

(2016) 06 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 17560 of 2016 (S-KAT)

K.V. Sudarshan

APPELLANT

Vs

The Director General of Police, Karnataka State, Bangalore

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2016) 5 KantLJ 161

Hon'ble Judges : Jayant Patel and B. Sreenivase Gowda, JJ.

Bench : Division Bench

Advocate : Sri Venugopal M.S, Advocate, for the Appellant; Sri H.T. Narendra Prasad, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present petition is directed against the order dated 2-3-2016 passed by the Tribunal. The Tribunal for the reasons recorded in the order has dismissed the petition and has not interfered with the order of discharge issued against the petitioner in capacity as probationer.

2. We have heard Mr. Venugopal M.S., learned Counsel for the petitioner and Sri H.T. Narendra Prasad, learned Additional Government Advocate appearing for the respondents.

3. The contention raised on behalf of the petitioner was that, the impugned order cannot be said to be discharge order but it can be rather said to be stigmatic order. It is submitted that as per Rule 7 of the Karnataka Civil Services (Probation) Rules, 1977 (hereinafter referred to as "Rules of 1977"), if the misconduct is committed and if the termination is to be effected for misconduct, the enquiry is required to be held as per Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as "Rules, 1957") and it was not a case for simpliciter discharge under Rule 6 of the Rules of 1977.

4. He submitted that, when the challenge is made to the order of discharge,

Court can lift the veil and Court can consider the material to find out as to whether the order is stigmatic tor misconduct or is the discharge order on the ground of unsuitability, Learned Counsel relied upon the decision of a Division Bench of this Court in case of Dr. Malini v. State of Karnataka represented by its Principal Secretary, Home Department (Police Services), ILR 2013 Kar. 3113 (DB), wherein the earlier decisions of various Courts including of the Apex Court were considered. It was submitted that the Tribunal has erroneously found that it was a case of discharge and did not interfere with the order. Hence, this Court may pass appropriate orders.

5. Whereas, Sri H.T. Narendra Prasad, learned Additional Government Advocate appearing for the respondent while supporting the order passed by the Tribunal contended that it was an order of discharge simpliciter, but as per Rule 6 of the Rules of 1977, the grounds were required to Be mentioned, the grounds have been mentioned. Thereby, it cannot be said that it was a misconduct as sought to be canvassed. Learned Counsel relied upon the decision of the Apex Court in case of H.F. Sangati v. Registrar General, High Court of Karnataka and Others, (2001)3 SCC 117. It was therefore submitted that the Tribunal has rightly not interfered with the order. Hence, this Court may not further interfere.

6. In order to appreciate the contentions, we may first consider the factual background.

The order of discharge is dated 23-6-2009 wherein, in the body of the order it has been observed thus:

"Sri K.V. Sudarshan, Second Division Assistant, Western Range Office, Mangalore, the service of him made until this day during his probationary period is being very unsatisfactory and hence discharged him from his service under provisions of Rule 6, sub-rule (1) of Karnataka Civil Services (Probation) Rules, 1977, by considering that he is ineligible to be continued in his service of S.D.A. made appointed him, in this regard."

7. We may record that the above said is the translation submitted by the petitioner himself of the original order in the present petition. If the order is read as it is, it is discharge from service on account of unsuitability or unsatisfactory service.

8. The attempt was made by the learned Counsel for the petitioner to contend that, the aforesaid order has been passed on account of the report received from the Inspector General of Police, Western Range, Mangalore, date 23-6-2009 (Annexure-A3) and as per the said report, it has been concluded that the petitioner is in the habit of remaining unauthorised absent to duty often and addicted person and due to unsatisfactory service of him during probationary period separate order be passed. As per the learned Counsel for the petitioner, the same is required to be considered while examining the legality and validity of the order of discharge.

9. In our view, even if such a conclusion recorded is considered, the ground of unsuitability arrived at on account of habitual absenteeism and addiction of alcohol would be attached to the unsuitability in service.

10. Rules 6 and 7 of the Rules of 1977 for ready reference are reproduced as under:

"6. Discharge of a probationer during the period of probation.-(1) Notwithstanding anything in Rule 5, the Appointing Authority may, at anytime during the period of probation, discharge from service a probationer on grounds arising out of the conditions, if any, imposed by the rules or in the order of appointment, or on account of his unsuitability for the service or post; but the order of discharge except when passed by the Government, shall not be given effect to, till it has been submitted to and confirmed by the next higher authority.

(2) An order discharging a probationer under this rule shall indicate the grounds for the discharge but no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, shall be necessary.

7. Termination for misconduct.-No order terminating the services of a probationer, whether during or at the end of the period of probation for any misconduct, shall be passed except in accordance with the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957."

11. As per Rule 6, if the petitioner is to be discharged from service, the ground of discharge are required to be indicated but no formal proceedings under the Rules of 1957 is necessary. Rule 7 further provides that, if the services of probationer are to be terminated for any misconduct, the procedure as required under Rules of 1957 is to be followed.

12. The aforesaid Rules expressly make it clear that if it is a case of discharge, no enquiry is required, but the ground has to be mentioned and when it is a case of termination on the ground of misconduct, the procedure as required under Rules of 1957 is to be followed.

13. The Tribunal, after considering the material on record found that it was a case of discharge.

14. We have considered the material on record referred to herein above and find that the view taken by the Tribunal cannot be said to be erroneous.

15. In the decision of this Court in cast of Dr. Malini after considering the various decisions, this Court at paras 14 and 15 had observed thus:

"14. A harmonious reading of these two rules make it dear that a probationer could be discharged from service on three grounds. They are:

(1) On the conditions imposed by the rules;

(2) On the conditions imposed by the order of appointment;

(3) On the ground of unsuitability.

15. The order of discharge shall indicate the ground of discharge. When a probationer is discharged on any of these grounds no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 shall be necessary. However, no probationer can be discharged on the ground of misconduct. It is because such cases are covered under Rule 7. If a probationer is discharged on the ground of misconduct, it amounts to termination. Rule 7 expressly provides that no order terminating the services of the probationer shall be passed on the ground of misconduct except in accordance with the aforesaid Rules of 1957. The reason being, it amounts to removal from service within the meaning of Article 311(2) of the Constitution of India, which gives him a constitutional protection from illegal termination, thus securing certainty of service."

16. It observed that the discharge order can be passed on the following three grounds:

(1) For condition imposed by the Rules.

(2) For condition imposed by the order of appointment.

(3) On the ground of unsuitability.

17. Therefore, unsuitability is one of the aspects on the basis of which the service of the petitioner can be discharged. Further in the very decision, it has been held that whether it was a case of discharge or removal would be depending on the facts of each case and Court will have to find out as to whether it is a case of removal from service on various grounds or discharge on the ground of unsuitability.

18. Further, in the case of Dr. Malini, the notice was issued calling upon her to submit explanation by Home Minister but before the reply could reach, on account of the pressure applied by the members of Legislative Assembly on the floor, the order of termination was passed. The facts of the said case cannot be equated with the facts of the present case.

19. Further, even if the observations are considered, it does leave room for finding out in each case as to whether it is a case for discharge on the ground of unsuitability or the removal on the ground of misconduct. Even if it is considered that veil can be lifted by the Court and other material can be considered, the report date 23-6-2009 Annexure-R3 is for ultimate conclusion of unsuitability on the ground of habitual absenteeism and addiction of the person. Such cannot be said to be a removal on the alleged ground of misconduct as sought to be canvassed.

20. Under the circumstances, the contentions raised by taking the support of the decision of the Apex Court in case of the Dipti Prakash Banerjee v. Satvendra Nath Basu National Centre for Basic Sciences, Calcutta and Others, (1999)3 SCC

60 will be of no help to the learned Counsel for the appellant.

21. It is hardly required to be stated that in a petition under Article 227 of the Constitution of India, the judicial scrutiny is not as that of the Appellate power. This Court would be at loath to interfere in a case where two views are possible or there is any error unless such an error is apparent on the face of the record or there is any breach of any law.

22. As observed by us herein above, if the material which was the basis of the order for discharge is considered, it cannot be said that it was a case of termination from service on the basis of misconduct but, it can rather be said a discharge on the ground of unsuitability in the service. The Tribunal, after considering the material on record has taken the same view. Hence, we find that no case is made out for interference.