

(2011) 03 KAR CK 0222

In the Karnataka High Court

Case No : Writ Petition No's. 50362 and 52602 of 2003

Smt. R. Usha Padma and K. Seetharam Bhat

APPELLANT

Vs

General Manager (Admn. and HRD) Karnataka Power
Transmission Corporation Limited, Director (P and T) KPTCL
and Appellate Authority and The Company Secretary KPTCL

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 — Section 19
Constitution of India, 1950 — Article 19 (1) (g)
Marathwada University Act, 1974 — Section 24 (1), 84

Citation : (2011) 03 KAR CK 0222

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.V. Narasimhan, for the Appellant; P.S. Dinesh Kumar, Central
Government Standing Counsel for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the Petitioner. The petitions in WP 52602/2003 and WP 50362/2003 are considered together as the issues arising for consideration are identical.

2. In that first of these petitions, the Petitioner was working as an Assistant Engineer. The Petitioner had joined the services of the Respondent in the year 1991. The Petitioner claims to have discharged her services with blemish less record. However, it was alleged that the Chief Engineer-Electricity, Technical Audit and Quality Control had, by a communication dated 15.12.1999. addressed to the Secretary of the Respondent-Corporation suggested that disciplinary action may be initiated against the Petitioner and three others as there was an apparent violation of Clause 9 of the Electricity Supply Regulations in relation to providing power supply to a multi-storied building belonging to one Krishnappa of Ganganagar. The Chief Engineer had made such a recommendation on the inspection report of the engineers of the Technical Audit and Quality Control

department. Pursuant to this, the Secretary of the Respondent-Corporation had ordered a joint departmental enquiry against the Petitioner and three others, as envisaged under the KEB Employees" (Classification, Discipline, Control and Appeal) Regulations, 1987 (hereinafter referred to as " the 1987 Regulations" for brevity). The charges were to the effect that the Petitioner while working as an Assistant Engineer-Electrical in the technical section of the Respondent-Corporation had committed irregularities in providing power supply to the building belonging to one Krishnappa as aforesaid. It was specifically alleged that the Petitioner did not register the application submitted by the said consumer as required under Rule 9, though it was patent that the building in question consisted of four floors as per the building plan submitted. It was further alleged that the Petitioner had accepted the deposit amounts from the consumer and had issued a work order though there was no regular sanction of the power supply by the concerned superior. It was further alleged that the Petitioner did not collect the monthly security deposits under Low Tension 3 for a 2 H.P. Pump of the consumer. It is on that basis that the article of charges were framed and the Petitioner had submitted a reply as on 27.3.2007 and the allegations were denied. The Petitioner specifically contended that the allegations could not be sustained against the Petitioner as she could not be held responsible for the alleged loss occasioned in not collecting the required deposit from the consumer. The main allegation against the Petitioner being that she did not call for all the relevant records to ascertain the nature of the building as to whether it comes under the multi-storied category or not. Further, the Petitioner contended that she alone was not responsible for the servicing of the installation and sanctioning of the power to the building and the authority not being vested with the Petitioner, the allegations were baseless. The only responsibility entrusted with the Petitioner at the relevant period of time was the scrutiny of estimates and filing of field report for consideration by the higher authorities for further action. Without properly appreciating the defence set up by the Petitioner, an enquiry officer had been appointed by the disciplinary authority and the enquiry itself was ridden with irregularities insofar as the enquiry officer not having afforded sufficient opportunity to the Petitioner to effectively participate and defend her case and to cross-examine the witnesses who were examined on behalf the management and the procedure also not having been made explicit to the Petitioner, the enquiry having been concluded and to the surprise of the Petitioner, her superior namely Shri Nagaiah, against whom also enquiry was initiated, stood exonerated and it is the Petitioner and two others who were found guilty of the charges while inexplicably Nagaiah was exonerated. The disciplinary authority after having accepted the report of the enquiry officer and also having pre-determined the penalty that was to be imposed on the Petitioner had proceeded to impose the extreme penalty of withholding of three annual increments with cumulative effect.

3. Similar facts are involved in WP 50362/2003 wherein the Petitioner has been imposed the penalty of withholding of three annual increments with cumulative

effect.

4. The learned Counsel for the Petitioner would submit that insofar as the imposition of penalty was concerned, that in terms of Official Memorandum dated 19.5.2003, issued by the Managing Director, the Company Secretary of the Corporation was placed in charge of the post of General Manager and it is that officer who has imposed the penalty of withholding of three annual increments falling due with cumulative effect by his order dated 26.5.2003, exercising the power of the first Respondent-disciplinary authority, which according to the learned Counsel for the Petitioner, is not permissible in law. It is this which is urged as the primary contention in support of the grounds raised in the writ petition namely, that the third Respondent while acting as in-charge of the post of General Manager could not exercise the statutory power which could be exercised only by the officer named namely the General Manager. The third Respondent could at best discharge the routine day-to-day affairs attached to the post of General Manager and could not exercise statutory power which only a General Manager could exercise.

5. It is nextly contended that the authority, while issuing the show-cause notice, as to why penalty ought not to be imposed on the Petitioner on the basis of the findings of the enquiry officer, has taken a decision that the penalties prescribed under the Regulations could certainly be imposed on the Petitioner. This according to the learned Counsel is a predetermination of the penalty to be imposed even before consideration of a reply that could be submitted by the Petitioner to the show-cause notice issued pursuant to the receipt of the enquiry report by the disciplinary authority. In this regard, the learned Counsel would firstly place reliance on a judgment in the case of *Maridev v. State of Mysore* 1968 (1) Mys. LJ 325, in support of the proposition that when an officer is appointed to officiate in a higher appointment, he is invested with the powers of higher post, but when he is placed in charge of the current duties of a vacant post in a higher appointment, whether in addition to his own duties or independently, he cannot exercise any of the statutory powers of the office, and he could merely perform the day-to-day office duties only.

6. Further, he seeks to place reliance on a judgment of the Supreme Court in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, , to the similar effect namely, while interpreting the scope of Section 84 of the Marathwada University Act, 1974 which provided for delegation of powers and which indicated that any officer or authority of the University may, by order, delegate his or its powers except the power to make statutes, Ordinances and Regulations to any other officer or authority under his or its control and subject to the condition that the ultimate responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating them. Further Section 24(1)(xii) provided for delegation of power by the executive council, which laid down that the executive council may delegate any of its power, except the power to make ordinances to the Vice-Chancellor or to any other officer subject to the approval

of the Chancellor. The approval of the Chancellor was therefore mandatory. Without such approval, the power could not be delegated to the Vice-Chancellor. Since the record did not reveal that the approval of the Chancellor was not obtained, the resolution in the instant case was held to be not in conformity with the statutory requirement and therefore has not conferred power on the Vice Chancellor to take action against the Respondent therein. The learned Counsel seeks to draw sustenance from the said judgment.

7. The counsel also places reliance on a decision of this Court in Sri. B.N. Dhotrad Vs. The Board of Directors/cum-Appellate Authority, Karnataka Land Army Corporation Ltd., , wherein this Court has interpreted the scope of Rules 32 and 68 of the Karnataka Civil Service Rules and after referring to various judgments of the Supreme court has held with reference to the Rule itself that a Government servant appointed to be in-charge of current duties of an office cannot exercise any substantive powers of the office. He cannot discharge the statutory functions assigned to the post and he could merely perform the day-to-day office duties because the powers other than substantive powers do not adversely affect the interest or rights of others. It is this proposition which is sought to be relied upon in support of the Petitioner's case that the Company Secretary could not discharge the power under the Regulations: which are statutory in character in imposing the penalty while acting as in-charge of the office of the General Manager.

8. The learned Counsel would also draw attention to a decision in the case of H.R. Ravindranath Vs. Syndicate Bank, , for the proposition that the disciplinary authority having indicated in the show-cause notice issued pursuant to the receipt of the enquiry report as to why punishment ought not to be imposed having predetermined the punishment that would be imposed causes grave prejudice to the delinquent. The counsel would hence submit that the impugned order withholding three increments with cumulative effect is bad in law on account of the authority imposing such penalty was not authorised to do so and hence the order being without jurisdiction and the disciplinary authority also having indicated the punishment that would be imposed even before receiving a reply to the show-cause notice was also not in consonance with the law as laid down by the Supreme Court.

9. Per contra, the counsel for the Respondents would place reliance on a decision of the Supreme Court in the case of Gopalji Khanna Vs. Allahabad Bank and others, , to contend that the exercise of power by the third Respondent company in imposing penalty while as acting as in-charge of the office, of the General Manager cannot be said to be bad in law as no statutory power is exercised but while being in-charge of the office of the General Manager could exercise all powers that were capable of being exercised by the General Manager. He would place reliance on Paragraph-7 of the above said decision, which was rendered in a circumstance where power of review which was available to the Chairman and Managing Director of the Allahabad Bank Officer Employees" (Discipline and

Appeal) Regulations, 1976 whether could have been exercised by the executive director who in the absence of the chairman and Managing Director was entrusted with the current charge of the duties of the office of the Chairman and Managing Director and would point out that the similarity of the circumstances is uncanny and the said power having been exercised was held by the Supreme Court as not being exercised of statutory power in his following terms:

7. With respect to the second contention, it was submitted by the learned Counsel that the power of review is conferred by Regulation 18. Only the Chairman and Managing Director are specified as reviewing authorities. This statutory power, therefore, can be exercised by the Chairman and Managing Director only as they are the named authorities under the statutory provision and cannot be validly delegated to any subordinate authority. Shri Wadhwa, therefore, could not have, validly exercised that power. There is no substance in this submission. It is really misconceived. Though the Regulations have been framed in exercise of the powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, by the Board of Directors, they cannot be equated with, a statute. What the Board of Directors have done by making those Regulations is to regulate the power of taking disciplinary action against the employees of the Bank. Moreover, this is not a case where the power of Chairman or the Managing Director came to be exercised by a subordinate official as a result of delegation of that power. Shri. Wadhwa while exercising the power of review was really discharging the functions of Chairman and Managing Director as he was then placed in charge of those offices and was therefore entitled to all the duties and functions of those offices. He did not exercise that power on the basis that it was delegated to him. Therefore, the decisions in *Barnard v. National Dock Labour Board*, *Krishna Kumar v. Divisional Assistant Electrical Engineer and Marathwada University* v. *Seshrao Balwani Rao Chavan*, relied upon by the learned Counsel in support of his contention that statutory power can be exercised by the named authority only and cannot be further delegated, require no further consideration. So also, *Ramakant Shripad Sinai Advalpalkar v. Union of India* and *State of Haryana v. S.M. Sharma* cited by the learned Counsel have no relevance. The question which arose for consideration in those cases was whether an officer who substantively holds a lower post and is asked to discharge the duties of a higher post can be considered as promoted to that higher post. This Court held that entrustment of current duties charge of a higher post does not amount to promotion and in such cases the person continues to hold his substantive lower post and only discharges the duties of higher post essentially as a stopgap arrangement.

10. He would further submit that insofar as the distinction sought to be drawn as to whether the Regulations are statutory in nature and the exercise of statutory power per se, is also expounded upon by the apex Court while drawing reference to *Ajaib Singh v. State of Punjab* AIR 1965 SC 1619 in the following words:

8. It was next submitted that when a person is entrusted with charge of current

duties of a higher post, he can exercise only that powers and perform those functions which are available to the person holding the higher post under executive orders and not those which are conferred by statutory provisions. In support of this submission the learned Counsel relied upon the decision of this Court in *Ajaib Singh v. Stat of Punjab*. In that case what had happened was that the Additional District Magistrate, Amritsar was invested with powers of a District Magistrate u/s 10(2) of the Code of Criminal Procedure, 1898 and was also put in charge of the office of the District Magistrate Amritsar, who was transferred. No order appointing him as a District Magistrate u/s 10(1) was passed. While in charge of the office of the District Magistrate, he passed an order of detention under the defence of India Act and Rules, 1962. That order was challenged on the ground that as the Additional District Magistrate was not appointed as District Magistrate u/s 10(1) he did not have the power to pass a detention order and, therefore, the order passed by him was without any authority of law and liable to be set aside. This Court after considering the relevant provisions of the defence of India Act and Rules, 1962 and the drastic nature of the power and the consequences following from it, observed that the power of detention could only be exercised by the State Government or an Officer or authority to whom it was delegated and that the said power could be delegated to an officer or authority who was not lower in rank than the District Magistrate, it was then held that even though the Additional District Magistrate was exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate, he was still not the District Magistrate as he was not appointed as such u/s 10(1) of the Code and therefore, he had no power to pass the order of detention. Even though invested with the powers of a District Magistrate, he did not become an officer of the rank of a District Magistrate. In this case we are not concerned with such a provision and therefore are not required to consider whether Executive Director of the Rank when entrusted with the charge of duties of the offices of Chairman and Managing Director became an officer of the rank of Chairman and Managing Director. Moreover the power of the employer to take disciplinary action against his employee including the power to review an order of penalty, has to be distinguished from the statutory power to detain a person. Therefore, on the basis of this decision it cannot be held that the Executive Director who was merely entrusted with the charge of duties of the offices of Chairman and Managing Director could not have exercised the power of reviewing the order of penalty passed by the disciplinary Authority.

11. Placing further reliance on *Hari Chand Aggarwal v. Batata Engineering Company Limited*. 1969 CrLJ 803 the court has drawn attention to the following passage therein:

9. *Hari Chand Aggarwal v. Batata Engineering Co. Limited*. also a question had arisen, whether the Additional District Magistrate who was entrusted with all the powers of the District Magistrate who was entrusted with all the powers of the District Magistrate u/s 10(2) of the Code of Criminal Procedure could have exercised the power delegated by the Central Government to the District

Magistrate to requisition the property u/s 29 of the Defence of India Act, 1962. This Court held as under:

....the powers of requisitioning are of a very drastic nature and involve the fundamental rights in respect of property guaranteed under Article 19(1)(f) of the Constitution. The Central Government while making the delegation of its power u/s 29 of the Act must ordinarily be presumed to be fully conscious of this aspect of the matter and it is for that reason that an officer or authority of the high status of a District Magistrate in the district was empowered to exercise that power.

The scheme of Section 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two and distinct authorities and even though the latter may be empowered under Sub-section (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in Sub-section (1) of Section 10...

12. The learned Counsel for the Respondents would therefore submit that the contention as to the order of penalty being without jurisdiction and being illegal on the footing that an officer placed in-charge could not exercise such power as the same amounts to misuse of statutory power which is not available in the officer acting in-charge of the said post is therefore, not tenable and the decisions sought to be relied upon stand on a different footing all together and it is the facts of case in Gopalji Khanna, supra which would apply and therefore, would submit that the questions stand answered against the Petitioners.

13. Insofar as the decision in H.R. Raveendra's case, supra is concerned, the question really would not arise for consideration as there is no predetermination of any punishment that would be imposed on the Petitioner. The show-cause notice issued itself would indicate that the Respondent is called upon to show-cause as to why punishment that would follow for violation of the Regulations ought not to be imposed. The further reference to the several penalties that are capable of being imposed does not by itself indicate a pre-determination of the punishment to be imposed on the Petitioners. Hence, it cannot be said that the order impugned is bad in law on the grounds that, are sought to be urged by the learned Counsel for the Petitioners.

14. One other contention as to Nagaiah, against whom also proceedings were initiated, but who has stood exonerated is concerned, it is evident from the material on record that he had not signed any order sanctioning the supply of power and it is the Petitioner herself who had issued such a work order even in the absence of sanction by the said Nagaiah. It is in that glaring circumstance that Nagaiah had been exonerated and it cannot be said that there was bias as against the Petitioner.

15. The petitions are without merit and are hereby dismissed.