

(2014) 02 KAR CK 0142

In the Karnataka High Court

Case No : Writ Petition Nos. 81153-81154 of 2012 (S. Res)

Mahantesh

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Constitution of India, 1950 — Article 311
Karnataka Home Guards (Amendment) Act, 2003 — Section 3

Citation : (2014) 2 AKR 418 : (2014) 3 KCCR 2406

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, Advocate for the Appellant; Manvendra Reddy, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—The order at Annexure-"D" dated 28.02.2012 passed by respondent No. 1 removing the petitioner from the post of Commandant of Home Guards on the allegations of dereliction of duties and lowering dignity of the post, is called in question in these writ petitions. Petitioner is an Advocate by profession. He was appointed as Commandant of Home Guards as per the order at Annexure-"A" dated 19.04.2010. The very order makes it clear that the petitioner will hold the post until further orders of the first respondent. Which means that the petitioner will hold the post during the pleasure of the Government. However, based on certain allegations, such as, gross dereliction of duties and lowering the dignity of the post of Commandant, the order of termination is issued as per Annexure-"D" dated 28.02.2012 by respondent No. 1.

2. Sri. Ameet Kumar Deshpande, learned Advocate for the petitioner drawing attention of the Court to sub-section (2-C) of Section 3 of the Karnataka Home-Guards (Amendment) Act, 2003 (Karnataka Act No. 19 of 2003) (for short the "Act") submits that the term of the office of Commandant is to be held by the petitioner subject to the pleasure of the State Government and the same shall

ordinarily be for a period of five years and it may be extended for a further period of five years. He further submits that since the order of termination is stigmatic, enquiry needs to be held against the petitioner with regard to the allegations made against him as per Rule 14-A of the Karnataka Home-Guards (Amendment) Rules, 2003 (for short the "Rules").

Sri Manvendra Reddy, learned Government Advocate opposes the writ petitions inter alia contending that appointment order does not prescribe any particular period for the petitioner to hold the post; the petitioner under the order of appointment will hold the post until further orders of the State Government i.e. during the pleasure of the State Government; since the petitioner is terminated from the post of Commandant, the impugned order cannot be treated as stigmatic order. He further submits that since the petitioner is not the Government servant, Article 311 of the Constitution of India cannot be pressed into service.

Learned Government Advocate relies upon the judgments of this Court in the case of A.M. Bhaskar and Others Vs. State of Karnataka and Others, and in the case of Khusro Quraishi Vs. State of Karnataka, The Karnataka State Minorities Commission and Shri Anwer Mannapadi, in support of the contention that there is no need to conduct enquiry against the petitioner.

3. The aforementioned judgments are not at all applicable to the facts of this case inasmuch as, in those judgments the impugned orders were not stigmatic and in that context this Court has held that conducting of enquiry is not necessary (the persons in those matters were holding post during the pleasure of the Government).

This Court hastens to add here itself that the contention of petitioner's counsel that the petitioner shall be retained atleast for five years from the date of appointment cannot be accepted, inasmuch as such period of five years would be subject to the pleasure of the Government. Which means, if the petitioner has lost the pleasure of the Government, he cannot be continued upto five years. Thus, the only question that remains to be considered is as to whether the order of termination issued against the petitioner is just and proper though the petitioner will hold the post during the pleasure of the Government.

4. This Court does not find any reason to accept the arguments of learned Government Advocate. The bare reading of the order of termination clearly and amply reveals that the order of termination is highly stigmatic. The said order not only alleges that the petitioner is indulged in gross dereliction of duties, but also has lowered the status of the post of Commandant held by him. The order of termination is in Kannada and the same reads thus:

(Vernacular matter omitted... Ed.)

(Emphasis supplied)

5. From the aforementioned it is clear that serious allegations of gross dereliction

of duties as well as bringing dishonor to the post held by the petitioner are made against the petitioner. Therefore, the impugned order is stigmatic and consequently the enquiry needs to be held as contemplated under Rule 14-A(2) of the Rules, though the appointment is during the pleasure of the Government.

6. It is clear from the impugned order Annexure-"D" that the petitioner is removed from the post under Rule 3-C(5) of the Rules and the same reads thus:

3-C. Termination of Commandant--Commandant General may recommend to the State Government for termination of the Commandant from his post if--

(1) to (4) xxxx

(5) he is involved in misuse of official position and resources;

7. Since the said rule is mentioned in the order of termination, it is clear that the petitioner is removed from the post of Commandant as he is stated to have been involved in misuse of official position and resources. Since serious allegations against the Commandant of Home Guards are made, enquiry needs to be held in that regard. The petitioner has to face the enquiry. Ultimately, the result of the enquiry will decide as to whether the petitioner is innocent or not. Thereafter, further consequences will follow. Be that as it may, since the order of termination is stigmatic and as the same is issued without conducting any enquiry as required under the rules, the order of termination is bad in the eye of law. Accordingly, the order at Annexure-"D" stands quashed. It is open for the respondents to conduct enquiry against the petitioner based on allegations. Thereafter, further consequences will follow. Hence, petitions stand allowed accordingly.