

(1998) 08 KAR CK 0099
In the Karnataka High Court
Case No : Writ Petition No. 8422 of 1997

Dr. T.K. Puttaswamy Gowda

APPELLANT

Vs

Bangalore Water Supply and Sewerage Board, Bangalore and
Another

RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 10 (4),
100 (1) (a)

Citation : (1998) 6 KarLJ 531

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri L.M. Chidanandayya, for the Appellant; Sri M.H. Motigi, for the
Respondent

Judgement

1. The petitioner has been appointed as a Medical Officer under the respondent-Bangalore Water Supply and Sewerage Board ("the Board" for

short). At the material time in 1983 he was posted at T.G. Halli. On 18-4-1983 he was suspended in contemplation of the disciplinary

proceedings. On 4-5-1983 he was served with article of charges. Thereafter pursuant to an enquiry he was removed from service under order

dated 23-2-1984 (Annexure-F) passed by the Chairman of the Board. The order was challenged by the petitioner by filing W.P. No. 2227 of

1985. This Court by order dated 8-11-1991 quashed the order of removal on the ground that the Chairman of the Board could not have acted as

a disciplinary authority (Annexure-G). Writ appeal No. 261 of 1992 filed against that order, was disposed on 11-12-1992 (Annexure-H). The

Division Bench held that the Chairman was the appropriate disciplinary authority but since it was found that the enquiry was not conducted in

accordance with the principles of natural justice therefore it remitted the matter to the Chairman with a direction to conduct the enquiry himself or

to appoint fresh enquiring authority and to dispose of the proceedings according to law. By an order dated 4-8-1993 the Board permitted the

petitioner to resume the duties and accordingly the petitioner reported for duty on 5-8-1993.

2. Subsequently a memorandum dated 31-1-1997 was passed providing therein that:

(i) Dr. T. K. Puttaswamy Gowda is deemed to be kept under suspension from the date of original orders of dismissal i.e., 23-2-1984 to 4-8-

1993 in accordance with Rule 10(4) of KCS (CCA) Rules, pending regularisation of the period of suspension, he is reinstated to duty with effect

from 5-8-1993, the date on which he assumed charge.

(ii) he shall be paid the subsistence allowance for the above period as per rules.

(iii) he shall also be eligible to the following:

(a) The corresponding pay on revision of pay in the scale of 1986 and 1990 to the pay which he drew before the order of dismissal. In case the

revised pay so arrived at as above happens to be less than the minimum of the present scale of pay to such minimum pay of the scale, provisionally.

(b) all other allowances admissible as on date on the basic pay arrived at as per (a) above.

(c) subsistence allowance for the period of suspension at the same rate at which it was paid earlier to the date of dismissal but subject to revision of

pay in the two revised scales of pay and satisfying the conditions laid down in Rule 98(2) of KCS Rules"".

Subsequently a fresh enquiry was held and the Chairman by his order dated 31-1-1997 (Annexure-B) though exonerated the petitioner from the

charges levelled against him but so far as suspension is concerned he passed the following order:

The period from 23-2-1984 to 4-8-1993 i.e., the date of dismissal to the date of reinstatement has been treated as suspension period and he is

entitled for subsistence allowance as per rules"".

3. The petitioner filed a representation for reconsideration of the above part of the order, but the same was rejected by an order dated 22-2-1997

(Annexure-A).

4. The present writ petition has been filed questioning the authority of the Chairman to treat the period from 23-2-1984 to 4-8-1993 as period of suspension and entitling him to only subsistence allowance as per rules.

5. The petitioner has preferred the present writ petition questioning that part of the order as well as the rejection of the representation as per

Annexure-A on the ground that once the petitioner has been reinstated on a finding of exoneration from charges, in law he has to be treated as on

duty throughout excluding the period under which he was put under suspension and therefore he is entitled to full salary with all admissible

allowances. In support of his submission the Counsel for the petitioner has placed reliance on the judgments of the Supreme Court reported in the

cases of E. Achuthan Nair Vs. P. Narayanan Nair and Another, , and Munji Prasad Singh v. State of Bihar, (1987) 2 SCC 640 , and also a

Division Bench judgment of this Court reported in the case of P. Ramaswamy Vs. The General Manager, Canara Bank, Bangalore and Another, .

6. On the other hand the learned Counsel for the respondents has submitted that keeping in view the provisions contained in Rule 10(4) of the

Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (in short ""the CCA Rules"") and Rule 100(1)(a) of the Karnataka Civil

Services Rules, (in short ""KCS Rules"") the order of the Disciplinary Authority is quite in accordance with law and does not call for any interference

by this Court. The said rules read as under:

10. Suspension.-

(1).....

(2).....

(3).....

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or

rendered void in consequence or by a decision of a Court of law, and the disciplinary authority on a consideration of the circumstances of the case,

decide to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally

imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original

order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders"".

Section 100(1) of the KCS Rules reads as under:

100(1) --When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on

superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order.-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his

retirement on superannuation, as the case may be: and

(b).....

7. Keeping in view sub-rule (4) of Rule 10 of the CCA Rules it was quite competent on the part of the disciplinary authority to treat the petitioner

as on suspension during the period from 23-2-1984 to 4-8-1993. If that be so, then under Rule 100(1)(a) of KCS Rules it was permissible on the

part of the disciplinary authority to pass an appropriate order regarding the pay and allowances which were required to be paid to the petitioner

during the period of suspension ending with reinstatement. In the present case because of one or the other reason, admittedly, the petitioner was

not on duty during the period of deemed suspension. Nonetheless he has been paid subsistence allowance for the said period ranging from 50% to

75% as per the Rules. In that view of the matter, the exercise of the discretion by the disciplinary authority restricting admissibility of pay and

allowances to the petitioner cannot be said to be unreasonable. The disciplinary authority was quite competent to pass such order and the order so

passed cannot be said to be unreasonable or arbitrary from any point of view.

8. So far as judgments cited by the learned Counsel for the petitioner are concerned those have no bearing on the present case because those

judgments related to completely different set of circumstances and legal provisions.

9. For the said reasons, I do not find any substance in the petition. Writ petition is accordingly dismissed. No costs.