
(1967) 11 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 1567 of 1965

K.S. Rajasekhariah

APPELLANT

Vs

The State of Mysore and Another

RESPONDENT

Date of Decision : 08-11-1967

Acts Referred:

Mysore Civil Services Rules, 1958 — Rule 212, 289

Citation : AIR 1968 Kar 206 : (1967) 2 MysLJ 612

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

Somnath Iyer, J.—An Executive Engineer who retired on superannuation on January 9, 1965 is the petitioner before us. In this writ petition which he presented in August, 1965 he makes two complaints. The first is that he was improperly excluded from promotion to the post of a Superintending Engineer during the long period between June, 1963 and the date of his retirement. The second is that in a disciplinary proceeding which was commenced against him when he was still in service, a punishment in the nature of a reduction of pension was imposed on him after his retirement which was not permissible.

(2) Mr. Keshava Iyengar appearing for the petitioner informed us that the petitioner does not press in this writ petition, the contention concerning his exclusion from promotion. He seeks permission to withdraw from that part of the writ petition with liberty to pursue other remedies such as might be available to him in that regard. We grant him permission to withdraw from that part of the writ petition in that way, reserving liberty for him to pursue such other remedies as may be available to him if he chooses to do so.

(3) So, the only restricted investigation which we should make is into the complaint that there was an improper imposition of punishment after the petitioner's retirement.

(4) To understand the contention urged in this context, it will be necessary to

refer to the events which preceded the reduction which was made of the petitioner's pension. When the petitioner was the Executive Engineer of the Bangalore Division, certain shortages of cement and steel in the stores under his control were discovered, and, in the context of that discovery, Government directed an enquiry in May, 1963. On November 18, 1964 when the petitioner was still in service, a charge sheet which contained the charges against him was delivered to him, but the disciplinary proceeding concerning those charges did not conclude before the petitioner retired. On the basis of a report subsequently forwarded to Government by the enquiring authority, Government made the impugned order on May 31, 1965 which reads:--

"* * *

Sri K. S. Rajasekharaiah, Executive Engineer was one of the officers involved in this case against whom the departmental enquiry was ordered in Government orders referred to above. The Deputy Director of Anti-corruption and Inspection accordingly held the departmental enquiry and has forwarded his report to Government along with the records of enquiry. The findings of the Enquiry Officer against Sri K. S. Rajasekharaiah, Executive Engineer are that all the charges except the charges at (g) and (k) framed against him are proved and that the services of Sri K. S. Rajasekharaiah may, therefore, have to be treated as unsatisfactory and his pension reduced by 1/4. After examining the findings of the Enquiry Officer and the record of the enquiry Government agree with the findings of the Enquiry Officer and record the same accordingly and pass the following orders.

Order No. PWD 9 EDA 63,

Bangalore, dated 31st May 1965.

Government hereby order that the service of Sri. K. S. Rajasekharaiah, Executive Engineer, should be treated as unsatisfactory for the purpose of pension and further order that his pension should be reduced by 1/4th under the M. S. Rs. or M.C.S Rs. which are applicable to him.

By order and in the name of the Governor of Mysore.

Sd/- S. C. Wali, Under Secretary to Government., P. W. & Electricity Department.

(5) Although it is true that by an order made by Government on January 5, 1965 by which the petitioner was placed under suspension it was directed that he shall be retained in service to enable the conclusion of the disciplinary proceeding, Mr. Special Government Pleader had to admit that the continuance of the disciplinary proceeding after he attained the age of superannuation of January 9, 1965 when he retired, or his retention in service for the continuance of the disciplinary proceeding, was not permissible. It is now well settled that a disciplinary proceeding against a Government servant comes to an end when he retires and there is no power in Government to retain him in service so that a punishment may be imposed on him in a pending disciplinary proceeding. That,

that is so, was not disputed by Mr. Government Pleader, and so, it is unnecessary for us to refer the decisions which make that enunciation.

(6) Mr. Keshava Iyengar contended that, if the continuation of the disciplinary proceeding was not possible after January 9, 1965 when the petitioner retired, it was not within the competence of Government to impose a punishment in those disciplinary proceedings. His further contention was that the reduction of the petitioner's pension is a punishment imposed in the disciplinary proceeding which started against the petitioner before he retired, and that the imposition of a punishment in that form is not authorised by Civil Services (Classification Control and Appeal) Rules.

(7) It is true that reduction of pension is not one of the punishments which is contained in the enumeration of rule 8 of the Civil Services (Classification, Control and Appeal) Rules and so such reduction cannot be made in a disciplinary proceeding by way of penalty or punishment. But Mr. Venkataramaiah contended that the pension was reduced not as a punishment imposed in a disciplinary proceeding, but that that reduction was made in the exercise of power created by rules 212 and 289 of the Mysore Civil Services Rules.

(8) Rule 212 authorises Government to reduce the pension of a Government servant whose service has not been thoroughly satisfactory. Rule 289 (b) says that, if the service has not been thoroughly satisfactory the authority sanctioning the pension could reduce it to the extent it thinks proper. Both in the counter-affidavit produced on behalf of the State Government and in the course of the argument placed before us by Mr. Government Pleader, the assertion made was that the reduction of the pension against which the petitioner complains was made in the exercise of power created by those provisions. But it is clear from the Government Order that such reduction was not possible only on a finding that the service of the Government servant has not been "thoroughly satisfactory" as rules 212 and 289 state. No such finding was recorded by Government in the impugned order. In the two places in which that order refers to the service of the petitioner, all that is stated is that his service has to be treated as unsatisfactory. Government did not form the opinion that the service of the petitioner was thoroughly unsatisfactory. In the absence of a finding to that effect, the reduction of the pension of the petitioner was beyond the competence of Government, and, we therefore quash the impugned order by which there was such reduction of pension.

(9) No costs.

(10) Petition allowed