

S. Kumar Vs. Chairman, Narmada Education and Scientific Research Society and ors.

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Court : Gujarat

Decided On : Apr-22-1999

Reported in : (2000)1GLR413

Judge : S.K. Keshote, J.

Appellant : S. Kumar

Respondent : Chairman, Narmada Education and Scientific Research Society and ors.

Judgement :

S.K. Keshote, J.

1. The petitioner-a dismissed professor of Narmada College of Science and Commerce, Zadeshwar, Bharuch, by this petition under Art. 226 of the Constitution of India praying for quashing and setting aside the order dated 13-8-1998 Annexure-K at page 63 of this Special Civil Application, passed by Gujarat Affiliated Colleges Services Tribunal at Ahmedabad, in Application vide No. 52 of 1997 under which the interim stay granted earlier by the Tribunal on 7-5-1997 was ordered to be vacated. From the facts of this case, I find that at this stage of litigation the petitioner attempts to get the advantage for which otherwise he may not be entitled by way of interim relief or more precisely which normally cannot be

granted by the Tribunal by way of interim relief.

2. The facts of the case in brief are that on 20-6-1985 the petitioner joined the respondent No. 1 college as its principal under the order of the respondent No. 1. He was placed under suspension vide order dated 12-11-1994 pending the departmental inquiry. As a result of the departmental inquiry in which the charges framed against him were found proved, he came to be dismissed from the services under the order passed by the respondent No. 1 dated 3-1-1996. The petitioner challenged that order by filing the application before the Gujarat Affiliated Colleges Services Tribunal, Gujarat State at Ahmedabad. On 31-1-1996, the Tribunal granted the interim relief in favour of the petitioner to maintain status quo in respect of the service conditions. I find from the record of this Special Civil Application that this interim relief has been granted by the Tribunal on the basis of the statement made by the Advocate of the management before it. In pursuance to this interim order what the learned Counsel for the petitioner submits that the petitioner is getting subsistence allowance. That application is pending for decision before the Tribunal.

3. The petitioner filed another application, being Application No. 52 of 1997 under the apprehension that the petitioner would be retired on 14-6-1997 at the age of 58 taking into consideration the relevant Ordinance of University as also the resolution of the Government. On 7-5-1997 in this application the interim relief has been granted by the Tribunal which came to be vacated on 13-8-1998.

4. The Government of Gujarat under its resolution dated 7-9-1998 raise the retirement age to 62 years as on 1-1-1996 of the teachers in the college education. The petitioner filed 3rd application before the Tribunal being Application No. 119 of 1998, in which the petitioner stated that the Tribunal has granted stay in favour of the petitioner on 28-10-1998, which continued till 30-11-1998. It is not the case of the petitioner that this interim relief extended beyond 30-11-1998.

This Special Civil Application is filed by the petitioner in this Court on, 13-11-1998.

5. The learned Counsel for the petitioner contended that the age of the superannuation of the professor in the college education has been made 60 years

during the pendency of the application in the Tribunal and the Tribunal has rightly granted interim relief to give the benefit of the services accordingly, which order should not have been vacated. It has next been contended that the age of superannuation has further been raised to 62 years and this benefit of the services should have been continued to be enjoyed by the petitioner. It has next been contended that the learned Tribunal under the impugned orders has decided regarding what should have been the age of the retirement of the petitioner by way of this interlocutory order. Concluding his submissions, the learned Counsel for the petitioner contends that till three applications filed by the petitioner are decided, the respondent be directed to pay all the benefits of the services to the petitioner.

The learned Counsel for the respondent has opposed this Special Civil Application.

6. I have given my thoughtful considerations to the submissions made by the learned Counsels for the parties.

7. It is really a litigation which clearly exhibits how the litigants have abused the process of the Tribunal and to get the interim order pending the decision of the application. It is true that looking to the heavy pendency the Tribunal or the Courts are not in a position to expeditiously dispose of the matters finally. The difficulties of the Courts/Tribunals are being exploited by the litigants and they make indiscriminately repeated interlocutory applications before the Court/Tribunals to get the interim relief. I have seen the cases after cases where in the matter which have no merits but as the Court or the Tribunal has no time to dispose of the matters finally, the litigants get the benefit under the interim reliefs. It is a case where though the petitioner has been dismissed from services on proved of serious misconduct in departmental inquiry is getting service benefits from the management of the college. I fail to see any justification, necessity and legal obligation on the part of the Advocate, who was appearing for the management to make such a statement before the Tribunal so that the pending disposal of the application the petitioner gets the monetary benefits. What the learned Counsel for the respondent-management saying that under this statement the petitioner was paid only the amount of suspension allowance. But after dismissal of the petitioner

from service there was no obligation on the part of the management to pay a single pie to the petitioner. The petitioner challenged order of the respondent dismissing from the services before the Tribunal and I have my own reservation that the Tribunal could not have granted the interim relief in this matter where to give any financial benefit to the petitioner. However, the petitioner has taken the advantage of this statement made by the Advocate for the management, which could have at the most respected till the petitioner attain the age of superannuation, i.e., 58 years. The petitioner filed the second application to get the similar relief that is to continue to get this benefit as under the Government Resolution the age of superannuation has been raised to 60 years of the college teachers. The Tribunal has granted interim relief though I have my own reservation whether such interim relief could have been granted. But, later, on the same has been vacated. The third application has been made, in which the petitioner has come up with the case that now the age of superannuation has raised to 62 years and these benefits should be continued to be paid to him till he attains the age of 62 years. In this application also the Tribunal has granted the interim relief. The management has acted in this matter as if it is a rich person or for whom the money is no problem or as if it is a charitable institution. However, it is a management's own creation and they have to pay to the petitioner, the money for which otherwise he would not have been entitled during the pendency of the application by way of interim relief. However, this statement given could not have gone for indefinite. The management, which is perfectly correct in its approach to oppose the grant of interim relief to the petitioner by the Tribunal and that also has found favour by the Tribunal and interim relief granted on 7-5-1997 has been vacated. The learned Counsel for the petitioner is unable to show any resolution or any decision of Apex Court or this Court where the petitioner can get any benefit whatsoever after his dismissal from services. The petitioner is not entitled as a matter of course or right to get any financial benefit after his dismissal from the services. Merely because the management has extended some favour to the petitioner, it will not be taken to be law or as if the Court has granted the interim relief in his favour. The management is perfectly legal and within its competence to withdraw this statement at any stage and in this case rightly, it is not bound to honour the statement beyond the date on which the petitioner has attained the age

of superannuation as what it was there on the date of his dismissal from service. Though in the matter of the correction of the date of birth the decision has been given by the Apex Court but it can equally be made applicable to the case where the employees come up with the claim of the higher age of superannuation. In such matters interim relief cannot be granted and the reason is also very obvious. The question what should have been the age of superannuation of the employee officer is to be finally adjudicated by the Tribunal or the Court and where it decides that age of superannuation is higher than the age at which the employee has been retired he can be compensated for losses he suffered because of his premature retirement. But in such cases by way of interim relief they cannot be allowed to continue in the services till he attains the claimed age of superannuation. The grant of the interim relief of this nature will amount to overreaching of the main relief which ultimately the Court may or may not grant. Their Lordships of Supreme Court said that in such matters of the correction of the date of birth it cannot be said that decline of the interim relief will cause any irreparable injury to the employee or the officer, which cannot be compensated in terms of money or they may be placed in irretrievable position. In such cases also the balance of convenience cannot be said to be in favour of the employee-officer. If ultimately, the contention raised and claim made by them is accepted then without working on the post the Tribunal or the Court in appropriate case may allow them all benefits. In the matter of grant of the interim injunction or relief these well known and recognised principles of grant of the temporary injunction are to be adhered to by the Tribunal or the Courts. Even if it is taken that prima facie case is there in favour of the litigant, it itself may not be sufficient for the Tribunal or the Court to grant the interim relief in favour of the litigant. Two other ingredients are to be satisfied and only when the Court is satisfied that all the 3 necessary ingredients for grant of temporary injunction or relief or the stay are established, no such relief can be granted. In the present case, I do not find any illegality or perversity in the order impugned in this Special Civil Application.

8. The Tribunal is perfectly legal and correct not to grant any interim relief in favour of the petitioner. What should be the age of the superannuation in the case of the petitioner is not the question to be decided at this stage. The petitioner is trying to get the monetary benefits till he attains the age of 62 years because of the

pendency of the application in which he has challenged the order of the respondents to dismiss him from the services. The case of the petitioner is worst than other cases. Here the petitioner dismissed from the services after holding the full-fledged departmental inquiry and so long as the dismissal continues that is to say is declared to be illegal and consequently the same is set aside, he is not entitled to any benefit whatsoever and he should not have been granted such a benefit. Similarly, the respondent-management is also not under any obligation to undertake such liability to pay to the petitioner subsistence allowance after his dismissal from the services. A benefit which otherwise could not have been given to the petitioner, has been extended by the respondent and if the respondent-management now is not to stick to its statement or by necessary implication not require to honour the same, the Tribunal could not have insisted upon the management to honour its statement in these facts of the case. Whatever the benefits the petitioner got under the statement made by the management before the Tribunal is a different matter but he cannot be allowed to get further any benefits whatsoever. It is a matter where the petitioner challenges his dismissal from the services and if ultimately the Tribunal decides the matter in his favour, he will get all the consequential benefits in accordance with law for which the Tribunal is quite competent. The question of the raising of the age of superannuation of the petitioner so long as his dismissal from services is not set aside is of any consequence and substance. If ultimately the main application of the petitioner is dismissed by the Tribunal then how this question has any relevance and importance. The petitioner knowing all these facts that in case where the decision is given by the Tribunal against him in the application filed by him challenging his dismissal from service he shall not be entitled for anything and this question will be of no substance, he has asked to get the benefits by way of interim relief during the pendency of the application. Such application otherwise also should not be encouraged. The petitioner is not entitled for any benefit whatsoever during the pendency of the applications. However, if ultimately the Tribunal decides the dismissal matter in his favour then it will consider for all their claims and consequential benefits for which he may be legally entitled and accordingly it will pass necessary order for the same. There is fallacy in the contention of the learned Counsel for the petitioner that the Tribunal has adjudicated upon the

question of age of superannuation of the petitioner. In fact, that stage has not arisen. At this stage, otherwise also it is not necessary for the Tribunal to adjudicate upon and decide this question. However, whatever the observations made by the Tribunal under the impugned order with reference to what should have been the age of the superannuation of the petitioner are only tentative and not final. It is no more *res Integra* that whatever the observations made or findings given while deciding the applications of litigants for grant of temporary injunction are only provisional or tentative. The reference in this respect may have to the decision of the Apex Court in the case of *Jaikishan Jagwani v. Britomatics Enterprises (P) Ltd.* 1987 Supp. SCC 72. The petitioner has already raised the question what should have been the age of superannuation in case where his dismissal from services order is quashed and set aside. But this question in the application is to be decided only when the necessity arises. For decision on this question necessity may arise only in case where the Tribunal decides the question of dismissal of the petitioner from the services in his favour. This Special Civil Application is wholly misconceived and in fact an attempt where the petitioner has tried to abuse the process of Court.

9. In the result, this Special Civil Application fails and the same is dismissed. The petitioner is directed to pay Rs. 2,000/- as the costs of this Special Civil Application to the respondent-management.

It is made clear that there is no obligation whatsoever of the management to pay anything to the petitioner during the pendency of the applications.

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