

(2012) 08 KAR CK 0165

In the Karnataka High Court

Case No : Writ Petition No. 17954 of 2012 (S-RES)

Sri K M Suresh

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Karnataka Home Guards (Amendment) Act, 2003 — Section 3 (2c)

Citation : (2012) 08 KAR CK 0165

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : H. Jayakara Shetty, for the Appellant; Manjula Kommadolli, HCGP
For R-1 and 2 and Notice to R-3 is Dispensed With, for the Respondent

Judgement

Subhash B. Adi

1. Petitioner has called in question the relieving order of the petitioner dated 4.6.2012 issued by the respondent No. 2. Case of the petitioner is that, petitioner was appointed as a Commandant of District Home Guards at Hassan. The said appointment was at the pleasure of the Government and under amended Section 3 sub-section 2 clause (c) of the Karnataka Home Guards (Amendment) Act, 2003, the Government at its pleasure appoint Commandant ordinarily for a period of five years and it may extend for further period of two terms of five each. Though the services of the petitioner is extended for second term by Annexure-B dated 5.6.2007 i.e., upto 17.4.2012 or till the order of the Government, the second respondent without awaiting for the order from the Government, only on the ground that 17.4.2012 is the date mentioned in Annexure-B, has passed the order of relieving and it is submitted that, till the Government passes an order on the recommendation made by the respondent No. 2, the petitioner could not have been relieved.

2. On the other hand, learned Government Pleader submits that, petitioner's appointment itself is a pleasure appointment, it was for a fixed term, it was extended upto 17.4.2012. An observation is made that, if the Government wants

to extend, it can continue the petitioner for a further period. If the Government has not passed any order for continuing the petitioner, it cannot be treated that the petitioner has a right to continue in the said post and further submitted that, petitioner's services have been relieved and the third respondent is placed as incharge in the petitioner's place.

3. The very fact that the appointment of the petitioner being at the pleasure of the Government, petitioner cannot, as a matter of right, seek extension, however, the provision says that, ordinarily the period would be for five years extendable for another two terms. In this case, the notification dated 5.6.2007 at Annexure-B fixes the term upto 17.4.2012. It also mentions that, petitioner could be continued in the said post until the Government order. Now this portion of the order is sought to be interpreted to say that, till the Government passes further order, the petitioner will continue to function as a Commandant.

4. When the term is fixed, even the provision also fixes the period, ordinarily it will be for five years extendable for two terms, that means, all the appointments of Commandant at the pleasure of the Government would be for a fixed term of five years, there cannot be continuation for indefinite period. If the period is fixed upto 17.4.2012 unless the Government considers to continue the petitioner, petitioner automatically will not get any right to continue in the said post. However, learned Senior Counsel for the petitioner submits that, the recommendation has been made by the second respondent himself for continuing the petitioner's services for one more term. If that is so, it is open to the Government to consider the said recommendation and pass appropriate order on the same. If the Government want to continue the petitioner, it is open to the Government to continue him for another term.

Accordingly, the writ petition stands disposed of. The Government may consider the recommendation of the second respondent, if any, within two months from the date of receipt of copy of this order.