

(2015) 03 KAR CK 0355

In the Karnataka High Court

Case No : Writ Petition No. 6408 of 2015 (S-KAT)

State of Karnataka and Others

APPELLANT

Vs

D. Doreraj and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 3 KarLJ 111

Hon'ble Judges : K.L. Manjunath, J;R.S. Chauhan, J

Bench : Division Bench

**Advocate : S. Susheela, Additional Government Advocate, for the Appellant;
M.C. Pyati and Lakshmi, Advocates for the Respondent**

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.

1. The State has filed this petition challenging the order passed by the Karnataka Administrative Tribunal, Bengaluru in Application No. 4412 of 2007 connected with Application No. 6582 of 2005. The respondents were working as Village Accountant and Deputy Tahsildar respectively. On the allegation that the respondents committed irregularities while mutating entries in respect of Government lands, the Deputy Commissioner, Hassan District, Hassan ordered to hold a joint inquiry. After conducting an inquiry, the Inquiring Officer submitted a report, holding that the charges levelled against the respondents have been proved. Thereafter, the Deputy Commissioner, by issuing a second show-cause notice, passed an order on 1-1-2005 imposing the penalty of compulsory retirement from service on both the respondents.

2. Challenging the legality and correctness of the order passed by the Deputy Commissioner, the respondents filed appeals before the Regional Commissioner, which appeals came to be dismissed. Thereafter, they approached the Tribunal. The main contention of the respondents before the Tribunal was that the Deputy Commissioner who ordered for a joint inquiry had no power to order for such a

joint inquiry, since the second respondent-K. Puttaiah was working as a Deputy Tahsildar and that the Disciplinary Authority for Deputy Tahsildar was the Regional Commissioner and not the Deputy Commissioner. According to the respondents, the Deputy Commissioner was competent to initiate disciplinary proceedings only against the first respondent-D. Doreraj and not against second respondent-Puttaiah.

3. The Tribunal, accepting the contentions of the respondents, allowed the applications and set aside the order passed by the Deputy Commissioner imposing punishment of compulsory retirement from service on the respondents. The said order of the Tribunal is challenged by the State in this writ petition.

4. Heard Ms. S. Susheela, learned AGA and Sri M.C. Pyati, learned Counsel for the respondents.

5. According to learned Additional Government Advocate, even though the Deputy Commissioner was not the Competent Authority for ordering a joint inquiry in respect of second respondent, later on such power was delegated to the Deputy Commissioner and in view of the delegated power, the order passed by the Deputy Commissioner for conducting a joint inquiry against the respondents was permissible. Relying upon Rule 10-A(2) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short, "the Rules"), learned AGA contends that the Deputy Commissioner is empowered to pass such an order to impose the punishment of compulsory retirement from service. Therefore, she requests the Court to allow the petition.

6. Learned Counsel for the respondents submits that when the Deputy Commissioner was not the Appointing Authority or Disciplinary Authority for the second respondent-Puttaiah, who was working as Deputy Tahsildar, the Deputy Commissioner was incompetent to order for a joint inquiry and based on the said order passed by an incompetent authority even if an inquiry is conducted, such inquiry is void ab initio. Therefore, he requests the Court to dismiss the petition.

7. Having heard the learned Counsel for the parties, the only question that arises for our consideration in this petition is whether the Tribunal has committed an error in setting aside the order passed by the Deputy Commissioner, Hassan, imposing the penalty of compulsory retirement on the respondents?

8. The admitted facts in this case are that: The Deputy Commissioner is the Appointing Authority and also the Disciplinary Authority insofar as the first respondent-Doreraj is concerned. It is also not in dispute that insofar as the second respondent-Puttaiah is concerned, the Regional Commissioner is the appointing as well as Disciplinary Authority. Rule 13 of the Rules reads as under:

"13. Joint Inquiry.--(1) When two or more Government Servants are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from service on all such Government Servants may make an order directing that disciplinary action against all of them may be taken in a

common proceeding:

Provided that if the authorities competent to impose the penalty of dismissal on such Government Servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provision of sub-rule (3) of Rule 9 any such order shall specify.--

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceeding;

(ii) the penalties specified in Rule 8 which such Disciplinary Authority shall be competent to impose; and

(iii) whether the procedure prescribed in Rules 11 and 11-A or Rule 12 may be followed in the proceeding."

9. In view of the above said provisions, when the Deputy Commissioner was not competent to order for a joint inquiry against the second respondent-Puttaiah, the entire proceedings are liable to be set aside. Even if we accept the contention of the learned AGA that subsequent to the passing of the order for joint inquiry, if the Deputy Commissioner is delegated with such power, it will not cure the inherent defect. It can only be prospective in nature and such delegation cannot be with retrospective effect.

10. Therefore, we are of the view that the Tribunal is justified in setting aside the order passed by the Deputy Commissioner. When specific provision is there indicating the manner in which such a joint inquiry is to be ordered, if an order is passed for such an inquiry in utter violation of Rule 13 of the Rules, the inquiry conducted based on the order passed by an incompetent authority is vitiated. In the circumstances, this Court cannot find fault with the order passed by the Tribunal. In the result, writ petition is dismissed.