

(2003) 10 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 30301 of 2001

I.V. Suresha

APPELLANT

Vs

Zilla Panchayat and Others

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Citation : (2003) ILR (Kar) 4794 : (2004) 1 KarLJ 305 : (2004) 1 KCCR 132

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : R.S. Ravi, for the Appellant;

Judgement

Patil, J.—The petitioner, assailing the resolution dated 31st July 2001 passed by the second respondent vide Annexure C, has presented this Writ Petition. Further, he has sought for a direction, directing the second respondent to pay the salary of the petitioner from April 2000 by considering his representation vide Annexure -B.

2. The grievance of the petitioner in the instant Writ Petition is that, the second respondent had passed a resolution recommending the appointment of the petitioner and the same has been sent for approval to the Taluk Panchayath. The Executive Officer of the Taluk Panchayath has forwarded the recommendation made by the second respondent with his covering letter dated 26th August 1996 to the first respondent for appointment of the petitioner as "waterman". In pursuance of the said recommendation made by the second respondent herein, the first respondent has appointed the petitioner as "waterman" on monthly salary of Rs. 300/- by its order dated 27th September 1996 vide Annexure A. It is the case of the petitioner that, after appointment of the petitioner as "waterman", the petitioner has been discharging his duties to the utmost satisfaction of the first respondent, second respondent and also the villagers. Though the petitioner was rendering his services without any blemish and without any complaint against him, the respondents have failed to pay the salary to the petitioner and when he has requested to pay the salary, the second

respondent has been postponing the matter on some ground or the other without any justification and therefore, the petitioner was constrained to give a representation dated 16th July 2001 to the second respondent to pay the salary of the petitioner from the month of April 2000 vide Annexure B, requesting the second respondent to pay the salary. Instead of considering his request for payment of salary, to the shock and surprise of the petitioner, the second respondent has passed a resolution dated 31st July 2001 vide Annexure C, terminating the services of the petitioner on the ground that he is not working properly and there is complaint against him by the villagers and that the petitioner is financially far better than the third respondent herein and recommending the third respondent for appointment as "waterman" subject to approval by the competent authority. Feeling aggrieved by the impugned resolution passed by the second respondent, the petitioner has presented this Writ Petition.

3. The principal ground urged by the petitioner in the instant Writ Petition is that, the impugned resolution passed by the second respondent is illegal, arbitrary and capricious. As a matter of fact, the petitioner has not been notified or afforded any opportunity of being heard before terminating his services. Without following the relevant provisions of the Panchayat Raj Act, the respondents have no power to terminate the services of the petitioner without the approval from the authorities. The second respondent, being only a recommending body, has no power to terminate the services of the petitioner without issuing notice. The second respondent, without even conducting an enquiry, has gone to the extent of recommending the third respondent for appointing as "waterman" in place of the petitioner. If opportunity had been afforded to the petitioner, the petitioner would have substantiated his case that, at no point of time, the petitioner has given any room for complaints from the villagers or in discharging his duties. Therefore, the impugned resolution passed by the second respondent is opposed to law and probabilities of the case. Hence, it is liable to be set aside.

4. The respondent No. 2 is served and unrepresented. The Writ Petition is rejected as against respondents 1 and 3.

5. I have gone through the material available on record. After careful perusal of the grounds urged by the petitioner in the instant Writ Petition, the order passed by the first respondent dated 27th September 1996, and the resolution passed by the second respondent, it is manifest on the face of records that, the second respondent has neither issued any notice to the petitioner nor conducted any enquiry. Without following the procedure prescribed under the relevant provisions of the Act, the second respondent has proceeded to pass a unilateral resolution, without affording an opportunity to the petitioner and recommending the case of the petitioner for termination of his services and also further recommending the third respondent for appointment as "waterman" in place of the petitioner. It is significant to note here itself that the petitioner has been appointed by the second respondent himself after passing a resolution and after recommending

the petitioner for appointment to the post of "waterman" through the Taluk Panchayat, to the first respondent. The first respondent, after considering the recommendations made by the second respondent and the Taluk Panchayat, taking into consideration the Government order dated 10th January 1994 has appointed the petitioner as "waterman" in the Mallappanhalli Gram Panchayat, by its order dated 27th September 1996. The first respondent is the appointing authority. The second respondent being only a recommending body has no authority or power as such to terminate the services of the petitioner. The second respondent without following the procedure and without issuing notice to the petitioner as provided under the relevant provisions of the Act has passed the order. Therefore, the impugned order passed by the second respondent is vitiated for non-compliance of the principles of natural justice and the same has resulted in substantial miscarriage of justice. Therefore, as rightly urged by the petitioner herein, no opportunity as such has been afforded to the petitioner before passing the impugned resolution. Therefore, in my considered view, the impugned resolution passed by the second respondent is unsustainable in law, in view of non-compliance of the mandatory provisions of the Act and the Rules.

6. Having regard to the facts and circumstances of the case, as stated above, I do not find any justification to sustain the impugned resolution. Accordingly, the Writ Petition filed by the petitioner stands disposed of with the following directions:-

1) The Writ Petition filed by the petitioner is allowed.

2. The impugned resolution passed by the second respondent dated 31st July 2001, vide Annexure C is hereby set aside and the matter is remitted back to the second respondent for reconsideration of the matter afresh.

3. Further, the second respondent herein is directed to proceed with the matter in strict compliance of the mandatory provisions of the Act and Rules, after affording an opportunity of hearing to the petitioner, as expeditiously as possible.

7. For the foregoing reasons, the Writ Petition filed by the petitioner succeeds and stands disposed of.