
(2007) 03 KAR CK 0077
In the Karnataka High Court
Case No : Writ Petition No's. 3529 of 2007

Dr. Chidananda H.T.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

General Clauses Act, 1897 — Section 22 B

Citation : (2008) 1 KarLJ 312 : (2007) 3 KCCR 1722

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Ravivarma Kumar, J. Prashanth and V.R. Shastry, for the Appellant;
K. Sheela Anish, AGA for R.1 and B.A. Narendranath, for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner is questioning the legality and correctness of the impugned notification dated 27.02.2007 in the proceedings bearing No. A. KU. KA. 451 MPS 2006 issued by the first respondent, vide Annexure-A. Further, he has sought for a direction directing the first respondent to continue the petitioner as Principal and Director on additional charge till the expiry of the contract period.

2. The brief facts of the case are as follows:

The petitioner has been appointed as a Principal of Mandya Institute of Medical Science on contract basis for a period of eleven (11) months by the first respondent pursuant to the petitioner's vast teaching experience of 24 years and yeomen service in the medical field. Further he was also placed in additional charge of the post of Director along with the Principal's post. When things stood thus, to the shock and surprise of the petitioner, first respondent issued the impugned notification vide Annexure - A, prematurely terminating his services from the post of Principal and Director without any notice and without affording reasonable opportunity and appointed second respondent as the Principal and also additional charge of Director of the said Institute. With this background,

petitioner has presented the instant Writ Petition challenging the action of first respondent, prematurely terminating his services and seeking appropriate relief as referred above.

3. I have heard learned Counsel appearing for the petitioner, learned AGA for respondent No. 1 and learned Counsel for respondent No. 2.

4. The principal submission canvassed by the learned Senior Counsel is that, the impugned notification is contrary to law and is opposed to the principles of natural justice and hence, it is liable to be set aside at the threshold. To substantiate the said submission, he has produced the notification issued by the first respondent dated 17.11.2006 vide Annexure-F wherein the petitioner has been appointed on contract basis under relevant Rules for a period of eleven months as the Principal of the said institute and also placed the petitioner in additional charge of the post of Director until further orders when this notification was in force, without issuing any notice and without affording any opportunity to the petitioner, the first respondent has issued the impugned notification vide Annexure-A, without assigning any cogent reasons. Therefore, he submitted that the impugned notification is liable to be set aside and petitioner is entitled to continue in service till the expiry of the tenure of post. Hence, the impugned notification is in clear violation of the principles of natural justice.

5. Learned Senior counsel for the petitioner in support of his submission has placed reliance on the decision of the Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , and drew my attention to paragraph-8, wherein it is held that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the instant case, the respondents in their objections have not stated any valid reason for terminating the services of the petitioner. In the case of Dr. L.P. Agrawal Vs. Union of India and others, the word "tenure" is defined as "a term during which an office is held. It is a condition of holding the office." In view of the law laid down by the Apex Court and having regard to the facts and circumstances of the case, it is argued that the impugned notification issued by the first respondent cannot be sustained and hence, it is liable to be set aside. Further, he vehemently submitted that under the notification dated 17.11.2006 vide Annexure-F it is notified that for a tenure of eleven months petitioner is appointed as the Principal of the said Institute and was placed in additional charge of the post of Director until further orders. He further submitted that the statements made by respondents in their objections that, until further alternative arrangements are made, by exercising the powers under Rule 15(1)(b)(ii) of the Karnataka Civil Services (General Recruitment) Rules, 1977, on 17.11.2006, the Government has appointed the petitioner after his retirement as the Principal for a period of eleven months and placed in additional charge of the post of Director until further orders, cannot be accepted as the respondents have not explained as to under what circumstances the

Government has passed the impugned notification vide Annexure-A. The impugned Notification is issued while the petitioner was discharging his duties in the said post putting all his efforts and taking into consideration the service and performance of the petitioner. Therefore, learned Senior Counsel submitted that, the impugned notification vide Annexure-A, is liable to be quashed.

6. Per contra, learned AGA for first respondent, inter alia, substantiated the impugned notification, by contending that, under Rule 15(1) (b) of the Proviso of the Karnataka Civil Services (General Recruitment) Rules, 1977, first respondent has the power to terminate the services of the petitioner and to appoint another person as the petitioner's tenure was until further Orders. Relying on the above proviso, learned AGA submitted that, the petitioner has no right to assail the correctness of the impugned notification vide Annexure - A. Therefore, she submitted that the instant writ petition is liable to be dismissed as misconceived.

7. After careful perusal of the material available on file and the rival contentions of the petitioner and first respondent, the only question that has arisen for consideration in the instant writ petition is:

whether the impugned notification issued by the first respondent is sustainable in law?

8. After careful evaluation of the entire material on record, it is manifest on the face of the impugned notification issued by the first respondent on 27.02.2007 that, the first respondent has not committed any error in cancelling the appointment of petitioner to the post of Principal and placing in additional charge of the post of Director. It is significant to note that, after attaining the age of superannuation, petitioner has been appointed by the first respondent by its notification dated 17.11.2006 for a period of eleven months as Principal and placed in additional charge of Director until further orders, under the provisions of the Karnataka Civil Services (General Recruitment) Rules, 1977, subject to the Orders of the Government. It is pertinent to note that, in the instant case there was no Government order issued approving the appointment of the petitioner to the said Posts. Therefore, the petitioner cannot claim any right under the notification, vide Annexure-F. In the instant case, as submitted by the learned senior counsel appearing for the petitioner, Notification consists of two parts, firstly the appointment of the Petitioner as the Principal of the Mandya Institute of Medical Sciences for a period of eleven months and secondly placing him in additional charge of Director until further Orders. Learned Counsel for petitioner submitted that, the preamble of the notification should be read in toto and it cannot be read between the lines. It pre-supposes and establishes that the appointment of the petitioner to the post of Principal is for eleven months and additional charge of Director was until further orders.

9. As per Article 311 of Constitution of India, it makes no distinction between the temporary or permanent or officiating in any of them and protection of Article 311 is available only where the dismissal, removal or reduction in rank is sought

to be inflicted by way of punishment and not otherwise. The words "until further orders"" in the contract of appointment do not import any nature of permanency in the appointment of the petitioner. This proposition is found in the decision in the case of State of Maharashtra and Others Vs. V.G. Koppar, wherein the Division Bench of the Bombay High court explained in paragraph-19 about the meaning of the words "until further Orders", at page 138, which reads as under:

19. As stated above the words "until further orders" do not import any nature of permanency in the appointment of the plaintiff. Even where the terms of contract of service or the rules government the same spell out that the employment is of a purely temporary nature, mere length of service for any number of years will be of no avail to the plaintiff to contend that the nature of his employment was of a permanent nature and not of a temporary nature.

Further the Apex court in the case of Jayshree Chemicals and Another Vs. Orissa State Electricity Board and Others, has held as under:

The words "would remain in force until further orders" were used in the notifications to enable the State Govt. to modify or vary the conditions of supply of energy within the same water year.

The words "this shall remain in force untill further orders" only mean that the state Govt. was free to revise, modify, alter or rescind their order even after issue of the aforesaid orders. The power to amend or rescind the order issued u/s 22B was available to the Government under the provisions of General Clauses Act which provides that the power to make orders, rules or bye-laws includes the power exercisable in the like manner and subject to the like conditions to act to amend, verify or rescind or revise.

The use of the expression "this shall remain in forces untill further orders" only means that the order can be changed or revised or amended or even withdrawn even in the middle of the year, before the expiry of the period. It did not mean that when the period of allotment is expressly and specifically mentioned, the order can be construed to mean that its life shall extend beyond the external termini mentioned in the order.

(Emphasis supplied.)

If the ratio laid down by the Apex court as stated supra is applied to the case in hand, it would be amply clear that, the appointment of the petitioner according to the notification is purely on contract basis for the post of Principal and placing in additional charge of the post of Director until further orders and it includes that the competent authority has got the power to pass the Order or revise or amend or even withdraw even in the middle of the year before the expiry of the period. Therefore, I do not find any good ground or justification to interfere with the impugned notification issued by the competent authority.

9. So far as the submission of the learned Senior counsel for the petitioner that the impugned notification cannot be sustained without issuing notice to the

petitioner and without affording an opportunity to the petitioner, is concerned, in my considered view, there is no illegality or violation of the principle of natural justice nor the same has got any substance, in view of the ratio of law laid down by the Division Bench of the Punjab and Haryana High Court in the case of Joginderjit Singh v. The State of Haryana and Ors. 1980 (1) SLR 779 to the effect that, under Article 311 of the constitution of India the termination of services Payment of one month salary in lieu of notice along with order of termination is not at all necessary. The services of the petitioner therein was terminated without any notice and without any payment of salary in lieu thereof, and it is stated therein that his services were no longer required. The termination was challenged in the said case wherein the Division Bench of the Punjab and Haryana High court held that, the services of the appellant could be terminated either after giving one month's notice or in the alternative it was open to the Government to pay one month's salary in lieu thereof. It also clarified that, this Rule does not interpret that, one month's salary must be paid along with the order of termination. Further it is pertinent to note in the case on hand that, as per the appointment made on contract basis vide Annexure-F, it is issued by the first respondent by exercising the powers under Rule 15(1)(b) (ii) of the Karnataka civil Services (General Recruitment) Rules, 1977. Once the said notification is issued and the appointment is accepted under the said Rules, now it is not open for petitioner to take the grounds contrary to the said Rule stating that, proviso (ii) to the Rule is not applicable, and the contention that, issuance of notice is mandatory cannot be accepted. Therefore, in the light of facts and circumstances of the case as stated above, I do not find any illegality in the impugned notification issued by the competent authority nor I find any good grounds as such made out by the petitioner to interfere with the impugned notification issued by the competent authority.

10. Having regard to the facts and circumstances of the case, as stated supra and taking into consideration the totality of the case on hand, the Writ Petition filed by the petitioner is dismissed as devoid of merit

Ordered accordingly.