
(2016) 08 KAR CK 0016
In the Karnataka High Court
Case No : RFA. No. 1244 of 2013 (MON).

Executive Engineer, Hemavathi Lett-Bank Canal, Turuvekere - Appellant
@HASH Lakshmipathi and Others

Date of Decision : 04-08-2016

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 214(1)(b), Rule 214(3)
Karnataka State Civil Services Act, 1990 — Section 8
Limitation Act, 1963 — Article 55

Citation : (2016) 4 AirKarR 375

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : V. Shivareddy, HCGP, for the Appellant; M. Nagaprasanna, Advocate, for the Respondent No. 2; Served and unrepresented, for the Respondent No. 3

Final Decision : Dismissed

Judgement

B. Manohar, J. - The appellant being the plaintiff preferred this appeal challenging the judgment and decree dated 16-02-2013 made in O.S.No.29 of 2007 passed by the Senior Civil Judge and JMFC, at Tiptur dismissing the suit filed by the plaintiff.

2. The Executive Engineer, Hemavathi Left Bank Canal filed a suit seeking for recovery of damages of Rs. 14,02,714/- (Rupees Fourteen Lakhs Two Thousand Seven Hundred and Fourteen only) together with interest at the rate of 6% p.a. from the defendants therein. In the plaint, it was contended that the defendants are the retired Superintendent Engineers. The first defendant worked from January 1996 to May 1996, the second defendant has worked from June 1996 to June 1998 and the third defendant worked from December 1997 to August 1998 as Superintendent Engineers of Hemavathi Canal at Turuvekere. During their tenure, they were entrusted with the supervision of CC lining work, Tumkur Distributory Channel from 23 to 27 Kms. lane. However, the defendants did not discharge their duties properly, there are lapses and deficiencies in their services and also there is dereliction in their duties. Due to the said act, the State Government has suffered loss to the tune of Rs. 14,02,714/-. The Vigilance

Department conducted an enquiry and reported that there is substandard work done in respect of the said Distributory Channel. Further, the expert technical team had inspected the spot and gave a report regarding the substandard work. The defendants being the officers placed in-charge of the said work did not discharge their duties properly, resulting in the loss sustained by the State Government. The plaintiff claimed that the cause of action of the suit arose on 26-07-2004 and on 14-12-2006, the plaintiff had obtained sanction from the State Government on 23-11 -2005. Hence, they filed the suit seeking for the above reliefs.

3. In pursuance of the notice issued by the Tribunal, the first defendant remained unrepresented. The defendants 2 and 3 entered appearance and filed written statement and denied the entire averments made in the plaint and also denied the allegation regarding the deficiency or lapse on their part causing loss to the State Government as contended by the plaintiff.

4. The defendants have contended that they have discharged their duties not in their individual capacity, but in the official capacity as Superintendent Engineers. The deficiency is not due to the lapse on the part of the Supervisors or in their work or in the material supplied by the Contractor. Due to heavy rain in the month of October 1999, due to the act of God, the Distributing Channel at 23-27 kms was damaged extensively. For that the defendants cannot be held responsible. During their tenure, CC Lining was prepared based on technical suggestion of IAS Bangalore and the same was sanctioned by the Chief Engineer, Hemavathi Channel Zone, Tumkur. The tender work was called and the same was accepted by the Chief Engineer, Tumkur. The channel work was already done during 1986-87 itself. However, a portion of the work was done during their tenure. The final bill was accepted only after fulfilling all the obligations by the Contractor as per the Tender Agreement. There is inordinate delay in filing the suit. The suit filed by the plaintiff is barred by limitation. Further, the suit filed by the plaintiff is liable to be dismissed in view of provision of Rule 214(1) of Karnataka Civil Service Rules (hereinafter referred to as ?KCSR? for short) and sought for dismissal of the suit.

5. On the basis of pleadings of the parties, the trial Court framed the following issues:

1. Whether the plaintiff proves that it is sustained loss to the tune of Rs. 14,02,714/-on account of dereliction of duty of defendants in cement concrete lining from 23rd to 27th k.m. of Hemavathi Sub-Canal ?

2. Whether the plaintiff proves that it is entitled for interest at the rate of 6% p.a.?

3. Whether the defendants prove that alleged substandard work has not occurred during their period and the maintenance of canal work no way concerned to them?

4. Whether the defendants prove that the suit is barred by law of limitation?

5. Whether the defendants prove that the suit is not maintainable in the present form?

6. Whether the plaintiff is entitled to relief as sought for?

6. The defendants filed an application under Order 7, Rule 11 of CPC for dismissal of the plaint. In view of that, issue Nos.4 and 5 were taken up as preliminary issues. The parties have addressed their arguments on issue Nos.4 and 5. On the preliminary issues, the trial Court dismissed the suit holding that the suit filed by the plaintiff is hopelessly barred by law of limitation. Article 55 of the Limitation Act provides that suit has to be filed within three years from the date of cause of action. Further, the defendants are protected under Section 214(1) of the KCSR. After lapse of 4 years from the date of retirement, the plaintiff cannot initiate any proceedings against the retired employees for recovery of any damages. Being aggrieved by the said judgment and decree passed by the trial Court, the plaintiff has preferred this appeal.

7. Sri. V. Shiva Reddy, learned Government Pleader appearing for the appellant contended that the judgment and decree passed by the trial Court is contrary to law. On the basis of the report submitted by the Vigilance Department and also Expert Technical Team had inspected the spot and gave a detailed report in the year 2004. On the basis of the said reports, the Government has accorded sanction to prosecute the defendants and to recover the damages from them in the year 2005. Accordingly, the suit has been filed in the year 2007. There is no delay on the part of the plaintiff. The State Government within three years from the date of the knowledge filed a suit against the defendants. Further, Rules 213 and 214 of KCSR deal with the limitation to prosecute against the retired officials. In the present case, the plaintiff has not filed any suit for withholding the pensionary benefits from the defendants and moreover, the suit has been filed for recovery of damages. Hence, the finding of the trial Court that the suit is hopelessly barred by limitation is contrary to law and sought for setting aside the said judgment and decree by allowing this appeal.

8. On the other hand, Sri. Nagaprassanna and K. Puttegowda learned counsel appearing for the second respondent argued in support of the judgment and decree passed by the trial Court and contended that the second respondent was a Government Employee and he is protected under Rule 214(1) of the KCSR. Rule 214(3) prohibits the State Government from initiating any judicial proceeding after four years of his retirement from the Government service. In the instant case, the second respondent has retired from service in the year 1998 itself. The proceedings were initiated in the year 2007. Article 55 of the Limitation Act is a clear bar to file a suit for recovery of any dues or damages. Hence, sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel for the appellant and the second respondent. Perused the judgment and decree,

oral and documentary evidence adduced by the parties and other relevant records.

10. This appeal was dismissed as against first respondent and though the third respondent was served with notice, he remained unrepresented.

11. The records clearly disclose that the respondents in the suit are retired Superintendent Engineers at Hemavathi Left Bank Canal. The second respondent worked from June 1996 to July 1998, third defendant worked from December 1997 to August 1998. They got retired from service in the year 1998 and 1999 respectively. The allegation in the plaint is that while they were working as Superintendent Engineers, due to the dereliction of duties, the Distributory Channel work done from 23 - 27 Km lane was substandard. It was damaged in the year 1999 itself. Hence, the Government has suffered loss to the tune of Rs.14,02,714/-, Whereas the defendants in their written statements have contended that the Distributory Channel work has been done as per the technical suggestion of I.A.S. Bangalore. The construction work has been made after taking due care. After completion of the work, the Chief Engineer of Hemavathi Canal, Tumkur inspected and approved the same and settled the final bill. However, it was contended that the canal work was already done in the year 1986-87, only a some portion of the work was done during the year 1996-1998. In view of heavy rain in the month of October 1999, which was beyond human control, due to the Act of God there was damage to the canal. For that, the respondents cannot be held responsible. Further contended that they retired in the year as Superintendent Engineers 1998 and 1999 respectively. The Government accorded sanction in the year 2005 and suit came to be filed in the year 2007. The suit is barred by limitation and the defendants are protected under Rule 214 of KCSR.

12. The trial Court heard the arguments on the preliminary issues and given a finding on the said issues. Under Rule 214 of the KCSR, there is a clear bar to recover damages from the retired officials in respect of cause of action which arose more than four years before such institution. Sub-rule (3) of Rule 214 specifically bars the State Government to file a suit after lapse of four years. Rule 214 of the KCSR reads as under:

"214 (1) (a) Withholding or withdrawing pension for misconduct or negligence. The Government reserve to themselves the right of either withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, if in any departmental or judicial proceedings, the pensioner is found guilty or grave misconduct or negligence during the period of his service including the service under a foreign employer and the service rendered under re-employment.

(b) Recovery of pecuniary loss from pension. The Government reserve to themselves the right of ordering recovery from a pension the whole or part of any pecuniary loss caused to the Government or to a foreign employer under

whom the Government servant has worked on deputation or otherwise, if in any department or judicial proceedings, the pensioner is found guilty of grave negligence during the period of his service, including the service rendered upon re-employment after retirement.

Provided that the Karnataka Public Commission shall be consulted before any final orders are passed.

Provided further that whether a part of pension is withheld or withdrawn, the amount of pension shall not be reduced below the amount of minimum pension prescribed under the rules.

(2)(a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the Government servant, the proceedings under this rule and shall continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided that where the department proceedings are instituted by an authority other than Government, that authority shall submit a report recording its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.

(i) shall not be instituted save with the sanction of the Government.

(ii) Shall not be in respect of any event which took place more than four years before such institution, and

(iii) Shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arouse or in respect of an event which took place, more than four years before such institution. Further. Article 55 of the Limitation Act provides for limitation period of only three years to file a suit from the date of cause of action for recovery of damages caused to the State Government due to the negligence on the part of the defendants. In the instant case, damage was suffered to the Distributory Channel in the year 1999 itself. The State Government accorded sanction to initiate recovery proceedings for the damages caused to the Channel in the year 2005 whereas the suit was filed in the year 2007. There is inordinate delay. The suit filed by the State Government is barred by limitation. The Hon?ble Supreme Court in a judgment reported AIR 1996 SC 1656 (State of U.P. v. Sri. Krishna Pande) clearly held that the

departmental enquiry or any other proceedings against the retired employees must be instituted within four years from the date of misconduct or alleged event of embezzlement by the delinquent employee. Further, this Court in a judgment reported in ILR 1985 Kar 2794 held as under:

"It is abundantly clear that clause (c) of the proviso to Rule 214 governs only the judicial proceedings referred to in Rule 214. This is clear from the terms "such judicial proceeding" thereby meaning judicial proceeding referred to in Rule 214 and not other judicial proceedings including criminal proceedings before any criminal Court dealing with general criminal law. The prohibition against the institution of a judicial proceeding in respect of a cause of action which arose or an event which took place more than 04 years before such institution as contained in clause (c) or against the institution of a departmental enquiry in respect of any event which took place more than 04 years before such institution as stipulated under clause (b) of the proviso is only for the purpose of exercising the powers under Rule 214 and not for any other purpose. The period of limitation provided in clauses (b) and (c) of the proviso appears to be intended to prevent harassment, by instituting either departmental or judicial proceedings in respect of a stale or remote even or cause of action which arose more than 04 years before such institution after the officer has retired. The prohibitory words in clause (c) cannot be construed as a bar against criminal prosecutions in general". The period of limitation provided in clauses (b) and (c) of the proviso appears to be intended to prevent harassment, by instituting either departmental or judicial proceedings in respect of a stale or remote event or cause of action which arose more than 04 years before such institution alter the officer has retired."

13. In view of authoritative pronouncement of law, on appreciating Rule 214 of KCSR, I find that the suit filed by the appellant is hopelessly barred by limitation and also the protection given under Rule 214 of the KCSR, Hence, I find that there is no infirmity or irregularity in the judgment and decree passed by the trial Court on the preliminary issues. The appellant has not made out a case to interfere with the said well considered judgment and decree. Accordingly, the appeal is dismissed.