

(2007) 02 KAR CK 0057
In the Karnataka High Court
Case No : Writ Appeal No. 2061 of 2006

S.R. Patil

APPELLANT

Vs

State of Karnataka and Rajashekhar Mirje

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 — Rule 26 (3), 5 (6)

Citation : (2007) ILR (Kar) 4653 : (2007) 6 KarLJ 405 : (2007) 4 KCCR 2332

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : Jayakumar S. Patil Associates, for the Appellant; Pramila Nesargi and C.H. Jadhav, for C/R.2, for the Respondent

Judgement

Cyriac Joseph, C.J.—This Writ Appeal is filed against the judgment dated 22.11.2006 in Writ Petition No. 15359/2006 which was allowed by the learned Single Judge. The appellant is the second respondent in the Writ Petition. The second respondent was the petitioner in the Writ Petition.

2. The second respondent Sri. Rajashekar was appointed as Additional Government Pleader vide Annexure-"A" order dated 30.5.2003. According to Annexure-"A" order, the appointment was for a period of three years from the date of the order or until further orders whichever is earlier. As per Annexure-"B" order dated 12.4.2006, the appointment of Sri. Rajashekar as Additional Government Pleader, Chikkodi, was continued for a period three years from 30.5.2006 or until further orders whichever is earlier. The Government, vide Annexure-"C" letter dated 24.8.2006 informed the District and Sessions Judge, Belgaum, that the Government proposed to appoint Sri. S.R. Patil, Advocate, (Appellant herein) as Additional Government Pleader for a period of three years under Rule 26(3) of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 and requested the District and Sessions Judge to offer his opinion on the proposal. The District and Sessions Judge, Belgaum, through

Annexure-"D" letter dated 3.10.2006, informed the Government that Sri. S.R. Patil, Advocate, cannot be considered for appointment as Additional Government Header for three reasons. The first reason was that the term of Sri. Rajashekar who was then working as Additional Government Pleader had not expired and no fresh notification had been published inviting applications for the post. The second reason was that there were no complaints or allegations regarding the work and conduct of Sri. Rajashekar as Additional Government Pleader. The third reason mentioned by the District and Sessions Judge, Belgaum was that certain documents produced by one Sri. S.B. Majaji of Yamakanamardi, Hukkeri Taluk, showed that Sri. S.R. Patil, who was a former Government Pleader, Chikkodi, had contravened the orders of the Court and had given wrong information to the Court. The said documents produced by S.B. Majaji also were enclosed with Annexure-"D" letter for perusal of the Government. The District and Sessions Judge, Belgaum, concluded Annexure-"D" letter conveying his opinion that Sri. S.R. Patil may not be considered as Additional Government Pleader, Chikkodi, However, Government issued Annexure-"E" order dated 31.10.2006 terminating the appointment of Sri. Rjashekar and appointing Sri. S.R. Patil as Additional Government Pleader, Chikkodi, for a period of one year from the date of taking charge of the post or until further orders whichever is earlier. It was also mentioned in the order that Sri. Rajashekar was entitled to one month's additional Retainer's Fee under Rule 5(6) of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977. It is seen from Annexure-"E" order that the appointment of Sri. Rajashekar was terminated in exercise of the powers under Rule 5(2) of the said Rules and the appointment of Sri. S.R. Patil was made under Rule 26(3) of the said Rules. Challenging Annexure-"E" order, Sri. Rajashekar filed the Writ Petition praying to quash Annexure-"E" order and to direct the first respondent-Government to continue him as Additional Government Pleader. The learned Single Judge allowed the writ Petition observing that even though the petitioner's appointment was terminated under Rule 5(2) of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977, there was no compliance with the said Rule as he was not given one month's notice or one month's retainer's fee in lieu of notice. Even though the Writ Petition was allowed, the learned Single Judge has clarified that it would be open for the Government to terminate the services of the petitioner in accordance with law.

3. Aggrieved by the order of the learned Single Judge, Sri. S.R. Patil has filed this Writ Appeal.

4. While admitting the Writ Appeal on 4.12.2006, an interim order was passed staying the operation of the impugned order of the learned Single Judge until further orders,

5. Thereafter, the second respondent Rajashekar has filed a counter affidavit in the Writ Appeal and has also produced additional documents. The affidavit contains allegations against the appellant and documents are produced to

substantiate the allegations. However, we do not consider it necessary or proper to adjudicate on the truth of the said allegations in this proceeding. For the reasons to be stated later, we leave it to the Government to consider the truthfulness or otherwise of the allegations as and when the Government takes a fresh decision in the matter,

6. Having heard learned Counsel for the parties and having considered the materials placed on record and the relevant provisions contained in the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977, we are of the view that the learned Single Judge was not right or justified in interfering with the termination of appointment of Sri. Rajashekar. The reason stated by the learned Single Judge for quashing the order impugned in the Writ Petition is that Sri. Rajashekar was not given one month's notice of termination or one month's retainer's fee in lieu of notice. It is true that under Rule 5(6) of the said Rules, the State Government is competent to terminate the appointment of a Law Officer without assigning any reason by giving one month's notice in writing or by giving one month's retainer fee in lieu of such notice. It is clearly stated in Annexure-"E" order of the Government that Sri. Rajashekar was entitled to one month's additional Retainer fee under Rule 5(6) of the said Rules. Hence it is evident that even though one month's notice was not given to Sri. Rajashekar, he was given one month's retainer fee in lieu of such notice as required under Rule 5(6). Therefore, the order of the learned Single Judge is liable to be set aside.

7. At the same time, we cannot ignore the fact that the learned Single Judge did not consider the question whether the appointment of Sri. S.R. Patil was in accordance with the Rules. According to Annexure-"E" order, Sri. S.R. Patil is appointed as the Additional Government Pleader under Rule 26(3) of the said Rules which reads thus:

26(3) Notwithstanding anything contained in Sub-rule 2, but subject to other provisions of these rules, the Government may in cases of urgency appoint in consultation with the concerned District Judge, any advocate as District Government Pleader or Additional District Government Pleader for a period not exceeding one year.

Thus, it is obvious that the appointment under Rule 26(3) has to be made in consultation with the District Judge. Annexure-"C" letter shows that the Government had communicated to the District and Sessions Judge, Belgaum, a proposal to appoint Sri. S.R. Patil as Government Pleader in the place of Sri Rajashekar and the Government sought the opinion of the District and Sessions Judge on the said proposal. It is also evident from Annexure-"D" letter dated 3.10.2006 that the District and Sessions Judge categorically stated that Sri. S.R. Patil may not be considered for appointment as Additional Government Pleader, Chikkodi. Thus, the appointment of Sri. S.R. Patil as Government Pleader was against the opinion of the District and Sessions Judge, Belgaum.

8. Since the relationship between the Government and the Government Advocate is fiduciary in character and since the Government Advocate can hold the office only during the pleasure of the Government and also in the light of the terms and conditions of appointment contained in Annexure-"B" order dated 12.4.2006, it was open to the Government to terminate the appointment of Sri. Rajashekar under Rule 5(2) read with Rule 5(6) even before the expiry of the period of appointment. Therefore, the first reason stated by the District and Sessions Judge in Annexure-"D" letter did not stand in the way of the termination of appointment of Sri. Rajashekar under Rule 5(2) r/w Rule 5(b) or the appointment of Sri. S.R. Patil under Rule 26(3). The second reason; i.e., there are no complaints or allegations against the work and conduct of Sri. Rajashekar also may not be relevant if the Government is not willing to take the service of Sri. Rajashekar any more and if the Government wanted to appoint a new person as Government Pleader. But the third reason stated by the District and Sessions Judge, i.e., the documents produced by one S.B. Majaji and enclosed with Annexure-"D" showed that Sri. S.R. Patil while working as Government Pleader earlier had contravened the orders of the Court and had given wrong information to the Court, deserved to be considered by the Government before taking a decision. Such consideration was absolutely necessary in view of the categorical statement of the District and Sessions Judge that Sri. S.R. Patil may not be considered for appointment as Additional Government Pleader. Even assuming that the Government is competent to ignore or overrule the opinion of the District and Sessions Judge and to appoint a person as Additional Government-Pleader, before taking such a decision, the Government is bound to consider the opinion of the District and Sessions Judge and to apply its mind to the materials or information furnished by him and to record the reasons for ignoring or overruling the opinion of the District and Sessions Judge. Hence we have perused the relevant files made available by the learned Government Advocate. We have seen from the relevant files that the Government did not consider or apply its mind to the materials and information furnished by the District and Sessions Judge while opining against the appointment of Sri. S.R. Patil as Additional Government Pleader. No reason is recorded for ignoring and overruling the opinion of the District and Sessions Judge. The failure of the Government to consider such materials and information and to record the reasons for ignoring and overruling the opinion of the District and Sessions Judge, has rendered the decision of the Government arbitrary and illegal Hence the said decision of the Government is liable to be set aside and the Government is liable to be directed to reconsider the matter in accordance with law.

9. For the reasons stated above, the Writ Appeal is disposed of in the following terms:

(1) The order dated 22.11.2006 passed by the learned Single Judge in Writ Petition No. 15359/2006 is set aside:

(2) Annexure-"E" order to the extent it terminated the appointment of Sri.

Rajashekar as Additional Government Pleader is upheld:

(3) Annexure-"E" order to the extent it appointed Sri. S.R. Patil as Additional Government Pleader, Chikkodi, is quashed;

(4) Notwithstanding the quashing of the appointment of Sri. S.R. Patil as Additional Government Pleader, it will be open to the Government to consider the matter of appointment of Sri. S.R. Patil as Additional Government Pleader afresh, in accordance with law and in the light of the observations contained in this judgment:

(5) Consequent on the quashing of the appointment of Sri. S.R. Patil as Additional Government Pleader, he shall cease to be Additional Government Pleader, Chikkodi, forthwith and the Government shall make necessary alternate arrangement for discharge of the functions of the Additional Government Pleader, Chikkodi, by any other person till the matter is considered afresh and fresh appointment is made as directed above.