
(1994) 11 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 32321 of 1994

S.D. Dandagi

APPELLANT

Vs

Secretary, KEB

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Citation : (1995) ILR (Kar) 401 : (1995) 1 KarLJ 628

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Ravi B. Naik, for the Appellant; S.G. Sundaraswamy, Senior Advocate and B.C. Prabhakar, for the Respondent

Judgement

Saldanha, J.—Heard the petitioner's learned Counsel and Mr. Sundaraswamy, learned Senior Counsel who appears on behalf of the Board. The Board has filed its reply wherein it has been pointed out that the petitioner who is at present working in the post of Assistant Executive Engineer, was placed in that position by virtue of an "incharge arrangement" on 2.2.1988. It has been clarified that the petitioner was not promoted to this post and therefore, that it does not constitute a service elevation. The petitioner has been working in that post since 2.2.1988 and it is the case of the Board that after the conclusion of the first enquiry instituted against him, wherein the petitioner has been held responsible for substantial losses to the Corporation aggregating to Rs. 22,61,155.50ps. which has been ordered to be recovered from him. That a personal punishment was also imposed on him reducing his pay by two stages permanently. Mr. Sundaraswamy states that as of now, the petitioner has not preferred any appeal against the said order even though he is aware of the fact that this Court has granted the petitioner leave to present an appeal if he so desires. Even assuming, according to learned Counsel that the petitioner files an appeal, it is contended that having regard to the adverse verdict, the Board was of the view that he should not be continued in independent charge and that consequently, he has been relegated to his original post of Assistant Executive Engineer. Learned

Counsel clarified, that this is only an administrative action which the Board is quite competent to take having regard to the findings of the Enquiry Officer and that consequently, the petitioner's contention that he has been reverted is unsubstantiated in law. He has relied heavily on the written reply filed by the Board wherein it is clearly indicated that the petitioner was never promoted to the post of Assistant Executive Engineer with independent charge but was only incharge of that post. According to learned Counsel, before the petitioner contends that an unjustified order of reversion has been passed, he must first satisfy the Court that he was holding the substantive post and that the order of reversion or relegation is in effect, a punishment which cannot be inflicted on him unless the disciplinary proceedings have culminated in such an order. In sum and substance, what has been pointed out is that the petitioner undoubtedly over a longish period of time was looking after the post of Executive Engineer but was exercising independent powers in that capacity is, having regard to the subsequent developments not considered fit to exercise those independent powers. Mr. Sundaraswamy justifies the action on the ground that it is an administrative corrective. He further states that the reply filed on behalf of the Board indicates that even while exercising these powers, the petitioner had indulged in certain acts which have given rise to some additional disciplinary proceedings having been instituted against him. Learned Counsel requests the Court to take an overall view of the matter and to consider whether in the total background of the case, the action of the Board is justifiable or not.

2. The essence of the argument advanced on behalf of the petitioner is that the punishment that was imposed on him so far was limited only to recovery of the money or reduction of his increments. Petitioner's Counsel relies very heavily on the use of the word "reversion" in the order that has been passed and he contends that there is no dispute whatsoever about the fact that the petitioner has been reverted to a lower post and that this constitutes adding on a second punishment to the order passed by the disciplinary authority which is wholly impermissible in law. Petitioner's Counsel also relies heavily on the reference in the order to the word higher post and he submits that since the petitioner has been effectively holding charge of the post independently for a period of six years, that it would be absurd to contend that this is only a transitory arrangement and that the Court must construe that this is a substantive appointment to that post. He reinforces the argument by submitting that only and until an adverse order was passed in the disciplinary proceedings, that the Board did not consider it necessary to take any such action which clearly indicates that it is not an independent administrative act but that it is effectively imposing a double punishment on the petitioner. Also, it is contended that effect ought not to be given to the disciplinary authority's order unless and until the appeal is disposed of because there is every possibility that the petitioner will succeed in the appeal and the damage done cannot be thereafter rectified.

3. Normally, I would have straight away upheld the contentions advanced by the petitioner's learned Counsel because undoubtedly, the order of the disciplinary

authority is subject to appeal. I however need to take cognizance of certain additional factors which a Court exercising Writ jurisdiction must do, particularly where public institutions are concerned. In this case, the Board is a public sector Corporation and the post in which the petitioner is at present working happens to be an extremely responsible one. I have taken special note of the contention raised on behalf of the Board that the petitioner had been placed in that position with independent powers. Despite the fact that disciplinary enquiries were pending against the petitioner, the Board was good enough not to touch him until the enquiry was concluded. A finding has now been recorded against the petitioner whereby he has been held guilty of misconduct involving a substantially large sum of money. If the petitioner is successful in his appeal, that order will be modified or set aside but it is too early in the day to presume such a state of affairs. As of now, the Board was justified in taking cognizance of the order that had been passed. Had the petitioner been reverted from a substantive post to which he had been duly promoted, this Court would have perhaps taken a different view of the matter but where the record undisputedly indicates that the petitioner was only incharge of that post, it means that he does not have any legal rights to insist on stating that he was effectively holding that post and that he therefore cannot be relegated from that position. Just as the Board had the inherent power to ask him to officiate in that post if a set of circumstances justified the Board to discontinue that arrangement, it would be within its jurisdiction to do. Undoubtedly, the Board ought not to act arbitrarily but on the present record one cannot say that the Board was unjustified in its action. I am conscious of the fact that the Board has used the word "reverted" as also the term "next higher post" but to my mind this Court will have to overlook the sloppy drafting which is quite characteristic in these days and examine the matter from the basis namely the question as to whether the petitioner has in law been reverted. In so far as the answer to this question is in the negative to my mind, the order in question does not deserve interference with. I need to however clarify, that in vacating the interim order passed by this Court earlier, the petitioner will not be precluded from applying to the appellate authority for appropriate interim orders and if the appellate authority so considers, appropriate interim orders in favour of the petitioner may be passed. Also, this order will not preclude the appellate authority, in the event of the petitioner succeeding in his appeal, from ordering appropriate corrective action including restoring the status quo ante if the facts so justify.

4. This order substantially disposes of the subject matter of the dispute completely and therefore it is unnecessary to keep this Petition pending any longer. The Petition to stand disposed of.

5. It is very necessary for me to clarify, that since the petitioner is yet to have his appeal decided and since there are other proceedings pending, that none of the observations made in this order which are for purposes of deciding the present application shall come in the way of the petitioner as far as a fair evaluation of his case is concerned in any other proceedings.