

(2017) 04 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 62761 of 2016 (S-Kat)

Sri. H. Srirama

APPELLANT

Vs

Commissioner of Public Instruction, New Public

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Constitution of India, 1950 — Article 309

Karnataka Civil Services (Probation) Rules, 1977 — Rule 4, Rule 5(1)(b), Rule 6

Citation : (2017) 2 AirKarR 861

Hon'ble Judges : Mr. H. G. Ramesh and Mr. John Michael Cunha, JJ.

Bench : Division Bench

Advocate : Sri. Satish M. Doddamani, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

John Michael Cunha, J.—This petition is directed against the order passed by the Karnataka Administrative Tribunal at Bengaluru in Application No. 1527/2012 dated 20.07.2016 (Annexure-"C") where under the Administrative Tribunal has rejected the application filed by the petitioner seeking to quash the O.M. dated 14.1.2011 issued by the respondent/the Commissioner of Public Instructions.

2. We have heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner was appointed as F.D.A. vide notification dated 28.09.2005. He was posted at the Government High School, Andersonpet, KGF in Kolar district. He was on probation. As per the conditions of appointment, the petitioner was required to pass the departmental examination within two years from the date of appointment. The petitioner having failed to pass the departmental examination and also having remained continuously absent from duties, the appointing authority/respondent found the petitioner unsuitable to hold the post, hence, by office memorandum dated 14.1.2011 he was discharged from service. The

petitioner challenged the said order before the Administrative Tribunal contending that due to mental agony, hardship and domestic problems, he was unable to appear for the higher examinations though he had paid examination fee to the KPSC during 2009 and further the petitioner contended that due to ill-health, he could not attend the office. The explanation offered by the petitioner did not find favour with the Administrative Tribunal and consequently, the Administrative Tribunal dismissed the application.

4. The petitioner has urged the very same grounds before this Court. In the course of the argument, learned counsel for the petitioner has submitted that having regard to the circumstances in which the petitioner was placed, an opportunity could have been afforded to the petitioner to complete the departmental examination as held in an identical case in W.P.No.14531/2010 (date of disposal 19.7. 2010). Learned counsel further contended that the respondent was required to declare the probation of the petitioner within two years from the date of appointment, but the respondent having extended the probationary period without passing any order, the petitioner is deemed to have satisfactorily completed the probation and therefore, the second respondent was not entitled to discharge the petitioner on the purported ground of non-completion of the departmental examination.

5. Both the contentions urged by the learned counsel for the petitioner do not merit acceptance. It is now well settled that a person appointed on probation would not ordinarily get automatic confirmation in service on the expiry of his stipulated probationary period and that if he is allowed to continue in service without any action being taken by the employer either by way of confirmation or by way of termination, he would continue only as a probationer even after the expiration of period of probation. Therefore, the first contention urged by the petitioner is liable to be rejected.

6. The second contention urged by the petitioner is also legally not tenable. In order to examine this contention, it is necessary to refer to Rule 5(1)(b) of Karnataka Civil Services (Probation) Rules, 1977. It reads as under:-

"(b) if the Appointing Authority decides that the probationer is not suitable to hold the post to which he was appointed or has not passed the special examinations or special tests, if any, required to be passed during the period of probation, it shall, unless the period of probation is extended under Rule 4, by order, discharge him from service."

In the instant case, undisputedly the petitioner did not pass the departmental examination within the probationary period. His period of probation was also not extended. Therefore the Appointing Authority was justified in invoking Rule 5(1) (b) of the Karnataka Civil Services (Probation) Rules, 1977. Added to that, Rule 6 of the Probation Rules provides that:-

"6(1) Notwithstanding anything in Rule 5, the Appointing Authority may, at any time during the period of probation, discharge from service a probationer on

grounds arising out of the conditions, if any, imposed by the rules or in the order of appointment, or on account of his unsuitability for the service or post; but the order of discharge except when passed by the Government, shall not be given effect to, till it has been submitted to and confirmed by the next higher authority.

(2) An order discharging a probationer under this rule shall indicate the grounds for the discharge but no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules 1957, shall be necessary."

This Rule clearly postulates that an appointee on probation can be discharged from service at any time during the period of probation on breach of the conditions of the appointment including his unsuitability for the service or post. Sub-rule (2) of Rule 6 requires that the order of discharge passed under sub-rule must contain the ground for discharge. In the instant case, all the requirements prescribed under Rule 6 are duly complied. The Administrative Tribunal has adverted its mind to the legal and factual aspects of the case and has dismissed the application. We do not find any reason to interfere with the said order. We do not find any merit in the petition.

7. Accordingly, the writ petition is dismissed.