

(2015) 01 KAR CK 0486

In the Karnataka High Court

Case No : Writ Petition No. 60252 of 2014 (S-RES)

H.C. Shivaraju

APPELLANT

Vs

The Commissioner, Municipal Administration and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (2015) 2 KarLJ 550

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : M. Naga Prasanna, for the Appellant; H.T. Narendra Prasad, Additional Government Advocate and R. Ramachandran, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.V. Nagarathna, J.—Though the writ petition is listed for consideration of interim prayer, I have heard learned Counsel for the parties and perused the material on record and therefore, the writ petition is disposed by this order. Petitioner is aggrieved by order dated 5-12-2014 (Annexure-Z to the writ petition) and consequential order dated 10-12-2014 (Annexure-AA to the writ petition). By these orders, petitioner has been relieved from service of the 2nd respondent, the Bruhat Bengaluru Mahanagara Palike ("BBMP" for short). Therefore, the said orders are assailed and a direction is sought to the respondents to reinstate him with all consequential benefits including continuity of service.

2. The facts in a nutshell are that petitioner was appointed under the provisions of the Karnataka Panchayat Raj Act, 1993 in Konanakunte Grama Panchayat on 1-1-1994, pursuant to a resolution of the Grama Panchayat dated 24-3-1994. Subsequent to the merger of the aforesaid Grama Panchayat with the 2nd respondent-BBMP, service of the petitioner was continued under the 2nd respondent.

3. It appears that the petitioner was subject to certain criminal proceedings, which were initiated by the Hon"ble Lokayukta. It is also stated that the petitioner was acquitted in those proceedings. Petitioner had assailed order dated 26-3-2011 issued by 1st respondent herein and order dated 2-4-2011 issued by 2nd respondent herein in W.P. No. 15597 of 2011. Those orders were orders of termination of service of the petitioner on the ground that criminal proceedings were pending against him. This Court by order dated 22-9-2012, quashed the aforesaid orders and observed that the petitioner was entitled to consequential benefits. However, liberty was reserved to the State Government to take action in accordance with law. It is pursuant to the said liberty that the 2nd respondent sought legal opinion and thereafter, impugned order dated 5-12-2014 has been issued followed by order dated 10-12-2014, which are assailed in this writ petition. It is also noted that prior to the impugned order, the petitioner was reinstated in service with all consequential benefits.

4. I have heard learned Counsel for the petitioner, learned Additional Government Advocate for respondent 1 and learned Counsel for respondent 2.

5. While drawing my attention to the impugned orders, petitioner's Counsel stated that even in the legal opinion that was sought by 2nd respondent, it was observed that a preliminary enquiry against the petitioner must be made in order to ascertain the truth of the allegations against him by providing sufficient opportunity to him. But, in the instant case, without holding any such enquiry, the impugned order of termination has been passed. He contended that petitioner being in service of the 2nd respondent-authority for a long period of time was entitled to be protected by the principles enunciated in Article 311 of the Constitution of India as he had acquired status of a temporary employee as he was in service for almost two decades, by placing reliance on a decision of the Hon"ble Supreme Court in the case of Nar Singh Pal Vs. Union of India and Others, AIR 2000 SC 1401 : (2000) 85 FLR 458 : (2000) 3 JT 593 : (2000) 1 LLJ 1388 : (2000) 2 SCALE 685 : (2000) 3 SCC 588 : (2000) SCC(L&S) 362 : (2000) 2 SCR 752 : (2000) AIRSCW 1141 : (2000) 2 Supreme 667 . He, therefore, contended that the impugned orders may be quashed and as observed in the legal opinion, steps may be taken by the respondent-authorities, in accordance with law.

6. Learned Counsel for respondent 2 stated that it is only respondent 1, who can initiate action in the matter and that appropriate steps would be taken in accordance with law in the impugned order. The relevant portion of the legal opinion is extracted as under:

"It is opined that it would be proper to conduct a preliminary enquiry against the employee to ascertain the truth of the allegations against him by providing sufficient opportunity to the employee. A Preliminary enquiry of this nature must not be mistaken for the regular departmental enquiry in order to inflict any of the major penalties. The preliminary enquiry is not governed by Article 311(2) of the Constitution of India, there is no element of punitive proceedings in such an

enquiry. The idea in holding such a enquiry is not to punish the temporary Government servant but to decide as to whether he deserves to be continued in service or not. If as a result of such preliminary enquiry the authorities were to come to a conclusion that the temporary Government servant is not suitable, the authorities may pass a simple order of discharge under the rules."

In terms of that opinion, respondent-authorities ought to have conducted a preliminary enquiry against the petitioner by providing sufficient opportunity to him. In the absence of holding of preliminary enquiry by giving sufficient opportunity to the petitioner, the impugned order is a nullity being in violation of the principles of natural justice. Therefore, on that short ground alone, the impugned order dated 5-12-2014 (Annexure-Z to writ petition) and consequential order dated 10-12-2014 (Annexure-AA to writ petition) are quashed. In view of the impugned orders being quashed, respondents are directed to reinstate the petitioner with all consequential benefits. Respondents are at liberty to initiate action as against the petitioner in accordance with law by complying with what has been opined by the Law Officer of 2nd respondent-BBMP.

Writ petition stands disposed in the aforesaid terms.