

(2016) 02 KAR CK 0381

In the Karnataka High Court

Case No : Writ Petition Nos. 36917 to 36919 of 2015 (GM-KIA)

K.S. Shivalingappa

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 14

Citation : (2016) 3 KantLJ 589

Hon'ble Judges : Jayant Patel and B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Rajeswara P.N., Advocate, for the Appellant; H.B. Mahesh, Government Pleader, Mallikarjun C. Basareddy, Advocate and Basavaraj V. Sabarad, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Patel, J.—Rule.

2. Learned Counsel for respondents waives notice of rule.

3. The matter is finally heard.

4. The petitioner has preferred the present writ petitions seeking an appropriate writ to quash and set aside the order passed by the respondent namely, Hon'ble Upalokayuktha as well as respondent 2, whereby the enquiry was commenced and action initiated by framing of charges. The petitioner has also prayed for the consequential relief to quash the charge-sheet issued pursuant to the above order passed by the Upalokayuktha.

5. We have heard Mr. P.N. Rajeswara, learned Counsel for the petitioner, Mr. H.B. Mahesh, learned Government Pleader appearing for respondent 3, Mr. Mallikarjun C. Basareddy, learned Counsel for respondent 2 and Mr. Basavaraj V. Sabarad, learned Counsel for respondent 3.

6. Upon hearing the learned Counsel appearing for both sides, we find that there is considerable force in the contention of the learned Counsel for the petitioner regarding the non-applicability of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 thereafter referred to as "the Rules") to the employees of Karnataka Industrial Areas Development Board-respondent 3 herein. The issue is already covered by a decision of the learned Single Judge of this Court in W.P. No. 41590 of 2012 in the case of M.P. Jaishankar v. State of Karnataka, decided on 19-10-2012 and its further confirmation by the Division Bench decision of this Court, in the case of M.P. Jaishankar v. State of Karnataka and Others, 2014(5) Kar. L.J. 497 (DB), in W.P. Nos. 1983 to 1986 of 2014, decided on 1-9-2014.

7. Learned Counsel for the respondents are not in a position to show that whether the above referred decision of the Division Bench of this Court in W.P. Nos. 1983 to 1986 of 2014 has been carried before the Apex Court or not.

8. As such, the facts are not in dispute inasmuch as the petitioner is an employee of respondent 3. It is also an admitted position that the enquiry was referred to by respondent 2 against the petitioner. It is also not in dispute that based on the order of respondent 2, the enquiry has been ordered to be initiated against the petitioner. The enquiry has been initiated as per the provisions of the aforesaid Rules. The Division Bench of this Court in the above referred decision in the case of M.P. Jaishankar stated thus:

"2. The petitioner is working as a Development Officer in Karnataka Industrial Areas Development Board, a statutory Board constituted under Section 5 of the Karnataka Industrial Areas Development Act, 1966. Lokayuktha Police on 27-12-2007 caught red handed the petitioner while accepting bribe. Therefore, a case was registered against him in Special C.C. No. 21 of 2010. Charge-sheet was filed later on stating that sanction order was obtained to prosecute the petitioner under the provisions of Karnataka Lokayukta Act, 1984.

3. On 11-11-2011, respondent 2-Karnataka Upalokayuktha sent a report to the Government to take further steps on the ground that petitioner has committed misconduct under Rule 3(1) of the Karnataka Civil Services (Conduct) Rules, 1966. Based on the report of the Lokayuktha dated 11-11-2011, the State of Karnataka passed an order on 23-1-2012 to hold an enquiry against the petitioner under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Respondent 3 was appointed as an Enquiry Officer and when respondent 3 issued articles of charge on 16-6-2012, challenging the entrustment of enquiry to be conducted by Lokayuktha, writ petition came to be filed by the petitioner in W.P. No. 41590 of 2012. The said writ petition came to be allowed on 19-10-2012 granting liberty to the employer of the petitioner to take such steps as may be advised on the ground that Lokayuktha cannot conduct an enquiry against the petitioner on the premise that Karnataka Civil Service Rules has no application to the employees of respondent 4.

4. Again the matter was referred to respondent 2 pursuant to the order passed in the Executing Committee Meeting of the respondent 4. Based on the same, respondent 2-Upalokayuktha has nominated respondent 3-Additional Registrar Enquiries to frame charges against the petitioner. On 6-7-2013, respondent 3 has framed articles of charges against the petitioner, which is nothing but replica of articles of charges, framed earlier and quashed in W.P. No. 41590 of 2012. Therefore, the present petitions are filed.

5. Though several grounds are urged in the writ petition, the learned Counsel for the petitioner contends that respondent 4 could not have referred the matter to Upalokayuktha to hold enquiry against the petitioner and in turn Upalokayuktha has no power to direct respondent 3 to frame charges and proceed with the matter. According to him, provisions of Lokayukta Act is applicable to an employee who is serving in the statutory body provided such statutory body has adopted Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to its employees. According to him Karnataka Civil Services (Classification, Control and Appeal) Rules are not applicable to the employees of respondent 4. When such an order was set aside in earlier writ petition filed by the petitioner, again the respondent 4 referring the matter to Upalokayuktha is not correct and is liable to be quashed.

6. After hearing the learned Counsel for the petitioner, the only ground to be considered by this Court is whether the Upalokayuktha would get the jurisdiction to pass an order on the recommendations of respondent 4 in the absence of applicability of Karnataka Civil Services (Classification, Control and Appeal) Rules.

7. The learned Counsel for the respondent 4 does not dispute that the employees of the KIADB are not governed by Karnataka Civil Services (Classification, Control and Appeal) Rules.

8. When separate service regulations are framed by respondent 4 and when it has not adopted the Karnataka Civil Services (Classification, Control and Appeal) Rules, question of entrusting the enquiry to respondent 2 or respondent 3 by the respondent 4 does not arise.

9. In the circumstances, the writ petitions are disposed of. The order passed by the respondent 4 entrusting the matter to Upalokayuktha to hold enquiry and further order passed therein by the Upalokayuktha are hereby quashed. Liberty is granted to the respondent 4 to take action in accordance with law as per its service conditions."

9. Then aforesaid judgment shows that as per the view taken by the Division Bench of this Court, the rules are not applicable to the employees of respondent 3. When the rules are not applicable, the order for initiation of the enquiry under the said rules and the action taken in furtherance thereof cannot stand in the eye of law. As observed by us herein above, no other view taken by the higher forum is brought to our notice. In the circumstances, when the issue is already covered by the decision of the Division Bench of this Court, we find that the petitions

deserve to be allowed. The order passed by respondent 2 and further consequential order passed by respondent 3 and further action pursuant thereto cannot be sustained in the eye of law.

10. Hence, the impugned orders dated 29-7-2009, 22-10-2009 and the charge-sheet issued pursuant to that dated 11-1-2010, are quashed and set aside.

11. Petitions are allowed to the aforesaid extent. Considering the facts and circumstances of the case there is no order as to costs. Rule made absolute.