

(2007) 11 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 18000 of 2007

Sri Narayan S. Bhat

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Karnataka Home Guards Act, 1962 — Section 11, 35 (2)

Citation : (2008) ILR (Kar) 396 : (2008) 3 KarLJ 410

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.G. Pandit and Suresh S. Bhat, for the Appellant; S.Z.A. Khureshi, AGA, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, assailing the correctness of the impugned Notification dated 16th March 2007 bearing No. OE 40 Ka.Gru.Se 2007 vide Annexure B issued by first respondent, has presented the instant writ petition.

2. The facts in brief are that, petitioner was appointed as honorary District Commandant, Home Guards North Canara District under the relevant provisions of the Karnataka Home Guards Act, 1962 by Notification dated 24th October 2002 vide Annexure A. Being the District Commandant of Home Guards, he has got opened new unit at Kathur in Mundagod Taluk, Karwar District and conducted training camps and sports in the Home Guards Force in the District and has also recruited Home Guards for the Karwar District for smooth functioning of the Home Guards in the District. His services to Home Guards has been appreciated and a Certificate has been issued to that effect by first respondent and there is no blemish in his entire service records and that, he has been rendering his service to the fullest satisfaction of the superior officer without any adverse remarks in his career. Be that as it may.

3. To the shock and surprise of the petitioner, he came to know of the impugned

Notification, stating that, petitioner's services have been removed from the post of Commandant of the Karwar, North Canara District without any justification. It is specifically referred in the Notification that, the petitioner is lagging behind in the development of the Home Guards in respect of the Uttara Kannada District. It is the case of petitioner that, the said specific observation made in the impugned Notification for relieving the petitioner from the post of District Commandant of the Home Guards of Uttara Kannada District has caused stigma to this career. Therefore, petitioner is constrained to approach this Court by presenting the instant writ petition, seeking quashing of the said Notification dated 16th March 2007 vide Annexure B.

4. The principal ground urged by petitioner in this petition is that, the first respondent without following the relevant provisions of the Karnataka Home Guards Act, 1962, particularly Section 11 and Sub rule (2) of Rule 14-A of the Home Guards Act and Rules respectively, has proceeded to issue the impugned Notification without affording opportunity to the petitioner and without conducting any enquiry whatsoever, to substantiate his submission. Further, learned Counsel appearing for petitioner has placed reliance on the judgment of the Apex Court reported in V.P. Ahuja Vs. State of Punjab and Others, and submitted that, the termination of the services of the petitioner is arbitrary in as much as the competent authority has not complied with the relevant provisions of the Home Guards Act and Rules and hence, the same cannot be sustained and is therefore, liable to be set aside.

5. Per contra, learned Additional Government Advocate appearing for respondents, inter alia, contended and substantiated the impugned Notification issued by first respondent stating that, the same is in accordance with the relevant provisions of the Home Guards Act and Rules and no error or illegality as such has been committed by the said authority. Further, he submitted that, the reliance placed by learned Counsel for petitioner regarding non compliance of Section 11 and Rule 14-A of the Home Guards Act and Rules respectively is not at all applicable to the case of petitioner for the reason that, in the instant case, there is no disciplinary proceedings as such initiated against the petitioner and the said provisions can be invoked only when such proceedings are initiated against a person. Petitioner has been removed from the services as District Commandant of Home Guards only for the reason that, the developmental activities in the District where he was appointment were lagging behind and the performance of the petitioner was less than satisfactory. Therefore, in view of non satisfactory performance of the petitioner in the Home Guards in the District where petitioner was appointed as District Commandant, he has been relieved from the services of the Home Guards and the same would not attach any stigma to the petitioner. Therefore, he submitted that, the writ petition filed by petitioner is liable to be dismissed as misconceived.

6. After careful perusal of the Notification issued by first respondent dated 24th October 2002 vide Annexure A, appointing the petitioner under Sub-Section (2)

of Section 35 of the Karnataka Home Guards Act, 1962 in place of Sri. G.P. Naik, it can be seen that, the said appointment of petitioner is made until further orders. Further it reveals from the impugned Notification vide Annexure B that, the competent authority has assigned valid reason stating that, the developmental activities of the Home Guard Force in the District of the petitioner is lagging behind. Therefore, Government has decided to relieve the petitioner from the said post. The said reasoning given for removing the petitioner from the service of Home Guards cannot be construed as causing stigma to the career of petitioner, as contended by learned Counsel for petitioner. Further, it is significant to note that, the services of petitioner has been taken by way of issuing Notification vide Annexure A as referred above, dated 24th October 2002 until further orders, which means that, petitioner can be removed any time, at the discretion of the respondents, as rightly pointed out by learned Additional Government Advocate.

7. Further, after careful perusal of Section 11 and Rule 14-A(2) of the Home Guards Act and Rules respectively, it can be seen that, they are not applicable to the case on hand on the ground that, no disciplinary proceedings as such have been initiated against the petitioner. The said provisions can be invoked and made applicable, only if any disciplinary proceedings are initiated against the petitioner. Therefore, I am of the view that, there is considerable force in the submission made by learned Additional Government Advocate appearing for respondents.

8. Under Sub-rule (2) of Rule 14-A, it is stated that, No order, imposing on a Commandant, other than member of Indian Police Service, any penalty specified in Section 11 shall be passed except after an enquiry held. so far as may be, in the manner hereinafter provided. In the instant case, the appointment of the petitioner has been made until further orders by the appointing authority and thereafter, petitioner has been relieved from duty without any stigma attached to his career as he is neither terminated nor dismissed from service. It is specifically referred that, petitioner is removed only for the reason that, the developmental activities were lagging behind in the District where he was appointed. Therefore, the first respondent has relieved the petitioner from the post in which he was appointed. Therefore, I am of the considered view that, there is no stigma as such attached to petitioner or his career as contended by the learned Counsel for petitioner nor I find any good grounds or justification to interfere in the impugned Notification issued by the competent authority and more over, petitioner cannot claim the continuity of service as a matter of right since the said post is only honorary post and his appointment being until further orders. The petitioner having accepted the said post as Honorary and interested in rendering social service in the District and maintaining discipline in the Home Guards by giving training, ought not to have redressed his grievance by presenting the instant writ petition by taking a specific ground that, the impugned Notification vide Annexure B, is causing stigma to his career. Therefore, having regard to the facts and circumstances of the case, as stated

above, I do not find any good grounds as such made out by petitioner to entertain the instant writ petition. Hence, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed. However, so far as the reliance placed by learned Counsel appearing for petitioner on the Apex Court judgment, referred above is concerned, I am of the view that, there is no quarrel or second opinion regarding the well settled law laid down in the said judgment, but the said ratio of law is not at all applicable to the case on hand nor the same is of any assistance to petitioner in the instant writ petition.

9. Learned Additional Government Advocate is permitted to file memo of appearance on behalf of respondents within three weeks from today.