**IN THE HIGH COURT OF****KARNATAKA AT BANGALORE**

Writ Petition No. 8112 of 2006

Decided On: 04.08.2011

Appellants: **Smt. Shobha Pillai, W/o. B. Venugopal**
**Vs.**
Respondent: **The Principal, Vijaya College and The Registrar, Academy of General****Education**

**Hon'ble Judges/Coram:**
Anand Byrareddy, J.

**ORDER**

**Anand Byrareddy, J.**

1. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents.

2. The facts are as follows:

The Petitioner had joined the services of Vijaya College, Mulki, which is under the management of the second Respondent, in the year 1989 as an Instructor and was working in the Computer Department. She was initially appointed on probation for a period of one year. After one year, she was assigned the post of a Lecturer in the same department. She was continuously employed thereafter, though her probation was not declared as having been completed successfully. Her salary, which was initially at Rs. 1,200/- per month was enhanced to Rs. 4,000/- over a period of time. She had worked for eleven hours on the practical side and ten hours on the theory side, per week. She was employed full time as a permanent employee. In the department of Computer Science and Computer Applications, the number of sanctioned posts of teaching staff are three Lecturers and two Programmers. The Petitioner was one of the Lecturers. This has been acknowledged by the Respondents in submitting a statement of particulars of teachers to the competent department, a copy of which is at Annexure-C to the writ petition. In the year 2001, there was a communication from the Chancellor of the second Respondent - Academy, to indicate that the persons serving in the Computer Department were required to file applications and to attend interview in order to regularise their services. The Petitioner had complied with the directions hoping that her service condition would improve. However, this was not to be since the Petitioner was directed on 1.7.2002 that her services were no longer required. This was a shock to the Petitioner since she was always under the belief that she was treated as a permanent employee. In the light of the fact that she was initially appointed on probation and under the prevailing Rules, at that point of time, the probation period could have been extended by a further period of six months and since the Petitioner was continued in service long thereafter, she was in law deemed to have been confirmed in the post as a permanent employee. Therefore, the summary termination of the Petitioner was sought to be questioned by preferring an appeal before the Educational Appellate Tribunal under the provisions of the KarnatakaEducation Act, 1983. The same was contested by the Respondent, wherein it was vehemently contended that by the very nature of appointment of the Petitioner, it was a temporary appointment and the Petitioner never having been confirmed in service, the question whether the Petitioner is deemed to have been confirmed in service would not arise, as it is also settled in a catena of decisions that unless the probationer is confirmed in services in writing, there can be no deemed confirmation that could be employed. It was sought to be highlighted that throughout, the Petitioner was only treated as a temporary employee. The Tribunal accepted the contention that the Petitioner was a temporary employee and promptly dismissed the appeal while incidentally holding that the Petitioner, at best, may be entitled to a nominal compensation, which was quantified at Rs. 54,537/- without being entitled to any other relief. It is that which is sought to be questioned in the present petition.

3. The learned Counsel for the Petitioner would submit that there is no dispute that the Petitioner was duly appointed as an Instructor and later assigned the post of a Lecturer and that she was appointed on probation, but she had been continued well beyond the period of probation prescribed and the law on the point is well settled as laid down in a Constitution Bench judgment in the case of State of Punjab v. Dharam Singh,  : AIR 1968 SC 1210, which has been followed consistently.

4. The learned Counsel for the Respondent on the other hand, would submit that on the admitted facts, the Petitioner would not deny that there was no order in writing appointing her to the post of Lecturer. Though she was initially appointed as an Instructor on probation and was assigned the temporary post of a Lecturer, there were no terms and conditions spelt out in her appointment order. It is only, as also admitted by the Petitioner, at a later point of time that the Petitioner was required to file an application to be considered for regular appointment, which the Petitioner has failed to comply with. In that view of the matter, the Petitioner seeking to claim that she was a permanent employee with reference to Annexure -C to the writ petition would not be tenable. Therefore, the Tribunal had addressed this question of fact, as to whether the Petitioner could claim as a permanent employee, at length at a trial and thereafter has arrived at a finding to deny the claim of the Petitioner that she is a permanent employee. This finding being a finding of fact could hardly be the subject matter of the present petition in judicial review. Therefore, he would submit that the Tribunal also having granted fair compensation to the Petitioner, who may have discharged her service with the Respondent - institution, ends of justice are met and hence, there is no warrant for interference. He would also submit that on the question of law, the Constitution Bench judgment, which is relied upon by the learned Counsel for the Petitioner, has given room for one line of cases where there is yet Anr. line of cases developed on the basis of yet Anr. Constitution Bench judgment, which has taken a diametrically opposite view. Hence it cannot be said that the Petitioner should be treated as a permanent employee on a deemed confirmation with reference to the authorities cited by the learned Counsel for the Petitioner.

5. In the above facts and circumstances, it may be seen that there is no much dispute of the Petitioner having been initially appointed as an Instructor in the Computer Department of the Respondent - Institution. The Petitioner having been assigned the post of a Lecturer in due course, the probationary period under the Rules then prevalent was for a period of one year which was capable of being extended for six months. The Petitioner having continued in service well beyond the said probationary period, notwithstanding that there was no order in writing appointing her as a Lecturer, the fact that she had been continued in that post, would give rise to a presumption that it was on the same terms and conditions under which she was appointed as an Instructor. Therefore, the point for consideration would be whether she could be deemed to have been confirmed in the post since she was continued in service for long years thereafter.

6. Insofar as the case-law is concerned, the divergent views as to whether a probationer could claim as a permanent employee has been taken note of by the Supreme Court in a recent decision, whereby the entire case-law has been reviewed in the case of Kazia Mohammed Muzzammil v. State of Karnataka and Anr., (2010) 8 SCC 755, and the Supreme Court has opined that there are two views prevalent, primarily the court has taken diametrically opposite views, one which enables the application of the deemed confirmation after the expiry of the prescribed period of probation, while the other taking a view that it will not be appropriate to apply the concept of deemed confirmation to officers on probation as that is not the intent of the law and the apex Court has taken the middle path in holding that the Rules and Regulations governing a particular service are bound to have a greater impact on determining such a question. In the present case on hand, the prevalent Rule, namely, Rule 7 of the KarnatakaPrivate Educational Institutions Rules, 1978 which reads as follows:

Period of probation: A person appointed under Rule 6(1) shall be on probation for a period of one year.

Provided that the Board of Management may extend the period of probation by a further period of six months.

7. In that view of the matter, the line of judgments, wherein it was declared by the Supreme Court that there can be no deemed confirmation in the absence of a written order to that effect would not apply and it is the line of cases following the judgment of the apex court in the case of Dharam Singh, supra, that would indeed apply. Hence, it can be safely said that the Petitioner is deemed to have been confirmed in service as a permanent employee and therefore, would be entitled to be reinstated as such. However, since the Petitioner has been out of employment since the year 2001, to direct that the Petitioner be reinstated into service at this point of time with full backwages, would certainly prejudice the institution in having to pay a large sum of money for a period, during which the Petitioner has not rendered any service. However, the Petitioner having been deprived of her post for no fault of hers and in a manner which is not contemplated in law, the Petitioner was certainly entitled to be compensated and since the year 2001, it cannot be expected that the Petitioner would have survived without any other avocation and as pointed out during the course of the arguments by the learned Counsel for the Respondents that she was gainfully employed elsewhere, it would be necessary to restrict the compensation payable to a nominal amount. In the facts of the present case, since the Petitioner's last drawn salary was in the area of Rs. 4,000/-, it would be reasonable to grant her a lumpsum amount of Rs. 1.00 lakh as compensation, in full and settlement of her claim towards any back wages on account of the illegal denial of service. If the Petitioner is reinstated with continuity of service with all consequential benefits that would be available to a regular permanent employee of the institution, ends of justice would be met.

Accordingly, the impugned judgment of the Tribunal is quashed and the petition is allowed. The Respondent is directed to reinstate the Petitioner into service with all consequential benefits, except that in lien of the arrears of salary, the Petitioner shall be paid a lumpsum of Rs. 1 lakh within a period of four weeks, from the date of receipt of a certified copy of this order and the Petitioner shall be entitled to all consequential benefits, including continuity of service, seniority and other allowances and benefits, which a regular employee would be entitled to.