
(1980) 11 KAR CK 0020
In the Karnataka High Court
Case No : WP. 20890/80

Mahadev Narasappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-11-1980

Acts Referred:

Citation : (1981) 2 KarLJ 239

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The Petitioner, who is a former Police Constable, has presented this Writ Petition, questioning the jurisdiction of the State to hold a de novo enquiry against him.

2. A departmental enquiry had been instituted against the Petitioner on a charge that he had misbehaved with a lady Police Constable. On the basis of the findings recorded in the said enquiry, the Petitioner was removed from service. The Petitioner filed a suit in OS. 93 of 1975, on the file of the Principal Munsiff, Bijapur. The contention of the Petitioner in the suit was that the Officer, who held the departmental enquiry, was biassed and, therefore, the finding recorded in the enquiry and the penalty imposed were in violation of principles of natural justice. The said plea was accepted and the suit was decreed. Against the said order the State preferred an appeal before the Addl. Civil Judge, Bijapur. The learned Addl. Civil Judge, confirmed the judgment and decree. Thereafter, the State preferred a Second Appeal before this Court in R.S.A. 662 of 1978. By judgment dated 13-12-1979 that Second Appeal was dismissed. Thereafter, a notice dated 14-10-1980 (Annexure G) has been issued proposing to hold a de novo departmental enquiry on the same charge.

3. The contention of the Petitioner in this Writ Petition is that in view of the judgment and decree made by the Munsiff, Bijapur, which has been confirmed in First and Second Appeals, the State has no jurisdiction to hold the proposed de novo departmental enquiry on the same charge.

4. I am unable to agree. The learned Munsiff, Bijapur set aside the dismissal order on the ground that there was procedural irregularity in the conduct of the proceedings in that the Enquiry Officer, who was biassed against the petitioner, had been appointed as Enquiry Officer. The same view has been confirmed in First and Second Appeals. Under such circumstances, it is competent for the State to hold a de novo departmental enquiry into the charge as the courts had not gone into the merits of the charge and had only set aside the proceedings on the ground of procedural irregularity. The question as to whether a de novo departmental enquiry can be conducted in such circumstances is covered by the decision of the Supreme Court in *Devendra Pratap Narayan Bai Sharma v. State of Uttar Pradesh*, AIR 1962 SC. 1334.

5. Learned counsel for the petitioner, however, relied on the judgment of the Patna High Court, in *Hridaya Narayan Prasad v. State of Bihar*, 1975 L & I 640, as also the decision of the Calcutta High Court in *Sanjib K. Sen v. Director (Administration) Government of India*, L & I 1580. In the first case, the Court held that a second enquiry was impermissible as in the first enquiry the appointing authority had exonerated the Petitioner on merits. In the Calcutta case, the Court held that the second enquiry was impermissible because an earlier order of removal had been unconditionally withdrawn.

6. The ratio of the two cases is inapplicable to the facts of the case; and the instant case is governed by the law declared by the Supreme Court in *Devendra Pratap Narayan Rai Sharma's case*, AIR 1962 SC. 1334. Accordingly, I make the following order:

Petition is rejected.