
(1984) 10 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 2979 of 1977

N.S. Dhamankar

APPELLANT

Vs

Cantonment Board, Belgaum

RESPONDENT

Date of Decision : 11-10-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 1 KarLJ 289 : (1985) 2 LLJ 485

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Judgement

1. Petitioner, an employees of the Cantonment Board, Belgaum, has preferred this writ petition under Art. 226 of the Constitution seeking relief by way of Writ of Certiorari quashing Exhibit-E dated 14th March, 1977. That order is in the form of a communication signed by the Executive Officer of the respondent Board, by which the petitioner was informed that despite the order of this Court in W.P. 863/75, the petitioner should be deemed to have been under suspension from 13th December, 1972 the date on which he was originally dismissed from service after a departmental enquiry, which dismissal order came to be set aside by this Court in the aforementioned writ petition. Consequently, he has prayed for issue of a Writ of mandamus directing the respondent Board to release his salary from 29th August, 1970, the date on which he was originally suspended pending enquiry.

2. Respondent has entered appearance through counsel and filed the statement of objection. The facts alleged by the petitioner are not in dispute. It is useful to notice paragraphs 4 and 5 of the statement of objections, which are as follows :

"4. The petitioner has complained in this Writ Petition about his suspension. He has also complained about payments. It is submitted that petitioner was under suspension when inquiry was held prior to the earlier decision of the Board dismissing him. Since the Hon'ble High Court has been pleased to set aside that order on the technical grounds and now proceedings continue on the very same

charges, he can be deemed to be under suspension as from the days of earlier order of dismissal (now set aside). It is submitted that the Board being the appointing authority - master - has power to suspend. It is submitted that the order of suspension is not open to challenge by the petitioner.

5. In regard to the payments during this period, the Board has no objection to make payments in accordance with rules and Board will make such payments."

3. Later, in para 6, the Board asserts that it will make the payments in accordance with the Rules and Regulations if a certificate is filed by the petitioner that he was not gainfully employed elsewhere during the period of suspension. In other words, what emerges from the stand taken in paras 4 and 5 and the concession made in para 6 of the statement of objections is that the petitioner is entitled to some payment if not the full salary.

4. Therefore, the two questions which this Court has to decide in the circumstance are - (i) from what date the petitioner is entitled to salaries or such amounts which are liable to be paid under the Regulations ? and (ii) what should be the amount that he should be paid ?

5. Before deciding the above two questions, it will be necessary for me to state that the power of suspension is incidental to the master and servant relationship as claimed by the respondent Board even though the Rules and Regulation governing disciplinary action against its employees may not provide specifically for suspension pending enquiry. Therefore, while the suspension order itself is sustainable on that principle, withholding of the salary or non-payment of any allowance in accordance with the Regulations that the Board may have, would not be correct in law. In the case of Balvantray Ratilal Patel Vs. The State of Maharashtra, the Supreme Court held as follows :

"The general Principle therefore, is that an employer can suspend an employee pending in enquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the status or the rules framed thereunder providing for the scale of payment during suspension, the payment will be made in accordance therewith."

6. From the above, it is clear that in the absence of any Regulation regulating payment of subsistence allowance, petitioner is entitled to at the rate of last salary drawn by him as on 29th August, 1970 for the entire period of suspension.

7. It is not in dispute that petitioner was suspended from 29th August, 1970. Therefore, the respondent Board is liable to pay him his full salary till his date of retirement subject to such deduction which the Board is entitled to by the reason that these amounts have been paid as subsistence allowance during the period of

suspension.

8. Mr. K. I. Bhatta, learned counsel for the respondent Board however argued that the Board is not liable to pay anything at all because, after the matter was remanded by this Court for fresh disposal in the earlier writ petition, the appellate authority has finally decided to reduce the penalty of dismissal imposed by the disciplinary authority converting the same to one of reduction in rank. In other words, petitioner must be presumed to have continued in service from the date of suspension till the date of his retirement.

9. But, what the learned counsel derives as support from the appellate order is that the appellate order has stated that the period of suspension shall be treated as leave without pay. Now, the thrust of the argument is that direction itself is treated as part of punishment. But, no Regulation is placed before me framed by the respondent Board or any other lawful authority binding the petitioner, which permits imposition of such penalty, as a measure of punishment.

10. No doubt, in service rules it is known that the disciplinary authority has inherent power to keep a person under suspension and if found guilty, treat that period as he desires to be the punishment imposed. If a lesser punishment than termination is imposed, the period could be treated as leave without pay only if there is no obligation to pay salary or other emoluments or allowances during the period of suspension. But, if the petitioner is entitled to full salary as I have held in the instant case for the reasons given, then that cannot be taken away from him by way of punishment. If that is done, punishment will be imposed without the authority of law and as well as it amounts to punishing, the petitioner twice for the same offence, which also is equally impermissible.

11. In the result, it is unnecessary to specifically quash Annexure-E as the effect of Annexure-E is to merely continue the suspension order, which the Board was competent to pass. But, in the circumstance stated above and for the reasons already given, petitioner is entitled to payment of full salary less such amounts he might have received from the respondent Board.

12. Accordingly, a mandamus will issue to the respondent Board to pay the salary and allowance to the petitioner from 28th September, 1970 till his date of retirement subject to such deductions which the respondent Board has paid, but at the rate of salary admissible to the post in the reduced rank with effect from 13th December, 1972, unless that appellate order is set aside by this Court in the order writ petition in which event the salary of the post held by the petitioner on the date of suspension in 1970 will be the basis.

13. Rule is made absolute in terms above.

14. In the circumstances of the case, petitioner is entitled to costs.

15. Advocate's fee Rs. 250/-.