

(1991) 07 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 5649 of 1990

G.K. Thirunarayana Iyengar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-07-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227
Karnataka Co-operative Societies Act, 1959 — Section 30 A

Citation : (1991) ILR (Kar) 4070 : (1991) 3 KarLJ 395

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : S. Srinivasamurthy, for the Appellant; N.B.N. Swamy, HCGP for R-1 and H.K. Vasudeva Reddy, for R-2, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—The sole question which arises for consideration in the instant Writ Petition is whether the respondents are justified in continuing the disciplinary proceeding against the petitioner even after his superannuation from service on 29th December 1989, without extension of his services.

2. The facts of the case are few and not in dispute.

The petitioner was employed as the Manager of the Davangere Branch of the second respondent viz., the Karnataka Industrial Co-operative Bank Ltd. In exercise of powers conferred by Section 30A of the Karnataka Co-operative Societies Act, the third respondent viz., the Special Officer was appointed by the Government to manage the second respondent after superseding the Co-operative Society. It is not disputed that presently the Special Officer of the Bank is incharge of the management of the society.

3. A report was made on the 17th March 1987 to the effect that five employees of the Davangere Branch of the second respondent Bank, including the petitioner, had acted in a manner detrimental to the interest of the Bank which resulted in

monetary loss to the Bank. Consequently, an Enquiry Officer was appointed to conduct a joint enquiry into the charges framed against the petitioner and others. The petitioner was suspended with effect from 21st March 1987, but it appears that the enquiry commenced only on 25th May 1988. It is not necessary for me to go into the question as to who was responsible for the delay in the conclusion of the enquiry. Admittedly, the enquiry was never concluded and is perhaps still pending, In the meantime, the petitioner was to retire from service on attaining the age of superannuation on 29-12-1989. He appears to have written a letter earlier that he may be permitted to retire from service, and later followed up with another letter stating that he had no intention of continuing any further in the services of the second respondent and that upon his retirement, his claims must be settled. By communication, dated 28-11-1989 the second respondent replied by saying that though the petitioner will be retiring on 29-12-1989 and formal orders will be issued shortly, his retirement benefits will not be paid to him pending departmental enquiry and the civil and criminal proceedings. This is contained in the letter, Annexure-C, dated 28-11-1989. Thereafter, in normal course, the petitioner received the letter, Annexure-D, dated 29-12-1989, the relevant part of which reads as follows:-

"Sri G.K.T. Iyengar, Karnataka Industrial Co-operative Bank Ltd., Bangalore is retired from the service of the Bank with effect from 29-12-1989 as per Rule 30(8) of Subsidiary Rules of the Bank, i.e., after his attaining the age of 60 years."

4. From the facts stated above it will be apparent that during the pendency of the disciplinary proceeding, the petitioner retired from service after attaining the age of 60 years which was the age of superannuation.

5. Thereafter, the petitioner has been constantly reminding the respondents to settle his claims particularly, his post-retirement benefits. The petitioner claims that he is entitled to Pension, Provident Fund, Gratuity and other terminal benefits consequent upon his retirement. Despite several requests, he has been deprived of the monetary benefits to which he is entitled, and it is in this background that the instant Writ Petition has been filed by the petitioner.

6. The main contention urged on behalf of the petitioner is that the petitioner having superannuated from service, the respondents have no jurisdiction to continue with the disciplinary proceeding, and consequently, they must settle his claims forthwith on the footing that no disciplinary proceeding is pending against the petitioner. The continuation of the disciplinary proceeding, according to the petitioner, is illegal and without jurisdiction.

7. On the other hand it is contended on behalf of the respondents that the petitioner was informed earlier by letter Annexure-C, dated 28-11-1989 that he will be permitted to retire, but the retirement benefits will not be given to him till the disposal of the domestic enquiry, civil case as also the criminal case pending against him. It was submitted that though the disciplinary proceeding did not

result in any final order, and pending that proceeding the petitioner superannuated from service, that will have no effect on the disciplinary proceeding and the petitioner cannot be permitted to go scot free when there is a serious charge against him of misconduct involving large funds of the respondent-Bank. Secondly, it was urged that the petitioner cannot invoke the Writ Jurisdiction of this Court. He has an alternative remedy under the provisions of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the "Act") inasmuch as he can raise a dispute u/s 70 thereof. Lastly, it was urged that the action of the respondents cannot be impugned in a Writ Petition because the respondent-2 society is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959, and hence the action of the respondents cannot be characterised as action of the "State". It was contended that a co-operative society is not "State" so as to be amenable to the Writ Jurisdiction of this Court.

8. I will first take up the last submission urged on behalf of the respondents. There is no doubt that normally a co-operative society registered under the provisions of the Act cannot be said to be "State" within the meaning of Article 12 of the Constitution of India. It must, therefore, follow that if the managing committee of a co-operative society takes any action against its employee, such action cannot be challenged in a Writ Petition and the concerned employee must seek his remedy under the provisions of the Act. The submission, however, ignores one very relevant fact viz., that in the instant case the cooperative society has been superseded and the management of the society now vests in an Officer appointed by the State Government. Respondent-3 is the Special Officer who is incharge of the management of the society. By reason of Section 30A of the Act, the Special Officer is authorised to exercise and perform all the powers and functions of the Committee of the society and of any officer of the co-operative society and take all such actions as may be required in the interest of the co-operative society. Sub-section (3) of Section 30A of the Act further provides that the Special Officer shall exercise all such powers and functions subject to the control of the State Government and the Registrar. It is therefore apparent that the action complained of in the instant case is the action of the Special Officer appointed u/s 30A of the Act. The Special Officer has been appointed by the State Government. He exercises powers which are vested in him under the provisions of the Act, and further he exercises such powers and functions subject to the control of the State Government and the Registrar of Co-operative Societies. It is well settled that the mere fact that the co-operative society is a distinct legal entity is not conclusive and the real test is the nature of power exercised and the control exercised by the State Government in the exercise of such power. To me, it appears apparent that if a Special Officer is appointed u/s 30A of the Act by the State Government, and he in the discharge of his powers and functions takes any action which is impugned before this Court, it must be held that the action complained of is "State" action. The Special Officer is appointed by the State Government and in the discharge of his

duties is subject to the control of the State Government and the Registrar. He exercises all the powers which are vested in him under the Act. In these circumstances, it must be held that the action of the Special Officer appointed u/s 30A of the Act is amenable to Writ Jurisdiction since the action is that of an instrumentality of the "State" within the meaning of Article 12 of the Constitution of India. I am tempted to quote the observations of the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . The Court observed:-

"It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government, it is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, for in that event the Government would be enabled to over-ride the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality."

The last submission must, therefore, be rejected.

9. Coming to the first submission urged on behalf of the petitioner, it is by now well settled that the disciplinary control which an employer or master exercises over his employee or servant is incidental to the subsisting employer - employee or master - servant relationship, as the case may be. If that relationship ceases to exist the employer or the master also loses his power of disciplinary control. As early as in the year 1937 the Privy Council in *R.T. RANGACHARI v. SECRETARY OF STATE* observed:-

"It seems to require no demonstration that an order purporting to remove the appellant from the service at a time when, as their Lordships hold, he had for some months duly and properly ceased to be in the service, was a mere nullity and cannot be sustained."

The general principle is well settled and it was so stated by the Supreme Court in

STATE OF ASSAM v. PADMA RAM 64 I.A. 40; and more recently reiterated in C.L. VARMA v. STATE OF MADHYA PRADESH AND ANR. 1989 FLR 786 It must, therefore, be held that the employer has no right to deal with its ex-employee in its disciplinary jurisdiction after the employee has superannuated. Authorities are legion, and it is not necessary to multiply Authorities in view of the authoritative pronouncements by the Supreme Court. The High Courts have also consistently laid down the same principle. This Court in R.S. Naik Vs. State of Karnataka and Others, STATE OF KARNATAKA v. NAIK 1984(1) KLC 248 Delhi High Court in C.B. Dhall Vs. State Bank of India and others, the Assam High Court in GIRIJA KR. PHUKAN v. STATE OF ASSAM 1985 (3) SLR 432 and the Allahabad High Court in HARISH CHANDRA SRIVASTAVA v. DEPUTY COMMISSIONER, FAIZABAD 1985(3) SLR 305 have laid down the same principle.

10. The rule that an employer cannot proceed in the exercise of his disciplinary jurisdiction against an ex-employee who has retired from service on attaining the age of superannuating is the general rule which does permit of some exceptions. While it is true that after the employee has superannuated, there can be no question of his being punished in the sense of his being either dismissed from service, reduced in rank, stoppage of increments etc., exceptions may be carved out by law in relation to the monetary benefits which he may claim consequent upon his superannuation such as pension, gratuity etc. As has been noticed in some of the Cases referred to above, in some States the law authorises the continuance or even initiation of a proceeding to judge the guilt of the employee who may have superannuated, only in relation to the grant of pensionary benefits to him, the law may permit the employer or the master to continue the disciplinary proceeding, if pending, or even to initiate a fresh proceeding to judge the guilt of its ex-employee only for the purpose of judging whether he is entitled to his full pension or whether the facts found justify any deduction from the pensionary benefits to which he is otherwise entitled. For the exercise of such power, special provisions have been incorporated in the Pension Rules of some of the States and some such Rules vest a discretion in the Governor to direct an enquiry into such cases. Needless to say that such powers have to be exercised in accordance with the provisions of the relevant law. It is, therefore, possible to conceive of a situation where the law permits the employer or the master to hold a proceeding to fix the guilt of the employee or servant and thereafter to deal with his pensionary benefits as provided by law in cases where the misconduct of the employee or servant has resulted in monetary loss to the employer or master. Such amendments have been made with a view to avoid the necessity of extending the services of an employee or servant who is about to superannuate and against whom a disciplinary proceeding is pending.

11. Learned Counsel for the respondents relied upon a Judgment of the Supreme Court in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, . It will be noticed that in that case the regulations specifically provided that full pension was not to be given as a matter of course and that if services had not been thoroughly satisfactory the authority sanctioning the pension could make such

reduction in the amount as it thought proper. There was, therefore, a specific rule which permitted the State in that case to make deduction from the pension admissible under the Rules to the concerned employee. The Supreme Court after noticing Article 470 of the Regulations held that if the Government incurs pecuniary loss on account of misconduct or negligence of a Government servant and if he retires from service before any departmental proceedings were taken against him, it was open to the Government to initiate departmental proceedings, and if in those proceedings he was found guilty of misconduct, negligence or any other such act or omission as a result of which Government was put to pecuniary loss, the Government was entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension.

12. Learned Counsel for the respondents has not brought to my notice any law, rule or regulations similar to Article 470 of the Regulations referred to by the Supreme Court in Brahm Datta Sharma's case. In fact, he conceded that there is no rule which permits the respondents to hold any further enquiry and on the basis of the finding recorded, make any deduction from the pensionary benefits to which the petitioner may be otherwise entitled in law. In the absence of such a legal provision, to my mind, the respondents have no justification for withholding the pensionary and other benefits to which the petitioner is entitled. Indeed, no other proceeding has been initiated against the petitioner except the instant disciplinary proceeding. It was submitted that a civil suit as well as a criminal prosecution is pending against the petitioner. Learned Counsel contended relying upon a Judgment of this Court in *HERCULES INSURANCE CO. v. SRI GANESH TRANSPORT CO.* 1969(1) Mys.L.J. 316 that the same principles which were applied by the Supreme Court in Brahm Datta Sharma's case should be applied to the instant case by way of justice, equity and good conscience. As I have observed earlier, Article 470 of the Regulations with which the Supreme Court was concerned in Brahm Datt Sharma's case was in the nature of an exception to the general rule that the disciplinary jurisdiction comes to an end with the cessation of employer - employee relationship. Such an exception may be carved out by law, but in the absence of law to this effect, it will not be possible to disregard the well settled general rule.

13. I, therefore, hold that the continuance of the disciplinary proceeding after the petitioner has been permitted to superannuate unconditionally is illegal and without jurisdiction. The petitioner having ceased to be an employee of the respondent- Bank, the respondents have no disciplinary control over him. In the absence of any law which permits either the continuance or the initiation of a fresh proceeding with a view to affect the pensionary benefits of the petitioner, having regard to the monetary loss caused by his misconduct, the disciplinary proceeding cannot be continued after his superannuation. The disciplinary proceeding must, therefore, be quashed.

14. The learned Counsel for the respondents then contended that the petitioner had an alternative remedy u/s 70 of the Act and he could very well raise a

dispute before the Registrar of Co-operative Societies. It is well settled that the mere existence of an alternative remedy does not operate as a bar to the exercise of Writ Jurisdiction under Articles 226 and 227 of the Constitution of India. In a case where the action appears to be wholly illegal and without jurisdiction, and does not involve any disputed questions of fact this Court will be fully justified in exercising its Writ Jurisdiction to quash an illegal action. In the instant case, the facts are not in dispute and the law well settled. Under these circumstances, there is no justification for compelling the petitioner to take recourse to the remedy provided u/s 70 of the Act.

15. In the result, this Writ Petition is allowed. The disciplinary proceeding initiated against the petitioner is quashed. The respondents are directed to forthwith compute the pensionary and other retirement benefits payable to the petitioner and to pay the same to him within the period of four months from today. This is on the basis that no other proceeding is pending against the petitioner. So far as the civil suit and the criminal prosecution are concerned, the quashing of the disciplinary proceeding shall have no effect on those proceedings and the Courts concerned will proceed with the civil suit and the criminal prosecution in accordance with law.