

(2011) 03 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 26158 of 2005

Shri. K. Sippe Gowda

APPELLANT

Vs

The High Court Karnataka

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Constitution of India, 1950 — Article 311
Karnataka Civil Services Rules, 1974 — Rule 160, 175, 175 (2), 182

Citation : (2011) 03 KAR CK 0022

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Subramanya Jois, for the Appellant; S.S. Naganand, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the parties.

2. The facts briefly stated are as follows:

The Petitioner had joined the services of the first Respondent on 14.2.1972 as a Second Division Assistant and was promoted to the cadres of First Division Assistant, Assistant Court Officer and Court Officer in the years 1979, 1991 and 1994, respectively. It is claimed that the Petitioner has rendered service without any blemish over the decades. The Petitioner also contends that he was elected as the Joint Secretary of the Karnataka State Government Employees Association in the year 1978 and that he was a member of the Executive Committee of the said Association and thereafter, was elected as the General Secretary and he held that position till December 1994. In January 1995, he was said to have been elected as the President of the Association. In the year 2002, he was again elected as the president of the Association. It claimed that the Association has a membership of almost six lakh employees through out the State of Karnataka with 182 branches.

It is contended by the Petitioner that as an office-bearer of the Association, he

was required to attend to the problems of the Government employees in various departments and he was therefore a necessary member of various sub-committees, which were constituted by the Association to address the numerous grievances of its members. It is in view of the active involvement of the Petitioner in the affairs of the said Association, that the Respondents, as early as in the year 1991, had granted a general permission to the Petitioner, on his representation, that he could attend to the activities of the Association even during the office hours.

The Petitioner however was placed under suspension by an order dated 18.12.2004, in contemplation of disciplinary action. The Petitioner was posted to work under the Assistant Registrar in the MFA. Decree-II, Record Room-II and the Supreme Court branches. He was under the over-all administration, control and supervision of the Registrar (Judicial), High Court of Karnataka. It was alleged that he was irregular in attendance and was in the habit of leaving his work place after marking attendance and was not available to assign any work. When questioned by the Registrar (Judicial), about his dereliction of duty, it was stated that he had frowned at him arrogantly and continuously failed to discharge his duties.

This having been Drought to the notice of the Honourable Chief Justice, the Chief Justice had directed that he be posted to Court-hall No. 1 as an Additional Court Officer and accordingly, a Memo dated 18.12.2004 was served on him. After receiving the same, instead of complying with the directions contained therein, he had refused to work and had displayed utter defiance and had submitted an application seeking earned leave from 18.12.2004 till 15.2.2005, on medical grounds, which according to the Chief Justice was a ruse to avoid the work assigned to him. This was held to be willful, disobedience to work and a lack of devotion to duty and therefore, disciplinary proceedings were initiated, with the Chief Justice acting as the disciplinary authority and had been placed under suspension. This was followed by Articles of Charge dated 1.1.2005. The two charges were as follows:

Charge-1: That while working as Court Officer on the establishment of High Court of Karnataka, you were directed under Memo dated 18.12.2004 to work as Additional Court Officer to Court Hall No. 1 with effect from 18.12.2004. But, after receiving the Memo instead of complying with the directions, you submitted an application praying for grant of Earned Leave from 18.12.2004 to 15.02.2005 on medical grounds without stating the nature of ailment and production of necessary medical certificate. Since the leave application was in total defiance to the Memo issued, as a ruse to avoid the work assigned to you, in disregard to Rule 182 of Karnataka Civil Service Rules, your leave application was rejected. You submitted your leave application in disobedience to work assigned memo dated 18.12.2004. Thus you have derelicted to your duty and you are also guilty of misconduct.

Charge-2: That you are in the habit of marking attendance and getting away

from the Court premises and were not available to assign any work and when questioned several times by the Registrar (Judicial), you frowned at him arrogantly. (A list containing the particulars of your absence, leave availed by you, marking your presence by overwriting your absence in the attendance register and not marking the attendance register is enclosed herewith.)

Thereafter, not being satisfied with the reply submitted by the Petitioner, the Registrar - Vigilance of the High Court of Karnataka was appointed as the inquiry officer by an order dated 18.3.2005. The Petitioner had submitted his statement of defence on 17.1.2005 and an inquiry was conducted, whereby two witnesses namely, the Registrar-General and the Registrar-Judicial were examined as witnesses on behalf of the first Respondent.

The Petitioner examined himself as PW.1. At the conclusion of the inquiry, the Petitioner had submitted his written brief dated 11.7.2005. The Presenting Officer also submitted his written brief on 12.7.2005. The report of the inquiring authority was submitted on 1.6.7.2005 and a show-cause notice was issued to the Petitioner on 19.7.2005, calling upon him to show-cause as to why the report ought not to be accepted and any of the penalties enumerated under the Rules be imposed on him. The Petitioner submitted his representation with reference to the show-cause notice on 27.7.2005. The second Respondent thereafter passed an order dated 12.9.2005 directing the dismissal of the Petitioner from the services of the first Respondent. It is that which is sought to be challenged in the above writ petition.

3. The learned Senior Advocate Shri Subramanya Jois appearing for the Counsel for the Petitioner would seek to canvass the following contentions:

That the impugned proceedings were under the provisions of the High Court of Karnataka (Conditions of Service and Recruitment) Rules, 1973 (hereinafter referred to as the "1973 Rules" for brevity) and penalty under the Rules could be imposed only in the manner contemplated and for reasons contained in Rule 17 of the Rules and the Petitioner could have been visited with the extreme punishment of dismissal only on the basis of the evidence of probative value, which was not available against the Petitioner. The learned Counsel would point out that the proceedings had been rushed through as is evident from the sequence of events and the Petitioner was not afforded ample opportunity to meet the case against him.

It is contended that there is no misconduct committed by him on the basis of the Articles of Charge. It is contended that the Statement of Imputations accompanying the Articles of Charge was not in accordance with law and was vague rendering it impossible for the Petitioner to answer the so-called Articles of Charge. It is contended that the disciplinary authority has failed to apply his mind to the defence statement submitted by the Petitioner before proceeding to appoint the Special Empowered Authority (hereinafter referred to as the "SEA" for brevity), to conduct the inquiry. This would be a clear violation of Rule 17(4)

of the Rules, which required the disciplinary authority to have dispassionately considered the defence submitted by the Petitioner.

The learned Senior Advocate would take this Court through the evidence tendered by the witnesses PWs.1 and 2 to demonstrate that the said witnesses had deposed with regard to matters and aspects, which never formed a part of the charges and thus the findings recorded on such aspects which were never the subject matter of the charges did not justify the inquiring authority in holding the Petitioner guilty of the same. The disciplinary authority having accepted those findings is hence bad in law and the entire proceedings stand vitiated. It is contended that the finding to the effect that the Petitioner had received the memo Exhibit P.1 and thereafter declined to discharge the work assigned to him, and on the other hand, submitted an application for leave on medical grounds, is clearly against the evidence of PWs. 1 and 2 and therefore, is not tenable. The further finding that the Petitioner had not appended any medical certificate in support of the request for earned leave on the ground that he was unwell proceeds on the assumption of such a requirement under the Rules, whereas even according to PWs. 1 and 2 the Rules did not stipulate or envisage any medical certificate being required to be appended to a leave application. Whereas the contemplation in law is otherwise. In terms of Rule 182 of the Karnataka Civil Services Rules, a certificate is required to be submitted only at the time of resumption of duty, after availing medical leave and not while submitting a leave application and that this position is further clear from Rules 175, 175(2), 160 read with 182 which was brought to the attention of the inquiring authority, but which was completely overlooked. The unreasonable finding that the Petitioner was not in his robes and therefore, that itself was another act of indiscipline is in negation of the circumstance that for over ten years, the Petitioner had not been assigned any court work and there was no charge whatsoever that he had attended to court work without being properly dressed and this finding also runs counter to the evidence on record. The repeated assertion of the Petitioner that the application for leave marked in evidence as Exhibit P.2 was prepared by PW. 1 as it was typed in his office and that therefore, the accusation as to the nature of illness not having been mentioned was not of any great significance, as it was forcibly obtained from the Petitioner.

It is pointed out that the record does not disclose that the Petitioner had any adverse remarks against him over the years though it is sought to be made out that the Petitioner was a habitual absentee and he never attended to his work. From a perusal of the annual performance reports for the years 2001-2002, his attendance is shown as "punctual". However, the Registrar - Judicial has made identical remarks in both the reports, to the effect that he "remains busy in State Association activities and attendance is not punctual". Significantly, there is no date mentioned against the said entry by the Registrar -Judicial. However, for the years 2004-2005, it is apparent that the reports contain remarks which are identical, verbatim, against each column and would submit that, a plain perusal of these documents would speak for itself as regards the object with which an

inquiry was conducted and the supporting documents that are placed on record.

It is submitted that even if the charges are held proved, the penalty imposed is disproportionate and is unsustainable. The disciplinary authority has failed to mention the compelling reason for imposing the extreme penalty of dismissal from service. It is apparent that there is no application of mind as to the choice of penalty. It was imperative that reasons be assigned for the same. The Petitioner having been deprived of his source of livelihood also suffers from a slur and stigma, which is now attached to his reputation by virtue of the summary dismissal of the Petitioner after having served the institution for thirty two years and hence, the learned Senior Advocate would submit that the petition be allowed and the order of punishment be set aside and grant such consequential benefits, which the Petitioner is entitled to.

Reliance is placed on the following authorities in support of his contentions:

- a) Bhagat Ram Vs. State of Himachal Pradesh and Others, ,
- b) Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, ,
- c) Surath Chandra Chakrabarty Vs. State of West Bengal,
- d) Mahabaleshwar Pandrinath Naik v. State of Karnataka and Ors. 1982 (1) Kar. LJ 105,
- e) Ranjit Thakur Vs. Union of India (UOI) and Others, ,
- f) Ram Pal Singh Vs. Union of India and Others, ,
- g) Union of India and another Vs. G. Ganayutham (Dead) by LRs., ,
- h) M.K. Nagaraja v. State of Karnataka and Ors. ILR 1979 Kar. 565
- i) A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,
- j) Shankar Dass Vs. Union of India (UOI) and Another,
- k) Kalpana Goel v. The. Central Silk Board W.A. NO. 6225/2003

4. The learned Senior Advocate Shri S. Naganand appearing for the counsel for the Respondents would contend as follows:

That from an admission made by the Petitioner that he was the office-bearer of an Association of Government employees, which required his full-time attention, would itself disclose that he was too busy to attend to the duties assigned to him. He had been in the habit of marking attendance and leaving the court premises. He constantly indulged in insubordination. It was by virtue of his status as an office-bearer of the said Association, the Petitioner sought shelter under that pretext not to discharge any work assigned to him. The service record and the yearly performance appraisals for the years 2000 to 2004 would clearly indicate this aspect of the matter.

When he was called upon to report for duty as a Court Officer in Court Hall No. 1, the Petitioner immediately filed an application seeking earned leave for almost two months from 18.12.2004 to 15.2.2005. This was a blatant act of willful disobedience and lack of devotion towards duty. It was under those circumstances that he was kept under suspension with effect from 20.12.2004. The disciplinary proceedings followed as a matter of course initiated by the Honourable Chief Justice after examining the service record of the Petitioner. In the Petitioner's defence statement, it was contended that he left the court premises only after obtaining permission and he placed reliance on a memo dated 16.8.1991, which permitted him to attend meetings in connection with the work of Karnataka Government Employees Association on all working days whenever situation warranted and therefore, his application for medical leave could not be construed as misconduct under Rule 22 of the Rules and that the rejection of his leave application was never communicated to him. The learned Senior Advocate would submit that from a reading of the order dated 12.9.2005 passed by the disciplinary authority, it would reveal that the authority has considered the report of the inquiry officer dated 16.7.2005 in detail and it is thereafter concluded that the charges are proved after independently applying its mind to both the documentary and oral evidence. It is pointed out that the disciplinary authority has referred to Rule 17(10) and has noted that the said Rule was deleted with effect from 11.8.1977. This was pursuant to the 42nd amendment of the Constitution of India, by which Clause (2) of Article 311 was deleted and with the deletion of Sub-rule 10 of the Rules, there was no necessity for the disciplinary authority to record a finding on each of the charges independently before serving a copy of the inquiry report on the delinquent official and the Petitioner also having filed his objections to the report and the disciplinary authority having considered the same while passing the impugned order, the question of there being any violation of Rule 17(9) is misconceived and untenable. It is pointed out that the Petitioner's conduct in refusing to comply with the memo calling upon him to attend to work in Court Hall No. 1 on the ground that he had suddenly took ill, was never established. The medical certificate sought to be produced did not indicate that he required continuous bed rest for almost two months and the Petitioner himself having decided that he required to be on leave for almost two months on the spur of the moment and on the pretext that he had fallen ill is not placed on record.

Having regard to the habitual conduct of the Petitioner, in the interest of discipline in the institution, any lenience shown to the Petitioner would have had a drastic effect insofar as the behavior and conduct of other employees of the institution, who could also resort to such misbehavior secure in the belief that no severe punishment would visit them, was uppermost in the mind of the disciplinary authority in imposing the punishment of dismissal and hence it is contended that the same cannot be characterised as being disproportionate to the acts of misconduct which have been established by cogent evidence before the inquiring authority.

The learned Senior Advocate would further submit that even during the pendency of this petition, the Petitioner had approached the disciplinary authority seeking review of the impugned order of punishment which has been rejected. The law is well settled that insofar as the quantum of punishment is concerned that it is within the discretion of the disciplinary authority and therefore, he would submit that the petition be dismissed.

He would place reliance on the following authorities in support of the contention that absenteeism is a serious misconduct and willful absenteeism was a ground for dismissal from service and that the punishment of dismissal from service cannot be said to be disproportionate to the said act of misconduct.

- a) Charanjit Lamba Vs. Commanding Officer, Southern Command and Others, ,
- b) General Manager, Appellate Authority, Bank of India and Another Vs. Mohd. Nizamuddin, ,
- c) State of Rajasthan and Another Vs. Mohammed Ayub Naz, .

5. In the light of the above contentions and on a perusal of the record, the points for consideration by this Court are, (1) whether the misconduct said to have been committed by the Petitioner was established; (2) whether the punishment imposed on the Petitioner was justified; (3) whether the procedure followed at the inquiry; and (4) whether the disciplinary authority in imposing the punishment was in compliance with the principles of natural justice. The charges pertained to insubordination and refusal to attend to work assigned to him and habitual unauthorised absence from the court premises though having marked attendance and defying his superiors when questioned about such conduct and showing utter contempt and disrespect to them. Along with the charge sheet, a list was appended furnishing the particulars, month and year wise, from October 2000 to November 2004, indicating the days of absence, the dates on which there was marking as "present" by overwriting the attendance register, the dates on which the Petitioner was on casual leave and earned leave and the dates on which attendance was not marked. As is evident from these dates, the Petitioner's conduct was questionable even from the year 2000. The said list was produced in order to establish the allegations as alleged in the charge sheet. Though it is not stated either in the body of the writ petition or the statement of objections, PW.1 in his evidence, has indicated the immediate provocation for the initiation of the disciplinary proceedings against the Petitioner in the year 2004 when it was evident that the Petitioner was given to such indiscipline even from the year 2000. It is stated that on 16.12.2004, the Honourable Chief Justice accompanied by two other Senior Judges and the Registrar (Vigilance) and the Registrar (Judicial), had paid a surprise visit to all the branches of the High Court. The Petitioner was not found on the premises. The inspection had taken place between 4.00 p.m. and 4.30p.m. On the next day, the Honourable Chief justice had passed an order that the Petitioner be posted as a Court Officer in Court-hall No. 1 and it was on this direction that a memo was prepared by the

Registrar (Judicial). The reason as to why the Respondents had not chosen to initiate any action against the Petitioner is also answered by the very witness in his cross-examination. Though the Petitioner was promoted as a Court Officer in the year 1994, he had never been assigned any court work at any point of time, till December 2004. It is also stated by the said witness that there was no complaint against the Petitioner, in writing, except a memo dated 2.6.2003, which was said to have been issued by PW.1 to the Petitioner for overwriting the attendance register relating to the dates 27.5.2003 to 29.5.2003, which is marked as Exhibit P.4. The said memo however was not reflected in the service records of the Petitioner and this was not denied by PW.1 in his evidence.

However, it was claimed by PW.1 that the Petitioner was orally warned on several occasions as regards his conduct, but no action was taken against him for two reasons; firstly, in the expectation that he would mend his behaviour and secondly, as he was the president of the "NGO Organisation" (sic) and the leader of a faction of the High court employees, there was apprehension that the work of the High Court would be paralysed. It is also stated in the evidence of PW.1 that though he was aware of the habitual absence and behaviour of the Petitioner and that it was also brought to the attention of the former Chief Justice, (who held office before the Chief Justice who had initiated action against the Petitioner), there were no directions issued to PW.1 to take any action against the Petitioner. From this evidence, it is apparent that though the misconduct that is alleged is specifically in relation to the conduct of the Petitioner on 16.12.2004 and 17.12.2004, and broadly in respect of his habitual conduct in remaining absent from the court premises unauthorisedly, and marking his attendance by overwriting in the attendance register, the Respondents did not view the conduct as per the second charge seriously, over the years. However, from the material on record, it cannot be said that there was no misconduct committed by the Petitioner or that the evidence placed in support of the same did not support the charges. The findings of fact are therefore arrived at on the basis of the material which has not been shown to be false. But, however, the glaring circumstance that over the years, even though the Petitioner was given to the same behaviour, there were no adverse remarks to be found anywhere in the service records. It is therefore a matter of shame, if it is admitted that the authorities were apprehensive of initiating any action against the Petitioner on account of the clout that the Petitioner carried as an office bearer of the Government Employees Association.

Seen from the annual performance reports, at Annexures Q and R they are contradictory reports. The Assistant Registrar has not reported of the poor attendance and bad conduct of the Petitioner, but, on the other hand, has reported that his attendance was punctual and his conduct was good during the years 2001 and 2002. It is only for the years 2003 and 2004 that it is shown that his attendance was irregular and that his official conduct could not be assessed for those years. Significantly, the Registrar (Judicial) has made remarks for the years 2003 and 2004, to state that he is irregular in attending to duties and after

signing the attendance register leaves the High Court premises and does not work in any branches and has also mentioned the date on which such remarks have been made by the Registrar (Judicial). However, for the years 2001 and 2002, there is an identical comment to the effect that the Petitioner remains busy in Association activities and therefore, attendance is not regular and is signed by the Registrar (Judicial) but no date is shown against the said comment. This is contradictory to the report of the Assistant Registrar for the said years where he has indicated the attendance of the Petitioner as punctual and his official conduct as being, good. These apparent contradictions cannot be reconciled.

In the absence of any complaints or adverse remarks over the years insofar as the Petitioner's conduct was concerned, the proceedings initiated in the year 2004 in respect of the past conduct of the Petitioner, which was well within the knowledge of the disciplinary authority, as admitted in the evidence of PW.1 even earlier and the Disciplinary Authority not having thought it fit to check the conduct of the Petitioner or to initiate any proceedings, does not justify the extreme punishment of dismissal from service now imposed on the Petitioner.

As could be seen from Rule 15 of the 1973 Rules, any penalty could have been imposed for good and sufficient reason. Rank insubordination and absenteeism, if were chronic in nature, and if there was material evidence available on record, it cannot be said that the disciplinary authority would not be justified in imposing the extreme punishment of dismissal which is the law as laid down in the decided cases, relied upon by the learned Senior Advocate Shri Naganand.

As could be seen, in the case of State of Rajasthan and Anr. v. Mohd. Ayuh Naz, supra, the Respondent therein was absent from duty for over three years and it was not satisfactorily explained. It is in that circumstance that the Supreme Court held that even though the administrative authority has a primary role in deciding as to the quantum of punishment, the scope of judicial review would necessarily relegate the intervention of the court as being secondary. But the proceedings had been pending before the court for over 20 years, the court itself has thought it fit to hold that the punishment could be sustained.

In Mohd. Nizamuddin case, supra, it was again a case of absenteeism, which was an unauthorised absence for three years.

In Charanjit Lamba's case, supra, the delinquent had made a false claim for payment of transport charges of household luggage and refused to pay electricity bill charges.

In spite of the nature of charges, the punishment of dismissal was imposed, as otherwise, it would have been subversive of army discipline and its high traditions. Therefore, to impose the extreme punishment of dismissal, in the case on hand, when it was also found that the Petitioner had a standing permission to attend to Association activities, subject to obtaining permission from the competent authority and the added circumstance that in spite of the Petitioner

having been found to be away from duty on several occasions as claimed, the extreme view, that in order to maintain discipline in the institution, it was necessary to ensure that the Petitioner was to be removed from service, thereby affecting his chances, of reemployment and also denying his retirement benefits that he would have been entitled to for long years of service, even if it is deemed as irregular service, results in the punishment being disproportionate to the proved misconduct.

Therefore, this Court is of the opinion that though the charges have been held proved, the punishment imposed stands modified to that of compulsory retirement from service with effect from the date of the impugned order.

Accordingly, the petition stands disposed of.