SUPREME COURT OF INDIA

Mgmt, Kalpataru Vidya Samasthe (R)

Vs

S.B. Gupta

Appeal (Civil) 3536 of 2003

(Arijit Pasayat and H.K.Sema)

12/09/2005

JUDGMENT

H. K. SEMA, J.

This appeal filed by the appellant Kalpataru Vidya Samsthe, Tiptur, Tumkur District, in short 'KVS', is directed against the judgment and order dated 19.8.2002 passed by the High Court of Karnataka at Bangalore in C.R.P.No.2959 of 2000, in exercise of its power under Section 115 C.P.C. The High Court has set-aside the order dated 27.5.2000 passed in MA (Eat) No.2 of 1996 by the Additional District Judge, Education Appellate Tribunal, dismissing the appeal of the respondent herein under Section 94 of the Karnataka Education Act.

The basic facts may be noted. The respondent no.1 was appointed as Assistant Professor in Mechanical Engineering Department of Kalpataru Institute of Technology by an order dated 6.9.1994 in the scale of Rs.3700-125-4950-150-5700 at Rs.3700/- basic pay and other allowances as are admissible under the rules and regulations on temporary basis for a probation period of one year commencing from 7.9.1994 till 7.9.1995. The said appointment carries a stipulation in Clause 11 that the appointment would be on probation for one year and thereafter the same would be reviewed. On the strength of the appointment, the respondent no.1 reported to duty on 7.9.1994 and worked till 31.8.1995. Before the completion of the probation period, the respondent no.1 was relieved from service w.e.f. 31.8.1995 and on 1.9.1995 he was again appointed afresh on probation

for a period of six months i.e. up to 29.2.1996. His basic salary was, however, fixed at Rs.3825/- with other allowances. Clause 11 of the said appointment order clearly stipulated that the appointment was purely temporary and up to 29.2.1996. Pursuant to the aforesaid appointment the respondent no.1 joined the duty on 4.9.1995. On completion of the period of probation, the respondent was relieved from his duties w.e.f. 1.3.1996. As noticed earlier, he filed an appeal before the Educational Appellate Tribunal in short 'EAT'.

The EAT after examining the evidence and documents on record dismissed the appeal holding inter alia that the re-appointment of the respondent by an order dated 1.9.1995 was for a period of six months i.e. up to 29.2.1996 and the respondent knowingly accepted the condition stipulated in the appointment letter and the said probation appointment came to an end by a efflux of time for which period he was appointed. Counsel for the appellants first contended that the High Court has erred in law transgressing his jurisdiction vested in it under Section 115 C.P.C. inasmuch there is no findings that the Tribunal have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in exercise of its jurisdiction illegally or with material irregularity. According to the counsel for the appellants, the High Court, therefore, erred in law in sitting as appellate jurisdiction by setting aside the well-merited and considerate judgment of the Tribunal.

The further contention of the counsel for the appellants is that the respondent having known the condition stipulated in Clause 11 of the appointment order accepted the condition and joined the post and cannot be allowed to turn back and say that he has not been dealt with fairly by the appellants. It is further argued that the appointment of the respondent has expired by efflux of time for which period he was appointed. There was no requirement of observance of the principle of natural justice in such matter. Per contra counsel for the respondent contended that from the appointment order of respondent itself it is clearly stated that the appointment shall be governed by all the service conditions and rules of the KVS. It is further contended that the appellant's institute being a private educational institution, it is governed by the provisions of repealed Karnataka Private Educational Institutes Act, 1975 which were in force at the time of issuing the appointment order and in this connection Rule 7 of the Rules framed by the State Government in exercise of its power under Sections 3 and 15 of the Act has been pressed into service. It is further contended that under the said Rules it is incumbent on part of the board of management to extend the period of probation of an employee by a further period of six months. Since there is no extension of probationary period of the respondent and in absence of the same, the probationary period of the respondent would come to an end on 6.9.1995.

We have carefully considered the rival contentions of the parties. Reverting back to the facts of the case, the undisputed question that revolves around for resolving the dispute at hands is that the respondent was appointed on probation w.e.f. 6.9.1994 for a period of one year. Clause 11 of the said appointment stipulated that he would be on probation for one year and then review. Before the probation period came to an end the respondent was relieved from service by an order-dated 31.8.1995. He was again re- appointed for a period of six months by an order-dated 1.9.1995. He was directed to report to duty on 2.9.1995. Clause 11 of the order stipulated that the appointment is purely temporary and is up to the end of February 1996 i.e. 29.2.1996. The respondent admitted that he has written a letter-dated 4.9.1995 addressed to the Institute stating that "As per your notification, I am happy to rejoin your institution. I am herewith submitting my originals along with no dues". At

this stage, it may be stated that the respondent has not challenged his subsequent appointment for a period of six months on probation by an order-dated 1.9.1995. He has challenged the order dated 29.2.1996 relieving the respondent w.e.f. 1.3.1996. on expiry of the probation period on 29.2.1996 before the 'EAT'.

In our view, the order dated 29.2.1996 relieving the service of the respondent w.e.f. 1.3.1996 is in terms of Clause 11 of the order of appointment-dated 1.9.1995, which has been accepted by the respondent without any demur, does not suffer from any infirmities. **It is now well-settled principle of law that the appointment made on probation/adhoc for a specific period of time and such appointment comes to an end by efflux of time and the person holding such post can have no right to continue in the post. #** In the case of Dir., Institute of Management Development v. Pushpa Srivastava, 0 (referred), a three Judge-Bench of this Court considered the identical question and held in paragraph 20 of the Judgment as under:-

*"Because the six months' period was coming to an end on 28th February, 1991, she preferred the writ petition a few days before and prayed for mandamus which was granted by the learned Judge under the impugned judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularization? The answer should be in the negative". **

In the instant case, as noticed above, the respondent has accepted the appointment including the terms and conditions stipulated in Clause 11 of the appointment order and re-joined the post from 4.9.1995 and continued in the post up to 29.2.1996 on which date the period of six months came to an end. He raised grievances before the Tribunal after the probationary period came to an end by efflux of time. **Having accepted the terms and conditions stipulated in the appointment order and allowed the period for which he was appointed to have been lapsed by efflux of time, he is not permitted to turn back and said that the appointment de-hors the Rules or the terms and conditions stipulated in the appointment, were not legally valid. #**

It is also well-settled principle of law that the High Court in its revisional jurisdiction under Section 115 cannot interfere with the findings of fact recorded by the courts below and reappreciate the evidence and interfere with the findings unless it is found that the findings recorded by the lower court are perverse or there has been non-application of mind. # In the case of Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, (referred), this Court held in paragraph 3 of the judgment as under:

"It is well settled position in law that under S.115 of the Code of Civil Procedure the High Court cannot reappreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact, if the findings are perverse or there has been a non- appreciation or non-consideration of the material evidence on record by the Court below. Simply because another view

*of the evidence may be taken is no ground by the High Court to interfere in its revisional jurisdiction". **

Going through the impugned order of the High Court, we do not find any findings of the High Court that the findings of fact recorded by the lower court are perverse and there has been non-application of mind. The High Court has erred in law as well as in facts by setting aside the well-reasoned order of the Tribunal. The Order of the High Court is, therefore, set-aside and the order of Tribunal is restored. The appeal is allowed with no order as to costs