

The Commissioner, Karnataka Housing ... vs C. Muddaiah on 7 September, 2007

Equivalent citations: AIR 2007 SUPREME COURT 3100, 2007 (7) SCC 689, 2007 AIR SCW 5577, 2007 LAB IC 4133, (2007) 6 ALLMR 403 (SC), (2007) 4 LAB LN 967, (2007) 4 ALL WC 4028, (2007) 4 SCT 452, (2008) 1 KANT LJ 249, (2008) 1 MAH LJ 546, (2007) 58 ALLINDCAS 120 (SC), (2008) 1 SERVLJ 387, 2007 (6) ALL MR 403, 2007 (10) SCALE 625, (2007) 6 SERVLR 157, (2007) 6 SUPREME 97, (2007) 10 SCALE 625

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Bench: C.K. Thakker, D.K. Jain

CASE NO.:
Appeal (civil) 4108 of 2007

PETITIONER:
THE COMMISSIONER, KARNATAKA HOUSING BOARD

RESPONDENT:
C. MUDDAIAH

DATE OF JUDGMENT: 07/09/2007

BENCH:
C.K. THAKKER & D.K. JAIN

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 4108 OF 2007 ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12608 OF 2005 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:

"A mere look at sub-section (2) of Section 11 shows that the respondent, State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State Legislature to legislatively over-rule binding decisions of competent courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had not become final it could rely upon the relevant provisions of the Act which were given retrospective effect by sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the concerned petitioners deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefit consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this

decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in identical other matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one's comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to bypass and over-ride the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced".

(emphasis supplied)

20. The Court, therefore, held that the provisions of sub-section (2) of Section 11 which interfered with the judgment of a competent Court was unconstitutional, ultra vires and void.

21. As to Section 4 of the Act, which provided certain benefits to employees only on 'notional basis', the Court held that it would not apply to the petitioners.

22. The Court stated:

"We, therefore, strike down Section 11 sub- section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4, sub-sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against the respondent-State and in favour of the petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. Therefore, the underlined portions of sub-sections (2), (3) and (8) of Section 4 will have to be read down in the light of orders of the court which have become final against the respondent-State and in so far as these provisions are inconsistent with these final orders containing such directions of judicial authorities and competent courts, these impugned provisions of Section 4 have to give way and to the extent of such inconsistency must be treated to be inoperative and ineffective. Accordingly the aforesaid provisions are read down by observing that the statutory provisions contained in sub-sections (2), (3) and (8) of Section 4 providing that such person who have been given deemed promotions shall not be entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent courts against the respondent-State have become final".

(emphasis supplied)

23. The learned counsel for the appellant-Board strenuously urged that in S.R. Bhagwat, this Court struck down sub-section (2) of Section 11, but did not hold Section 4 unconstitutional or ultra vires. The Court held that on the facts and in the circumstances of the case, the said provision did not apply to the petitioners in view of the direction issued by the Court and the petitioners were held entitled to consequential benefits. But the ratio laid down in the said decision would help the appellant-Board. The Division Bench, in the light of S.R. Bhagwat, could not have issued direction as to payment to be made to the writ-petitioner.

24. We are unable to uphold the argument. In our judgment, the submission of the learned counsel for the writ-petitioner is well-founded that in the instant case also, express and unequivocal direction was issued by the Court to grant to the writ-petitioner "such other consequential benefits that he might get consequent upon the revision of ranking". It was also observed that such benefits should be paid to him by December 30, 1997 as the writ-petitioner was to retire in February, 1998. The said decision, to reiterate, has become final and binding. It is, therefore, not open to the appellant- Board to contend that the respondent is not entitled to such benefits under 1973 Act and hence no such direction could have been issued by the Court.

25. As observed in S.R. Bhagwat, when a decision has been rendered by a competent Court, the law provides a remedy to an aggrieved party. If the appellant- Board thought that the writ-petitioner was not entitled to financial benefits as contended before us now and he could be granted such benefits only on 'notional' basis, it could have challenged the said direction and ought to have obtained an appropriate order from an appropriate Court. In the case on hand, the directions issued by the learned Single Judge were challenged by the Board, but intra court appeal as well as Special Leave Petition came to be dismissed. The direction, thus remained and in the teeth of such direction, it is not open to the appellant- Board not to comply with it by contending that it would not grant consequential benefits as no such direction could be issued in view of 1973 Act.

26. In our opinion, the contention that no fresh petition could be filed by the respondent-writ petitioner in 2000 has also no substance. So far as contempt petitions are concerned, the Court held that the order passed by the Court had been complied with and it could not be said that the Board or its Officers were liable to be punished. An Office Memorandum dated February 2, 1998 is on record. It refers to a decision of the High Court dated October 27, 1997 in Writ Petition No. 1848 of 1992 and states as to how the direction of the Court has been complied with. The relevant part of the said order reads thus:

"Accordingly, the promotion of Sri C. Muddaiah, be worked out with reference to the promotion accorded to Sri K. Srinath and the consequential benefit be allowed to Sri C. Muddaiah, as per the Judgment referred to above". (emphasis supplied)

27. From the above order, it is clear that promotion of the writ petitioner was ordered to be worked out with reference to the promotion accorded to Shri K. Srinath and the 'consequential benefits' be allowed to the writ-petitioner as per the judgment referred to in the writ petition.

28. But our attention was also invited by the learned counsel for the writ-petitioner to a subsequent order dated June 1, 1998. The Preamble of the order refers to the decision in the writ petition and direction of the Court to place the writ-petitioner above respondent Nos. 2 to 34 and to grant him consequential benefits.

29. It then proceeds to state:

"In view of the facts explained in the preamble I, P.B. Mahishi, Housing Commissioner, Karnataka Housing Board, order that Sri C. Muddaiah is deemed to have been promoted as Superintendent from the cadre of F.D.A's with effect from 22-03-1984 i.e. the date from which Sri K. Srinath was so promoted. I further order that Sri C. Muddaiah is deemed to have been promoted as Assistant Revenue Officer from the cadre of Superintendent with effect from 12.06.1985 i.e. the date on which his junior was so promoted. He is deemed to have been posted as Assistant Revenue Officer with effect from 27.10.1997, the date on which the Hon'ble High Court of Karnataka rendered its judgment in W.P. No. 1848 of 1992. I also order that Sri C. Muddaiah be paid arrears of pay and allowance for the period from 27.10.1997 to 28.2.1998 the date on which he retired from service on attaining the age of superannuation presuming that he has worked as Assistant Revenue Officer during the said period even though he had actually not worked in that capacity. Sri C. Muddaiah will not be eligible for arrears of pay and allowance for any earlier period since he has not actually worked in the cadre of Superintendents and Assistant Revenue Officers, in view of the provisions of Karnataka State Civil Services (Regulation of Pay, Promotion and Pension) Act, 1973. A statement showing the pay fixation allowed in favour of Sri C. Muddaiah consequent on the above orders is enclosed herewith. On the basis of the revised pay fixation order enclosed Sri C. Muddaiah will also be entitled for pension, gratuity and family pension etc."

(emphasis supplied)

30. Bare reading of the above order makes it more than clear that the salary to be paid to the writ petitioner was from October 27, 1997 to February 28, 1998. It was expressly stated that the writ-petitioner would not be entitled to arrears of pay and allowances for any earlier period "since he has not actually worked in the cadre of Superintendents and Assistant Revenue Officers". It is thus obvious that in spite of clear direction issued by a competent Court, no payment was made and an express order was passed to the effect that the writ- petitioner would not be entitled to pay as he had not worked. The writ-petitioner, therefore, had legitimate grievance against such direction. A fresh substantive petition, hence, could be filed by him and since he was entitled to such relief, the Division Bench was justified in granting the prayer.

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking

appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.

33. For the foregoing reasons, we see no ground to interfere with the order passed by the Division Bench of the High Court. The appeal deserves to be dismissed and is accordingly dismissed with costs which is quantified as Rs.10,000/-. The appellant-Board shall comply with the directions within twelve weeks from today.