

SUPREME COURT OF INDIA

The Commissioner, Karnataka Housing Board

Vs.

C. Muddaiah

C.A.No.4108 of 2007

(C.K. Thakker and D.K. Jain JJ.)

07.09.2007

JUDGMENT

C.K. THAKKER, J.

1. Leave granted.

2. The present appeal is filed by the Commissioner, Karnataka Housing Board against the judgment and order dated March 22, 2005 passed by the Division Bench of the High Court of Karnataka, Bangalore in Writ Appeal No.6722 of 2003. By the impugned order, the Division Bench set aside the order dated August 4, 2003, passed by a Single Judge of that Court in Writ Petition No. 10722 of 2000. The Division Bench held that the dismissal of the claim of the respondent-employee writ-petitioner by the learned Single Judge on the ground that contempt petitions filed by him were dismissed was not legal and in consonance with law. The Division Bench, hence, directed the appellant-Board to implement the direction issued by the learned Single Judge in Writ Petition No. 1848 of 1992 decided on October 27, 1997 in 'letter and spirit' and disburse 'all consequential benefits' to which the writ-petitioner was held entitled.

3. The facts of the case are that the respondent herein (writ-petitioner) joined service in Karnataka Housing Board ('Board' for short) in the year 1972. He was appointed as a Second Division Assistant and was promoted as First Division Assistant on February 15, 1972. On December 30, 1974, a seniority list of the First Division Assistants was published. The writ-petitioner challenged the said seniority list by approaching the High Court under Article 226 of the Constitution. The Writ Petition No. 1848 of 1992 was allowed on October 27, 1997 by a Single Judge of the High Court of Karnataka.

The Court directed the Board to reassign seniority of the writ-petitioner by placing him above respondent Nos. 2 to 34 and to grant 'other consequential benefits'.

4. It appears from the record that Writ Appeal filed by the State against the order passed by the learned Single Judge was dismissed on March 30, 1998 by the Division Bench. Even Special Leave Petition (Civil) No.

5487 of 1998 was dismissed by this Court. The order passed by the learned Single Judge thus became final.

5. It is the case of the Board that the order passed by the Court was implemented and the writ-petitioner was reassigned seniority above respondent Nos. 2 to 34 as per the direction of the Court and was also granted consequential benefits. The grievance of the writ-petitioner, however, was that he was not granted consequential benefits as awarded to him by the learned Single Judge and confirmed even by this Court. The writ-petitioner retired from service on February 28, 1998.

6. Since consequential benefits were not extended to him, the writ-petitioner filed Contempt Petition No. 12 of 1998 which was dismissed. Similarly, another Contempt Petition No. 1134 of 1999 was also dismissed.

He, thereafter, filed a substantive petition, being Writ Petition No. 10722 of 2000 contending that though an order was passed in the writ petition filed by him wherein directions were issued to reassign him seniority and consequential benefits, arrears of salary to which he was entitled, was not paid to him. The said action was clearly illegal, unlawful and not sustainable at law. A prayer was, therefore, made that the Board may be directed to extend monetary benefits as per the judgment rendered in the earlier litigation. The learned Single Judge, as observed above, dismissed the petition observing that the Division Bench disposed of Contempt Petitions observing that the Board had complied with the directions issued by the learned Single Judge in W.P. 1848 of 1992.

According to the learned Single Judge, if it were so, the writ-petitioner could not contend that he was entitled to monetary benefits from the date he was denied seniority in the final gradation list of First Division Assistant prepared and published by the Board. The petition was, therefore, dismissed. Intra court appeal, however, was allowed by the Division Bench. The Board has challenged the order passed by the Division Bench of the High Court of Karnataka in this Court by filing this appeal.

7. On July 14, 2005, notice was issued by this Court. Counter affidavit was thereafter filed by the writ-petitioner and matter was ordered to be heard finally.

Accordingly, the matter has been placed before us.

8. We have heard learned counsel for the parties.

9. The learned counsel for the appellant-Board contended that the writ-petitioner had succeeded in earlier litigation. A Single Judge of the High Court directed the appellant-Board to reconsider the seniority list and reassign seniority to the writ-petitioner over respondent Nos. 2 to 34. It is also true that the Court directed consequential benefits to be extended to the writ-petitioner. According to the learned counsel, however, the said order had been complied with and the appellant-Board has paid all consequential benefits to the writ-petitioner to which he was entitled in law. He also submitted that it was the case of the writ-petitioner that the order passed by the Court had not been complied with and the appellant-Board had committed contempt, but the contempt petitions were dismissed. In view of the said order, it is not open to the writ-petitioner to contend that there was non-compliance with the order passed by the Court. A fresh petition for such relief was not maintainable. According to the counsel, the learned Single Judge was wholly justified in dismissing the petition taking into consideration dismissal of contempt petitions and in observing that the complaint of the writ-petitioner against non-compliance with the order of the Court was ill-founded. The Division Bench was in error in setting aside the said order and in allowing the appeal.

He, therefore, submitted that the present appeal deserves to be allowed by quashing the directions

issued by the Division Bench and by restoring the order of the learned Single Judge.

10. The learned counsel for the respondent-writ- petitioner, on the other hand, submitted that the Division Bench was wholly right and fully justified in passing the order in the light of the earlier litigation between the parties. He submitted that the case was finally decided, the learned Single Judge allowed the petition filed by the petitioner and directed the Board to reassign him the seniority above respondent Nos. 2 to 34 and also to grant consequential benefits. The said order was challenged by the Board but intra court appeal as also Special Leave Petition came to be dismissed by the Division Bench of the High Court and by this Court respectively. The said order thus became final and binding on the parties. It was, thereafter, not open to the Board not to pay consequential benefits on the so-called ground that such payment was not envisaged by law. Once an order is passed by a competent court, it has to be implemented.

Dismissal of contempt petitions was totally irrelevant.

The learned Single Judge was, therefore, not justified in dismissing the petition and the Division Bench was right in setting aside the said order. The present appeal, therefore, has no substance and deserves to be dismissed.

11. Having heard learned counsel for the parties and having given anxious consideration to the rival submissions of the counsel, in our opinion, the appeal filed by the Board must be dismissed. Certain facts are not in dispute. The writ-petitioner was promoted as First Division Assistant in the year 1972. Seniority list of First Division Assistants was prepared and published. The writ-petitioner had grievance against the said list. He, therefore, challenged the said seniority list and his placement therein. A Single Judge was satisfied as to the grievance raised by the writ-petitioner and allowed the petition directing the Board to place the writ-petitioner above respondent Nos. 2 to 34 and also to grant consequential benefits.

12. In the operative part of the order, the learned Single Judge stated;

"Hence, there will be a direction to the 1st respondent to the effect that the date of seniority to be assigned to respondents Nos.2 to 34 shall be with effect from 30-12-1974 and below the petitioner. The seniority list of the petitioner and respondents Nos.2 to 34 shall be revised accordingly. Necessarily it follows that the petitioner is entitled to such other consequential benefits that he might earn consequent upon this revision of ranking.

The learned counsel for the petitioner submits that the petitioner is due to retire by February, 1998. Taking into account all the circumstances, it is desirable that the 1st respondent awards all the consequential benefits that the petitioner would have earned consequent upon this judgment by 30-12- 1997. With the above direction, the writ petition is disposed of".

(emphasis supplied)

13. It is not in dispute that the Board challenged the said decision by filing intra court appeal but the appeal was dismissed by the Division Bench. Even Special Leave Petition was dismissed by this Court and the order passed by the learned Single Judge had become final and binding between the parties. It was, therefore, obligatory on the Board to implement the directions issued by the learned Single Judge in the writ petition, to reassign seniority of the writ-petitioner by placing him over respondent Nos. 2 to 34 in the petition and also to extend 'consequential benefits'.

14. It is the case of the appellant-Board that all those directions had been carried out. The writ-petitioner has been reassigned seniority over respondent Nos. 2 to 34 and he has been awarded consequential benefits.

When it was contended by the learned counsel for the writ-petitioner that no arrears of salary had been paid, the learned counsel for the Board did not dispute the fact. He, however, relied upon statutory provisions. He also referred to a decision of this Court in *S.R. Bhagwat v. State of Mysore*, (1995) 6 SCC 16. The counsel for the writ-petitioner also placed reliance on that decision. It is, therefore, necessary to consider the said decision and the law laid down therein by this Court.

15. In *S.R. Bhagwat*, certain Deputy Conservator of Forests were serving in the former States of Bombay and Hyderabad. Pursuant to reorganization of States, they were allotted to the new State of Mysore under Section 115 of the [States Reorganisation Act, 1956](#).

Under the 1956 Act, the Central Government issued certain directions for equation of posts and promotions on the basis of provisional inter-State seniority lists subject to the revision of such promotions in accordance with the ranking in the final seniority list. The petitioners claimed certain benefits which were not granted. They, therefore, approached the High Court of Mysore. The claim was finally allowed and a direction was issued by the Court to grant all consequential benefits to the petitioners. The State of Mysore thereupon enacted an Act known as the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 (hereinafter referred to as 'the Act'). By the said Act, the actual financial benefits directed to be made available to the petitioners pursuant to the order passed by the Division Bench of the High Court, which had become final, were sought to be taken away. The petitioners, in the circumstances, approached this Court by filing a substantive petition under Article 32 of the Constitution challenging constitutional validity and vires of the Act to the extent they had affected the petitioners.

16. After hearing the parties, this Court allowed the petition, struck down certain provisions of the Act as ultra vires the legislative power of the State and directed the Authorities to comply with the directions contained in the binding decision of the Division Bench in favour of the petitioners by granting 'all consequential financial benefits' within the stipulated period.

17. In that case also, it was contended by the State that the petitioners were not entitled to consequential benefits in view of legislative provision and overriding effect under Section 11 of the Act. The Court, however, negated the contention. It observed that it is open to a competent Legislature to remove a defect in a legislation. Such enactment or validating statute could not be held unconstitutional or ultra vires. But it is equally well settled that a binding judicial pronouncement between the parties cannot be made ineffective or inoperative with the aid of legislative power by making a provision which, in substance and in reality, overrides and overrules a decision rendered by competent Court. Such process virtually renders a judicial decision ineffective by indirectly exercising appellate power over a judicial forum which is impermissible.

18. The Court stated:

"It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance over-rules such judgment and is not in the realm of a legislative enactment which displaces the basis of foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having

retrospective effect".

19. Considering the overriding effect of Section 11 of the Act, the Court observed: