

(2009) 07 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 10024 of 2009

Smt. B.C. Ammakka

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 8 (vi)

Citation : (2010) ILR (Kar) 2829 : (2010) 1 KCCR 186 : (2010) 5 SLR 678

Hon'ble Judges : P.D. Dinakaran, C.J.; V.G. Sabhahit, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; B. Veerappa, G.A., for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.

This writ petition is filed under Articles 226 and 227 of the Constitution of India being aggrieved by the order dated 20/22.4.2006 passed by District Judge, Kodagu-Madikeri ordering compulsory retirement of the petitioner and also to set aside the order dated 9.4,2008 passed by the second respondent-Registrar General of this Court modifying the order into one of voluntary retirement passed by the third respondent and refusing to review the said order by rejecting the application for review on 9.4.2008 and to direct the second respondent to consider the application dated 24.3.2008 and to decide the appeal on merits by considering the facts and grounds urged in the appeal.

2. It is averred in the petition that petitioner was appointed to Group-D post on 28.10.1980 in the establishment of third respondent. She was promoted to the cadre of SDA. She was working as SDA in the office of Civil Judge (Sr.Dn.) & JMFC., Virajpet and was entrusted with the work of Motor Vehicle Claims in pending branch. She was on casual leave on 3.4.2001 to attend the funeral of her aunt. The third respondent initiated a Departmental enquiry against the

petitioner in DE. No. 2/2004 and served a charge memo dated 20.9.2004 calling upon her to submit her written statement of defence on or before 21.10.2004 alleging that she had been entrusted with the charge of motor vehicle claims pending branch and due to her dereliction and negligence of duty she has misplaced/missed the cheque sent by this Court in MFA. No. 3606/96 in a sum of Rs. 50,000/- and it is not credited to CCD and caused loss of cheque amount and interest thereon in Execution Petition No. 87/2003 on the file of Civil Judge (Sr.Dn.) Virajpet The petitioner denied the said articles of charge served upon the petitioner and submitted that on 3.4.2001 she was on casual leave and no cheque was entrusted or received by her from the Sheristedar either personally or through any official of the court. Civil Judge (Sr.Dn.) Virajpet was appointed as the Enquiry Officer to hold an enquiry against the petitioner. Four witnesses were examined by the Presenting Officer in the enquiry and Enquiry Officer submitted a report on 31.3.2006 to the third respondent holding that the charge against the petitioner had been proved. The third respondent issued a second show cause notice to the petitioner on 3.4.2006. Petitioner submitted a detailed reply to the said show cause notice and third respondent by order dated 20/22.4.2006 imposed penalty of compulsory retirement to the petitioner with effect from 31.5.2006 under Rule 8(vi) of KCS (CCA) Rules, 1957 and petitioner was relieved of her duties as SDA on the afternoon of 31.5.2006. It is the further case of the petitioner that she preferred Administrative Appeal to the second respondent, records were called for in the said appeal. Petitioner was in financial distress as she stopped receiving her salary from 1.6.2006 because of the order of compulsory retirement and therefore, she was under suspension and she was forced to submit a representation on 3.1.2008 to the second respondent requesting the said authority to consider here case sympathetically and at least permit her to retire voluntarily from service so that she could lead a peaceful life without any stigma. The petitioner sent a representation on 24.3.2008 to the Hon"ble Chief Justice requesting to cancel the representation given by her on 3.1.2008 for voluntary retirement and to order consideration of appeal on merits. The said representation was received on 26.3.2008. But the second respondent without considering the said representation of the petitioner by which she had withdrawn her earlier representation dated 3.1.2008, passed an order on 9.4.2008 and has modified the order of compulsory retirement into voluntary retirement from service with effect from 31.5.2006. The petitioner filed an application for review of the said order passed by the second respondent and the application for review was also rejected and therefore, being aggrieved by the said order, petitioner has filed this writ petition for the above said reliefs.

3. When the matter was posted for hearing on 3.7.2009, learned Counsel appearing for the petitioner sought permission to retire and the learned Counsel was permitted to retire and the writ petitioner was present as party in person.

4. We have heard the petitioner and the learned Government Advocate appearing for respondents.

5. The petitioner submitted that she was on casual leave on 3.4.2001 and no cheque was given to her and she was not in any way connected with the cheque sent by this Court in MFA. No. 3606/96 for a sum of Rs. 50,000/-. She further submitted that she had sent a representation seeking for withdrawal of the memo filed before the appellate authority-the second respondent seeking for withdrawal of the letter submitted by her under pressure and force on 3.1.2008 and without considering the said representation, second respondent passed the order and application for review has also been rejected. The Insurance Company issued another cheque for Rs. 50,000/- in place of the missing cheque and the claimant has been paid the amount under the cheque and therefore, no loss is caused to the Insurance Company. The petitioner was not afforded sufficient opportunity in the enquiry and she further submitted that her husband is also an employee in the Court and he has refused and neglected to maintain the petitioner and her daughter who is of a marriageable age. Disciplinary Enquiry has been started against her husband and he has been imposed penalty and a false charge has been foisted against the petitioner and the charge has not been proved and therefore, the order of compulsory retirement passed by the third respondent which is modified to one of voluntary retirement by the second respondent is liable to be set aside and she may be reinstated into service with all consequential benefits.

6. Learned AGA submitted that impugned orders have been passed in accordance with law and the same does not suffer from any error or illegality as to call for interference in this appeal.

7. We have given careful consideration to the contention of the petitioner and the learned Government Advocate appearing for the respondents and scrutinised the material on record.

8. The material on record would clearly show that the writ petitioner was working as SDA in the court of Civil Judge (Sr. Dn.) & JMFC, Virajpet. She was entrusted with the incharge of Motor Vehicle claim cases pending branch during the relevant period is not disputed. The charge against the petitioner was framed as follows:

That you being SDA posted as such to the court of Civil Judge (Sr. Dn.) & JMFC, Virajpet entrusted with in charge of Motor Vehicle Claims cases pending branch. Due to your dereliction and negligence of duty, you have misplaced/missed the cheque sent by the Hon''ble High Court of Karnataka, Bangalore in MFA. No. 3606/96 a sum of Rs. 50,000/- and it was not credited to CCD and caused loss of cheque amount and interest thereon in Execution Petition No. 87/2003 on the file of the Civil Judge (Sr. Dn.) Virajpet.

9. It is the contention of the petitioner that though she was incharge of Motor vehicle claim cases pending Branch in the Court of Civil Judge (Sr. Dn.) Virajpet that her aunt expired and she applied for a day's CL on 3.4.2001 and did not attend the office. However, the fact that she had applied for leave and was

sanctioned casual leave on 3.4.2001 is not disputed by respondents 1 to 3. However, according to the respondents, petitioner came to the office on 3.4.2001, she was entrusted with the cheque sent by this Court in MFA. No. 3606/96 for a sum of Rs. 50,000/-. However, it is the case of the respondent that petitioner had come to the office on 3.4.2001, the cheque was received in MFA. No. 3606/96 for Rs. 50,000/- and the same was handed over to the petitioner and thereafter she made an application for grant of casual leave and leave was sanctioned and she went away from the office and did not credit the cheque to CCD Account. In order to substantiate the charge against the petitioner, four witnesses were examined as PWs.1 to 4 and Exs.P1 to P14 were got marked.

10. PW. 1-H. V. Somaiah has stated in his evidence that as per the instructions of the Sheristedar he delivered the cheque to the delinquent in the presence of the Sheristedar it is elicited in his cross-examination that after the arrival of Sri. P. Richard to the Shirestedar's chamber, he delivered the cheque to the delinquent. There was a letter annexed to the said cheque, he does not know the number of the cheque.

11. PW. 2-A. N. Nagarathna was working as Despatch, Reciept and Court Hall typist and also used to attend 7th and 8th register. It is clear from her evidence that cheque was received along with the covering letter where upon the CMO made an endorsement to hand-over the same to record keeper. When it was sent to the record keeper, record keeper returned back the cheque as he is not concerned with the said cheque and accordingly she made entry in Ex.P3-register at Sl. No. 250 on 3.4.2001 and thereafter she placed the cheque returned from the Record Keeper and letter before the Sheristedar who asked her to leave it on the table. Accordingly, she kept there along with Ex.P3-register and the Sheristedar strike out the word Record keeper by deleting and she does not know who has written the work "CMO". It is clear from the evidence of PW. 2 that her evidence is not at all helpful to prove the endorsement of the cheque to the delinquent employee on 2.4.2001 and her evidence would show that cheque had been marked to the record keeper by the CMO and PW 2 made an entry in the receipt rcsiter-P3. Since the record keeper returned the cheque, she kept the cheque along with the letter on the table of the Sheristedar.

12. PW. 3-T.S.Vasu was working as Record Keeper in the court of Civil Judge (Sr. Dn.) and JMFC, Virajpet, between January, 2000 to May, 2001. He has stated that PW.2-Nagarathna had showed him a cheque for Rs. 50,000/-received in MPA. No. 3606/96 pertaining to MVC. No. 255/95. All the records have been sent to the High Court, hence, he did not receive the cheque from Nagarathna-PW. 2 and his evidence is also not helpful in showing that the cheque was entrusted to the petitioner-the delinquent employee.

13. PW. 4-Edmond Mascarenhas was working as CMO incharge of Accounts Sheristedar. He has deposed that on 30.3.2001 he received the cheque for Rs. 50,000/- from the High Court in MFA. No. 3606/96 along with a letter and it was handed over to the delinquent employee-the petitioner who was SDA incharge of

MVC pending Branch through H.V. Somaiah, Process Server of that court and she has accepted the said cheque along with the covering letter. However, the said cheque and letter have not been returned by her along with dummy order sheet to obtain orders of then Presiding Officer to remit the cheque amount to CCD and thereafter, after receipt of cheque and letter after half an hour, she applied for leave and availed it. She has not put up proceeding within two or three days. Hence, he informed the said fact to the Presiding Officer who in turn asked him to give notice to the delinquent. Accordingly, notice was issued to the delinquent. He has further deposed that delinquent subscribed her signature in attendance register on 3.4.2001 and thereafter it has been erected and written as Casual Leave. It is not in his handwriting. The said portion is marked as Ex. P13(a). It is suggested in his cross-examination that, he along with Somaiah (PW. 1) tried to assault the delinquent in the record room. It has been denied by the witness and it is further suggested that there was no occasion to the petitioner to obtain necessary orders from the Presiding Officer which has been denied by the witness. He has also denied the suggestion that delinquent never signed the attendance register on 3.4.2001 and he has also denied the suggestion that he himself has misplaced the cheque.

14. It is clear from the evidence adduced before the Disciplinary Authority as also the contents of the documents that the finding of the Enquiry Officer that petitioner had applied for casual leave on 3.4.2001 after coming to the office she applied for casual leave and availed the same and mere fact that there is no entry in Ex.P3-cheque receipt register that the cheque had been entrusted to the petitioner-the delinquent employee would not in any way affect the deposition of PWs. 1 and 4 and therefore, evidence of PWs. 1 and 4 proves that the cheque was entrusted to the delinquent-the petitioner herein on 3.4.2001. The said finding of the Disciplinary Authority is clearly erroneous. It is clear from the evidence of PW. 2 that an entry is made in Ex. P3 that the cheque was sent to the Record Keeper and since record keeper informed that the entire records have been sent to the High Court, she returned the cheque and placed the same before the CMO-PW. 4. Admittedly, there is no entry in Ex. P3-register meant for entering the movement of the cheque received that the cheque was entrusted to the writ petitioner-delinquent employee and in the absence of any entry in that behalf and that the cheque has been sent to the Record Keeper and he returned the same, it was returned and placed on the table of the CMO-Cash Sheristedar as per the evidence of PW. 2 would clearly show that the evidence of PWs. 1 and 4 that the cheque was entrusted to the petitioner becomes doubtful. Further, the fact that the petitioner on casual leave on 3.4.2001 is not disputed and in the absence of any material to prove conclusively evidence about the entrustment of the cheque to the delinquent employee, it is clear that the entrustment of cheque to the delinquent employee has not been proved. The Disciplinary Authority has accepted the finding of the Enquiry Officer on the ground that detailed order has been passed by the Disciplinary Authority and having regard to the material on record, the finding of the Enquiry Officer that charge against the petitioner has

been proved is justified and further, the Disciplinary Authority in his order dated 20.4.2006 has also taken into account the entries made in the confidential records of the delinquent employee in coming to the conclusion about the proof of charge against the petitioner and imposing the punishment. The said entries were not produced before the Enquiry Officer as they are not relevant for proving the charge and could not be taken into account by the Disciplinary Authority. Further, the material on record would show that no loss of the amount and interest has not been proved as no such loss has occasioned as the material on record would clearly show that another cheque was sent by the High Court on 24.3.2004 and the same was credited to CCD and payment was made to the claimant on 5.11.2004, claimant has not made any grievance or claim for loss of interest and admittedly, no loss is occasioned as alleged in the charge. The material on record would further show that the husband of the petitioner is also working in the District Judiciary at Madikeri and he was subjecting petitioner and her daughter to cruel treatment and the husband of the petitioner has married another woman and Disciplinary Enquiry was conducted and he was reverted to the lower cadre and a false case has been foisted against the petitioner though she was on leave on 3.4.2001 and she was not entrusted with the cheque as alleged in the charge and therefore, the order passed by the Disciplinary Authority cannot also be sustained. The material on record would further show that in the Administrative Appeal, the Appellate Authority has not gone into the merits of the case and has modified the order of punishment of compulsory retirement to one of voluntary retirement on the basis of the letter submitted by the petitioner Registrar (Vigilance) of this Court. The material on record would further show that the petitioner had addressed a letter to the Hon''ble Chief Justice of this Court and she has sought for return of the letter given by her to the Registrar (Vigilance) seeking for modification of the sentence. However, the Appellate Authority has passed the order on 23.6.2008 modifying the sentence from compulsory retirement to voluntary retirement and review petition to recall the said order has been dismissed and therefore, it is clear that the Appellate Authority did not go into the merits of the case and only proceeded on the letter which has been later retracted by the petitioner by writing letter to the Hon''ble Chief Justice retracting from the letter given by her to the Registrar (Vigilance) on the basis of which the order passed by the Appellate Authority on 26.3.2008. Accordingly, for the above said reasons we hold that the report submitted by the Enquiry Officer holding that the charge against the petitioner has been proved as also the order passed by the Disciplinary Authority-the third respondent accepting the order of the Enquiry Officer dated 31.3.2006 is liable to be set aside and consequently, the punishment imposed upon the petitioner is also liable to be set aside and it is held that the charge against the petitioner has not been proved and petitioner is absolved of the said charge framed against the petitioner and petitioner is entitled to reinstatement with all consequential benefits. Accordingly, we pass the following order:

The writ petition is allowed. Order dated 31.3.2006 by the Enquiry Officer and

the order passed by the Disciplinary Authority dated 20.9.2004 and order passed in Administrative Appeal-HV/E & 6/2004 dated 26.3.2008 are set aside and the petitioner is absolved of the charge framed against her by holding that the charge framed against the petitioner has not been proved and consequently, the order of punishment is set aside. The petitioner is reinstated into service with all consequential benefits.