

(2015) 06 KAR CK 0121

In the Karnataka High Court

Case No : Writ Petition No. 40088 of 2012 (S-DIS)

B.P. Honakhande

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 163-A

Citation : (2015) 06 KAR CK 0121

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Advocate : Raffiunnissa, H.C.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Raghvendra S. Chauhan, J.—The petitioner, Sri. B.P. Honakhande, a former judicial officer, has challenged the order dated 17.07.2012 whereby, he has been dismissed from the judicial service of the State.

2. The brief facts of the case are that after passing the judicial examination, on 08.02.1995, the petitioner joined on the post of Munsiff. Initially, he was posted as Munsiff Judge at Mudagood, Uttara Kannada District where he served for four years. Subsequently, he was confirmed. After confirmation, he was posted as Munsiff at Sringeri, Chikkamagalur District for one year. Thereafter, he was posted as Principal Civil Judge (Jr.Dn.,) at Mangalore where he worked for three years. In August 2004, he was promoted to the post of Additional Civil Judge (Sr.Dn.,) and posted at Srirangapattana, Mandya District. However, by order dated 18.01.2008, he was placed under suspension as a disciplinary enquiry was contemplated against him. The charge sheet was framed on 17.10.2008 and was delivered to the petitioner.

3. According to the charge sheet, six charges were framed against him, which are as under:

CHARGE I: That while you are working as Addl. Civil Judge (Sr.Dn) and Addl. MACT, Srirangapatna from 02.08.2004 to 18.1.2008 i.e., till the date of your suspension you were found indulging in corrupt practices viz., awarding higher amount of compensation in motor vehicle accident cases by accepting illegal gratification. Some of the advocates practicing in motor vehicle accident cases viz., Sriyuths Mallikarjunaswamy, B.K. Ramegowda, Mahadev, Ananda. K. Ningegowda, B. Kumar, K. Kumar, A. Kumar, N. Shivashankar, Vanaraju and Satyanarayana, N.K. Shivaram, Manjunath. K.M., M. Puttegowda, Indrakumar Reddy and Smt. J. Leelavathi had free access to your chambers and from whom you were accepting illegal gratification for awarding higher amount of compensation, disregarding settled principles of law for awarding just and proper compensation.

Thereby, you have failed to maintain honesty, absolute integrity, devotion to duty and committed an act of unbecoming of a Judicial Officer amounting to misconduct within the meaning of Rule 3(1)(i), (ii) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966.

CHARGE II: That while you were so working, you were in the habit of pronouncing the judgments by getting them typed from outside sources especially from the advocates in whose client's favour the judgments were rendered viz.,

1. R.A. 1/07
2. R. A. 20/04
3. R.A. 2/07
4. R.A.86/06
5. R.A. 28/07
6. R.A.1 0/07
7. O.S.1 96/06
8. MVC 518/06
9. MVC 521/06
10. MVC 317/06
11. MVC 511/06
12. MVC 523/06
13. MVC 522/06
14. MVC 517/06
15. MVC 519/06

16. MVC 520/06
17. MVC 513/06
18. MVC 2350/05
19. MVC 2620/05
20. MVC 512/06

Thus, you have failed to maintain honesty, absolute integrity, devotion to duty and committed an act of unbecoming of a Judicial Officer amounting to misconduct within the meaning of Rule 3(1)(i), (ii) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966.

CHARGE III: That you were in the habit of writing cryptic judgment awarding higher amount of compensation in motor vehicle accident cases without assigning proper reasons disregarding the well settled principles of law and structured formula u/s. 163-A of the MV Act 1998.

It is pertinent to state that against the judgment and order dated 20.7.2006 passed by you in M.V.C. No. 102/04 awarding compensation of Rs. 2.52 lakhs, the Insurance Company filed MFA No. 10642/2006 before Hon"ble High Court of Karnataka, Bangalore, challenging the said award; that the Hon"ble High Court while reducing the award amount from Rs. 2.52 lakhs to Rs. 1.54 lakhs as global compensation has observed thus:

"Xxx xxx xxx

xxx xxx xxx

It is obvious that the learned Judge either is not aware of basic elements that is required to be mentioned in the judgment or is treating the motor vehicle accident cases very lightly. In either event, his approach is thoroughly wrong. It is hoped that he will herein after write the judgment in conformity with what is well settled and give no room for challenge to his award on those grounds."

The above observation of the Hon"ble High Court perforce that you lack basic elements required to be mentioned in the judgment for awarding just and fair compensation in motor vehicle accident cases. Thus, you have failed to maintain devotion to duty and committed an act of unbecoming of a Judicial Officer amounting to misconduct within the meaning of Rule 3(i), (ii) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966.

CHARGE IV: i) That you were maintaining SB Account No. 54016320392 in State Bank of Mysore, Srirangapatna Branch and deposited the following amount during the period noted against each of the items:

That after the visit of the Registrar (Vigilance) to your Court on 30.10.2007, you had closed the above S.B. Account.

ii) That you have maintained S.B. A/c. No. 54016322395 at State Bank of Mysore, Srirangapatna. In your said S.B. Account, the following amounts were credited by transfer/cash deposit on the dates noted against each of them:

iii) That you have maintained S.B. A/c.No.16287 in Canara Bank, Athani Branch of Belgaum District. In the said S.B. Account, you have deposited a sum of Rs. 80,000/- on 23.04.2007 and Rs. 5,00,000/- on 24.04.2007. Besides, you have also invested Rs. 5,79,500/- infixed deposit for one year in KD A/c. No. 1038 at Canara Bank, Athani Branch.

iv) That you have maintained S.B. Account No. 11157138767 at State Bank of India, Athani Branch wherein you have deposited Rs. 6,00,000/- on 6.11.2007.

v) That you have maintained S.B. Account No. 01190/023418 in State Bank of India, Athani Branch and deposited Rs. 3,00,000/- and Rs. 5,50,000/- on 12.5.2006 and 27.12.2006 respectively (in all Rs. 8,50,000/-).

vi) That you have invested Rs. 8,50,000/- in term deposit Account No. 01291/023418 in State Bank of India, Athani Branch, on 27.12.2006.

vii) That you had maintained S.B. A/c.No.01190019040 in State Bank of Mysore, Chitradurga Branch, while you were working as Prl. Civil Judge (Jr.Dn) and JMFC, Chitradurga from 26.05.03 to 26.07.04 and had deposited the following amount by cash and by transfer on the dated noted below:

As against the deposit of Rs. 50,24,009/- various bank accounts (as indicated in the following tabular statement), you have reported the deposit of Rs. 1,62,699/- and Rs. 1,02,800.17 ps. Only in the Assets and liabilities statements for the year ending 31.12.2003 and 31.12.2006 respectively.

The details of the above banking transactions show that you are in prosecution of pecuniary resources disproportionate to your known sources of income, which you cannot satisfactorily account for.

Thus, you have failed to maintain honesty, absolute integrity, devotion to duty and committed an act unbecoming of a Judicial Officer amounting to misconduct within the meaning of Rule 3(1)(i), (ii) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966.

CHARGE V: That you were permitted to purchase two sites bearing Nos. 7 and 8 of R.S. No. 1440 C of Athani, Belgaum District measuring 2 guntas 14 annas (60ft X 40ft) from Sri. R.B. Deshpande for Rs. 2.40 lakhs (Rs. 1.20 lakhs for each site) vide High Court letter dated 13.07.05 Contrary to the permission, you have purchased the above said sites for a consideration of Rs. 2,56,000/- (Rs. 1.28 lakhs for each site) Sources for payment of additional consideration of Rs. 16,000/-(Rs. 8,000/- for each site) has not been intimated to the High Court.

Further, you were permitted to alienate a plot measuring 18 X 16 feet of Sy.No.123/B, Athani for a consideration of Rs. 65,000/- in favour of Sri. R.M. Dange as per High Court letter dated 1.2.01, but you have alienated the above

said site for a consideration of Rs. 71,000/- as per sale deed dated 11.5.2001 and the said fact has not been intimated to the High Court.

Thus, you have failed to maintain honesty and committed an act unbecoming of a Judicial Officer amounting to misconduct within the meaning of Rule 3(1) (i) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966.

CHARGE VI: That you have not informed about owning a mobile phone bearing No. 9480502005 to the High Court either through a letter of intimation immediately after purchase of the same or shown in your annual assets and liabilities statement for the relevant period.

Thus, you have failed to maintain honesty and committed an act unbecoming of a Judicial Officer amounting to misconduct within the meaning of Rule 3(1)(i) and (iii) of the Karnataka Civil Services (Conduct) Rules, 1966."

4. Immediately the petitioner filed his reply to the said charge sheet and denied all the charges framed against him. Subsequently, the Principal Sessions Judge, Mandya was appointed as the Enquiry Officer. The Enquiry Officer did issue notice for hearing to the petitioner. By letter dated 16.09.2012, the petitioner clearly indicated that he has already filed his written statement, and has also filed additional written statement. Since, he has filed the same, he is not interested in appearing before the Enquiry Officer. Therefore, he abstained from participating in the departmental enquiry. Despite his non-appearance, the departmental enquiry continued. On 04.11.2010, the Enquiry Officer submitted his enquiry report. According to the enquiry report, all the six charges were held to be proved. The Enquiry Officer was of the opinion that the petitioner has failed to maintain honesty, absolute integrity, devotion to duty and has committed acts unbecoming of a judicial officer amounting to misconduct within the meaning of Rules 3 (1)(i), (ii), (iii) of the Karnataka Civil Service Conduct Rules, 1966 (henceforth referred to as "the Rules").

5. On 27.04.2011, the Disciplinary Authority issued second show-cause notice to the petitioner. A copy of the enquiry report was also sent to the petitioner along with the said show-cause notice. On 16.05.2011, the petitioner submitted his reply to the second show-cause notice. However, by order dated 17.07.2012, the petitioner was dismissed from the service. Hence, this petition before this court.

6. Sri B.P. Honakhande, the petitioner-in-person, has raised the following contentions before this Court:

"Firstly, relying on the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 he has pleaded that an error of law apparent on the face of the record can be corrected by a writ of certiorari. Since there is an error of law apparent on the face of the record, this Court should pass a writ of certiorari quashing and setting aside the impugned order mentioned herein above. Secondly, the entire departmental enquiry was based on certain complaints which were vague, and were not even signed by the complainant.

Therefore, the very initiation of the enquiry is without any basis. Thirdly, despite the fact that the petitioner had submitted his reply to the Enquiry Officer, the same has not been considered by the Enquiry Officer. Fourthly, charge No. 1, that certain advocates practicing in the area of Motor Vehicle accident cases had free access to the petitioner's chambers, is hopelessly vague. There is no evidence to buttress the said charge. Yet according to the Enquiry Officer, he has found the petitioner guilty of the said misconduct. Fifthly, the petitioner has well explained the reasons why he had to get the judgments typed from outside the Court staff. Even if the judgments were typed by other staff members of the other Courts, it does not compromise his honesty, integrity, or devotion to his duty. Charge No. 4, which deals with petitioner depositing large amount of money in his Bank accounts, the same has been explained by him. For, he was a member of Hindu undivided family which had business of its own. Therefore, the monies he had received belonged to his family. Charge No. 5 which deal with purchase of two sites has also been explained by him. Even the plot he was permitted to alienate, the said plot has been alienated in accordance with law. Charge No. 6 that he owned a mobile phone without intimating to the High Court is equally vague. Thus, the six charges do not add up to any misconduct by the petitioner. Therefore, his punishment order dismissing him from service is unsustainable."

7. On the other hand, Smt. Raffiunnissa, H.C.G.P., has relied on the case of Union of India (UOI) Vs. P. Gunasekaran, (2014) 310 ELT 417 : (2015) 1 ESC 101 : (2015) 144 FLR 219 : (2015) LabIC 268 : (2014) 10 SCJ 341 in order to plead that the scope of judicial review of a punishment order is a limited one. This Court can only examine the punishment order, if the enquiry held by the competent authority, is in violation of the procedure established by law, is against principles of natural justice, or if irrelevant or extraneous considerations have crept in, and/or there is exclusion of admissible or material evidence, or there is admission of inadmissible evidence. If such factors have influenced the final decision, then the punishment order can be set aside. Since these grounds have not been raised by the petitioner, the impugned order does not deserve to be set aside. Moreover, this Court in its jurisdiction under Articles 226 of the Constitution of India cannot sit as an Appellate Court for re-appreciating the evidence submitted before the Enquiry Officer. Secondly, it is too late for the petitioner to claim that the departmental enquiry was initiated on vague complaints. If he were really aggrieved, he should have challenged the initiation of the departmental enquiry at the very threshold. After a lapse of six years, he cannot be permitted to challenge the same. Thirdly, by his letter dated 16-9-2012, the petitioner had refused to participate in the departmental enquiry. Therefore, he did not cross-examine the witness, did not put up his defense. But despite of his absence, the Enquiry Officer has considered his reply and has relied upon the documents which were produced by the Department, and has rightly found the petitioner guilty of the misconduct mentioned in the charge-sheet. Fourthly, both the Enquiry Officer as well as the Disciplinary Authority have given cogent and convincing reasons for their conclusions. Therefore, the

impugned order is legally sustainable. Hence, the learned counsel has supported the impugned order.

8. Heard the learned counsel for the parties, perused the record, and considered the case law cited at the Bar.

9. Recently, in the case of P. Gunasekaran (supra), the Hon''ble Supreme Court has clearly laid down the scope and ambit of judicial review of a punishment order. Para Nos. 12 and 13 of the Report is as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

10. Thus, the scope of judicial review is a limited one. While exercising the said jurisdiction, this Court cannot sit as a Court of appeal.

11. There can be no issue with the observation made by the Apex Court in the case of Syed Yakoob (*supra*) that "an error of law apparent on the face of the record can be corrected by a writ of certiorari." But despite this Court repeatedly asking the petitioner what is the error of law on the face of the record, he has failed to point out any such error of law. He has merely repeated that sufficient evidence did not exist for passing the impugned order. Thus, he has not been able to point out any error of law apparent on the face of the record.

12. The petitioner has claimed that the charges are based on unsigned complaints and are vague in nature. The said plea is being raised too late in the day. If the petitioner were aggrieved by the vagueness of the charges, he should have challenged the same at the earliest. Once the punishment order has been passed, the petitioner cannot be given an opportunity to turn the historical clock back. Thus, the first contention raised by the petitioner is unacceptable.

13. Even otherwise, the charges framed against the petitioner are rather serious: they speak not only about dereliction of judicial duty, but also deal with financial integrity of the petitioner as a Judicial Officer. In the inquiry report dated 4-11-2010, the Enquiry Officer has dealt with each and every charge in great detail; he has not only dealt with the evidence produced by the Department, but has also considered the arguments raised and explanation given by the petitioner in his reply. The Enquiry Officer has given cogent reasons for rejecting the pleas raised by the petitioner through his reply. Thus, no fault can be found with the Enquiry Report.

14. Even then, in order to briefly consider the report, it is noticed that the Enquiry Officer has dealt with charge No. 4 which deals with the financial irregularities committed by the petitioner. The charge dealt with the fact that over a period of few years, the petitioner had deposited lakhs of rupees in different bank accounts of his. The Enquiry Officer has clearly noted that the petitioner did not dispute the fact regarding holding of these bank accounts. Although the petitioner had tried to justify the transactions, but the fact remains that he did not disclose these transactions as required under Rule 23 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. According to the said Rule, every Government Servant is required to submit a return of his assets and liabilities, and of all members of his family, and thereafter, at the interval of every 12 months, he has to go on submitting his returns. The petitioner did not furnish the full description of his property and the properties owned by his father and other family members. Further, he has not

furnished the share deposits, and cash deposits in bank accounts held by him, and his family members. He has failed to reveal the debts and liabilities of his family members. The petitioner has claimed that he belongs to a joint Hindu undivided family, which owns several parcels of land, and the money so deposited by him were part of monies that he has received from his family from the sale of turmeric, jaggery, water and footwear. But the petitioner has never disclosed these amounts in the form filled by him which was submitted before the High Court. Since he has not revealed these aspects when they were required to reveal them, since he has tried to explain it after framing of the charges, the Enquiry Officer was justified in concluding that the explanation was an afterthought. The Enquiry Officer has dealt with the evidence which was admissible, has critically analysed the said evidence, and also given reasons for disbelieving the defense taken by the petitioner.

15. Similarly, considering the charge No. 2 which dealt that the petitioner asking other persons, other than his Court staff, to type his judgments, the Enquiry Officer has dealt with the testimonies of P.W.1, P.W.2 and P.W.11. P.Ws.1 and 11 were not the members of petitioner's Court staff. Moreover, the petitioner has not been able to explain from where the other judgments were typed. Thus, the Enquiry Officer was justified in concluding that since these judgments were not typed by the petitioner's court staff, they must have been typed by persons who did not belong to his Court staff i.e., typed from other staff or from outside the Court. The Enquiry Officer has also noticed that the petitioner pronounced five judgments on 5-10-2007, and another five judgments on 6-10-2007. All the cases were argued by the same advocate. Thus, ten judgments were pronounced in cases belonging to a particular advocate. Since the petitioner has not been able to explain as to who has typed these ten judgments, therefore, the Enquiry Officer was certainly justified in concluding that these judgments have been typed outside the Court. Hence, his conclusion is logical and legal.

16. Charge No. 3 is that the petitioner was in the habit of writing cryptic judgments, awarding higher compensation, and assigning improper reasons, disregarding the well settled principles of law and structured formula. The petitioner does admit the stricture passed by this Court in M.F.A. No. 10642/2006. However, according to the petitioner, the observation made by this Court are not strictures, but are merely advises given by this Court. The observation made by this Court is as under:

"It is obvious that the learned Judge either is not aware of the basic elements that is required to be mentioned in the judgment or is treating the motor vehicle accident cases very lightly. In either event, his approach is thoroughly wrong. It is hoped that he will herein after write the Judgment in conformity with well settled law and give no room for challenge to his award on those grounds."

17. A bare perusal of the said observation reveals that it is almost an indictment of the petitioner as a Judicial Officer, which cannot and does not amount to a mere advise.

18. Even with regard to accessibility of many lawyers to the petitioner's chamber, the Enquiry Officer has noticed the evidence of P.W.1, who was petitioner's Stenographer, P.W.3 who was petitioner's Attender, P.Ws.9 and 10 who were Sheristedars (equivalent to Second Division Assistant) and the testimonies of P.Ws.4 to 8 and P.W.12, who were the advocates of Srirangapatna Bar Association. Their testimonies were sufficient to prove the easy accessibility of certain lawyers to the petitioner's chamber.

19. Similarly, for charge No. 5, which dealt with purchase of two sites, although the petitioner has claimed that the extra amount was received from his father, but he has not placed any evidence to prove the same. He has not produced even his father as a witness to support his plea. Therefore, the Enquiry Officer was certainly justified in concluding that charge No. 5 was duly proved against the petitioner.

20. So far as the last charge is concerned, the petitioner has claimed that he did not buy the mobile phone, but was given the mobile phone by his brother. His plea was not proved by him. On the other hand, P.Ws.1 and 3, his own personal staff, stated that he was owning the said mobile phone, although he never informed the High Court.

21. Since the Enquiry Officer has strictly followed the procedures established by law, since he has permitted the admissible evidence during the course of enquiry, since he has critically analysed the evidence by the Department, since he has dealt with pleas raised by the petitioner in his reply, no fault can be found in the Inquiry Report dated 4-11-2010. Therefore, the conclusions drawn by the Enquiry Officer are logical and legal, fair and just, valid and sustainable.

22. The Disciplinary Authority has also followed the procedures established by law. The Authority had issued a second show-cause notice to the petitioner. The petitioner had submitted his reply to the same; after considering the Inquiry Report and reply submitted by the petitioner, the Disciplinary Authority had passed the impugned order dismissing the petitioner from the service.

23. The punishment of dismissal from service is certainly not disproportionate to the charges of misconduct framed against the petitioner. The petitioner, being a Judicial Officer, is expected to live up to the highest standards of the judiciary. The Judicial Officer cannot indulge in any activity which would cast a cloud on his integrity, on his impartiality, and on the independence of his judicious mind. Caesar's wife has to be above board. However, the conduct of the petitioner not only tarnishes his image as a Judicial Officer, but most importantly also stains the status of the judiciary in the eyes of the people. Hence, the Disciplinary Authority was justified in passing the impugned order.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This petition, being devoid of any merit, is hereby dismissed.