

(2006) 07 KAR CK 0039
In the Karnataka High Court
Case No : Writ petition No. 18664 of 2001

K.S. Rajegowda

APPELLANT

Vs

The Karnataka Electricity Board, The Karnataka Power
Transmission Corporation Limited, The Karnataka Lokayukta
and The Deputy Registrar of Enquiries II

RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Karnataka Electricity Board Employees (Classification Disciplinary, Control and Appeal)
Regulations, 1987 — Regulation 14A, 14A (1)

Citation : (2006) ILR (Kar) 4129 : (2006) 6 KarLJ 424

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Subbarao and M. Narayana Bhat, for the Appellant; Naganand
Naganand Sundaraswamy Ramadas and Anand, for R1 and R2 and R.B.
Sathyanarayana Singh, HCGP for R3 and R4, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—This writ petition is directed against the 4th respondent's order, dt.20-2-2001 (Annex. H) rejecting the petitioner's preliminary objections regarding the jurisdiction of Inquiring Authority.

2. The brief facts of the case are that the petitioner was allegedly caught red-handed while accepting certain bribe amounts in June 1997. This resulted in the order suspending the petitioner from services on 5-7-1997. This suspension order was revoked on 16-5-1998. Thereafter he retired from service on 31-3-1999. The 1st respondent-Board in exercise of its power conferring by 14A(1) of the Karnataka Electricity Board Employees Classification Disciplinary Control and Appeal Regulations, 1987 (hereinafter called 1987 Regulations) ordered domestic enquiry against the petitioner. The enquiry was entrusted to the Hon'ble Upalokayukta. The Deputy Registrar, by virtue of the powers conferred on him by the Hon'ble Upalokayukta, issued the articles of charges on 28/3/2000.

3. The petitioner raised the preliminary objections to the holding of the domestic enquiry on two counts - (a) Regulation 14A(1) of the 1987 Regulations has no application for him, as he has retired from service (b) The Court of the Prl. Sessions Judge and Special Judge, Hassan is seized of the whole matter. The contemplated domestic enquiry proceedings and the trial in the criminal proceedings are on the same set of facts; the names of witnesses and the documents figuring in both the lists are one and the same. Therefore, if he is forced to defend himself in the enquiry proceedings, it would subject him to prejudice in the pending criminal proceedings. The 4th respondent overruled the preliminary objections raised by the petitioner by his order, dt 20-2-2001. Aggrieved by the initiation of the disciplinary proceedings and the rejection of his preliminary objections by the 4th respondent this petition is instituted. By virtue of the granting of the interim order by this Court on 30-4-2001, no further proceedings have taken place.

4. Sri Subba Rao, the learned Senior Counsel for Sri Narayana Bhat appearing for the petitioner made the following submissions:

(a) (i) No disciplinary proceedings can be initiated, once an employee retires from service, He has relied on a Division Bench Judge of this Court in the case of S. Subba Rao Vs. State of Mysore and Another, , wherein it is held that the disciplinary proceedings cannot be continued after the Government servant reaches the age of superannuation. He submits that in the reported case the proceedings were initiated but were not allowed to be completed. But in the instant case, no proceedings were initiated before the petitioner retired.

(a)(ii) Sri Subba Rao also sought to draw support from yet another Division Bench judgment of this Court in the case of K.S. Rajasekhariah Vs. The State of Mysore and Another, , wherein it is held that the disciplinary proceedings against a Government servant comes to an end, when he retires. There is no power in the Government to retain him in service so that a punishment may be imposed on him in the pending disciplinary proceedings.

(a)(iii) He further submits that an employee cannot be suspended and retained in service for the purpose of completing the pending departmental enquiry proceedings. In support of his submission, he has relied upon a judgment in the case of State of Assam and Ors. v. P.R. Bola reported in AIR 1965 SC 473.

(b) Sri Subba Rao brings the subsequent development to the notice of this Court by filing I.A.I/04. The Court, of Prl. Sessions Judge and Special Judge Hassan has acquitted the petitioner by his judgment, dt. 27/8/2004. In view of his acquittal, nothing survives for any consideration of the charge sheet (Annex. A). He submits that the subject matter of the charge sheet (Annex. A) and the subject matter of the trial in Spl. Case No. 14/98 is one and the same. The two are founded on the same set of facts involving the same witnesses and A.B.H. documents. Therefore the disciplinary proceedings in question are liable to be dropped. In this regard, he has cited two decisions - 1) Capt. M. Paul Anthony

Vs. Bharat Gold Mines Ltd. and Another, , 2 (2006) AIR SCW 2709.

(c) The 1st respondent-Board's order, dt. 6/3/2000 directing the domestic enquiry against the petitioner in exercise of Regulation 14A(1) of 1987 Regulations is without the authority of law. The said provision can be invoked only for the purpose of proceeding against the serving employees and that too for inflicting the enumerated penalties, if the charge sheeted employee is found guilty. However, in the instant case, the petitioner has retired from the services of the 1st respondent-Board (now 2nd respondent).

5. Per contra, Sri Naganand, the learned Senior counsel for M/s Sundaraswamy Ramdas & Anand, Advocates, appearing for the respondents 1 and 2 has made his reply submissions as follows:

(a) This writ petition itself is premature, as the petitioner virtually challenges the show cause notice. It is always open to the petitioner to prove his innocence by availing of the opportunity to take part in the enquiry proceedings.

(b) If the Management incurs pecuniary loss on account of misconduct or negligence of its employee, it is open to the Management to initiate the departmental proceeding even after his retirement from service. In this regard, he relies on a judgment of the Apex Court in the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, . The relevant portion of the said judgment is extracted here in below:

6. ...If the government incurs pecuniary loss on account of misconduct or negligence of a government servant, and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings he is found guilty of misconduct, negligence or any other such act or omission as a result of which government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. These provisions ordain the government servant to perform his duties faithfully and honestly. Honest and devoted service rendered by a government servant ensures efficiency in public administration. The statutory rules therefore contain provisions for the forfeiture and deduction in the pension of government servants who have not rendered satisfactory service or who may have been found guilty of misconduct or negligence resulting in pecuniary loss to the government. Merely because a government servant retires from service on attaining the age of superannuation he cannot escape the liability of misconduct and negligence or financial irregularities.

(c) Sri. Naganand, the learned Senior Advocate submits that Regulation 171 of Karnataka Electricity Board Employees' Service Regulations, 1966 (hereinafter called 1966 Regulations) are akin to the provisions contained in CCS (Pension) Rules, 1972. While interpreting the latter, the Hon'ble Supreme Court in the case of Union of India and Others Vs. Shri B. Dev, , has negated the contention that Rule 9 cannot be invoked in cases of grave misconduct unless pecuniary loss is

caused to the government Drawing support, from the said judgment, the learned Senior Counsel submitted that the power conferred on the respondent. No. 1 can be exercised in all cases where the pensioner is found guilty of misconduct or negligence.

(d) Sri Naganand submits that the standard of proof required in criminal proceedings for convicting an accused is far higher than the degree of proof required in domestic enquiry proceedings for indicting a delinquent of a charge. He refers to a judgment of this Court passed on 27-09-2005 in W.P.No. 51459/2004(S), after considering a catena of judgments in the matter. The relevant portion of the said unreported order is extracted hereinbelow:

9. ...Even where the criminal court has honourably acquitted the accused, the Apex Court has held that the initiation and continuation of disciplinary enquiry could be justified in given facts and circumstances. Reliance placed by the petitioner in this regard on the decision rendered by the Apex Court in the case of Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sanghs and Anr. (2004) (8) SCC 2002 is well founded A full Bench of this Court in the case of T.V. Gouda v. State of Mysore and Anr. ILR 1975 KAR 595 has held that the scope of enquiry and the nature of evidence required in the criminal trial and for the purpose of establishing the allegations of misconduct in the disciplinary enquiry are totally different and there was no bar for proceeding with the disciplinary enquiry even after the delinquent is acquitted of the charges leveled against him. The enunciation of law by the Apex Court and also by this Court as referred to above would unmistakably show that there is no bar for the bank to proceed with the enquiry in the instant case despite the fact that the criminal court has found the accused not guilty. Reliance placed by the counsel for the petitioner on the decision of the Apex Court in M. Paul Anthony's case is not apposite to the facts of the instant case. In this view of the matter, I do not find any merit in the contention urged by the teamed counsel for the petitioner.

(e) Sri Naganand submits that the right of initialing the disciplinary proceedings is inherent in the master. This being the position, whether or not any Act, Rules or the Regulations provide for holding the enquiry, the same can always be held in accordance with the principles of natural justice.

(f) Sri Naganand brings to my notice the deeming provision contained in explanation ?a? to Regulation 171 (d) of 1966 Regulations. It states, inter-alia that the departmental proceedings shall be deemed to have been instituted on the date on which an employee is placed under suspension. In the instant case, it is not in dispute that he was suspended on 5-7-1997. Therefore the departmental proceedings are deemed to have been initiated on 5-7-1997, on which date he was suspended from service; the same can be continued after 31-3-1999, on which date he retired. He submits that this position does not get altered, even when his suspension is revoked on 16-5-1998.

6. In the course of his rejoinder submissions, Sri Narayan Bhat, the learned

Counsel for the petitioner urged the following contentions:

(a) 1987 Regulations have no application whatsoever for the petitioner, as he is not a serving employee. The said Regulations govern the service conditions only of the serving employees of the first respondent - Corporation. He brings to my notice the definition of "Board Employee" contained in Regulation 2(c) of 1987 Regulations: "BOARD EMPLOYEE" means a person on monthly rate of pay in any establishment in the Board and includes any person whose services are temporarily placed at the disposal of the Central/State Government or a Local authority, whether working in the Board or on deputation to the Government or any other organisation.

(b) Thus, as the said definition does not cover the retired employees, the order of the respondent Nos. 1 and 2 entrusting the enquiry to the respondent No. 3 in exercise of their power under Regulation 14(A)(i) of 1987 Regulations is absolutely bad. Sri Naganand quickly joins the issue with Sri Bhat by pointing out the qualifying words contained in Regulation 2 "unless the context otherwise requires" The present context requires that the term "Board Employee" should be construed so as to include the Board's former employees also. If such a purposive interpretation is not given, it would have the effect of defeating the very intendment of framing of 1987 Regulations.

(c) Sri Bhat submits that once suspension is revoked, it cannot be said that the effect of suspension still persists for certain purposes. Once the suspension order is revoked, the respondent Nos. 1 and 2 cannot fall back on the deeming provision contained in explanation "a" to Regulation 171 (d) of 1966 Regulations.

(d) Sri Bhat brings to my notice the statement of the respondent. No. 1 in the preamble part, of its order dated 6-3-2000 (Annexure-G). It states that the petitioner was reinstated into service with the liberty to the respondent No. 1 to take steps depending on the outcome of the criminal case and the outcome of the disciplinary proceedings, if initiated. Therefore as on the date of issuance of the said order, dated 6-3-2000, the disciplinary proceedings were not initiated.

(e) Sri Bhat also points out that the scope of Regulation 171 of 1966 Regulations and that of Regulation 14A(1) of 1987 Regulations are entirely different. Regulation 14A deals with the special procedure in certain cases of misconduct. The said Regulation 14A is invoked for imposing the major and minor penalties contained in Regulation 9 of 1987 Regulations. On the other hand, recourse to Regulation 171 of 1966 Regulations can at the most result in withholding or withdrawal of pensions and recoveries therefrom.

(f) Sri Bhat submits that as Regulation 14A of 1987 Regulations cannot be invoked because the petitioner has retired from service and further that Regulations 171 also cannot be invoked because the suspension order is revoked. He further submits that Regulation 171(b) provides for the institution of the departmental proceedings while the employee is not in service. But the same cannot be done without the sanction of the Board; in the instant case, no

sanction of the Board is taken after the retirement of the petitioner on 31-3-1999.

7. Considering the rival submissions made at the bar, the soundness of the orders and the acts in question is to be examined. I find considerable force in the submissions of the petitioner's side that Regulation 14A is not invocable on the petitioner ceasing to be in the services of the respondent Nos. 1 and 2. The submission of the contesting respondents that, the definition of "Board Employee" has to be given a broader interpretation so as to include Board's ex-employees also does not commend itself to me. The exercise of power under Regulation 14A has a serious consequence for the petitioner. As the proceedings initiated pursuant to the passing of the order, dated 6-3-2000 (Annexure-G), in exercise of power contained in Regulation 14A, are of quasi-judicial nature, they call for strict interpretation. Therefore I have no hesitation in holding that a retired employee is not amenable to the jurisdiction of the Disciplinary Authority under Regulation 14A of the 1987 Regulations.

8. The petitioner's contention that the suspension cannot be saved once it is revoked is not tenable. It merits no serious consideration in view of the subsequent development of the respondent No. 1-Board giving its sanction for the institution of the departmental proceedings against the petitioner by entrusting the departmental enquiry to the Hon'ble Upalokayukta. As the respondent No. 1-Board has given the sanction on 19-1-2000, which is within four years from the date of the incident-20-6-1997, the date on which the petitioner was allegedly caught red-handed, there is no legal impediment for proceeding with the enquiry proceedings in question. The same are in accordance with Regulation 171(1)(b)(i) and (ii) of 1966 Regulations, which are extracted hereinbelow:

(b) such departmental proceedings, if not instituted while the employee was in service, whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Board.

(ii) shall not be in respect of any event which took place more than 4 years before such institution;

9. Sri Sreeranga, learned Counsel for the respondent NOS. 1 and 2, secured the original records and placed it before me. My scrutiny of the agenda note for the aforesaid resolution reveals that the Board considered the whole matter under 171(b) of 1966 Regulations, Merely because a wrong provision was invoked and/or mentioned in the first respondent's order, dated 06-03-2000 (Annexure-G), the same cannot be held to be bad. It may be profitable to mention to a judgment of the Apex Court in the case of B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., , wherein it is held that the omission or error in mentioning the correct provision of law, by itself would not denude the power of the authority to take action so long as the same is traceable to a statutory power governing such action. Thus, viewed in the factual and legal matrix of this case, the view of the respondent No. 4-

Deputy Registrar of Enquirer-II that quoting of a wrong provision of law will not vitiate the proceedings cannot be found fault with.

10. As far as the learned Senior Counsel, Sri Subbarao's contention that the acquittal of the petitioner in the criminal case entitles him to his automatic exoneration from the disciplinary proceedings is concerned, what weightage is to be given to the said judgment of the criminal court in the domestic enquiry proceedings is best left, to the respondents. Even assuming that the criminal case and the domestic enquiry proceedings are founded on the same set of facts involving the examination of the same witnesses and documents, there is no legal impediment in conducting the domestic enquiry. It is trite position in service jurisprudence that the standard of proof required in criminal proceedings is far higher than what is required in domestic enquiry proceedings. Regulation 171 ordains the Board employees to perform their duties faithfully and honestly; if they are guilty of misconduct or negligence, the respondent Nos. 1 and 2 are entitled to withhold or withdraw the pensions and effect recoveries therefrom.

11. The respondent Nos. 3 and 4 may conclude the enquiry proceedings. Thereafter it is for the respondent No. 2 to pass appropriate orders depending on the outcome of the enquiry proceedings and its independent assessment of the same. But the penalties, if any, shall not be more than what Regulation 171 of 1966 Regulations provides for. I make it amply clear that even if the disciplinary proceedings culminate against the petitioner, the penalties enumerated in Regulation 9 of 1987 Regulations cannot be imposed upon the petitioner.

12. This writ petition is allowed in part No order as to costs.