The Arpookara Service Co Operative Bank Ltd Vs T.M.George

Court: High Court Of Kerala

Date of Decision: Jan. 7, 2025

Acts Referred: Code of Civil Procedure, 1908 â€" Order 41 Rule 27

Hon'ble Judges: Anil K.Narendran, J; Muralee Krishna S, J

Bench: Division Bench

Advocate: Athul Shaji, P.Sivaraj, B.Unnikrishna Kaimal

Final Decision: Dismissed

Judgement

Muralee Krishna S, J.

1. This writ appeal is filed by the petitioners in W.P.(C)No.22517 of 2018, assailing the judgment dated 06.09.2021 passed by the learned Single Judge,

by which the writ petition filed by them challenging Ext. P9 award of the Co-operative Arbitration Court, Thiruvananthapuram, was dismissed,

confirming the direction of the Arbitration Court to pay full salary and other monetary benefits to the 1st respondent for the period from 30.10.1998 to

08.04.2003.

2. The 1st respondent was working as Secretary of appellant No.1-Bank. He was placed under suspension with effect from 30.10.1998 alleging

misconduct, including financial mismanagement. On inquiry, 7 out of 9 charges were found against him by the enquiry officer and he was dismissed

from service with effect from the date of suspension. The appeal filed by the 1st respondent before the Board of Directors of the Bank was also

dismissed. Against the order passed in the appeal, he filedÃ, aÃ, petitionÃ, beforeÃ, theÃ, JointÃ, RegistrarÃ, ofÃ, Co-operative Societies. While

so, the Board of Directors of the Bank was superseded, and an Administrator took charge on 19.03.2003. On 04.04.2003, the Joint Registrar

remanded the appeal to the Board of Directors. The Administrator heard and allowed the appeal on 08.04.2003 directing reinstatement of the 1st

respondent and accordingly, he rejoined duty on the next day.

3. Meanwhile, the Board of Directors challenged the supersession proceedings by filing OP No.9723 of 2003 before this Court, and by the judgment

dated 27.08.2003 the order of supersession was set aside. The Board of Directors returned to the office on the strength of the judgment in OP

No.9723 of 2003 and challenged the order of the Administrator before the Joint Registrar which ended in dismissal. It was taken up on appeal before

the Government which was also dismissed on the ground that the challenge was by a third party. The Board of Directors again initiated disciplinary

proceedings against the 1st respondent which was challenged by him initially before the joint Registrar and then before the Government. By the order

dated 27.09.2004 the appeal was dismissed by the Government. Against the dismissal of the appeal, the 1st respondent filed W.P.(C)No.30842 of

2004 before this Court. The Bank as well as a member of the bank also filed writ petitions before this Court. All three writ petitions were heard

together and as per Ext.P1 judgment dated 30.05.2006, the learned Single Judge found that the action of the Administrator was beyond his authority,

since the supersession of the Board itself was set aside by this Court in OP No.9723 of 2003. It was held that the Board in office on the basis of the

judgment in OP No.9723 of 2003 have to hear the appeal of the 1st respondent and decide in accordance with law. As against the challenge on the

government order according to which the disciplinary proceedings could be proceeded against the 1st respondent, it was found that interference with

the said disciplinary proceedings was not called for when an inquiry officer was already appointed. As per Ext.P1, the proceedings by the

Administrator, Joint Registrar and the Government were set aside. The said judgment of this Court was taken in appeal by filing writ appeal Nos.1121

of 2006, 1123 of 2006, and 1126 of 2006. As per Ext.P2 judgment dated 11.12.2006, the Division Bench found that there was tacit approval of the

reinstatement and therefore the learned Single Judge was not right in remitting the appeal again to the Board. Therefore, that direction of the learned

Single Judge was set aside. The Division Bench did not interfere with the second set of disciplinary proceedings. The Division Bench directed the

Bank to consider the question of regularisation of the period of suspension and the date of reinstatement, on filing a representation by the 1st

respondent. On the basis of this direction, the Board of Directors again considered the request of the 1st respondent and as per Ext.P3 proceedings

dated 15.05.2007 found that the suspension, inquiry, and dismissal from service of the 1st respondent cannot be termed as one without any legal

justification. It was also found that the 1st respondent was gainfully employed during the period of suspension and dismissal, till reinstatement. The said

order of dismissal passed by the Board of Directors was challenged before the Kerala Co-Operative Arbitration Court, Thiruvananthapuram by filing

ARC No.101 of 2007. As per Ext.P5 award dated 23.07.2013, the Arbitration Court found that the suspension and dismissal of the 1st respondent was

illegal being wholly unjustified and therefore he is entitled to full pay and allowances during the period of suspension till rejoining.

4. The award of the Tribunal was challenged by the appellants before the Kerala Co-Operative Arbitration Tribunal, Thiruvananthapuram, by filing RP

No.86 of 2012. As per Ext.P6 order dated 26.09.2013, the Tribunal affirmed the award of the Arbitration Court by finding that the 1st respondent is

not guilty of misconduct of dereliction of duty etc. Challenging the judgment of the Tribunal, the appellants filed W.P.(C)No.4827 of 2014 before this

Court. As per Ext.P7 Judgment dated 30.07.2015, this Court set aside the award in ARC No.101 of 2007 and the order in RP No.86 of 2012 and the

matter was remitted to the Co-operative Arbitration Court for consideration afresh after hearing the parties. The judgment of the Single Bench in

W.P.(C)No.4827 of 2014 was challenged by the 1st respondent by filing WA No.2479 of 2015. In Ext.P8 judgment dated 11.03.2006 passed in the

writ appeal, the Division Bench of this Court did not interfere with Ext.P7 judgment of the Single Bench. Thereafter, the Arbitration Court heard the

matter afresh and as per Ext.P9 award dated 26.7.2017 ordered that the 1st respondent is entitled to full salary and other monetary benefits for the

period from 30.10.1998 to 08.04.2003. Challenging Ext P9, the appellants filed W.P.(C)No.22517 of 2018 before this Court, which resulted in the

judgment under challenge.

5. Heard the learned counsel for the appellants and the learned counsel for the 1st respondent.

6. The learned counsel for the appellants would submit that in the disciplinary proceedings, 7 out of 9 charges were proved against the 1st respondent.

In Ext.P8 judgment of the Division Bench, it was found that entitlement of back wages will depend upon the facts and circumstances of each case.

The learned counsel vehemently argued that the burden is upon the 1st respondent to prove that he was not gainfully employed during the period of

suspension till reinstatement and even if he is entitled to back wages, he cannot claim it as a matter of course. Only if the disciplinary proceedings

were found as unwarranted, he is entitled to back wages. Therefore, the finding of the Arbitration Court that the 1st respondent is entitled to full back

wages and other monetary benefits is liable to be set aside.

7. The learned counsel for the 1st respondent would submit that the 1st respondent entered service in the year 1969 and he served the Bank for 34

years. It was raising false allegations, the disciplinary proceedings were initiated against him, which was later found to be incorrect. By relying on the

judgment of the Apex Court in Deepali Gundu Surwase v. Kranti Junior Adhypak Mahavidyalaya [(2013) 10 SCC 324], the learned counsel argued

that the 1st respondent is entitled for full back wages, since appellants were not able to prove that he was gainfully employed. At the time of hearing

this appeal, the 1st respondent has filed IA No.3 of 2024 under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and produced certified copy

of chief affidavit filed by him before the Arbitration Court and argued that in that chief affidavit the 1st respondent had contended that he was not

employed during the period of suspension-dismissal. The learned counsel sought reception of that document in evidence as Annexure R1(g).

8. Having considered the submissions made at the Bar and the reason for the reception of additional documents stated in the affidavit filed in support

of IA No.3 of 2024, we find that Annexure R1(g) document produced along with the IA is necessary for the just decision of this appeal. Accordingly,

Annexure R1(g) document is received in evidence by allowing IA No.3 of 2024.

9. As per Ext.P7 judgment dated 30.07.2015, the learned Single Judge set aside Ext P5 award dated 23.07.2010 of the Co-operative Arbitration Court

and Ext.P6 order dated 26.09.2013 of the Co-operative Arbitration Tribunal and remitted the matter to the Co-operative Arbitration Court for fresh

consideration of the back wages entitled by the 1st respondent. As per Ext.P8 judgment dated 11.03.2016, the Division Bench of this Court confirmed

the findings of the learned Single Judge in Ext.P7. Based on that direction the Co-operative Arbitration Court passed Ext.P9 order directing the

appellant-Bank to pay the entire salary and other monetary benefits to the 1st respondent for the period of suspension till superannuation. This award

of the Arbitration Court was challenged by the appellants before the learned Single Judge in W.P.(C)No. 22517 of 2018 which also ended in dismissal.

Therefore, the only issue now remaining is the entitlement of the 1st respondent to get full back wages during the period of his absence from duty.

10. In Hindustan Tin Works Pvt. Ltd v. Employees of Hindustan Tin works Pvt. Ltd [(1979) 2 SCC 80], the Apex court held thus:

Ã¢â‚¬Å“Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed

during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer

terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well

amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wagesÃ¢â‚¬â€‹.

11. In Deepali Gundu Surwase [(2013) 10 SCC 324], the Apex court held thus:

Ã¢â‚¬Å“The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in

the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is

otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee

relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the

source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from

relatives and other acquaintances to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by

the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by

the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to

deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the

intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an

illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back

wages including the emolumentsÃ¢â‚¬â€‹.

12. In Pradeep v. Manganese Ore (India) Ltd [(2022) 3 SCC 683], the Apex Court and in Secretary, Perinthalmanna Taluk Co-operative Educational

Society and another v. M.Sethuratnam [2018 (2) KLT 99], this court re-iterated the dictum in Deepali Gundu Surwase [(2013) 10 SCC 324].

13. In all these judgments the dictum laid down is that ordinarily a workman whose service has been illegally terminated would be entitled to full back

wages except to the extent he was gainfully employed during the period of absence from duty. It is the employer who has to plead and prove the

same.

14. In Ext.P9 award the Co-Operative Arbitration Court observed that the appellants have no contention that the 1st respondent was gainfully

employed during the period of suspension and dismissal. The Arbitration Court found that the appellants did not produce any document to prove that

the 1st respondent is gainfully employed during the period of absence from duty. This finding of the Arbitration Court was confirmed by the learned

Single Judge in the impugned judgment by holding that the appellants failed to place on record any material regarding gainful employment of the 1st

respondent.

15. The scope of interference of the Appellate Court while considering the judgment of a writ court is limited to the extent of any jurisdictional error or

other legal infirmities so patent in that judgment. In Unnikrishnan B v. State of Kerala and others [2021 KHC Online 188 : 2021:KER:12299], this

court held that the appellate court, while considering the judgment of a Writ Court, need only consider whether there was any jurisdictional error or

other legal infirmities so patent on the part of the learned Single Judge in considering the material aspects raised in the writ petition.

16. The appellants, though contend that the 1st respondent is not entitled to back wages and stuck on to the decision of the bank in Ext. P9, no

evidence has been produced by them either before the Arbitration Court or before the learned Single Judge to prove that the 1st respondent was

employed elsewhere during the period of his absence from duty in the appellant bank, though the 1st respondent specifically contended in Annexure

R1(g) chief affidavit filed by him before the Arbitration Court that he was not employed anywhere else during the period of suspension- dismissal.

While analysing the materials on record in the light of the dictum laid down in the judgments referred to above and also hearing the submissions made

at the Bar, we find no sufficient ground to interfere with the impugned judgment of the learned Single Judge. In such circumstances, the writ appeal

fails and accordingly stands dismissed.