

(2003) 08 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No"s. 19289 to 19293 of 2000

M.G. Umamahesh and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Citation : (2003) 5 KarLJ 360 : (2003) 4 KCCR 231 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; Srinivasa Murthy, Government Advocate for Respondent No. 1 and M. Kumar, for Caveator-Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—Since common questions of fact and law are involved in all these writ petitions, they are clubbed together, heard and disposed off by this common order.

2. Initially petitioners were appointed as Plantation Supervisors by the second respondent-Karnataka Pulpwood Limited, on a consolidated salary of Rs. 400/-. The appointment was purely temporary and for a period of six months only. Their appointment as Plantation Supervisors was continued by the second respondent authority by their order made on 27-11-1987 and that was again for a period of six months only. By a subsequent order dated 7-3-1988, petitioners were appointed by the second respondent company as Assistant Plantation Supervisors on a consolidated salary of Rs. 690/- per month. While working as Assistant Plantation Supervisors, it appears, some of the petitioners were also asked to discharge the duties of in charge Plantation Supervisors and Assistant Plantation Superintendents.

3. Petitioners assert that in spite of the fact that they were working as Assistant Plantation Supervisors, their services were regularised as Forest Guards. On a

wrong assumption that the second respondent along with its personnel has merged with the Karnataka Forest Development Corporation Limited, the second respondent has issued one more appointment order appointing the petitioners herein as Assistant Plantation Superintendents.

4. Facts stated in the petition are not very clear. Therefore, let me notice how the Chairman and Managing Director of second respondent company has understood and dealt the case of the petitioners while regularising their services as Assistant Plantation Superintendents in the pay, scale of Rs. 3450-6300 in his order dated 29-10-1995/5-11-1999. In the order, it is stated that the petitioners were initially appointed as Plantation Supervisors by the Karnataka Pulp Wood Limited, on a consolidated salary of Rs. 400/- and Rs. 500/- per month temporarily. It is further stated that by an order made by second respondent on 12-4-1999 the petitioners who were initially appointed as Plantation Supervisors were regularised in service as Forest Guards in the scale of pay of Rs. 3000-5450.

It is also stated in the order that these petitioners who were regularised as Forest Guards had made a representation dated 14-5-1994, requesting the second respondent to regularise their service as "Foresters" in the scale of pay of Rs. 3300-6300.

The Chairman and Managing Director of second respondent to consider the above request of the petitioners after obtaining the report of the Executive Director (Shimoga) with regard to duties and responsibilities performed by the Plantation Supervisors has modified his earlier order dated 12-4-1999 and has regularised the services of the petitioners as Assistant Plantation Superintendents in the scale of pay of Rs. 3300-6300 from a particular date indicated in his earlier order dated 12-4-1999.

5. It appears, persons who claimed that they were similarly placed like petitioners had approached this Court in W.P. Nos. 43304 to 43311 of 1999, inter alia, requesting this Court, to give directions to second respondent and others to consider their case and extend the benefits given to petitioners and others in these writ petitions or in the alternative to withdraw the benefits extended in the order dated 29-10-1999/5-11-1999.

6. This Court without going into the grievance of the petitioners therein, by its order dated 27-3-2000 was pleased to dispose off the writ petition with certain observations and directions. In that, the Court was pleased to observe as under:-

"In the light of the submission made by Sri Kumar and the fail-stand taken by the second respondent, I am of the view that it is not necessary, at this stage, to go into the correctness of order Annexure-P in these petitions and also to consider as to whether the petitioners are entitled for grant of the benefit extended to respondents 4 to 10 in order Annexure-P. In my view, the ends of justice will be met if these petitions are disposed of by recording the statement of Sri Kumar made on behalf of the second respondent, that the representations of the petitioners and other Forest Guards would be considered on merits and

appropriate decision would be taken on the said representations within three months from the date of receipt of a copy of this order. Accordingly, it is ordered".

7. After disposal of the aforesaid petitions, the second respondent after forming a tentative opinion, that the regularisation of the services of the petitioners as Assistant Plantation Superintendent is not proper, had issued a show-cause notice dated 18-4-2000, inter alia calling upon the petitioners, to show cause why their earlier order dated 29-10-1999/5-11-1999 should not be reviewed and recalled within ten days from the date of receipt of the notice. This notice came to be replied by the petitioners, justifying their regularisation in a particular cadre and also requested the respondents not to precipitate the matter till they secure the certified copy of the orders made by this Court and take steps to get the orders modified. In spite of such request, the second respondent after securing certain clarification from the Executive Director (Shimoga), who had clarified in his letter dated 9-9-1999, that the beneficiaries of the order dated 5-11-1999 were in fact performing duties and responsibilities which were equivalent to the duties and responsibilities which were performed by the Assistant Plantation Superintendents of Karnataka Forest Department Corporation Limited, and he had also clarified that some of the beneficiaries had also worked as in charge Plantation Superintendents. In spite of this clarification, the second respondent without rhyme or reason proceeds to pass the impugned order withdrawing the earlier order, regularising the services of the petitioners as Assistant Plantation Superintendents. It is the correctness or otherwise of the said order is the subject-matter of these petitions. The impugned order is dated 30-5-2000 and in that, the only reason assigned by the second respondent is as under:-

"In view of the above said facts, Sri M.G. Uma Mahesh and 6 others viz., Sri Nagaraja, Sri G.N. Murugendra Swamy, Sri G. Shekharappa, Sri V.Y. Malki, Sri R.D. Sondappanavar and Sri K.S. Prasanna who were regularised as Assistant Plantation Superintendents as per this office O.M. dated 5-11-1999 are not entitled to be regularised as Assistant Plantation Superintendent. Hence, the order dated 5-11-1999 is hereby withdrawn with immediate effect. Action should be taken to refix the pay of Sri M.G. Umamahesh and others as if they had continued to work as Forest Guards from 5-11-1999 to present date. However it is made clear that Sri M.G. Umamahesh and others are not liable for any recovery of higher pay already drawn".

8. Apart from others, Sri Lakshminarayana, learned Counsel appearing for the petitioners would contend that the second respondent-authority, without affording an opportunity of hearing to the petitioners could not have passed the impugned order by withdrawing the benefits granted to them earlier by their order dated 29-10-1999/5-11-1999. According to the learned Counsel, the entire exercise of the respondent-authority is wholly arbitrary, illegal and is in violation of the principles of natural justice. Secondly, he would contend that the order made by the respondent authority is bereft of any reasoning and, therefore, it is

arbitrary, unfair and unjust and thereby violative of Article 14 and unfair procedure offending Article 21 of the Constitution of India. In support of his submissions, the learned Counsel brings to my notice the observations made by the Supreme Court in the case of Narsirigha Patra and Anr. v. State of Orissa and Ors. 1997 SCC (L & S) 1773 and in the case of Director, ESI Scheme, Orissa and Another Vs. Dr Sabita Mohanty (Smt), in the case of Krishna Swami Vs. Union of India and another, and in the case of Travancore Rayon Ltd. Vs. Union of India (UOI), .

9. The question as to whether administrative authorities should record reason came up for consideration before the Apex Court in several decisions. Underlying the need for recording of reasons by an authority performing administrative functions, the Apex Court in M/s. Travail-core Rayons Limited's case, supra, was pleased to observe as under:-

"..... that the necessity to give sufficient reasons which discloses proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where non-judicial authority exercises judicial functions is obvious".

10. S.N. Mukherjee Vs. Union of India, the Apex Court was pleased to observe as under:-

"Keeping in view, the expanding horizon of principles of natural justice, the requirement of to record reasons can be regarded as one of the principles of natural justice, which governs the exercise of power by administrative authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority is required to record reasons for its decision".

11. It may not be necessary to over-burden my order with more decisions on this settled principles.

Keeping in view these settled principles, I have perused the orders passed by the second respondent authority. The second respondent authority in its order, firstly, refers to previous orders made regularising the services of the petitioners, the orders passed by this Court, the clarification issued by the Executive Director of its Shimoga Division, contents of the show-cause notice and the reply filed by petitioners and then proceeds to pass the impugned order without recording any reason why the previous order passed is either improper or incorrect. An order made without assigning any reasons is no order in the eye of law. Fair play requires recording of relevant and precise reasons, when the order affects the rights of the petitioners. Since that has not been done in the present case, the impugned order is not only arbitrary but also illegal and, therefore, the same requires to be set aside by this Court.

12. Sri V. Lakshminarayana, learned Counsel for the petitioners, nextly contends that the second respondent without affording an opportunity of hearing to the

petitioners could not have passed the impugned order and, therefore, the same is in violation of principles of natural justice.

In the present case, by an order made on 5-11-1999, the services of the petitioners came to be regularised as Assistant Plantation Superintendents. By this, they have acquired a vested right and a new status. Any person can ill-afford to lose that status and also the monetary benefits attached to that status. If the authority intends to de-recognize the status once conferred, that a person against whom an order to his prejudice may be passed should be informed the tentative opinion of the authority for cancellation/withdrawal of the earlier order and give him an opportunity to offer his explanation, if any, and then only pass an order. This exercise is done by the respondent authority. This would satisfy the requirements of principles of natural justice. Therefore, the impugned order cannot be straightaway condemned as one made without following the principles of natural justice.

However, Sri Lakshminarayana, learned Counsel for the petitioners would contend that the principle "no one shall be condemned unheard" applies even to administrative orders. In the facts and circumstances of the present case, according to learned Counsel, apart from issuing a show-cause notice, the authority passing the order should have also granted a personal hearing to the persons who would be effected by the tentative opinion of the authority, since the tentative opinion expressed in the show-cause notice, if it is confirmed would adversely affect the status and/or privileges of the petitioners. Therefore, submits that the respondent-authority without affording an opportunity of personal hearing to the petitioners could not have passed the impugned order.

13. Sri M. Kumar, learned Counsel for the respondent-authority, after obtaining appropriate instructions from the respondent authorities would firstly submit that the respondents before passing the impugned order had afforded an opportunity of "hearing" to the petitioners by issuing them a show-cause notice and further directing them to offer their explanation, if any, and this procedure would satisfy the requirement of principles of natural justice, and in spite of it, if the petitioners are of the view, that they should be heard in the matter, the respondent-authority would give them an opportunity of oral hearing and pass a fresh order.

The submission of the learned Counsel is very fair and just. That only shows that the respondents do not have any animus against the petitioners nor do they intend to deprive them their lawful rights, if they so deserve. The stand of the respondents really requires to be appreciated by this Court, for the sole reason, that, they do not intend to stand on technical formalities.

In view of the submission of the learned Counsel, it may not be necessary for this Court to express its view on the issue, whether the show-cause notice issued by the respondents directing the petitioners to show-cause against their tentative opinion would satisfy the requirements of principles of natural justice and

whether was it absolutely necessary for the respondents to have afforded the petitioners an opportunity of hearing before framing the impugned order.

Before I conclude, let me refer to the case-law on which reliance was placed by the learned Counsel for the petitioners. The learned Counsel firstly relies upon the observations made by the Apex Court in Narsingka Patra's case, *supra*. In the said decision, the pay scales of the Matriculates, who had undertaken ITI training, had been fixed at Rs. 300-410. That came to be modified by a subsequent order, after notice to the appellants therein, but an opportunity of hearing had not been granted. The appellants therein had approached the Central Administrative Tribunal. The Tribunal was of the view that since show-cause notice was issued to the appellants, there was total compliance of the principles of natural justice. Therefore, had rejected the application filed by the appellants. Aggrieved by that order, the appellants therein had approached the Supreme Court. Before the Supreme Court, a specific contention was taken that the appellants were not heard in the matter and without hearing them, an order withdrawing the earlier benefits granted to them could not have been made. While considering this issue, the Apex Court was pleased to observe as under:

"We heard the Counsel. We are of the view that in the totality of the circumstances the representations submitted by the appellants should be considered afresh after giving them an opportunity of being heard. The State Government shall do so within a period of three months from today and pass appropriate orders. The State Government shall not feel fettered by any of the observations contained in the order of the Tribunal. Pending the disposal of the representations, no recovery of amount alleged to have been paid shall be made".

The other case-law on which reliance was placed on is the case of Dr. Sabita Mohanty *supra*, wherein the Apex Court was pleased to observe as under:

"We are afraid, this perception of the Tribunal as to the ends of justice and their expeditious attainment prevailing over the delays inherent in what the Tribunal assumes to be a dispensable formality of the filing of a counter and hearing of the other side is wholly erroneous and entirely unsupportable. Indeed, these words of Lord Wright in *General Medical Council v. Spackman* are worth recalling:

"If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision" "

In the instant case, by an order made on 29-10-1999/5-11-1999, the services of the petitioners was regularised by the Managing Director of the Karnataka Pulpwood Limited as Assistant Plantation Supervisors and their basic salary had been fixed at Rs. 3,300/-. By that order, petitioners had acquired a vested right and the second respondent-authority intends to take away that vested right of the petitioners, and that has been done after issuing an appropriate notice to the petitioners. But, the learned Counsel appearing for petitioners would submit that,

if an opportunity of hearing has been granted to the petitioners or their representatives, they would have been in a better position to convince the Managing Director of the second respondent-authority not to take a different view than what had been already taken by them by their earlier order dated 29-10-1999/5-11-1999.

14. In my opinion, if an opportunity is given to the petitioners to appear before the second respondent authority to put forth their case, no prejudice would be caused to the second respondent-authority. Further, the petitioners would be in a better position to convince the second respondent authority that the earlier order made by them on 29-10-1999/5-11-1999 was perfectly justified. To remand the matter for affording an opportunity of oral hearing, respondents' learned Counsel has no objection whatsoever.

15. In view of the above, the following:

ORDER

I. Writ petitions are allowed. Rule made absolute.

II. The impugned order made by the respondent-authority dated 30-5-2000 (Annexure-K) is set aside.

III. The matter is remanded back to the second respondent-authority to redo the matter afresh, after affording an opportunity of personal hearing to the petitioners.

IV. This exercise the second respondent-authority shall do within three months from the date of receipt of a copy of this Court's order.

V. Till the final orders are made by the respondent-authority one way or the other, it is declared that petitioners are not entitled to either monetary or service benefits.

VI. This order should not be treated as precedent in any other case.

VII. All the other contentions of both the parties are left open. Ordered accordingly.