

(2006) 05 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 26158 of 2005

K. Sippe Gowda

APPELLANT

Vs

The High Court of Karnataka and Others

RESPONDENT

Date of Decision : 29-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2
Constitution of India, 1950 — Article 212, 226, 229, 229 (1), 235
General Clauses Act, 1897 — Section 16

Citation : (2006) 3 KCCR 1716

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : H. Subramanya Jois, for Vagdevi Associates, for the Appellant; S.S. Naganand, for Sundaraswamy Ramdas and Anand for R1 and R3, for the Respondent

Judgement

N. Kumar, J.—The petitioner, a dismissed Court Officer of the High Court of Karnataka has challenged in this writ petition the order of dismissal on several grounds. He has arrayed as the first respondent-The High Court of Karnataka represented by its Registrar General, the Hon'ble Chief Justice of the High Court of Karnataka as the second respondent and the Registrar (Judicial) as the third respondent. The second respondent is arrayed as party respondent because he is the disciplinary authority who has passed the order of dismissal. The Office has raised an objection on scrutiny of the papers to the effect that the petitioner should state in the cause-title who is the authorized representative of the second respondent. The petitioner in reply to the said office objection has stated, that the disciplinary authority who has passed the impugned order has been rightly impleaded in the said capacity as the administrative/disciplinary actions of the Hon'ble Chief Justice have been questioned. The said authority has been impleaded eo nomine, a party to the petition. Therefore, the matter was placed before the Court for orders on this office objection.

2. From the office objections and the explanation offered by the petitioner as

aforesaid, the question that arise for consideration is as under:

(a) When the Chief Justice of a High Court as a Disciplinary Authority passes an order imposing a penalty on an employee of the High Court, in a writ petition filed challenging the said order, whether he should be made eo nomine a party?

(b) If he is made eo nomine a party who should represent him before the Court?

3. On the aforesaid question, I have heard Sri. H. Subramanya Jois, learned Senior Counsel for the petitioner and Sri S.S. Naganand, Learned Senior Counsel for the respondents.

4. In order to resolve this Controversy it is necessary to look into the Constitutional Provisions which are relevant.

Article 229 deals with the power of the Chief Justice of the High Court in the matter of appointments and disciplinary proceedings of the officers and servants of the High Court which reads as under.

229. Officers and servants and the expenses of High Courts.

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct: Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the consolidated Fund of the State, and any fees or other money taken by the Court shall form part of that Fund.

5. However, Article 235 of the Constitution deals with the power of the High Court in the matter of control over the Subordinate Courts reads as under:

235. Control over Subordinate Courts - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right

of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

6. The Constitution of the High Court is dealt with by Article 216 which reads as under:

216. Constitution of the High Courts - Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

7. Article 229 of the Constitution confers exclusive power on the Chief Justice of the Court to make appointments of officers and servants of the High Court, subject to the provisions of any law made by the Legislature of the State. The conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court provided the rules made under the said clause shall so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. In so far as the Chief Justice of the High Court is concerned, he has a dual personality. One on the Judicial side and another on the administrative side. On the judicial side he would be a part of High Court as every High Court shall consists of Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. On the administrative side he is the supreme authority in the matter of High Court establishment, and he is the sole authority.

8. A Constitution Bench of the Supreme Court in the case of *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, , in dealing with the status of the Chief Justice under the Constitution has held as under:

8. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with Clause (2) of Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the legislature cannot abridge or modify the powers conferred on the Chief Justice

under Clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval....

9. ...Thus Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him. apart from the special situation contemplated by the proviso to clause (1) the only exception is that the Governors approval must be sought to the extent the rules relate to salaries, leave or pension. This exception, it is abundantly clear, had to be made because the finances have to be provided by the Government and to the extent there is any involvement of expense the Government has to approve of it.

9. A Constitution Bench of the Supreme Court in the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , dealing with the power of the Chief Justice in the matter of appointment of personnel of the High Court under Article 229 of the Constitution, explaining the word "appointment" held as under:

27. Now, let us see what is the ambit and scope of the power of "appointment" in Article 229(1). In the context of Article 229, read as a whole this power is of wide amplitude. The word "appointment" in Article 229(1) is to be construed according to the axiom that the greater includes the less. This cardinal canon of interpretation underlies Section 16 of the General Clauses Act which has been made applicable by Article 317(1) of the Constitution. Construed in the light of this juristic principle, the power of "appointment" conferred by Article 229(1) includes the power to suspend, dismiss, remove or compulsorily retire from service. In short, in regard to the servants and officers of the High Court, Article 229 makes the power of appointment, dismissal, removal, suspension, reduction in rank, compulsory retirement, etc., including the power to prescribe their conditions of service, the sole preserve of the Chief Justice and no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee, except to a very limited extent indicated in the provisos. In conferring such exclusive and supreme powers on the Chief Justice, the object which the Founding Fathers had in view, was to ensure independence of the High Court.

10. The Supreme Court in the case of High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another, , held as under:

18. This Article makes Chief Justice of the High Court the supreme authority in the matter of appointments of the High Court officers and servants. This Article also confers rule-making power on the Chief Justice for regulating the condition of service of officers and servants of the High Court subject to the condition that if the rules relate to salaries, allowances, leave or pensions, they have to have

the approval of the Governor of the State. If the Legislature of the State has made any law, the rules made by the Chief Justice would operate subject to the conditions made in that law.

23. Just as the Chief Justice of India is the supreme authority in the matter of Supreme Court Establishment including its office staff and officers, so also the Chief Justice of the High Court is the sole authority in these matters and no other Judge or officer can legally usurp those administrative functions or power.

32. ...A Judge of the High Court individually or all the Judges sitting collectively, as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any Constitutional amendment or amendment in the rules made by the Chief Justice nor can they create any avenue of promotion for the High Court Staff so as to be appointed on posts meant for officers in the Higher Judicial Service or the Judicial Service. The Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges who, however, can scrutinize his administrative action or order on the Judicial side like the action of any other authority....

36. Article 235 shows that the High Court has to exercise its administrative, judicial and disciplinary control over the members of the Judicial Service of the State. The word "control", referred to in this article, is used in a comprehensive sense to include general superintendence of the working of the subordinate courts, disciplinary control over the Presiding Officers of the subordinate courts and to recommend the imposition of punishment of dismissal, removal and reduction in rank or compulsory retirement. "Control" would also include suspension of a member of the Judicial Service for purposes of holding a disciplinary enquiry, transfer, confirmation and promotion.

37. The word "Control" under Article 235 meant exclusive and not dual control. It vests in the High Court and not in any Judge or Judges or any committee thereof. However, there is no bar to have an enquiry made by a Committee of several Judges against a member of the subordinate judiciary provided and report of the Committee is circulated to all the Judges and the ultimate decision is taken in the meeting of the Full Court.

38. What is, therefore, of significance is that although in Article 235, the word "High Court" has been used, in Article 229, the word ""Chief Justice" has been used. The Constitution, therefore, treats them as two separate entities in as much as "control over Subordinate Courts " vests in the High Court, but High Court administration vests in the Chief Justice."

40. As pointed out above, under the constitutional scheme, Chief Justice is the supreme authority and the other Judges, so far as officers and servants of the High Court are concerned, have no role to play on the administrative side, some judges, undoubtedly will become Chief Justice in their own turn one day, but it is

imperative under constitutional discipline that they work in tranquility. Judges have been described as "hermits." They have to live and behave like "hermits" who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat. This is necessary so that their latent desire to run the High Court administration may not sprout before time, at least, in some cases.

11. In the case of P.L. Lakhanpal Vs. A.N. Ray and Others, , a full Bench of the Delhi High Court held that, the office of the Chief Justice is distinctly different office from that of a Judge and normally The Chief Justice of the High Court is called the Chief Justice of that Court and not a judge of that Court. It does not mean that the Chief Justice of a High Court ceases to be a Judge of that Court. All that is meant is that the office of the Chief Justice of a High Court is a office different from the office of a Judge of the High Court and the former is normally called the Chief Justice of that Court and not a Judge of that Court. It does not mean that the Chief Justice of a High Court is not and cannot be properly called a Judge of that Court. The difference in the office of a Judge of a High Court and that of the Chief Justice of that Court lies only in the duties and functions to be performed by each of them. The Chief Justice of a High Court has duties which, are additional to his duties as a. Judge of that Court. But that does not mean that the Chief Justice of a High Court ceases to be or is not a Judge of that Court. For the judicial work, the Chief Justice is the Judge of the Court.

12. Therefore, the position of the Chief Justice under the Constitution is very clear and well settled. Article 229 makes the Chief Justice of the High Court the supreme authority in the matter of appointments of the High Court officers and servants, which includes the power to suspend; dismiss, remove or compulsorily retire from service. The said power is the sole preserve of the Chief Justice and no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee except to a very limited extent indicated in the provisos. In conferring such exclusive and supreme powers on the Chief Justice, the object which the Founding Fathers had in view, was to ensure independence of the High Court Under the Constitutional scheme, the Chief Justice is the supreme authority and the other Judges so far as officers and servants of the High Court are concerned, have no role to play on the administrative side. All though in Article 235 the word "High Court" has been used, the Constitution treats them as two separate entities in as ranch as control over subordinate Courts vests in the High Court but High Court administration vests in the Chief Justice. The Chief Justice has been vested with vide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges who, however, can scrutinize his administrative action or order on the judicial side like the action of any other authority. The office of the Chief Justice is distinctly different office from mat of a Judge of the High Court. Normally the Chief Justice of the High Court is called the Chief Justice of that Court and not a judge of that Court. The office of the Chief Justice of a High Court is an office different from the office

of a Judge of the High Court. The difference in the office of a Judge of a High Court and that of the Chief Justice of that Court lies only in the duties and functions to be performed by each of them. The Chief Justice of a High Court has duties which are additional to his duties as a Judge of that Court. But that does not mean that the Chief Justice of a High Court ceases to be or is not a Judge of that Court. For the Judicial work, the Chief Justice is the Judge of the Court.

13. Article 212 of the Constitution grants immunity to the proceedings of Parliament and the Legislature of the State. Neither the validity of any proceedings in the Parliament and Legislature of a State nor the conduct of business or for maintaining order, by any officer or member of Parliament or Legislature of State shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers. Similarly, Article 361 of the Constitution grants complete immunity from Court proceedings to the President, or the Governor of a State. They Shall not be answerable to any Court for the exercise and performance of the powers and duties of their office or for any act done or purporting to be done by them in the exercise and performance of those powers and duties. The proviso to the said Article makes it clear that nothing in the said clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

14. A Constitution Bench of the Supreme Court in the case of Rameshwar Prasad and Ors. v. Union Of India and Anr. AIR 2006 SCW 494, dealing with the constitutional immunity under Article 361 of the Constitution held that, a plain reading of the aforesaid Article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any Court for the exercise and performance of their powers and duties. The reason being that most of the actions are taken on aid and advice of Council of Ministers. However, it was made clear that the personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions: It was held that, under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by Union of India or the State, as the case may be. It was further clarified that, even in cases where the personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality it was held it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to President or Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than issue of direction by the Court to file an affidavit. The personal immunity under

Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides.

15. A similar identical provision conferring protection to the Chief Justice of High Court is conspicuously missing in the Constitution. Therefore, it is clear that the framers of the Constitution did not intend extending this complete immunity to the Chief Justice. In the absence of such express immunity being extended to the office of the Chief Justice it is not possible to infer any such immunity to the Chief Justice by implication. As stated earlier the Chief Justice has a dual capacity. As a Judge of the High Court on the judicial side when he passes an order the said order is challenged in the higher forums and in such proceedings the Chief Justice is not made a party as it is settled law that there is no necessity for impleading the Judicial Officer who disposes of the matter on the judicial side *Savitri Devi v. District Judge, Gorakhpur and Ors.*, Civil Appeal No. 932/1999 disposed of on 18.2.1999. However, on the administrative side as a disciplinary authority when he passes an order imposing a penalty on a servant of a High Court, it is an order which is amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. The question whether he should be impleaded as a party in such proceedings is to be decided, in the absence of any immunity under the Constitution, solely on the ground whether is he a necessary party as contemplated under Order X Rule 2 CPC. The only criterion would be that the necessary parties to be impleaded are those against whom the relief is sought and in whose absence no effective decision could be rendered by a Court. When an order of the disciplinary authority is challenged and the relief is sought for setting aside the said order and direction to the disciplinary authority to reinstate the employee in service, in order to effectually decide the validity of the order of dismissal and grant the relief of reinstatement the person who has passed the impugned order and the person who has to reinstate such an employee is a necessary party and his presence is very much required. As the order dismissing a servant from service is an administrative order, which is subject to judicial review, before any order is passed in setting aside such order, the person who has passed the said order ought to be heard and, therefore, necessarily he has to be made a party to such proceedings. Therefore, the Chief Justice of the High Court is a necessary party in a proceedings initiated, challenging the order passed by the Chief Justice under Article 229 of the Constitution.

16. The next question for consideration is even if the Chief Justice is made a party in such proceedings, who should represent the Chief Justice in such proceeding. Whether the Chief Justice himself should appear and contest the matter or he could be represented by an officer of the High Court. In the judgment by the Constitution Bench in the case of *Rameshwara Prasad* it was held, in a proceedings challenging the action of the President or Governor, such actions are to be defended by Union of India or the State as the case may be. Even in cases where personal mala fides are alleged and established they should

defend the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegations of mala fides are made.

17. Therefore, when Chief Justice is impleaded as a party, in such proceedings, having regard to the high office he holds under the scheme of the Constitution, though there is no immunity granted, he need not appear in those proceedings personally. He can defend his action through the Registrar of the High Court who in fact gives effect to his orders. In a case where mala fides are alleged against the Chief Justice, the Chief Justice if he chooses, can file an affidavit traversing those allegations. Therefore, whenever Chief Justice is made a party to the legal proceedings, he should be represented by the Registrar of the High Court.

Petitioner shall amend the cause title accordingly.