
(2017) 03 KAR CK 0269
In the Karnataka High Court
Case No : 60401 of 2016

R. Thippeswamy

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Karnataka Civil Services (Classification, Control and Appeal) Rules,
1957, <a href=13541-Rul

Citation : (2017) 03 KAR CK 0269

Hon'ble Judges : Jayant Patel, N.K. Sudhindrarao

Bench : DIVISION BENCH

Advocate : Sreedhara H.R., D. Nagaraj

Judgement

1. Rule. 2. Mr. D. Nagaraj, learned AGA waives notice of Rule. 3. With the consent of learned Advocates appearing for both the sides, the petition is finally heard today. 4. The present petition is directed against the common order dated 29.04.2016 passed by the Karnataka State Administrative Tribunal (hereinafter referred to as " the Tribunal-for the sake of brevity) in the respective applications, whereby the Tribunal for the reasons recorded in the order has dismissed the applications. 5. We have heard Mr. Sreedhara H.R., learned Counsel appearing for the petitioner and Mr.D. Nagaraj, learned AGA appearing for the respondents. 6. The learned Counsel appearing for both the sides fairly conceded that the present petition is covered by the decision of this Court dated 13.12.2016 passed in W.P.No.37411/2016 and allied matters and they have no objection if similar view is taken by this Court as was taken in the earlier matter. 7. The perusal of the impugned order passed by the Tribunal shows that it was pertaining to number of applications and one group was 2037/2012 and another and in the very group, the petitioner was also shown as the applicant of application No.2377/2012. So far as the remaining applicants are concerned, they preferred W.P.No.37411/2016 and at that stage, the present petitioner did

not prefer the petition. Therefore, this Court took the view qua the petitioners therein. The petitioner herein who was left out being applicant in Application No.2377/2012 has preferred the present petition. 8. We may record that this Court in the above referred decision observed from paragraphs 5 to 20 as under: "5. The short facts of the case appear to be that all the petitioners were working with the Agricultural Produce Marketing Committee (hereinafter referred as to "the Marketing Committee" for the sake of convenience), Siruguppa, Bellary District. On the basis of the alleged ground of not taking proper action for recovery of the difference of the market fees from the traders, disciplinary actions were initiated against all the petitioners. On 29.01.2008, articles of charges were served on the petitioners. On 06.02.2008 the petitioners submitted a detailed reply denying the charges and contending inter alia that recovery was the duty of the Secretary of the Marketing Committee under Sections 50 and 56 of The Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966. Thereafter enquiry was initiated in respect of the charges and on 14.12.2009 the Enquiry Officer submitted a report holding that the charges were proved. On 09.02.2010, respondents issued second show-cause notice to the petitioners calling upon them to submit their explanation. On 01.03.2010, petitioners submitted their reply contending inter alia that the findings of the Enquiry Officer were perverse and based on no evidence. On 28.02.2012 the first respondent after considering the explanation, passed the order in purported exercise of the power under The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, [hereinafter referred to as the Rules, for the sake of convenience], imposing punishments of demotion as well as withholding of annual increments etc. But in addition thereto, order was also passed for recovery of the financial losses from the respective petitioners. The petitioners approached the Karnataka Administrative Tribunal (hereinafter referred to as "the Tribunal" for the sake of convenience) by filing respective applications. The Tribunal for the reasons recorded in the order dismissed the applications. Under the circumstances, the present petitions before this Court. 6. We have Mr. P.N. Nanja Reddy, learned Counsel appearing for the petitioners and Mr.D.Nagaraj, learned AGA appearing for the respondents. 7. We may record that when this Court considered the matters for the first time on 02.12.2016, we had passed the following order: "As the translations are given in W.P.No. 33793/2016 and all matters arise from the common order, the office objection raised for translation in W.P.Nos. 37411/2016, 33242/2016 and 33795/2016 are dispensed with. Mr. P.N. Nanja Reddy, learned Counsel appearing for the petitioners does not press the petition for penalty imposed for withholding of the increment as after some argument, the Court was not inclined to interfere to that aspect of the impugned order of the authority and of the Tribunal. However, on the aspects of recovery from each of the employee totalling to about Rs. 24,00,000/- and more, it prima facie appears that there is no power or competence or jurisdiction to an employer to recover, unless a civil suit is filed or any other proceedings are resorted to and the decree or Certificate of Recovery is issued for such purpose. If such is not read accordingly, the Government which is employer will be

permitted to be Judge in its own cause. Further, it is coupled with the aspect that under The Karnataka Agricultural Produce Marketing (Regulation and Development), Act, 1966, there is an independent mechanism provided under Section 128 of the Act, for recovery of the amount from the employees of the Marketing Committee for the loss caused to the Marketing Committee, which in any case, not resorted to upto now. Hence notice returnable on 13.12.2016. By interim order, all the orders of the Government for recovery of the amount from the respective petitioners "employees shall remain stayed and suspended." 8. Therefore, as per the aforesaid order, this Court was not inclined to interfere with the penalty of withholding of increments and other penalty of demotion etc. imposed on the respective petitioners. However, on the aspects of order for recovery of the amounts from the respective petitioners, this Court was inclined to consider the matter and hence notice was issued to that extent. Under the circumstances, we find that the discussion in the present judgment would be required on the said aspect as to whether recovery of the so-called financial loss or the amount could be ordered by the impugned order passed by the State Government or not. 9. We may at the outset record that the quantum of the amount which is ordered to be recovered from the respective petitioners is as under:

Sl. No.	Writ Petition No.	Amount Rs.
1	W.P.No.32876/2016	10,27,651-00
2	W.P.No.33248/2016	25,25,382-00
3	W.P.No.33793/2016	25,25,382-00
4	W.P.No.37411/2016	10,27,651-00
5	W.P.No.33795/2016	35,56,033-00
6	W.P.No.33791/2016	35,56,033-00

10. The perusal of the order passed by the State Government shows that the same has been issued in purported exercise of the power under Rule 8 of the Rules. 11. Rule 8 (i) to (iv) of Rules, which is relevant for the purpose of these petitions reads as under: 8. Nature of Penalties - 1[One or more of the following penalties] for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely:- (i) Fine in the case of Government servants belonging to State Civil Services, Group "D" , (ii) Censure 2[(iii) Withholding of increments; (iii-a) Withholding of promotion]; (iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the State Government or to the Central Government, any other State Government, any person, body or authority, to whom the service of the officer had been lent; 3[Note-The words "pecuniary loss" shall mean and include interest from the date of causing such loss, at eight per cent per annum on the loss caused by the Government servant.] (Emphasis supplied) The aforesaid shows that as per Rule 8 of the Rules, apart from the penalties described under

the different heads, the Disciplinary Authority has power to order recovery from the pay of the whole or part of any pecuniary loss caused by negligence or breach of the order of the State Government or to the Central Government or to any other authority to whom the services of the Government servant was lent. But the important aspect is that the recovery can only be ordered from the pay and no recovery can be ordered exceeding the pay or the salary of the Government servant. If the impugned order of the Government is considered, there is no reference for recovery of the so-called financial loss from the pay of the concerned petitioner, but it is an order for recovery of the entire so-called financial loss. Therefore, it is possible to take a view that in the absence of any specific direction for recovery from the pay of that respective petitioner, it is an order for recovery in excess of salary or pay in order to recover the aforesaid amount of the so-called financial loss. 12. In our considered view, even if Rule 8 of the Rules, is read as it is, there is power to make recovery from the pay and/or salary of the employee concerned and it cannot be an independent recovery, which may reach to the financial assets of the employee exceeding the pay or salary. Hence the order for recovery of the so-called financial loss of the respective amounts, since it is not from out of the pay or salary of the concerned petitioner, is beyond the scope of Rule 8 of Rules and hence ultra vires to the power and without jurisdiction. 13. Apart from the above, if any employee of the Marketing Committee has caused any financial loss on account of wilful negligence, under The Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966, (hereinafter referred to as "the APMC Act" for the sake of convenience), a separate mechanism has been provided for recovery of the said amount by fixing the liability upon the employee concerned. Section 128 of the APMC Act is extracted for ready reference and it reads as under: "128. Liability of members, officers and employees of market committee for loss, waste, misappropriation, etc.- (1) If, in the course of an inquiry or an inspection under Section 123 or in the course of an audit under the rules, it is found that any person who is or was a member of a market committee or of the Board or who is or has at any time been an officer or an employee of a market committee or Board has made any payment contrary to this Act, the rules, the regulations or the bye-laws, or has caused any deficiency in the assets of the market committee or Board by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to the said market committee or the Board, the [Director of Agricultural Marketing] may himself inquire or direct any subordinate officer authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person. (2) Where an inquiry is made under sub-section (1), the [Director of Agricultural Marketing] may, after giving the person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, to pay contribution and costs or compensation to such extent, as the [Director of Agricultural Marketing] may consider to be just and equitable. (3) Any person aggrieved by an order of [Director of Agricultural Marketing] under sub-section (2) may, within sixty days

from the date of the communication of the said order appeal to the [Karnataka Appellate Tribunal], and the decision of the [Karnataka Appellate Tribunal] on such appeal shall be final and shall not be called in question in any Court of law. (4) Any action under this section shall be without prejudice to the prosecution of the person concerned in respect of any offence." The aforesaid shows that as per the mechanism provided under Section 128 of the APMC Act, if any employee of the Marketing Committee has caused loss to the Marketing Committee on account of his wilful negligence or otherwise, the Director of Agricultural Marketing, may hold an enquiry himself or may direct any subordinate Officer authorised by him to hold an enquiry. After such enquiry, as per sub-section (2) of Section 128 of APMC Act, after giving opportunity of hearing to the person concerned, the Director of Agricultural Marketing has power to direct the employee concerned to repay the amount with interest and cost. Against the aforesaid order under sub-section (2) of Section 128 of the APMC Act, there is a remedy of appeal for the aggrieved person before the Karnataka Appellate Tribunal. In our view, when the aforesaid full-fledged mechanism is provided by Section 128 of APMC Act, the so-called exercise of power under Rule 8 of the Rules, was uncalled for. It is not the case of the respondents that any of the procedure under Section 128(1) or (2) of the APMC Act, are followed. 14. In our considered view, if the provisions of 8 (iv) of Rules, is read with Section 128 of the APMC Act, the resultant situation would be that if the amount of any loss caused to the Marketing Committee is to be recovered by a State Government employee, whose services were lent by the Government to the Marketing Committee, such power for recovery has to be limited to the pay of the employee concerned and the recovery cannot be ordered independent of the pay or salary of the employee concerned. Further in spite of the power available under Rule 8 of the Rules, for making recovery from the pay, if any recovery is to be made in excess of the pay or salary from the employee of the Marketing Committee concerned, the procedure as provided under Section 128 of the APMC Act is required to be followed and then only, recovery of any amount independent of pay or salary can be made. 15. If the facts of the present case are further examined in light of the aforesaid legal position, neither the recovery is ordered to be made from the pay or salary of the employee concerned nor any order is passed by the Director of Agricultural Marketing under Section 128 of the APMC Act. Hence we are inclined to take the view that the impugned order of the Disciplinary Authority so far as it relates to ordering recovery of the aforesaid respective amount from the concerned petitioner is without any authority, competence and jurisdiction and hence they are liable to be set aside. 16. The learned Counsel appearing for the respondents did contend that such a contention was never raised by the petitioners and hence this Court may not permit the petitioners to raise such a contention. 17. Whereas the learned Counsel appearing for the petitioners contended that the ground is raised in the present petitions that the impugned order is passed in contravention to the provisions of the APMC Act, and therefore the petitioners may be permitted to raise such a contention. 18. In our view, it is by now well settled that if it is a

pure question of law, the same can be permitted even at the stage when the petition is under Article 227 of the Constitution, unless to examine such question of law, detailed examination of facts may be required on account of dispute of facts. In the present case, the order is admittedly passed under Rule 8 of Rules. Further it is not the case of the respondents that the so called order is passed by the Government in purported exercise of the power under Section 128 of the APMC Act. Further such power in any case, vests to the Director of Agricultural Marketing and not with the State Government. When the facts are not in dispute and the interpretation of Rule 8 of Rules and the application of Section 128 of the APMC Act, are to be made, it would result into pure question of law, which in our view, can be permitted to be raised under Article 227 of the Constitution of India for the first time in a petition even if not expressly raised before the Tribunal nor any discussion is found in the order of the Tribunal in this regard. Hence, the contention raised on behalf of the respondents cannot be accepted. 19. In view of the above, the impugned order passed by the Karnataka Administrative Tribunal so far as it relates to imposing penalty of demotion to the lower payscale or withholding of increment etc., is not interfered with. However, the impugned order passed by the Disciplinary Authority so far as the recovery of the above referred respective amount from the concerned petitioners shall stand quashed and set aside. However, it is observed that the present order shall not prejudice the rights of the Disciplinary Authority and/or the Director of Agricultural Marketing Committee to resort to the appropriate proceedings under Section 128 of the APMC Act, but at that stage, the rights and contentions of the petitioners shall also remain open to be considered in accordance with law. 20. The petitions are partly allowed to the aforesaid extent." 9. As the order passed by the Tribunal is common, similar view deserves to be taken. Hence, for the reasons recorded in the above referred order, the impugned order passed by the Tribunal so far as it relates to imposing penalty except for recovery of the amount is not interfered with. However, the impugned order passed by the Disciplinary Authority so far as it relates to the recovery of the amount from the petitioner concerned shall stand quashed and set aside. It is also observed that the present order shall not prejudice the rights of the Disciplinary Authority and/or the Director, of Agricultural Produce Marketing Committee to resort to appropriate proceedings under Section 128 of APMC Act, but at that stage, rights and contentions of the petitioner shall also remain open to be considered in accordance with law. 10. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs. Petition partly allowed.