letter, the Education Secretary, Embassy of India in U.S.A : wrote to the Chief Secretary, Government of Mysore conveying the request of the appellant that he be permitted to stay on for practical training with the General Electric Company for one year at his own expense beyond September 30, 1949. The Education Secretary supported this request with the comments that the training would be very valuable, the General Electric Company being well known. This request was duly granted by means of a cable Ext. P-9 which was followed by a letter from the Secretary to the Government of Mysore, Education Department, Bangalore intimating that the appellant had been permitted to undergo practical training for one year from September 30, 1949, at his own expense.

3. The appellant completed his studies at the Polytechnic Institute of Brooklyn, New York in September, 1949, and obtained the diploma from that Institute on June 14, 1950. On July 6, 1950, he returned to Bangalore and wrote a letter, dated July 18, 1950 to the Government of Mysore saying that he had returned from the United States after the completion of his studies there. On November 29, 1950, the appellant addressed a letter to the Mysore Government saying that he be permitted to return to the United States to complete his training which he had interrupted on account of the news of the ill-health of his mother to see whom he had to return to India. The appellant assured the Mysore Government that he would place his services at its disposal on his return to India. The appellant made it clear that he would be going to the United States on his own without seeking any financial assistance from the Government. The Government acceded to the request of the appellant. In its order Ext. P-4 it is stated "In the circumstances Sri M. Sham Singh is permitted to return to U.S.A. for the continuance of his studies, at his own cost, subject to the condition that he should serve the Government of Mysore for a period of 5 years after his return". The appellant left India on February 27, 1951. It appeal that he never returned to India thereafter and continued to stay in the United States after taking up employment as Director of the Tourist Office at San Francisco.

4. The State of Mysore filed a suit against the appellant for recovery of Rs. 40,000/- for breach of the conditions of the bond which had been executed by him. It was pleaded in the suit that owing to the breach of the conditions of the bond the appellant was liable to refund all the monies advanced to him together with interest. The total amount after calculation of interest which was due from the appellant came to over Rs. 62,000/- but the claim was limited to Rs. 40,000/- only. In the written statement it was pleaded by the appellant that when he was permitted by the Mysore Government by its order, dated February 28, 1951 to return to the United States the previous contract was discharged and ceased to be enforceable. In any event, it was asserted, that the suit was for breach of the terms of the bond which was for Rs. 16,000/- only and the appellant was not liable to pay any amount exceeding that sum. It is unnecessary to refer to the written statement of the sureties who were also impleaded as defendants to the suit.

5. A number of issues were framed on the pleadings of the parties. The trial court dismissed the suit on the ground, inter alia, that the Government had failed to provide a job to the appellant within six months of his sending intimation of his arrival in India. It was held that there had been variance of the terms of the contract by the Government by permitting the appellant to continue studies in the United States and there had been no breach of the terms of the bond by the appellant. It was also held that the contract, dated July 27, 1947, came to be discharged on the expiry of six months from July, 1950, i.e., in January, 1951. The Government order, dated February 28, 1951 if taken as a fresh contract was without consideration and not enforceable. The High Court, on appeal, by the State

reversed the decision and decree of the District Judge and decreed the suit against the appellant. It was, however, dismissed against the sureties.

6. There is hardly any merit or substance in the present appeal. The appellant appears to seek advantage from the fact that he had informed the Government of Mysore about his arrival on July 18, 1950 after completion of his studies at the Polytechnic Institute of Brooklyn. It has been contended on his behalf that as soon as this intimation was sent the appellant had performed his part of the contract and it was for the Government to offer him employment within six months. He stayed in Mysore till February 27, 1951 and the period of six months expired on January 18, 1951. He was not offered any employment and therefore in terms of Clause 3 of the bond the Government should be deemed to have waived the right to claim his services and he was at liberty thereafter to seek employment elsewhere. It is claimed that the letters which the appellant wrote to the Government asking for permission to go back to the United States for further studies without any financial assistance from the Government did not affect the legal position. The writing of such a letter and the reply sent by the Government agreeing to what had been proposed by the appellant were de hors the contract which stood discharged as soon as there was failure on the part of the Government to offer any employment within the period of six months of the intimation of the appellant's return to India.

7. The High Court after considering all the facts and circumstances came to the conclusion that when the appellant returned to Bangalore on July 6, 1950 he had not abandoned the idea of completing the course of training with the General Electric Company. He had come only because of the illness of his mother who died a little before his arrival. Although he had submitted a report to the State Government with regard to his arrival at Bangalore on July 18, 1950 his letter, dated November 27, 1950 was consistent with the original agreement which had already taken place between the parties that he should complete the course of training with the General Electric Company by staying for a period of one year at his own expense. It was observed by the High Court that the State Government having sent a scholar and having incurred an expenditure of about Rs. 35,000/- for his training could not have refused his request for overstay for a period of one year particularly when such a stay did not entail any financial burden on the State Government. The High Court proceeded to say :

"If under these circumstances, the State Government agreed to the request to extend the period of stay for one year and subsequently permitted defendant No. 1 to return to U.S.A. in pursuance of prior commitment under a mutual agreement, to complete his training, we have no doubt in holding that the request made by defendant No. 1 and granted by the plaintiff form one integral part of the contract, the performance of which by defendant No. 1 had been extended by mutual consent. It is regrettable that having secured the benefits of foreign technical education at the cost of the State exchequer, defendant No. 1 has been adopting an attitude in the suit, in utter disregard of his legal and moral obligations under the scholarship bond."

8. We find it difficult to understand and appreciate how the Government should be deemed to have waived the right to claim the services of the appellant in terms of Clause 3 of the bond when by mutual consent it had been agreed that the appellant could stay for one year after he had completed his study at the Polytechnic Institute of Brooklyn for getting practical training with the General Electric Company. The High Court is quite right in saying that when the appellant came to Bangalore in July 1950 he did not do so for the purpose of staying at Bangalore and accepting any employment which might be offered to him. He had to come as he admitted in his own letters, on

account of domestic reasons. He wanted to go back and finish that period of training with the General Electric Company. He sought permission in that behalf and was allowed to return to the United States for that purpose. We are unable to see how in these circumstances the Government was bound to offer him any employment within a period of six months from July 18, 1950. By writing the letter, dated November 27, 1950 the appellant had unequivocally indicated his desire to finish the training with the General Electric Company. He had made no suggestion and given no hint that he was waiting for the offer of any employment. The period of six months was to expire on January 18, 1951 whereas the letter, dated November 27, 1950 was written well before that date. The mere fact that he left after the expiry of the period of six months would not show that he had returned to Bangalore and was writing for any employment being offered to him within six months of his arrival in terms of the bond. It is significant that in the letter, dated November 27, 1950 he had reiterated his assurance that he would place his services at the disposal of the Government on his return provided a suitable position was available. This shows that he was fully conscious of what the true legal position was. Instead of returning to India the appellant chose to take up a job at San Francisco. Surely the Mysore Government had not expended all the amount in question on the studies of the appellant to enable him to seek employment on his own without first placing his services at the disposal of the Mysore Government which he was legally bound to do under the terms of the bond and the subsequent mutual agreement between the parties.

9. In the result this appeal fails and is dismissed with costs.

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