

(2004) 11 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No's. 46360 and 46550 of 2004

H. Rajappa and Another

APPELLANT

Vs

Haronahalli Grama Panchayat and Others

RESPONDENT

Date of Decision : 26-11-2004

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 113, 113 (1), 113 (2), 113 (4), 113 (5)

Citation : (2005) ILR (Kar) 1443 : (2005) 1 KarLJ 373 : (2005) 1 KCCR 384

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : A. Koshava Bhat, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—The first petitioner was appointed as a Bill Collector in the first respondent-Grama Panchayat on 25-8-2001. He contends that his appointment was also approved by the Zilla Panchayat by an order dated 10-3-2004 as per Annexure-A. Second petitioner was appointed as a Peon in the first respondent-Grama Panchayat long back and he claims that he has put in 21 years of service as a Peon. Both of them belong to Scheduled Caste Community. Their case is that on 13-9-2004, the Secretary of the first respondent-Grama Panchayat instructed the first petitioner to disburse 350 Kgs. of rice to a Contractor who has done contract work for the Panchayat. The said work was executed under "Kooligagi Kalu Yojane" and therefore the rice has to be disbursed to the Contractor, and as per the instructions rice was disbursed. The receipt of the rice was also duly acknowledged by the Contractor. Thereafter, the Secretary issued show-cause notices calling for an explanation from the petitioners giving three days time. Annexure-B and C are the said show-cause notices. Though the petitioners wanted to give reply, the Secretary did not receive the same. The Secretary did not attend the office properly for 2 or 3 days only to avoid receiving any reply by the petitioners to the show-cause notices. However, the petitioners gave reply as per Annexure-D and E. Thereafter, an emergency

meeting of Panchayat was called on 28-9-2004 in which a resolution was passed terminating the petitioners and appointing respondents 4 and 5 as a Bill Collector and a Peon. A Copy of the said resolution is produced as per Annexure-F. Consequent to the said resolution, memos were issued as per Annexure-G and H to the petitioners informing them that they have been dismissed from service. Challenging the aforesaid termination, the petitioners have preferred these writ petitions contending that the termination is arbitrary, passed with mala fide intention and in violation of principles of natural justice and therefore the same is liable to be quashed and they should be reinstated into service and appointment of respondents 4 and 5 in their place has to be set aside.

2. Learned Counsel for the petitioners relying on a judgment of this Court in the case of I.V. Suresha Vs. Zilla Panchayat and Others, contends that the Zilla Panchayat is the appointing authority and the Grama Panchayat being only a recommending body, has no authority or power as such to terminate the services of petitioners. The resolution passed by the Grama Panchayat is unsustainable in law in view of non-compliance of the mandatory provisions of the Act and the Rules. As the impugned order and the resolution are passed in contravention of the principles of natural justice, even if an alternative remedy is provided under the Act, it is a fit case for interference by this Court and to quash the same.

3. Chapter V of the Karnataka Panchayat Raj Act, 1993 (for short hereinafter referred to as the "Act") deals with Staff of Grama Panchayats and this Chapter contains three sections. Sections 111, 112 and 113. Between these sections, we have to find out who are the employees of Grama Panchayats, who appoints them, how they are appointed, who is the Disciplinary Authority and who is competent to pass orders and what are the remedies against those orders passed.

4. Section 111 of the Act provides that every Grama Panchayat shall have a whole time Secretary who shall be an officer of the Government and shall draw his salary and allowance from the fund of the Grama Panchayat, after the same is credited to the Grama Panchayat fund by the Government. The Secretary shall perform all the duties and exercise all the powers imposed or conferred upon him by or under this Act or any Rules or Bye-laws made thereunder. Sub-section (3) of Section 111 of the Act sets out the functions to be performed by such Secretary. Therefore, it is clear that the Secretary is an officer of the Government and Grama Panchayat has no power to appoint such a Secretary.

5. Section 112 of the Act deals with staffing pattern and schedule of employees. Sub-section (1) of Section 112 of the Act provides that the Government may, by order, specify the staffing pattern, the scales of pay and mode of recruitment of staff of Grama Panchayats. Sub-section (2) provides that the Grama Panchayat shall, subject to Sub-section (1) determine and submit for approval of the Chief Executive Officer a schedule of employees specifying the designation and grades and the salaries and allowances payable to its officers other than the Secretary, required for carrying out the duties imposed upon the Grama Panchayat by or

under this Act. Section 2(6) defines the Chief Executive Officer. It means the Chief Executive Officer of a Zilla Panchayat.

6. In terms of the powers conferred on the Government u/s 112 for specifying the staff pattern, the Government has issued a Government Order dated 20-6-2003 providing for the procedure to be followed for appointing the employees by the Grama Panchayat. The said Government Order makes it clear that the appointment to be made by the Grama Panchayat should not be in contravention of the staffing pattern fixed by the Government. Before any such appointment is made, the Panchayat has to take a decision. After such decision is taken, a notification is to be issued at least in one newspaper which has greater circulation in the area, calling for applications and in the Village and Taluk Panchayat Notice Boards the said notification has to be duly published. The eligibility criteria for such appointments would be in accordance with the Government Order dated 10-1-1994 and the appointment should be based on the marks secured by the candidates in the examination prescribed therein. After making the selection of the candidates to be appointed, the same has to be submitted to the Chief Executive Officer for approval. Without the approval if any person is appointed by the Grama Panchayat, the said appointment would not be valid and before such approval if any salary is paid by the Grama Panchayat, it would be treated as unauthorised expenditure. In making recruitment the Grama Panchayat should follow the policy of reservation as applicable to recruitment by the Government to the Civil Posts reserving the seats for Scheduled Castes, Scheduled Tribes, Backward Community and also Educational Backward Community. The Government Order further states that the control and disciplinary action against such employees appointed by the Grama Panchayat should be u/s 113 of the Act. However, either the Secretary of the Grama Panchayat or the Grama Panchayat if they decide to initiate any disciplinary proceedings against an employee, they should follow the principles of natural justice by issuing a show-cause notice calling for an explanation from such delinquent employee.

7. Section 113 of the Act deals with appointment and control of the employees. It reads as under:-

"Appointment and control of employees.-(1) Subject to the provisions of Sections 111 and 112 the Grama Panchayat may, with the prior approval of the Chief Executive Officer appoint other employees of the Grama Panchayat and pay their salaries from the Grama Panchayat Fund.

(2) The Secretary may, by order, fine or withhold, the increment of any employee appointed by the Grama Panchayat.

(3) The Grama Panchayat may reduce in rank, remove or dismiss any employee appointed by it.

(4) An appeal shall lie against an order passed by the Secretary under Sub-section (2) to the Executive Officer and against an order passed by the Grama

Panchayat under Sub-section (3) to the Chief Executive Officer.

(5) Any appeal under Sub-section (4) pending before the Mandal Panchayat or the Zilla Parishad on the date of commencement of the Karnataka Panchayat Raj Act, 1993, shall stand transferred respectively to the Executive Officer and the Chief Executive Officer and such appeal shall be decided by them as if it had been filed before them".

(emphasis supplied)

8. The aforesaid three sections have to be read together conjointly in order to appreciate the powers and functions of the Grama Panchayats. If so read, it discloses that every Panchayat will have a whole time Secretary. He is an Officer of the Government. He is not appointed by the Grama Panchayat and therefore the Grama Panchayat has no disciplinary powers against the said Secretary. Excluding this Secretary, the Government specifies the staffing pattern, the scales of pay and mode of recruitment of staff of Grama Panchayats as is clear from Section 112. The Grama Panchayats shall determine and submit for approval of the Chief Executive Officer a Schedule of employees specifying the designation, grades and salaries and allowances payable to its officers other than the Secretary required for carrying out the duties imposed upon them under the Act. The actual appointment and control of employees of Grama Panchayat are regulated by Section 113 of the Act. Section 113 of the Act could be divided into three parts. Sub-section (1) of Section 113 of the Act deals with appointment of the employees of the Grama Panchayat and their salaries. Sub-sections (2) and (3) provide for the punishment which can be imposed by the Secretary or Grama Panchayat on the employees of Grama Panchayat. Sub-sections (4) and (5) deal with the remedy by way of a statutory appeal against such orders passed by the Disciplinary Authorities.

9. In terms of the power conferred under Section 112 of the Act, the Government has issued an order dated 20-6-2003 providing for the procedure to be followed for appointment of the employees of the Grama Panchayats. Once, the said procedure prescribed under the said Government Order is complied with insofar as the appointment of the employees of the Grama Panchayats is concerned, the Panchayat shall submit a list of the selected candidates to be appointed, to the Chief Executive Officer for approval. It is only after such prior approval of the Chief Executive Officer, the Grama Panchayat gets the power to appoint the employees. But from the language employed in Sub-section (1) of Section 113 of the Act, it is clear that the Appointing Authority is the Grama Panchayat and such appointment shall be made with the prior approval of the Chief Executive Officer. Merely because the prior approval of the Chief Executive Officer is required for the appointment of employees of the Grama Panchayat, it cannot be said that it is the Chief Executive Officer who is the appointing authority and that the role of the Grama Panchayat is only recommendatory. It is the Grama Panchayat which initiates proceedings for recruitment of employees as stipulated in the Government Order referred to supra. It is they who select the

candidates in accordance with law with the prior approval of the Chief Executive Officer, appoint those candidates and pay their salaries from the Grama Panchayat fund. As the law requires them to follow the procedure prescribed under the appropriate Government Order and also reserve posts for Scheduled Castes, Scheduled Tribes and other socially and educationally Backward Classes, the role of the Chief Executive Officer would be only to see whether the Grama Panchayat has selected the candidates in accordance with the Rules, the Government Orders and the directions issued from time to time. He has to ensure that in the matter of selection of employees to the Grama Panchayat the Rules prescribed are complied with by the Grama Panchayat. Beyond this, the Chief Executive Officer cannot be said to have any other power or duties.

10. Insofar as initiating the disciplinary proceedings against these employees is concerned, no such prior approval of the Chief Executive Officer is contemplated. The Government Order expressly states that if any disciplinary proceedings have to be initiated against the employees of the Grama Panchayat the principles of natural justice have to be followed inasmuch as a notice has to be issued to the delinquent employee before any action is taken. After considering the reply given to the show-cause notice, the authorities under the Act are empowered to impose punishment on such employees. The two authorities which are vested with the power to impose punishment on the employees of the Grama Panchayats are the Secretary and the Grama Panchayat. The power to be exercised by these two authorities are well-defined. Sub-section (2) of Section 113 of the Act deals with the power of the Secretary to impose punishment. He has been conferred with the power to impose only fine, suspend or withhold increment of the employees who are appointed by the Grama Panchayat. This provision makes it very clear that the employee against whom the punishment is imposed by the Secretary is an employee appointed by the Grama Panchayat. Similarly, Sub-section (3) of Section 113 of the Act confers on the Grama Panchayat the power to impose a punishment in reduction in rank, removal or dismissal from service of any employee appointed by it. Therefore, it explicitly states that the said power could be exercised by the Grama Panchayat against the persons appointed by it. Therefore, the wordings used in Sub-sections (1), (2) and (3) make it very clear that it is the Grama Panchayat which appoints the employees of the Grama Panchayat except the Secretary and it has the power to impose a punishment of reduction in rank, removal or dismissal of such employees appointed by it.

11. Sub-sections (4) and (5) of Section 113 of the Act provide a remedy to the aggrieved employees against whom the authorities under the Act have passed the orders under Sub-sections (2) and (3). Thus, Chapter V and in particular Section 113 of the Act comprehensively provide a mechanism for appointment and control of employees appointed by the Grama Panchayat and remedies to such employees against the orders passed by the Grama Panchayat or the Secretary of the Grama Panchayat.

12. In the entire body of the judgment, in I.V. Suresha's case, supra, relied on by the learned Counsel for the petitioners, there is no reference to these statutory provisions and it has been rendered without noticing these statutory provisions. Therefore, it is of no assistance to the petitioners.

13. It was contended that as the impugned orders were passed in violation of principles of natural justice, notwithstanding the availability of the alternative remedy, this Court can entertain the writ petition and interfere with the impugned orders. It is not in dispute that before passing the impugned orders, petitioners have been served with the show-cause notice. Whether they had an ample opportunity to show cause, whether the cause shown by them has been considered by the Disciplinary Authority are the matters to be gone into in detail by the Appellate Authority. The question whether the impugned orders are bad for violation of principles of natural justice is a matter which the Appellate Authority also can go into. Under these circumstances, it is inappropriate for this Court to entertain the writ petitions when an alternative and efficacious remedy by way of a statutory appeal is provided under the Act to the petitioners.

14. In that view of the matter, there is no substance in any of the contentions of the petitioners. Hence, the following order:-

- (i) Writ petitions are rejected;
- (ii) Liberty is reserved to the petitioners to prefer a statutory appeal u/s 113(4) of the Act;
- (iii) Time spent in prosecuting these writ petitions before this Court shall stand excluded for the purpose of limitation;
- (iv) Office is directed to return all the papers filed along with the writ petitions to the petitioners to enable them to prefer a statutory appeal;
- (v) It is made clear that the Appellate Authority shall decide the appeal on merits and in accordance with law without in any way being influenced by any of the observations made by this Court in these writ petitions;
- (vi) All the contentions are left open.