

(1962) 07 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petin. No's. 1024 and 1064 of 1960 and 298 of 1961

S. Subba Rao

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 31-07-1962

Acts Referred:

Constitution of India, 1950 — Article 311

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 11 (2), 11 (4), 11 (6)

Citation : AIR 1964 Kar 221 : (1963) 1 MysLJ 80

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : S.K. Venkataranga Iyengar and V. Krishnamurthy, for the Appellant; B.S. Keshava Iyengar, H.C. Govt. Pleader, for the Respondent

Judgement

Somnath Iyer, J.—A retired Chief Engineer and a retired Executive Engineer whose pensions were reduced and a Sub-Engineer who was dismissed in a disciplinary proceeding commenced against them under the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, are the petitioners before us. The Chief Engineer is the petitioner in Writ Petition No. 1064 of 1960, the Executive Engineer in Writ Petition No. 298 of 1961 and the Sub-Engineer in Writ Petition No. 1024 of 1960.

2. In the charge brought against them on July 1, 1958, they were accused of dereliction of duty during the years 1948 and 1949 in the supervision of a high school building entrusted to a contractor, when the Chief Engineer was an Executive Engineer; the Executive Engineer was an Assistant Engineer and the Sub-Engineer was a Sub-Overseer. On November 14, 1958, a Board of Enquiry was appointed to enquire into those charges. That Board found the petitioners guilty of the charges which it had framed against them and proposed the punishments. This report of the Board was submitted to the Government on March 8, 1959. On June 12, 1959, a show cause notice was issued to each of the three petitioners proposing punishments somewhat at variance with those

suggested by the Board. On June 17, 1960, the impugned orders were made by which the petitioner in Writ Petition No. 1024 of 1960 was dismissed; the pension of the petitioner in Writ Petition No. 1064 of 1960 was reduced by twenty per cent and the pension of the petitioner in Writ Petition No. 298 of 1961 was reduced to the extent of fifty per cent. It should be stated that when the disciplinary proceedings commenced against the petitioners, the petitioner in Writ Petition No. 1024 of 1960 had become a Sub-Engineer; the petitioner in Writ Petition No. 1064 of 1960 had risen to the position of a Chief Engineer and had retired from service and the petitioner in Writ Petition No. 298 of 1961 had become an Executive Engineer. During the pendency of the disciplinary proceedings, the petitioner in Writ Petition No. 298 of 1961 also retired from service from the post of an Executive Engineer on May 31, 1959. The references to each of these petitioners in the course of this order will be to the posts held by them when it was proposed to commence disciplinary proceedings against them or about that time.

3. It is undisputed that the construction of a building for a high school at Chamarajanagar in the District of Mysore, commenced sometime in January 1948, and was completed in August 1949. Between February 28, 1948 and August 19, 1949, the petitioner in Writ Petition No. 1024 of 1960 was a Sub-Overseer in charge of that construction although according to his case before the Board, he was prevented from devoting any attention to the construction of the school building since he was assigned a whole-time duty in some other place. Between November 20, 1947 and February 5, 1949, the petitioner in Writ Petition No. 298 of 1961, was an Assistant Engineer and in that capacity was also in charge of the construction of the school building. Between October 25, 1947 and November 7, 1949 the petitioner in Writ Petition No. 1064 of 1960 was an Executive Engineer functioning in the area in which the construction of the school building was proceeding. It will thus be seen that although the Sub-Overseer and the Assistant Engineer were not in charge of the construction of the building during the entire period during which the construction was proceeding, the Executive Engineer was.

4. On May 22, 1957, nearly eight years after the completion of the construction of the building, there was in Chamarajanagar an exceedingly heavy downpour of rain in consequence of which, according to the report of the Chief Engineer who made an immediate inspection, a verandah of the building collapsed. There was an enquiry by an officer of the Anti-Corruption Department deputed for that purpose into the causes of the collapse of this part of the building. After that preliminary enquiry was made in March 1958, a charge was framed against each of the three petitioners by the Government on July 1, 1958. The charge against the Sub-Engineer read:

"That you Sri S. Subba Rao were in charge of the above construction of the building as Sub-Overseer, Chamarajanagar for the period 28-2-1948 to 19-8-1949 and were primarily responsible for the construction of the Municipal

High School Building, Chamarajanagar, which has subsequently collapsed in view of the bad materials used and defective construction and have failed in supervising the work properly thereby causing loss to Government to the extent of Es. 60,000/-" The charges against the Chief Engineer and the Executive Engineer were verbatim reproductions of this charge.

5. In the communication addressed to the petitioners on July 1, 1958, in which these charges were incorporated they were called upon to produce their written statements in defence by July 10, 1958. They were asked whether they desired any oral enquiry and to be heard in person and to name the witnesses whom they desired to cross-examine or to examine in defence. Their attention was also drawn to the provisions of Rule 11(6) of the Mysore Civil Services (Classifications, Control and Appeal) Rules, 1957, and it was pointed out to them that the required information had to be furnished by them under its provisions. It is manifest that with this communication addressed to the petitioners, the material stage of the disciplinary proceeding against each of them commenced under Rule 11(2) of the Rules.

6. Although Mr. Government Pleader at one stage contended that what the Government did at that stage was no more than to direct a preliminary investigation into the question whether a disciplinary proceeding should or should not be commenced it is obvious that that contention is groundless. In the very, communication addressed to the petitioners on July 1, 1958, it is made clear that the necessary preliminary investigation for the purpose of deciding whether or not there should be a disciplinary proceeding against the petitioners had already been made by a Special Officer of the Anti-Corruption Department, and, that the Government had when it framed the charges against the petitioners, that report of that Special Officer before it. It is, in my opinion, impossible for Mr. Government Pleader to sustain the argument which he advanced before us that notwithstanding the fact that the Government did state in its communication of July 1, 1958, that specific and definite charges had been framed against the petitioners and they were called upon to produce their statement of defence within a specified date as provided by Rule 11(2), and the attention of the petitioners was drawn to Rule 11(6) under which they were required to furnish information as to whether they desired an enquiry and the names of witnesses whom they wished to cross-examine or examine in defence, the disciplinary proceeding had not commenced under Rule 11 and that no charges had been framed against the petitioners under Sub-rule (2) of that rule. We must, in my opinion, understand the communication addressed to the petitioners by the Government on July 1, 1958, as one by which the petitioners were informed that definite charges had been framed against them under Rule 11 (2) after the Government decided to hold an enquiry into those charges. The argument to the contrary addressed by Mr. Government Pleader is in my opinion an impossible argument.

7. After the charges were framed in that way, what the Government did was to

appoint a Board of Enquiry to enquire into those charges under Sub-rule (4) of Rule 11 which reads:

"11. Procedure for imposing major penal ties. : * * * *

(4) On receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary Authority or specially empowered authority may inquire into such of the charges as are not admitted, or if the Disciplinary Authority considers it necessary to do, it may appoint a Board of Inquiry or an Inquiring Officer for the purpose.

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On November 1, 1958, the Board of Enquiry envisaged by this sub-rule was constituted and it was made clear by the order made by the Government in that regard on that date, that the Board of Enquiry was appointed under the provisions of Sub-rule (4) of Rule 11. Paragraph 13 of that Government Order reads:

"13) Having regard to all the circumstances of the case, Government consider that the charges against the said three officers and such others against whom it might be necessary to frame charges in the above connection should be enquired into by a Board and accordingly appoint a Board of Enquiry consisting of the Special Officer, Efficiency Audit and Sri N. Lakshminarasimhaiya, retired Superintending Engineer, Bangalore, for the above purpose under sub-rule (4) of Rule IB of the Mysore Civil Service (Classification, Control and Appeal) Rules as amended from time to time. They are requested to furnish a report to Government within a period of two months."

In paragraph 12 of this Government Order, the Board was directed to record findings on the following questions:

- (a) What the causes for the collapse of the building were;
- (b) who were the officers responsible; and
- (c) how they should be dealt with.

8. Curiously enough, when the Board embarked upon the enquiry which it was directed to hold into the charges which were formulated by the Government what the Board did was to ignore those charges and formulate new sets of charges against each of the petitioners, and, in the communications which were forwarded by the Board to each of the petitioners, they were called upon once again to produce their statements in defence in respect of the charges so framed by them. In those communications, the Board stated as follows:

"You are required herewith to put in any written statement you may desire to submit in your defence by 10-1-1959. Please also state whether you desire any oral enquiry and or to be heard in person. In case you desire any oral enquiry to be held, please specify the witnesses you desire to cross-examine and the

witnesses you desire to examine in your defence. Your attention is invited in this connection to Rule 11(6) of the Mysore Civil Services (C.C. and A) Rules, 1957."

9. It is clear that what was permissible for the Board to do was to make an enquiry into the charges framed by the Government as directed by Sub-rule (4) of Rule 11 of the Rules. It was not within its competence to start the proceedings once again from the stage referred to in Sub-rule (2) of Rule 11 and to frame a fresh set of charges or to call upon the petitioners to produce their statements in defence. The charges against the petitioner were already there and their statements in defence had already been produced and what remained to be done by the Board was to enquire into those charges.

10. If it had been possible for us to come to the conclusion that what the Board did was merely to recast the charges which had been framed by the Government and word them in different phraseology without altering the substance of those charges, it might have been possible for us to think that what was done by the Board was in the nature of nothing more than mere supererogation or elucidation. But it will be seen that: those proceedings of the Board could not be defended in that way. Against each of the three petitioners the Board framed charges in addition to those which had already been framed against them by the Government and which had nothing to do with the purpose for which the Board was constituted. It will be clear from the charge which was formulated by the Government that the only question into which the Board had to make an enquiry was whether any inferior materials had been allowed by the petitioners to be used for the construction of the building and whether the construction of that building was defective and whether there was inadequate supervision on the part of the petitioners and whether therefore the collapse of the school building which resulted in a loss to the Government to the extent of Rs. 60,000/- was attributable to any such dereliction of duty on the part of the petitioners. The only questions which therefore the Board had to enquire into were whether the petitioners were responsible for the use of inferior materials in the construction of the school building and whether there was any defective construction, and whether there was any remissness in the discharge of their duty on the part of the petitioners and whether the petitioners were therefore responsible for the collapse of the building.

11. It should be, pointed out that it is now no longer disputed that the entire school building

did not come down as a result of the unprecedented heavy rains in Chamarajanagar on May 22 and 23, 1957. Even according to the report of the Special Officer who conducted the preliminary investigation into the matter what came down was only the verandah portion of the building although that verandah appears to have been a fairly expensive verandah. However that may be in the charges formulated by the Government, the reference was not to the collapse of

the verandah of the building but to the collapse of the building as a whole as though the entire building had comedown.

12. Reverting now to the proceedings of the Board of Enquiry, it should be mentioned that instead of concentrating its attention upon and confining its investigation to the causes of the collapse of the school building or any part thereof whatever it was, the Board went about making an extremely roving enquiry into what it considered it to be very many acts and omissions on the part of the petitioners during the period when the school building was under construction. The charges formulated by the Government against the petitioners were altered beyond recognition and those altered charges which displaced the charges formulated by the Government were made the subject-matter of the enquiry.

13. It would now be necessary to refer to what was done by the Board in the case of each of these petitioners.

14. In the altered charges which were framed against the Sub-Engineer, he was also accused of having made unnecessary reinforcement of sills of doors and of having done brick bricknogging contrary to specifications. There was also an additional charge against him that the cement concrete flooring was defective. The remaining two charges against him had reference to the inferior quality of the bricks and mortar used and the unsatisfactory nature of the cement concrete work done.

15. Although it cannot be disputed that the accusation that inferior bricks and mortar were used and that the cement concrete work was unsatisfactory undoubtedly same within the purview of the charge framed by the Government, it could not be said, and it is, I think, plain that the charge that some kind of unnecessary reinforcement of sills of doors had been made by the Sub-Engineer or the charge that the brick bricknogging was not done in accordance with the specifications or the charge that the cement concrete flooring was defective cannot for any conceivable reason be regarded as a charge having any relevance or materiality to the charge framed by the Government in which the accusation against the Sub-Engineer was that there was either the employment of inferior materials or the bringing into existence of a defective construction or failure to exercise proper supervision, each of these contributing, according to the charge, to the collapse of the school building. Any defective construction not contributing to the collapse of the building was clearly outside the purview of the charge framed by Government. So, it becomes clear that any brick bricknogging not according to the specification and any imperfection in the cement concrete flooring although amounting as they may to a defective construction, if they did not contribute to the collapse of the building could not be regarded as charges comprised within the charge framed by the Government.

16. However that may be, it is I think incontrovertible that the charge that there was an unnecessary reinforcement of sills of doors was a thoroughly irrelevant

accusation quite unconnected with the charge made by the Government under Rule 11 (2), in respect of which the Board had no competence to make an enquiry under Rule 11 (4). The emphasis of this new accusation was on the superfluity of the reinforcement unrelated to any defect in the construction or the employment of inferior materials into which alone the Board had the power to make an investigation. But the Board did make an investigation into every one of the altered charges formulated by it including those between which and the collapse of the building there was no kind of nexus or relationship. It found the Sub-Engineer guilty of all those charges. In addition, it found him guilty, as will be pointed out, of other acts of misconduct in regard to which no charges had been framed by anyone.

17. It is on the basis of those conclusions of the Board that the Sub-Engineer was issued on June 12, 1960, the second show cause notice by which his dismissal was proposed as the punishment to be imposed on him and the order of dismissal which was made subsequently, also rested on those findings of the Board of Enquiry which were accepted by the Government. The question is whether a punishment imposed in that way can be sustained.

18. It is in my opinion plain that the only charge into which a Board of Enquiry appointed under Rule 11(4) of the Mysore Civil Services (Classifications, Control and Appeal) Rules, 1957, may make an enquiry would be the charge framed under Rule 11(2) by the disciplinary authority or by the authority specially empowered in that behalf. It is not within the competence of the Board of Enquiry to frame fresh charges when it is appointed to enquire into a charge already framed under Sub-rule (2). But, if it nevertheless proceeds to do so, it would be clearly acting without the authority of law and any finding recorded by the Board of Enquiry into a charge framed by it not already included in the charge framed under Sub-rule (3) would be a finding which has no existence in the eye of law and cannot properly form the foundation for the imposition of a punishment of the delinquent Government servant.

19. This is not all that has to be said about this matter. In paragraph 16(c) of the report of the Board of Enquiry, it recorded a finding that the Sub-Engineer was guilty of certain charges which had not been framed against him by anyone at any stage and not even by the Board of Enquiry. This is what it stated :

"He has failed to suggest the deduction of the value of materials and has on one occasion specially recommended the passing of an item deferred by the Assistant Engineer. Hence he cannot be considered to be innocent in any measure. According to his own defence evidence, he was making use of the vehicle of a contractor in his journeys to and from Kyathedevaragudi. This indicates that he did not scruple to place himself under the obligation of contractors. He is, therefore, responsible for all bad works, i.e.,

(A) (1) for use of bad or under burnt bricks;

(2) admixture of inferior lime and sand;

- (3) weak mixture of cement concrete;
 - (4) inadequate reinforcement in R.C.C. work.
 - (5) casting R. C. Joists rectangular.
 - (6) bad spongy weathering coat over roof;
 - (7) providing inadequate bearing or joists on walls and
 - (8) bad flooring work.
- (B) He is also responsible for classifying verandah lintels under the head "Beams".
- (C) He is responsible for submitting bills for bad work done;
- (D) In submitting bills he should have noted the issue of materials on works which he has neglected, thereby causing loss to the Government."

It is manifest that not all the sub-items under the heading (A) were within the charge framed by the Board of Enquiry and much less in the charge framed by the Government. It is equally clear that none of the matters referred to in items (B) (C) and (D) was included either in the charge framed by the Board of Enquiry or in the charge framed by the Government, and, that this is so, is not disputed by Mr. Government Pleader.

20. The position therefore with respect to

the Sub-Engineer is that the Board of Enquiry exceeded its power in first framing charges against him in addition to those which had been framed by the Government which was entirely beyond its competence; and again in finding him guilty of charges which he had no opportunity to meet at any stage and which were never framed even by the Board of Enquiry at any material point of time. This is therefore a case in which the impugned order of dismissal suffers from more than one defect, preceded as it was by the transgression of the provisions of Article 311 of the Constitution, and the contravention of the clear provisions of Rule 11(4) of the Mysore Civil Services (Classification, Control and Appeal) Rules 1957. A punishment imposed in that way cannot, it is clear, be defended.

21. It would now be necessary to consider the sustainability of the punishment imposed on the Chief Engineer who is the petitioner in Writ Petition No. 1064 of 1960. There is, I think more than one challenge possible to this punishment. Although it was part of the duties of this Chief Engineer to supervise along with the others the construction of the school building when he was functioning as an Executive Engineer when the construction was in progress, when the disciplinary proceedings commenced against him, he had already risen to the position of a Chief Engineer and what is of greater materiality is that he had by then retired. The disciplinary proceedings commenced on July 1, 1958, and more than five months before that date he had retired, it is, I think, clear from the provisions of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, that the commencement of a disciplinary proceeding against a retired government

servant is under its provisions impossible. Rule 8 which empowers the imposition of the penalties enumerated therein, authorises the imposition of those penalties only on "Government servants." A Government servant is defined by Rule 2(d) and that definition reads:

"2. Interpretation: -- In these rules unless the context otherwise requires:

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(d) "Government servant" means a person who is a member of the Civil Services of the State of Mysore, or who holds a civil post in connection with the affairs of the state of Mysore and includes any person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority, any person or persons whether incorporated or not and also any person in the service of the Central or another State Government or a Local or other authority whose services are temporarily placed at the disposal of the Government of Mysore:

* * * *". Rule 8 opens with the following words:

"8. Nature of Penalties.-- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on Government servants, namely:

* * * *".

Rule 9 which enumerates the disciplinary authorities likewise authorises imposition of a penalty only on a member of the State Civil Service or on a Government servant belonging to the Mysore Judicial Service or on the other Government servants referred to in that rule. Rule 11(1) forbids the imposition of a penalty on a Government servant except after an enquiry. Sub-rule (2) of that rule directs the supply of the charges to the "Government servant". It is a "Government servant" again, who is permitted the inspection of the official records specified in Sub-rule (3). In every other relevant rule the reference is to a "Government servant" making it abundantly clear that at every material stage during a disciplinary proceeding the person against whom that proceeding may be commenced or continued should be a Government servant, and, if a Government servant as defined by Rule 2(d) is a person who is a member of the Civil Services of the State of Mysore, or who holds a civil post in connection with the affairs of the -State of Mysore, it becomes perfectly clear that one who has retired from Government service is not and cannot be considered to be a Government servant" against whom alone a disciplinary proceeding may be commenced or continued.

22. In that view of the matter, since the Chief Engineer had retired on February 27, 1958, and no disciplinary proceeding against him commenced until after more than five months had elapsed after his retirement, the disciplinary proceeding started against him was clearly not one which was authorised by the rules, and, was, therefore, beyond the competence of the disciplinary authority.

That being so, the constitution of a Board of Enquiry under Sub-rule (4) of Rule 11 of the Rules for the purpose of enquiring into the charge made against the Chief Engineer was likewise impossible.

23. There is something more to be said about this matter as in the case of the Sub-Engineer, the Board of Enquiry expanded the charges against the Chief Engineer. It made manifold charges, against him instead of confining the enquiry which it was directed to hold to the only charge which was framed against him by the Government. One of these numerous additional charges made against him was that there had been unnecessary reinforcements for the sills of windows. The other was that savings were not effected by reducing the depth of the lintels over the windows. The next was that brick bricknogging had not been done according to the specifications. That the cement concrete flooring was defective was the next. But the charge which clearly fell outside the ambit of the permitted enquiry was what was referred to as charge 1(b) in the charges prepared, by the Board which reads:

"1. (b) You were also required to diligently design the roof and the allied structures economically consistent with its safety. You failed to do so as indicated below resulting in pecuniary loss of Rs. 40,000/- to Government.

xx xx xx".

Charge II was again a charge which was utterly foreign to the scope of the enquiry entrusted to the Board of Enquiry. It opens with the words "Abuse of official power resulting in pecuniary loss to Government and pecuniary advantage to the contractor." The Chief Engineer was accused of having paid advances and excess payments to the contractors in addition to advances from time to time for work in excess of the actual work done. He was charged with sanctioning items of work which were not included in the original estimate. It was said that earnest money was refunded to the contractors even before the completion of the work. Payment of enhanced rates for timber was the next accusation. The payment of watch and ward charges amounting to Rs. 1,060/- was, according to the Board of Enquiry, unjustified. None of these charges, it is obvious, had the remotest connection with the charge framed by the Government which related exclusively to the dereliction of duty on the part of the Chief Engineer in the matter of the construction of the building faulting in its collapse.

24. But the Board of Enquiry found the Chief Engineer, guilty of these charges and it was this finding of the Board of Enquiry which, formed the foundation of the impugned order of the Government reducing his pension to the extent of twenty per cent. The impugned punishment resting as it does on findings which the Board of Enquiry had no power or competence to record and which it recorded in a disciplinary proceeding which could never have been commenced after the retirement of the Chief Engineer, cannot but be open to the reproach that it was imposed without the authority of law.

25. But Mr. Government Pleader though that he could defend, the impugned

reduction in the pension, under Article 302 of the Mysore Services Regulations, 1953, which were in force when the Chief Engineer retired. That article which, empowered the authority sanctioning the pension of a civil servant to make such reduction, in the amount of the pension as he thought proper, reads;

"302. (a) The full pension admissible, under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such, reduction hi the amount as it thinks proper.

Note: -- The full pension admissible under the Regulations is not to be given as a matter of course but rather to be treated as a matter of distinction."

26. What was pressed on us was that it was clear, from the provisions of this condition of service applicable to the Chief Engineer that no-civil servant after his retirement can claim pension as a matter of right and that the Government had the discretion either not to grant him any pension at all or to grant him a reduced pension. It was contended that if a reduced pension was granted to a civil servant, the order by which such reduced pension was fixed is not subject to judicial review since the reduction in the-pension was a matter within the absolute discretion of the Government.

27. On the postulate that a reduction in the pension of a retired civil servant is not subject to judicial review it is not necessary in my opinion to express any opinion in this case. That question does not in my opinion present itself for decision by us, since it is indisputable that the reduction in the pension of the Chief Engineer was not made in the exercise of the power conferred by Article 302 of the Mysore Service Regulations but was made by way of punishment imposed in a disciplinary proceeding commenced under the provisions of the Mysore. Civil Services (Classification, Control and Appeal) Rules, 1957. It is indisputable as can be seen from the first communication addressed to the Chief Engineer on July 1, 1958, in which was incorporated the charge framed against him and also from tie order of the Government of November 14, 1958, constituting a Board of Enquiry, and also from the second show cause notice which was issued on July 12, 1959 culminating in the. impugned order by which the pension was reduced by the Government on June 17, 1960, that the reduction in the pension was not a reduction made under the provisions of Article 302 of the Mysore Services Regulations- but was a punishment professedly imposed under the Mysore Civil Services Classification, Control and Appeal) Rules. Every stage of the disciplinary proceeding reveals that the intention of the State was to impose one of the many punishments enumerated in Rule 8 of those rules and not to reduce the pension under Article 302 of the Mysore Services Regulations. Indeed, if the intention of the Government was to effect a reduction in the pension under Article 301 of the Mysore Services Regulation the commencement of a cumbersome and complicated disciplinary proceedings and the constitution of a Board of Enquiry to conduct it which were all quite

unnecessary, would be inexplicable. Further, any redaction in the pension under the provisions of Article 302 would be possible only by the application of the mind of the authority to the question whether the service of the retired Government servant had not been "thoroughly satisfactory". The impugned Government order in which there is no reference to Article 362 of the Mysore Services Regulation, makes it perfectly clear that when that order was made nothing was farther from the mind of the Government than the application of that article for bringing into effect a reduction in the pension. Nor is there any manifestation of the application of the mind of the Government to the question whether the service of this officer had not been "thoroughly satisfactory." In my opinion, the submission that the pension was reduced under Article 302 of the Mysore Services Regulation is only an endeavour to overcome the argument advanced on behalf of the Chief Engineer that no reduction of pension is possible under the Mysore Civil Services (Classification, Control and Appeal) Rules since such reduction is not one of the punishments which may be imposed under its provisions.

28. If we find it impossible to think that the proceeding against the Chief Engineer was no other than a disciplinary proceeding under the Civil Services (Classification, Control and Appeal) Rules, it becomes indisputable that no punishment in the nature of a reduction in pension is permissible under those rules, since, that is not one of the punishments authorised by Rule 8 or by any other rules of those rules. A punishment not authorised by the rules although imposed under those rules cannot be permitted to be sustained on the ground that that punishment in some form could have been imposed on a retired Government official under some other provision such as Article 302 of the Mysore Services Regulation.

29. One of the many weighty considerations which influences this conclusion in my mind is that a reduction in pension under Article 302 of the Mysore Services Regulation is possible, only if the concerned authority is satisfied that the service of the retired Government servant has not been "thoroughly satisfactory." A reduction in pension under Article 362 must therefore be preceded by a survey, of the entire career of the civil servant with a view to decide whether his service has not been "thoroughly satisfactory". No such survey was made by anyone in this case. Even the finding of the Board of Enquiry on the basis of which the Government reduced the pension was that the Chief Engineer and the Executive Engineer "had not satisfactorily discharged their duties" in connection with the construction of the school building. Neither the Board of Enquiry nor the Government found it possible to come to the conclusion that the service of any of these two persons had not been "thoroughly satisfactory". Whether or not the opinion of the authority, referred to in Article 302 of the Services Regulations that an official's service has not been "thoroughly satisfactory" is open to judicial review, it is clear that before a reduction in pension can be made under the provisions of that article, it should be clear to the mind of the authority which reduces the pension that the service of the concerned official has not been

"thoroughly satisfactory". If, in this case, there has been no application of the mind of anyone to the question whether the service of the Chief Engineer was or was not "thoroughly satisfactory" and all that was found by the Government on the basis of the report of the Board of Enquiry was that is the matter of the construction of the school building he had not discharged his duties satisfactorily, it is, I think, impossible for anyone to suggest that we should take the view that since a reduction in the pension of the Chief Engineer was possible under Article 302 of the Mysore Services Regulation, if that article had been applied to his case, we should refuse to disturb the order of reduction which was made by way of a punishment imposed on the Chief Engineer not under Article 302 of the Services . Regulations but in the course of a disciplinary proceeding. In my opinion, the endeavour to sustain the reduction in the pension of the Chief Engineer on the basis of Article 302 of the Services Regulations cannot therefore succeed.

30. What remains to be considered is the case of the Executive Engineer who is the petitioner in Writ Petition No. 298 of 1961. It should be mentioned at this stage that the oddest feature of the charges framed against all the three petitioners was that it was stated in those charges that each one of them was "primarily responsible" for the construction of the building. How three different officials in the department of Public Works could simultaneously be primarily responsible in the construction of any building is what I have found extremely difficult to understand,

31. However that may be, the proceedings of the Board of Enquiry in the case of this Executive Engineer are open to the same reproach to which they are subject in so far as they relate to the Sub-Engineer and the Chief Engineer. The Board of Enquiry did not, as it was bound to do, confine its investigation to the only charge which was framed against the Executive Engineer by the Government. It formulated against this officer extraneous and irrelevant charges in the same way as it formulated against the Chief Engineer, and those new charges which were made against the Executive Engineer were that he was responsible for unnecessary constructions, or that no attention had been bestowed to a more economical construction of the building, or that the contractors had been paid prematurely, or that earnest money was refunded to the contractors even before the completion of the work and so forth. For the reasons for which we should in my opinion hold that the punishments imposed on the Chief Engineer and the Sub-Engineer should be quashed, the punishment imposed on this Executive Engineer should also be similarly quashed.

32. Mr. Government Pleader submitted that the reduction in the pension of this Executive Engineer could be supported under the provisions of Rule 289 of the new Mysore Civil Services Rules, 1958, the provisions of which are similar to those of Article 302 of the old Mysore Services Regulations. This argument has to be repelled for the same reasons for which it was negatived in the case of the Chief Engineer.

33. I must state that the disciplinary proceeding against this Executive Engineer again stood complicated by the fact that during the pendency of the enquiry, he retired, on May 31, 1959, before any punishment was imposed on him. By the time the second show cause notice was issued to him on June 12, 1959, he was no longer a Government servant and was therefore not one when the punishment was imposed on him. So, it is clear that the imposition of that punishment which could be imposed only on a Government servant was not possible.

34. The submission made by Mr. Government Pleader that a punishment could be imposed under the Mysore Civil Services (Classification, Control and Appeal) Rules, even on a retired Government servant if he was in service on the date of the commencement of the disciplinary proceeding, has only to be stated to be displaced by its own unsustainability. So long as the power conferred by those rules is the power to impose a punishment on a Government servant, that power becomes unavailable in cases in which the Government servant ceases to be one during the pendency of the disciplinary proceeding. Although it may be possible to preserve the power to impose a punishment on a Government servant who has reached the age of retirement by declining to retire him, it is obvious that that power is not extensible the moment the Government servant retires.

35. There is one more reason for which we should hold that the argument resting on Rule 289 of the Mysore Civil Services Rules, 1958 cannot assist Mr. Government Pleader. That rule, as in the case of Article 302 of the Mysore Services Regulations of 1953, confers power to reduce the pension, only in cases in which the service of a Government servant has not been "thoroughly satisfactory". Far from anyone having considered the record of the service of the Executive Engineer to be thoroughly unsatisfactory, what was stated in that regard by the Board of Enquiry and which must be deemed to have been accepted by the Government, was something very much to the contrary. This is what it stated in paragraph 18 (a) of its report:

"A study of the confidential reports of Shri Ramaswamaiah however reveals that he has almost invariably been spoken of as an upright and conscientious officer with a high standard of duty."

Ramaswamaiah referred to herein is the Executive Engineer in this case. If that was what was, stated by the Board of Enquiry and the Government was not of a contrary view but accepted all the findings of the Board of Enquiry, it would be going altogether too far for anyone to suggest that the reduction in the pension of this officer should be left undisturbed regarding it as a reduction properly made under Rule 289 of the Mysore Civil Services Rules, 1958.

36. In the view that we should, in my opinion, take as a result of the discussion so far made, it becomes in my opinion unnecessary for us to consider the many other challenges made to the impugned orders. It is not, I think, necessary for us to dwell on the question whether a belated disciplinary proceeding in the year

1957 was in the circumstances extremely unreasonable and oppressive as contended. Nor is it necessary for us to consider whether any disciplinary proceeding could have been properly commenced against the petitioners in disregard of the opinion of one of the Chief Engineers of the State who inspected the building after its verandah collapsed, that the damage to the building was occasioned by an unusually heavy rainfall. Whether at all it was possible for the members of the Board of Enquiry to come to the conclusion that any bad or inferior materials had been permitted by the petitioners to be used for the construction of the building in the investigation which they made nearly a decade after the building was constructed when even according to the report of the Special Officer who made the preliminary enquiry there were alterations or repairs made to that building on at least five occasions by persons other than those who built it, is not again a matter on which it would be necessary for us to say anything at this stage. Whether the collapse of the verandah of the building as suggested on behalf of the petitioners, was due to the accumulation of debris on the roof of the verandah by those other persons to whom those items of work were so entrusted and whether that great load which became weightier when it got soaked during the very heavy rains, was really what brought down the verandah, is not also a matter on which we should now express any opinion. The submission that the fact that no one made any investigation into the question whether there was or was not faulty construction at the very earliest stage when the Municipal Council of Chamarajanagar made a report about it in the year 1950 and subsequently, detracted from the value of the investigation made into that question at an inordinately late stage, is not a contention on the validity of which we need say anything in these cases. On the soundness of the criticism that there was a misjoinder of charges and that the Board of Enquiry was appointed not to conduct a disciplinary proceeding but to tender its advice it would not be necessary for us to express any opinion. That is also what we should in my opinion say about the argument advanced that the then Chief Engineer and the Superintending Engineer who periodically inspected the building when it was under construction had no reason to think that the construction was faulty or that inferior materials were employed. These questions do not present themselves for determination since the petitioners succeed on the jurisdictional infirmities and errors already discussed.

37. These applications are accordingly granted. The impugned order of the Government of June 17, 1960, and the punishments imposed on the petitioners under it are quashed.

38. The petitioners will get their costs in each of these cases, advocate's fee being quantified at Rs. 100/-.

Kalagate, J.

39. I agree.

40. Application allowed.