

(2010) 08 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 83342 of 2009

Gurupada

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Karnataka Civil Services (Probation) Rules, 1977 — Rule 6

Citation : (2011) 3 KCCR 1922

Hon'ble Judges : S.N. Sathyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : Huleppa Heroor, for the Appellant; M. Kumar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The Petitioner, assailing the correctness of the order dated 22.05.2009 passed in A. No. 10847/2002 on the file of the Karnataka Administrative Tribunal, Bangalore (for short, "tribunal") produced at Annexure-A presented the instant writ petition. He has also sought for a direction directing the 2nd Respondent to forthwith reinstate the Petitioner into his original post, granting all the consequential benefits, like, full back wages, continuity of service, promotion as if there was no order of discharge and to pay him full salary from the date of discharge till the date of reinstatement.

2. The brief facts of the case are that, the Petitioner claims that, he has been appointed as civil police constable as per the appointment order dated 08.07.1993, by sponsor from the District Employment Exchange, Bidar. The Petitioner was selected for the post of civil police constable on probation for a period of two years or till their serves are declared to have been satisfactorily completed and the said appointment made is purely on temporary basis and his services could be terminated at any time, if they are found unfit during the period of probation. Before completion of probationary period of two years, his services has been discharged on 27.7.1996, produced vide Annexure A4, as per

the Karnataka Civil Services (Probation) Rules, 1977, on the basis of the report submitted by the PSI, Hulsur police station dated 14.6.1996, stating that, civil police constable - 1212 of Hulsur Police Station who is found unfit and unsuitable for the post of civil police constable during the period of his probation is hereby discharged from service under Rule 6 of the Karnataka Civil Services (Probation) Rules, 1977 and he is unsuitable to hold the post.

3. Assailing the correctness of the discharge from the service dated 27.7.1996 and the endorsement issued dated 26.6.2002, vide Annexure A10, the Petitioner filed A. No. 10847/2002 on the file of the tribunal. The said matter had come up for consideration before the tribunal on 22.05.2009. The tribunal after hearing the learned Counsel for the Petitioner and the learned Government Pleader for the Respondents, after thorough evaluation of the relevant material on the file, has dismissed the application holding that it was an independent decision of the appointing authority who considered the suitability of the Petitioner to be in the post where he was a probationer, leading to the decision that, the Petitioner was not suitable, not on the ground of any criminal case against the Petitioner and he secured acquittal for that. Being aggrieved by the order impugned passed by the tribunal, seeking appropriate relief as stated supra, Petitioner felt necessitated to present this writ petition.

4. The submission of the learned Counsel appearing for the Petitioner, Sri. Huleppa Herur is that, the order impugned passed by the tribunal is liable to be vitiated on the ground that, the Petitioner has been discharged from service on account of unsuitability before declaration of probationary period which cannot be sustainable. To substantiate his submissions, he was quick to point out and taken us through Annexure A2 order dated 10.10.1996 bearing No. EST-1/94/96 wherein, the name of the Petitioner is found at Sl. No. 5, his probationary period has been declared and further quick to point out and placed reliance on the "Drudeekarana Patra" (confirmation certificate) issued dated 12.03.1997 stating that, his Buckle Number is 1230 and he has earlier served in Hulsur police station and the seniority list of all the police staff was prepared by the police Superintendent and have changed the buckle number as per their seniority and hence change is made for Gurupada as PC No. 1212. These two clinching relevant materials available on the file has not been looked into nor considered by the tribunal and the tribunal proceeded to dismiss the application confirming the order of discharge from service of the Petitioner. Therefore, the impugned order passed by the tribunal is liable to be set aside and the relief sought for in the application may be allowed in toto.

5. As against this, the learned Government Advocate appearing for the Respondents, inter alia, contended and substantiated the order impugned passed by the tribunal strictly in consonance with the relevant provisions of the Karnataka Civil Services (Probation) Rules, 1977. He was unsuitable for the post of civil police constable during the period of his probation. After due consideration of the relevant material on the file and after affording reasonable

opportunity of hearing to the Petitioner through his counsel, the tribunal was rightly justified in dismissing the application filed by the Petitioner. Therefore, interference by this Court is not called for nor the Petitioner has made out any good grounds to consider the relief sought for in the instant writ petition.

6. After careful perusal of the submissions made by the learned Counsel appearing for both the parties and after careful perusal of the order impugned passed by the tribunal vide Annexure A and the order dated 27.7.1996 Annexure A4 discharge from service of CPC -1212 Gurupad, Petitioner herein, working at Hulsur police station and the endorsement issued vide Annexure A10 dated 26.2.2002, it is manifest on the face of the order passed by the tribunal, we do not find any error of law, much less material irregularity nor miscarriage of justice in the order impugned. The order passed by the tribunal is just and reasonable and strictly in consonance with the relevant provisions of the Act i.e., Rule 6 of the KCS (Probation) Rules, 1977, for the reason that, having regard to the magnitude of the charge against the Petitioner on the basis of the special report dated 14.6.1996 which was received by the Superintendent of Police, Bidar from PSI, Hulsur, who reported that the Petitioner has trespassed into the house of one Mallamma, w/o. Mallappa Metre, in a drunken condition with an intention to outrage the modesty of Smt. Mallamma when her husband was not in the house. Immediately, he was kept under suspension by order dated 24.7.1996 pending enquiry. After initiating further disciplinary proceedings against the Petitioner, taking into consideration his conduct, commitment to the service, not discharging the duties consciously to the satisfaction of the higher officer, the Respondent was compelled to take a decision and discharge the Petitioner from service before declaring the probationary period. It is significant to note that, in the order of appointment issued at Annexure A1, it is crystal clear that the appointment made is purely on temporary basis, their services could be terminated at any time, if they are found unfit during the period of probation. Knowing the terms and conditions of the appointment as civil police constable, he himself behaved with respected woman living peaceful life. Further, it is significant to note that, the submission of the learned Counsel for the Petitioner that his probation period has been declared as per Annexure A2 dated 10.10.1996 bearing No. EST-1/94/96 with his name found at Sl. No. 5 CPI - 1230 - Guruputra, the name is typed wrongly and further he placed reliance on the certificate issued by the Sub-Inspector of Police vide Annexure-A3 dated 12.3.1997. It is pertinent to note that, the order of termination/discharge from service passed on 27.7.1996 bearing No. EST-1/Appt/BDR/96 on the basis of the report submitted by the PSI dated 14.6.1996, the question of declaring the probationary period on 10.10.1996, cannot be sustainable. It is to be referred at Sl. No. 5 of the order i.e., in respect of CPI -1230 - Guruputra, the date of entry into service is shown as 12.7.1993, date of completion of probation of 2 1/2 years is 13.01.1996 and date of declaration of probation is 13.1.1996. In the instant case, the Petitioner has been appointed and entered service on 8.7.1993 produced at Annexure-A1. Therefore, the reliance placed by the learned Counsel

for the Petitioner that his name is found at Sl. No. 5 CPI - 1230 cannot be acceptable and it is liable to be rejected at the threshold. As a matter of fact, Petitioner is CPI - 1212 by name Gurupada in the order Annexure A2, it is CPI 1230 showing the name as Guruputra which name is nothing to do with the Petitioner. Therefore, we are of the considered view that the order impugned is passed after critical evaluation of the oral and documentary evidence and with reference to the relevant material on the file, therefore, does not call for interference and in fact, this aspect of the matter has been dealt with in detail by the tribunal in para 7 of the order impugned. The tribunal following the well settled law laid down by the Apex Court and this Court in catena of judgments, and after going through the relevant rules of probationary period, has recorded a finding of fact holding that, the Petitioner's services has been discharged before confirming the probationary period which is strictly in consonance with the relevant provisions of the Act and Rules. Therefore, interference by this Court is not called for.

7. Having regard to the facts and circumstances as stated supra, the writ petition filed by the Petitioner stands dismissed as devoid of merits.

8. Ordered accordingly.