
(1983) 06 KAR CK 0009
In the Karnataka High Court
Case No : WP 41148/82

A.K. Bhat

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-06-1983

Acts Referred:

Constitution of India, 1950 — Article 235
Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 28d
Karnataka Civil Services Rules, 1958 — Rule 8(15)

Citation : (1983) 2 KarLJ 420

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner, formerly a Munsiff in the Karnataka Judicial Service, has presented this writ petition praying for quashing the order by which he was discharged from service and has also sought for a direction for payment of salary for the period commencing from 24.4.1982 upto 17.7.1982 (b.d.i) before his discharge.

2. The facts of the case, in brief are as follows: The petitioner was appointed as a Munsiff and was posted to the Court of the Munsiff and J.M.F.C., Chikodi. He was under probation. During the period of probation, by an order made by this court on the administrative side, he was directed to hand-over charge on 24.4.82. In obedience to the said order, he, handed over the charge. No posting was given to the petitioner. Consequently he could not report for duty at any other place. Subsequently by notification dt. 5.7.1982 issued by the Governor (Annexure-B) the petitioner was discharged from service. This order was sent to the Registrar of the High Court for being forwarded to the petitioner. The Registrar forwarded the copy to the District and Sessions Judge, Belgaum. The District and Sessions Judge in turn by his order dt. 12.7.1982 forwarded the copy to the petitioner through the Civil Judge, Chikodi. It was served on the petitioner on 17.7.1982. Accordingly the petitioner ceased to be a member of the Judicial Service with effect from 17.7.1982.

3. In this petition the petitioner has not only questioned the legality of the order

of discharge, but also has sought for a direction for payment of salary for the period during which he was kept out of duty prior to the date of discharge. At the time of hearing, learned counsel for the petitioner submitted that he would confine this petition to the prayer for payment of salary for the period prior to the date of discharge with liberty to file a fresh petition questioning the legality of the order of discharge. I granted the request of the petitioner and heard the writ petition only in so far it relates to the prayer made by the petitioner for payment of salary.

4. From the facts stated above which are not in dispute, it is clear that the petitioner was directed to hand over charge on 24.4.1982 and no posting order was give to him. Instead of giving him a posting order an order of discharge was served on him on 17.7.1982, with effect from which date he ceased to be a member of the Judicial Service. The petitioner claims that the period commencing from 24.4.1982 till 16.7.1982 (b.d.i.) must be treated as duty and he should be paid salary and allowances for the said period.

5. In fact by letter dt. 6.9.1982 addressed by the Registrar of this Court to the Accountant General, the latter was asked to issue pay-slip to the petitioner authorising payment of salary for the period commencing from 24.4.1982 to 4.7.1982, the date of the discharge order. It reads.

"With reference to your letter No. GAD XIII/j1/82-83/692-694 dated 9.8.82, I am directed to state that the period from 24.4.1982 to 4.7.82 (bdi) has to be treated as on duty in respect of Sri. A.K. Bhat, the then JMFC., Chikodi, and to request you to issue necessary pay slip to the said officer early."

After the receipt of the above letter the Accounts Officer of the Office of the Accountant General addressed a letter dt. 6.10.1982 to the Registrar. The said letter reads-

"In your letter dt. 10.9.82, it has been stated that the period from 24.4.82 to 4.7.82 i.e., the date of handing over charge of the post of JMFC, Chikodi and date of discharging him from service is to be treated as on duty.

Since, after, handing over charge, the Officer was neither on duty nor on leave or suspension, the authority for treating such period as duty may please be intimated and also the specific orders in relaxation of rules may also be obtained from Government and forwarded to this office for taking further action."

In the said letter, the Accountant General wanted this Court to obtain orders of the State Government for treating the period in question as duty and forward the same to his office. Thereafter a notification dated 22.3.83 was issued. A copy of the same was produced at the time of hearing. It reads-

"No GOB 109/82.

High Court of Karnataka, Bangalore.,

dated: 22.3.1983

NOTIFICATION

The absence of Sri. A.K. Bhat, Munsiff (since discharged from service under G.O. No. Law. 78 LAC. 82 dated 5.7.1982) from 24.4.1982 to 4.7.1982 is treated as duty.

By Order of the High Court,

sd/- K. Gopal Hegde., Registrar".

Even after the above notification was forwarded to the Accountant General, another letter dt. 4/12.5.1983 was addressed by him to the Registrar. It reads-

In this office letter dt. 16.10.82 referred to above, you are requested to intimate the authority for treating the period of absence from 24.4.82 to 4.7.82 as duty in respect of Shri A.K. Bhat, Munsiff (now discharged) and to obtain specific sanction from the Government.

It is however, seen that neither authority for treating the period of absence from 24.4.82 to 4.7.82 has been intimated nor specific orders of Government obtained. Hence in view of this the reply furnished in your office letter dated 22.3.83 is not acceptable.

This is for your information.

In the said letter, the Accountant General pointed out that to treat the period of absence in question as duty, specific sanction of the Government was necessary and, therefore, he could not issue the pay slip on the strength of the notification issued by this Court.

6. Sri R.S. Hegde, learned counsel for the petitioner, contends that in view of the power of control over the members of subordinate judicial service vested in the High Court under Art. 235 of the Constitution, the notification issued by the High Court was sufficient authority for treating the period as duty and no separate Government order was necessary. He further submitted that a mistake had been committed in the letter addressed by the Registrar to the Accountant General as also in the Notf. dt. 22.3.1983, in that instead of treating the period commencing from 24.4.1982 upto 16.7.1982 i.e., the day prior to the service of the discharge order, the period upto 4.7.1982, i.e., the date of the discharge order alone has been treated as duty He submitted that the notification of discharge became effective only from the date on which the order was served on the petitioner and, therefore, he was entitled to be treated as on duty till 17.7.1982.

7. The first question therefore for consideration is whether the petitioner is entitled to full salary and allowances for the period in question treating it as duty and the second question is, who is the competent authority to certify that the period should be treated as duty.

8. Rule 8 (15) of the Karnataka Civil Services Rules defines "duty". Relevant portion of the rule reads-

"8. (15) Duty: "Duty" includes-

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(f) the period spent by a Government servant awaiting orders of posting after relief from a post under Government or after reporting for duty on return from leave, training or deputation; provided such waiting is approved by Government as unavoidable."

In the present case, the petitioner was directed to hand-over charge pursuant to which he handed over charge on 24.4.1982 and no posting order was given to him. He could not report for duty elsewhere. But instead of giving a posting order, he was discharged from service. Therefore the period commencing from the date on which he handed over charge till the date on which he was discharged from service, has got to be treated as duty in view of rule 8 (15) (f) of the K.C.S. Rules, if waiting is certified as unavoidable.

9. The next question is, who is the competent authority to approve that the period of compulsory waiting was unavoidable. Rule 8 (15) (f) no doubt states that the period of waiting in order to be treated as "duty" should be approved by the State Government. Obviously in view of this the Accountant General has asked this Court to seek and get the approval of the State Government. Under Art. 235 of the Constitution, the complete and effective control over the members of the judicial service including postings, transfers etc., is vested in the High Court. No rule made under Art. 309 of the constitution can impinge upon this constitutionally conferred power. The power of control so conferred includes the power to say finally as to whether the keeping of a member of judicial service out of duty was unavoidable or not. Obviously having regard to this constitutional provision, in the Karnataka Civil Services (Classification, Control and appeal) Rules, rule 28D has been incorporated. It reads-

"28D. Provision regarding members of the Karnataka Judicial Service, etc.- Notwithstanding anything contained in these rules, references to the Governor or the Government in these rules shall, in so far as they relate to the control over the district courts and courts subordinate thereto by the High Court of Karnataka under Article 235 of the Constitution of India, be construed as reference to the High Court of Karnataka:

Provided that nothing in this rule shall affect the powers of the Governor under the Constitution of India in respect of members of the Judicial Service or the right of an appeal which a person may have under the law regulating his conditions of service."

The above rule reiterates the position flowing from Art. 235 of the Constitution viz., that in the matter of control, wherever the Government is the competent authority for exercising the power under the service rules, so far as the members of the judicial service are concerned, that power has got to be exercised by the High Court. Thus the source of authority for the High Court to issue the

notification to the effect that the period commencing from the date of handing over charge till the date of discharge should be treated as duty is Art. 235 of the Constitution and rule 28D of the K.C.S. (CCA) Rules. The notification so issued by the High Court was binding on the Accountant General and he should have issued the pay-slip. Therefore I hold that the insistence on the part of the Accountant General that Government alone should issue the notification approving the period of waiting of the petitioner as duty is not tenable.

10. The third question for consideration is as to the period which should be treated as duty. In the Notification issued by this court, the period commencing from 24.4.1982 upto 4.7.1982 is treated as duty, but the petitioner claims that the period upto 17.7.1982 should also be treated as duty as the order of discharge was served on him on the said date.

10. The contention of the petitioner that the discharge order must be taken to have effect only from 17.7.1982 is also well founded for, it is the date on which the order was communicated to him officially, it takes effect against him (See: *State of Punjab v. Amar Singh*, AIR 1960 SC 1313.) Therefore to this extent there is a mistake committed in the Notification issued by the Registrar of this court and the same has to be rectified.

11. In the circumstances, I make the following Order:

(i) Writ petition is allowed.

(ii) A writ in the nature of mandamus shall issue to the third respondent directing it to amend Notification dated 22.3.1983 by substituting the figures and the words 16.7.1982 (both days inclusive) in place of figures 4.7.1982 and send a copy of the said Notification to the second respondent.

(iii) The second respondent shall immediately after the receipt of the amended notification as directed above issue the pay-slip to the petitioner authorising him to draw salary and allowances for the period commencing from 24.4.1982 to 16.7.1982 (b.d.i.).

(iv) The petitioner shall be at liberty to file separate writ petition questioning the legality of the order of discharge.

(v) No costs.

Sri L.M. Pandurangaswamy, High Court Government Pleader, is permitted to file memo of appearance within two weeks.