(2010) 04 KAR CK 0178

In the Karnataka High Court

Case No : Writ Petition No. 2768 of 2010

Sri. K. Venkatappa APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Citation : (2010) 04 KAR CK 0178

Hon'ble Judges : Manjula Chellur, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : B.B. Bajantri, for the Appellant; B. Veerappa, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—Learned Government Advocate takes Notice for Rule 1 to Rule 3. Two weeks time is granted to file his Vakalath. Heard.

2. It is seen that the appellant who was Village Accountant was absent during his entire service as follows:

01.01.1964 to 27.07.1964; 02.05.1970 to 24.02.1971

01.09.1971 to 01.04.1972; 16.10.1977 to 09.01.1979

16.08.1979 to 30.07.1999, and till 1979 when he resisted the transfer to Bhadravati Taluk from Shimoga, the concerned authorities did not initiate any disciplinary action. As a matter of fact, after resisting his transfer to Bhadravati the appellant again remained absent and at that point of time disciplinary action was initiated. Meanwhile he retired from service. However, the fact remains he did not take part in the disciplinary proceedings. By the order dt.4.9.2004 the Deputy Commissioner opined that the following period of absence shall be treated as unauthorised absence:

01.01.1964 to 27.07.1984; 02.05.1970 to 24.02.1971

01.09.1971 to 01.04.1972; 16.10.1977 to 09.01.1979

16.08.1979 to 30.07.1999 and he further directed that the period between 4.7.73 to 31.1.74 shall be treated as suspension period. He also directed that after deducting misappropriated amounts from the pensionary benefits, balance amount if any to be paid to the appellant.

3. Aggrieved by this order, he approached the appellate authority i.e., the Divisional Commissioner vide Application No. 7996/006. However, the same was dismissed confirming the order of the disciplinary authority. Thereafter, he approached the KAT. The learned Members of the KAT opined though he was absent unauthorisedly on earlier occasion, till 1979 no action was initiated and only in the year 1979 when he was again unauthorisedly absent, action was initiated. Therefore, except the suspension between 4.7.73 to 31.1.74 other periods ware not supported by any action or reasons, but the Department directing that the recovery of misappropriated amounts of Rs. 12,224.03 and Rs. 8,365.58 from pensionary benefit of tine applicant was not the amount determined by the disciplinary authority but arbitrarily withheld by the disciplinary authority for a subsequent period. In other words, according to the Tribunal in the absence of any opinion holding that there is misappropriation of the above said amount there was no justification for recovery of said misappropriated amounts by him on earlier occasions. Accordingly, the Tribunal passed the following order confirming the orders of the disciplinary authority in part modifying as follows:

For the above said reasons, we allow the application in part. While confirming the order of the Deputy Commissioner bearing No. 43/2001-02 dated 4.9.2004 (Annexure-A1) with regard to the direction to treat the period of absence as leave without allowance, we quash the following portion of the said order:

i) the period of suspension from 4.7.1973 o 31.7.1974 shall be treated as suspension only;

ii) to deduct an amount of Rs. 12,2224 03 and Rs. 8,365.58 from the pensionary benefits of the applicant;

The period of suspension from 4.7.73 to 31.7.74 shall be treated as period spent on duty and the arrears due thereon for that period shall be paid to the appellant. The above said amounts withheld from the pensionary benefit had to be refunded without any delay. Further, 3 months time was given to the department to make the above said payment, failing which they had to pay interest at 8% on the unpaid amounts till the date of payment.

4. As a matter of fact, though the present appellant was unauthorisedly absent for almost 10 years between 1964 to 1974 and again for 7 months or so from May 1970 to February 1971 and subsequent periods, the absence of any departmental enquiry regarding misappropriation or unauthorised absence gave the appellant the benefit for the earlier period. We do not find any good ground

to interfere with the order of the Tribunal, as the Tribunal has viewed the contentions of the appellant herein from every angle and has made a justifiable order.

Accordingly, the petition is dismissed.

