
(2003) 02 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 46608 of 2002

K.N. Kulkarni

APPELLANT

Vs

Karnataka Housing Board

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Housing Board Act, 1962 — Section 10 (5), 10 (6)

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 8, 9 (2)

Citation : (2003) 3 KarLJ 498 : (2003) 2 KCCR 1352

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : C.S. Jayaram, for the Appellant; K. Hiriyantha, for the Respondent

Final Decision : Allowed

Judgement

P. Vishwanatha Shetty, J.—The petitioner in this petition who was working as Assistant General Manager in the respondent-Karnataka Housing Board (hereinafter referred to as "the Board") in this petition has called in question the correctness of the order dated 13th December, 2002, a copy of which has been produced as Annexure-K to this petition, passed by the Commissioner of the Board reducing the petitioner from the rank of Assistant General Manager to the rank of Manager by way of penalty on account of certain charges of misconduct levelled and found proved against him.

2. The respondent-Board framed as many as five charges by means of Articles of Charges. The Enquiry Officer, on the basis of the materials available on record, has found that except Charge 3 all the other four charges were proved against the petitioner, by means of his report dated 14th March, 2002, a copy of which has been produced as Annexure-G to this petition. The Commissioner of the Board, on consideration of the report of the Enquiry Officer, passed order Annexure-K, as noticed by me earlier, imposing the penalty of reduction of rank of the petitioner from the rank of Assistant General Manager to the rank of

Manager. Aggrieved by the said order, this petition is filed.

3. Sri S.V. Narasimhan, learned Counsel appearing for the petitioner challenging the correctness of the impugned order Annexure-K made two submissions. Firstly, he submitted that since the Appointing Authority of the petitioner being the State Government, the Commissioner of the respondent-Board had no authority in law to pass the impugned order; and therefore, the impugned order is liable to be quashed on the ground that the same came to be passed by a person who had no jurisdiction to pass the said order. Secondly, he submitted that the finding recorded by the Enquiry Officer that the Charges 1, 2, 4 and 5 held proved against the petitioner is totally erroneous in law inasmuch as the said finding has been recorded in disregard of the materials available on record; and therefore, the Commissioner of the Board has seriously erred in law in passing the impugned order.

4. However, Sri M.K Motigi, learned Counsel appearing for the respondent-Board while strongly supporting the impugned order, made two submissions. Firstly, he submitted that since the petitioner has preferred an appeal against the impugned order, this petition is required to be dismissed on the ground that the petitioner has already availed of alternative remedy available to him. Secondly, he submitted that the Housing Commissioner of the respondent-Board being the Chief Executive and Administrative Officer of the Board and also he has been conferred with all the powers of a major Head of the Departments of the State Government under the Karnataka Civil Services Rules (hereinafter referred to as "the KCSR"), he has passed the impugned order in exercise of the power conferred on him under Sub-sections (5) and (6) of Section 10 of the Karnataka Housing Board Act, 1962 (hereinafter referred to as "the Act"). He further submitted that since the Enquiry Officer, on consideration of the evidence on record, has found that except Charge 3, the other four charges levelled against the petitioner have been proved, the conduct of the petitioner totally disentitles him for any equitable relief at the hands of this Court in exercise of its power conferred under Articles 226 and 227 of the Constitution of India. Relying upon the notification dated 9th May, 2001 issued by the Housing Board framing "Draft Rules" known as the Karnataka Housing Board (Cadre, Recruitment and Conditions of Service) Rules, 2000, Sri Motigi submitted that under the Draft Rules, the Commissioner is made both as Appointing Authority and Disciplinary Authority in respect of the post of Assistant General Manager. Therefore, he submits that the impugned order having been passed, the Disciplinary Authority is not liable to be interfered with by this Court.

5. In the light of the rival contentions advanced by the learned Counsels appearing for the parties the only question that would arise for consideration in this petition is as to whether the order Annexure-K, dated 13th December, 2002 passed by the Commissioner of the Board, is liable to be quashed by this Court?

6. It is not in dispute that the respondent-Board, for the purpose of disciplinary proceedings concerning the employees of the respondent-Board, has made

applicable the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as "the CCA Rules"). It is useful to refer to Clauses (i) to (v) of Rule 8 and Clauses (bb) and (c) of Sub-rule (2) of Rule 9 of the Rules. The said Rules read as follows:

"8. Nature of Penalties.--xxx xxx

(i) Fine in the case of Government servants belonging to State Civil Services, Group "D";

(ii) Censure;

(iii) Withholding of increments;

(iii-a) Withholding of promotion;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the State Government or to the Central Government, any other State Government, any person, body or authority, to whom the service of the officer had been lent;

(iv-a) Reduction to a lower stage in the timescale of pay for a period with a specific direction as to whether or not the Government servant will earn increments of pay during the period of such reduction with reference to the reduced pay or whether the pay shall remain constant and with a further direction whether on the expiry of the period of penalty the reduction will or will not have the effect of postponing the future increments of his pay;

(v) Reduction to a lower timescale of pay, grade, post or service which shall, unless otherwise directed, be a bar to the promotion of the Government servant to the timescale of pay, grade, post or service from which he was reduced, with or without further directions regarding.--

(a) Seniority and pay in the scale of pay, grade, post or service to which the Government servant is reduced;

(b) Conditions of restoration to the scale of pay, grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that scale of pay, grade, post or service.

xxx xxx xxx

9. Disciplinary Authorities.--(1).....

(2)(bb) The Heads of the Departments may impose on a member of the State Civil Service, Class II, any of the penalties specified in Clauses (ii), (iii) and (iii-a) of Rule 8;

(c) Any of the penalties specified in Rule 8 may be imposed on a member of a State Civil Service by the Appointing Authority or the authority specified in the Schedules in this behalf.

7. In the impugned order, the petitioner who was in the rank of Assistant General Manager has been reduced to the rank of Manager. It cannot be disputed that the penalty of imposing the reduction of rank is one of the major penalties provided under Rule 8 of the Rules. While Clause (c) of Sub-rule (2) of Rule 9 of the Rules confers power on the Appointing Authority or the authority specified in the Schedules given to the Rules on that behalf, to impose any penalty specified in Rule 8 of the Rules to a member of the State Civil Services, Clause (bb) of Sub-rule (2) of Rule 9 of the Rules confers power on the Head of Department to impose penalty on a member of a State service, Class II, any of the penalties specified in Clauses (ii), (iii) and (iii-a) of Rule 8 of the Rules. Clauses (ii), (iii) and (iii-a) of Rule 8 of the Rules provides for imposition of minor penalty. The petitioner is in the cadre of Group "A" Officer. Since the CCA Rules have been adopted by the Board, the penalty imposed being one which does not fall within Clauses (ii), (iii) and (iii-a) of Rule 8 of the Rules, in view of Clause (c) of Sub-rule (2) of Rule 9 of the Rules, it is only the Appointing Authority who is empowered to impose major penalty on the petitioner. Therefore, so far as the petitioner is concerned, the Appointing Authority would be the State Government. Therefore, from the plain reading of Rules 8 and 9 of the Rules referred to above, it is clear that the penalty in question could not have been imposed on the petitioner.

8. However, in the light of the submission made by Sri Motigi that the Commissioner of the Board, in exercise of the power conferred on him under Sub-sections (5) and (6) of Section 10 of the Act, has passed the impugned order, let me examine the said contention.

9. For the said purpose, it will be useful to refer to Sub-sections (5) and (6) of Section 10 of the Act, which reads as hereunder:

"10(5) The Housing Commissioner shall be the Chief Executive and Administrative Officer of the Board. He shall, in addition to performing such functions as are conferred on him by or under this Act or under any law for the time being in force, operate the accounts of the Board and be responsible for the maintenance of accounts of the Board. He shall also be responsible for implementing the housing schemes, land development schemes and labour housing schemes of the Board.

10(6) The Housing Commissioner shall have all the powers of a major Head of the Department of the State Government under the Karnataka Civil Services Rules for the time being in force as respects the officers and the servants of the Board".

10. Sub-section (1) of Section 10 of the Act confers power on the State Government to appoint an officer not below the rank of Deputy Commissioner to be the Housing Commissioner of the Board. Sub-section (5) of Section 10 of the Act, strongly relied upon by Sri Motigi, provides that the Housing Commissioner of the Board shall be the Chief Executive and Administrative Officer of the Board;

and under the said provision, in addition to the power conferred on him under the Act or under law, he is also conferred with the power to operate the accounts of the Board and made responsible for the maintenance of the accounts of the Board and implementing the housing schemes, land development schemes and labour housing schemes of the Board. Sub-section (6) of Section 10 of the Act further provides that the Commissioner shall have all the powers of the major Heads of the Department of the State Government and the Karnataka Civil Services Rules for the time being in force as respects the officers and the servants of the Board. The reading of Sub-section (5) of Section 10 of the Act, it appears to me that it does not confer any power on the Commissioner of the Board, merely because he was made as Chief Executive and Administrative Officer of the Board to impose the penalty in question as the disciplinary proceedings in respect of the employees of the Board is made governed by the CCA Rules of the Board. For the same reason, when the CCA Rules are made applicable to the employees of the Board, though the Commissioner of the Board is conferred with the power of major Heads of the Department under Sub-section (6) of Section 10 of the Act, it is not permissible for him to pass the impugned order. So far as the disciplinary proceedings of the employees of the Board are concerned, it is only the authorities who are specified under the CCA Rules who are competent to impose the punishment. Sri Motigi has also not been able to show to me that under the CCA Rules, the power is conferred on the major Heads of the Department of the State to impose a major penalty to the officer who is in the rank of the petitioner. Therefore, I am unable to accede to the submission of Sri Motigi that since the Commissioner of the Board being both Chief Executive and Administrative Officer of the Board and also is conferred with the power of the major Heads of the Department, he was competent to pass the impugned order. The Rules known as Karnataka Housing Board (Recruitment and Conditions of Service) Rules, 1988 (hereinafter referred to as "the Recruitment Rules") framed by the Board in exercise of the power conferred on it u/s 74 of the Act provides that the State Government is the Appointing Authority to the Officer in the cadre of Group "A". Therefore, there cannot be any doubt that so far as the petitioner is concerned, the Appointing Authority is the State Government.

11. Now, one other question that is required to be considered is as to whether the respondent-Board can be considered as a Disciplinary Authority in view of the Draft Rules framed by the respondent-Board relied upon by Sri Motigi?

12. It is not the case of Sri Motigi that subsequent to the issue of the Karnataka Housing Board (Cadre, Recruitment and Conditions of Service) Rules, 2000 (hereinafter referred to as "the draft rules"), regular rules have been framed by the respondent-Board. As it could be seen from the preamble to the notification dated 9th May, 2002 issued framing the draft rules, the same has been published for the information of the persons likely to be affected thereby; and inviting objections/suggestions from such of those persons who intend to file objections to the said draft rules. It is not the case of the Counsel for the respondent-Board

that the draft rules has been subsequently made as rules in terms of the provisions contained in Section 74 of the Act. After the issue of draft rules, there has not been any notification issued notifying it as Rules. Sub-section (1) of Section 74 of the Act provides that the State Government may, by notification, subject to the condition of previous publication, make rules for carrying out the purpose of the Act. Clause (a) of Section 2 of the Act provides "notification" means notification published in the Official Gazette. Therefore, it is clear that unless a notification is issued and published in Official Gazette, the rule will not come into force. The draft rules cannot be placed in par with the rules framed by the respondent-Board. Therefore, merely because, the draft rules have been published in Karnataka Gazette and in the said draft rules Commissioner is made as the Appointing Authority to the officers in the cadre of Assistant General Manager, in my view, is not a ground to take the view that the impugned order has been passed by the Appointing Authority. I am also of the view that there is also no merit in the contention of Sri Motigi that since the petitioner has filed an appeal, this Court should refuse to examine the correctness of the order impugned. In the light of my conclusion that the order impugned is one without authority of law, I find it unnecessary to go into the question as to whether the petitioner has a right of appeal against the order impugned or not. In my view, even assuming that the petitioner has right of appeal, since the order impugned is passed by the Commissioner of the Board who had no authority to pass the impugned order, is not a ground for this Court to refuse to interfere against the order impugned.

13. In the light of the discussion made above, I make the following:

ORDER

1. Order Annexure-K, dated 13th December, 2002 is hereby quashed and the respondent is directed to extend all the consequential benefits flowing therefrom to the petitioner;

2. However, liberty is reserve with the authorities to pass fresh orders in accordance with law and in the light of the observation made above.

14. In terms stated above, this petition is allowed. Rule is issued and made absolute. However, no order is made as to costs.