
(2012) 09 KAR CK 0305

In the Karnataka High Court

Case No : Writ Petition No. 84524 of 2012 (S-RES)

Mohammed Yousuf Javed

APPELLANT

Vs

The KSRTC Central Office and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2013) ILR (Kar) 197

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : P. Vilas Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Petitioner has called in question Order of punishment dated 21.07.2012 - Annexure-F passed by second respondent whereunder petitioner has been demoted from the post of Assistant Engineer (Grade-II) to Junior Engineer, Grade-III(Civil) with minimum Basic Pay and has ordered for recovery of Rs. 1,58,585/- in 20 EMIs from salary of petitioner. I have heard the arguments of Sri. Vilas Kumar, Learned Counsel appearing for petitioner regarding maintainability of this writ petition since petitioner without exhausting alternate and efficacious remedy available under the Regulations governing service conditions of respondent-Corporation has approached this Court directly by invoking extraordinary jurisdiction of this Court.

2. Alternate and efficacious remedy is a bar to exercise extraordinary jurisdiction is the normal rule, exception being blatant violation of provision of a statute or principles of natural justice having been given a go-by.

3. Facts on hand can be crystallised as under:

Petitioner was appointed in respondent-Corporation as a Junior Engineer on 25.05.1992. He was promoted as an Assistant Engineer in the year 2003. Articles of charges were issued on 12.06.2008 -Annexure-A against petitioner for certain

irregularities as per Regulation 19(2) of Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 (hereinafter referred to as "Regulations" for short). Said charges were denied by petitioner as per Annexure-B. Domestic enquiry was held wherein petitioner was held guilty of charges as per enquiry report dated 03.05.2010 -Annexure-C. After issuing second show cause notice to petitioner enclosing copy of enquiry report, a reply came to be issued by the petitioner on 09.10.2010 - Annexure-E. After considering said reply, Disciplinary Authority passed an Order of punishment on 21.07.2012 - Annexure-F demoting petitioner from Assistant Engineer (Grade-II) to Junior Engineer (Civil) (Grade-III) with minimum Basic Pay and order of recovery of money of Rs. 1,58,585/- in 20 EMIs from salary of the petitioner.

4. Learned Counsel for petitioner contends that there is no other effective, efficacious and alternate remedy available to the petitioner except invoking extraordinary jurisdiction of this Court under Articles 226 and 227 of Constitution of India. He would also submit that though Regulations provide for an appeal against order of the Competent Authority, it would not be a bar for the petitioner from approaching this Court under Articles 226 and 227 of Constitution of India questioning the order of punishment. In support of his submission, he relies upon Full Bench judgment of this Court in the case of H.S. Rangaramu Vs. The Management of Karnataka State Road Transport Corporation and Others, by drawing attention of the Court to paragraph 16.

5. Regulations which govern service conditions of petitioner would provide for an appeal against an order passed by Competent Authority. Regulation 2(a) defines "Appellate Authority" and Regulation 30 provides for filing an appeal against orders specified therein. Regulation 31 enumerates as to what orders can be appealed against and before which Authority. Hence, these provisions are extracted for purposes of convenience. They read as under:

2. Definitions:-xxx

(1) "Appellate Authority" means the authority competent under these Regulations to exercise the powers of Appellate Authority.

(30) Orders against which appeal lies:- Subject to the provisions of Regulation 29 Corporation Servant may prefer an appeal against all or any of the following orders, namely:-

(i) an order of suspension made or deemed to have been made under Regulation 21.

(ii) An order imposing any of the penalties specified in Regulation -18 whether made by the Disciplinary Authority or by any Appellate Authority;

(iii) An order enhancing any penalty imposed under Regulation-34.

(31) Appellate Authorities:-(1) A Corporation Servant, including a person who has ceased to be a Corporation Servant, may prefer an appeal against any of the

orders specified in Regulation 30 to the Authority specified in this behalf either in the schedule or by a General or Special order of the Corporation or where no such Authority is specified:-

(i) where such Corporation Servant is or was a Class I or Class II Servant.

(a) to the Appointing Authority, where the order appealed against is made by an Authority subordinate to it; or

(b) to the Corporation where such order is made by any other Authority.

(ii) Where such Corporation Servant is a Class III or Class IV Servant, to the Authority to which the Authority making the order appealed against is immediately subordinate.

(2) notwithstanding anything contained in Sub-Regulation - (1)

(i) An appeal against the order in a common proceeding under Regulation - 27 shall lie to the Authority to which the Authority functioning as the Disciplinary Authority for the purpose of that proceeding is immediately subordinate.

(ii) Where the person who made the order appealed against becomes by virtue of his subsequent appointment or otherwise, the Appellate Authority in respect of such order, an appeal against such order shall lie to the Authority to which such person is immediately subordinate.

Regulation 30 provides for an appeal against an order imposing penalties specified under Regulation 18 whether made by Disciplinary Authority or by any Appellate Authority. Punishment Order Dated 21.07.2012 - Annexure-F in the instant case is passed by second respondent in exercise of power vested under sub-Regulation(2) of Regulation 19 by imposing penalty prescribed under Regulation 18-A(viii) i.e., by demoting the petitioner from Assistant Engineer (Grade-II) to Junior Engineer (Civil)(Grade-III) and ordering recovery of Rs. 1,58,585/- in 20 EMIs from salary of petitioner under Regulation 18-A(v), which would be appealable under Regulation 30(ii). Regulation 31 classify as to different Appellate Authorities before whom such appeals can be filed and in respect of class of posts. In the instant case, these two punishments referred to hereinabove, Appellate Authority has been prescribed under Regulation 31 read with Schedule and as such, petitioner is having an alternate and efficacious remedy available under Regulations.

6. Sri. Vilas Kumar, Learned Counsel appearing for petitioner as noted herein supra, has relied upon the judgment in H.S. Rangaramu's case, wherein question referred to Full Bench was to the following effect:

Whether a workman can or cannot approach the Labour Court u/s 10(4a) of the Industrial Disputes Act, 1947 without exhausting the remedy of appeal or revision provided under the Regulations framed by KSRTC?

After referring to various statutory provisions of Industrial Disputes Act, 1947 it

has been held therein that merely because the workman has a remedy of appeal or revision against the order of discharge, dismissal, retrenchment or termination, it cannot be said that said order of discharge, dismissal or termination would not be effective until such remedy is exhausted. It was also held that Appellate Authority or Revisional Authority will only consider whether order of dismissal could be sustained or it requires modification and if the workman does not avail such of those remedies available to him, order of dismissal becomes final. Hence, it was held that an industrial dispute arises the moment order of dismissal or termination is passed. In other words, it was held that raising an industrial dispute is a well recognised and legitimate mode of redress available to a workman which has achieved statutory recognition under the Industrial Disputes Act, 1947 and this statutory recognised mode of redress cannot be denied to a workman merely because of existence or availability of alternate remedy. Further, it has been held that on the premise that order of discharge, dismissal, retrenchment or termination cannot attain finality and would not mature into an industrial dispute unless the remedy of appeal or revision is exhausted was incorrect. In other words, it was held that it is a statutory right of the workman u/s 10(4A) of the Industrial Disputes Act, 1947 which gives rise to dispute and not the order of Appellate or Revisional Authority as contemplated under the Regulations. This principle enunciated by Full Bench is sought to be relied upon by Learned Counsel for petitioner by contending same principle has to be extended even in a case where the extraordinary jurisdiction of this Court is invoked. However, said contention cannot be acceded to for reasons more than one.

7. At the outset, it can be noticed that for exercise of extraordinary jurisdiction by this Court, exceptions to the general rule has to be made out. In this regard, following judgments would reflect as to when the discretionary relief resorting to Article 226 of Constitution of India can be granted.

(1) Shashi Gaur Vs. NCT of Delhi and Others,

7. This judgment xxxxxxxx institutions. The Governmental authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then, he has to knock the doors of Court under Article 226 of Constitution which is a discretionary. xxxx

(2) Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternate remedy is a rule of discretion and not compulsion. In appropriate case, inspite of availability of alternate remedy, the High Court may still exercise its writ jurisdiction in atleast three contingencies:-

(1) where the writ petition seeks enforcement of the fundamental rights; (2) where there is failure of principles of natural justice; or (3) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

8. On the facts of instant case, it is noticed that neither averments made in writ petition nor writ papers would disclose the three contingencies explained in IOCL's case, had arisen in instant case, to exercise the extraordinary jurisdiction. To oust the jurisdiction of High Court under Article 226 of Constitution, being no doubt rule of discretion and Article 226 of Constitution being an extraordinary jurisdiction, unless the petitioner demonstrates before this Court such alternate remedy is not efficacious or effective, this Court would be loathe in exercising the discretionary power, as otherwise, the very purpose and intent with which the Appellate Authorities are conferred with powers to examine the appeals would become redundant and purpose of such Regulations gets negated. Thus, petitioner's contention that he is not required to file an appeal as contemplated under Regulation 30 of Regulations cannot be accepted and said contention is liable to be rejected and accordingly it stands rejected. It is also to be noticed that in the instant case, it is not the claim of petitioner that he is a workman and provisions of Industrial Disputes Act, 1947 would apply and as such the principles laid down in H.S. Rangaramu's case, would not assist the petitioner.

For the reasons aforesaid, following Order is passed:

(1) Writ petition is hereby rejected as not maintainable since alternate remedy of filing an appeal under Regulation 30 of the Regulations has not been availed of by petitioner.

(2) Order of dismissal of this writ petition would not come in the way of petitioner challenging the Order of punishment dated 21.07.2012 - Annexure-F before the Appellate Authority under Regulation 30 and in the event of such an appeal being filed within 15 days from today, Appellate Authority shall consider the same without insisting for limitation prescribed under Regulation 32 of Regulations and dispose of the appeal on merits and in accordance with law.

(3) No order as to costs.

Ordered accordingly.