

(2002) 05 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 2463 and 10774 of 1998

B. Suresh

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 15 (1) (b)
Constitution of India, 1950 — Article 315, 320

Citation : (2003) ILR (Kar) 1830 : (2002) 5 KarLJ 202 : (2002) 3 KCCR 199 SN

Hon'ble Judges : R.V. Raveendran, J;K. Ramanna, J

Bench : Division Bench

Advocate : S.V. Narasimha, in W.P. No. 2463 of 1998 and K. Hiriyanna, in W.P. No. 10744 of 1998, for the Appellant; G. Nagarajulu Naidu, A.G.A. for Respondent-1 in W.P. No. 2463 of 1998, T. Narayanaswamy, for Respondent-1 W.P. No. 10774 of 1998 and Respondent-2 served in W.P. No. 10774 of 1998, S.N. Murthy and T. Narayanaswamy for Respondents-2 and 3 in W.P. No. 2463 of 1998, for the Respondent

Judgement

R.V. Raveendran, J.—Petitioner in W.P. No. 2463 of 1998 was an employee of the Karnataka Public Service Commission (for short, "KPSC"), and he has filed this petition challenging the order dated 23-10-1991 passed by KPSC imposing the punishment of compulsory retirement. The petitioner in W.P. No. 10774 of 1998 is an employee of KPSC and she has filed her petition seeking promotion from the date her junior was promoted.

2. Petitioner in W.P. No. 2463 of 1998 had earlier approached the Karnataka Administrative Tribunal in Application No. 5594 of 1997 seeking for the very same relief. The Tribunal by order dated 11-12-1997 disposed off the said application at the stage of preliminary hearing, on the following ground:

"The question of his seeking reliefs before this Tribunal does not arise in view of the fact that the KPSC as having not been notified as one of the authorities u/s 15 of the Administrative Tribunals Act. It is open for the applicant to agitate his

rights before a proper forum".

3. In view of it, the petitioner in W.P. No, 2463 of 1998 has filed the said writ petition. In view of the said order of the Tribunal holding that it had no jurisdiction to entertain the petitions against KPSC the petitioner in W.P. No, 10774 of 1998 has directly approached this Court without approaching the Tribunal first.

4. In both these cases, learned Counsels for both parties submitted that the preliminary question as to whether the Tribunal has jurisdiction to entertain the applications in service matters relating to State Public Service Commission may be considered and decided. All the Counsels are of the view that the Tribunal has jurisdiction to decide service matters relating to KPSC. It is stated by the learned Counsel for KPSC that subsequently the Tribunal has entertained large number of applications against KPSC and decided them on merits. In fact, the learned Single Judge before whom these two petitions came up, while passing the order dated 25-1-2001 referring these petitions to the Division Bench, to consider this question, has virtually held that an application u/s 15 of the Administrative Tribunals Act, 1985 (for short, the "Act") will be maintainable against the KPSC before the Tribunal. However, as he, as a Single Judge, could not sit in judgment over an order of the Tribunal having regard to the decision of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, has referred these matters to the Division Bench, _____

5. Section 15(1)(b) of the Act provides that the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to all service matters concerning a person appointed to any Civil Service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any Corporation (or society) owned or controlled by the State Government. The question therefore, is whether appointment under the KPSC can be stated to be appointment to any Civil Service of the State or any civil post under the State.

6. "Civil Service of the State" includes all persons holding office under the State. The holder of a "Civil Post" is a person serving or employed under the State on the Civil side as distinguished from defence services.

6.1 In State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, a Constitution Bench of the Supreme Court held that the Panchayat Service constituted u/s 203 of the Gujarat Panchayats Act was a Civil Service of the State and the members of the service were Government servants. Supreme Court observed:

"It is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be

conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In such case, it is a question of fact whether a person is a servant of the State or not".

6.2 The Supreme Court in *R.N.A. Britto Vs. Chief Executive Officer and others*, considered the question whether Panchayat Secretaries are State Government servants and whether they hold civil post under the State within the meaning of Section 15(1)(b) of the Act. The Supreme Court held that they hold civil posts under the State and are entitled to invoke the jurisdiction of Tribunal for redressal of their grievances in relation to their service matters, on the following reasoning:

"The provisions in the Act to which we have adverted, clearly show that several functions which were required to be performed by the State are entrusted to the Panchayats. They also show that the properties vested in the Panchayats and the funds of the Panchayat are that of the Government and those collected by way of tax or fee by exercising the power of taxation vested in the Panchayat by the Government. Above all, provisions of the Act make it abundantly clear that the Panchayats have to function under the ultimate control of the State Government. When it comes to the Secretaries of the Panchayats appointed under the Act, their selection for appointment, their termination from service, their liability for transfer and all other conditions of their services are as provided for under the Rules made under the Act or other Rules made under Article 309 of the Constitution in respect of services of the State Government servants. . . ."

7. The primary tests therefore are: (i) whether the duties which the employees of Public Service Commission are required to perform are in connection with the affairs of the State; (ii) whether the expenditure towards their pay and allowances are met by the State; and (iii) whether their service conditions (recruitment, pay, pension, disciplinary action etc.) are regulated by Rules made by the Government. If the said tests are applied, there can be no doubt that the employees of the KPSC hold civil posts and they are appointed to Civil Service of the State. Article 315 provides that there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Article 318 empowers the Governor of the State to make regulations for making provisions with respect to number of members of the staff of the State Public Service Commission and their conditions of service. Article 320 which enumerates the functions of the Public Service Commission, provides that it shall be the duty of a State Public Service Commission to conduct the examination for appointments to

the services of the State and also to assist the State in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required. It also provides that the State Public Service Commission may give advise in regard to the matters enumerated in Clause (3) of Article 320. Article 322 provides that the expenses of Public Service Commissions, including the salaries, allowances and pensions payable to or in respect of the members of the Staff of the Commission shall be charged on the consolidated fund of India/State. The functions performed by the Public Service Commission are those relating to the services under the State. The service conditions of the employees of the State Public Service Commission are provided under the Regulations made by the Governor under Article 318 and their salaries are paid from the consolidated fund of the State. We are therefore of the view that the employees of the Public Service Commission are appointed to a Civil Service of the State. Therefore, the State Administrative Tribunal will have jurisdiction to deal with the applications relating to service matters concerning employees of the Public Service Commission.

8. We are fortified in this view by decision in *Piar Chand v. Himachal Pradesh Public Service Commission* 1990 SLR 93 where a Division Bench of the Himachal Pradesh High Court considered an identical question and held that service under the Public Service Commission is a "Civil Service" of the State and members of its staff are holding civil posts under the State. The following observations are relevant:

"The State, referred to in Article 323A and Section 15 of the Administrative Tribunals Act cannot be, equated with the Government; the Government being only a limb of the State. It is true that the Public Service Commission is an independent body established under Article 315 of the Constitution..... The functions of the Public Service Commission are enumerated in Article 320 of the Constitution. The Public Service Commission though independent of the Government is also an organ of the State machinery and service under the State Public Service Commission is part of the Civil Service of the State".

9. We therefore, direct that these two petitions be transferred to the Karnataka Administrative Tribunal for disposal in accordance with law.