

(2016) 12 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 202241 of 2014 (S-DE)

Syed Shabbir Hussain

APPELLANT

Vs

Government of Karnataka

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AirKarR 855

Hon'ble Judges : A. N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Sri. P. Vilaskumar Marthand Rao, Advocate, for the Petitioner; Smt. Archana P. Tiwari, AGA, for the Respondent No. 1; Sri. A. M. Patil, Advocate, for the Respondent No. 2 & 3

Final Decision : Disposed Off

Judgement

A. N. Venugopala Gowda, J.—This petition is directed against a penalty order dated 23.07.2013 as at Annexure-B, by which, the petitioner, a Traffic Controller in the STU was imposed with a punishment of reduction to the minimum scale of pay and the period of suspension undergone was treated as suspension only.

2. Brief facts of the case are that the petitioner was appointed as Conductor on 02.02.1975 in Karnataka State Road Transport Corporation. On the establishment of Nekrtc, petitioner became its employee. A charge-sheet dated 21.07.2012 vide Annexure-A was served. Reply submitted was found to be unacceptable and an Enquiry Officer was appointed on 31.07.2012 to conduct Disciplinary Enquiry. Report of Disciplinary Enquiry having been submitted on 27.08.2012 holding the petitioner guilty of charged misconduct, penalty order vide Annexure-B was passed. Assailing the said order this petition was filed on 18.02.2014.

3. Questioning the punishment imposed vide order as at Annexure-B, petitioner had filed an appeal before respondent No. 2. Upon consideration the appeal was

rejected on 25.01.2014. Though the petitioner received a copy of said order on 28.01.2014 there is not even a whisper made to it in this petition i.e. to the fact of filing of appeal and the outcome.

4. Sri. A. M. Patil, learned advocate for the respondents contended that the order of penalty as at Annexure-B having merged with the order passed in the appeal and the order of Appellate Authority having not been questioned and there being suppression of material fact, the petitioner having not approached the Court with clean hands, the petition is liable to be rejected in limine by imposing exemplary costs.

5. Sri P. Vilas Kumar, learned advocate initially contended that the remedy of the appeal being not efficacious was not availed by the petitioner. However, a little later, learned advocate changed the stand and took out from his file a copy of the order dated 25.01.2014 passed by the Appellate Authority and submitted that there is no bar for this Court to decide the case by ignoring the order passed by respondent No. 2, as it was not a statutory appeal.

6. Copy of Appellate Authority order was perused by me. As appeal filed by the petitioner, upon consideration has been rejected, there is merger of the order as at Annexure-B, with the order passed by the Appellate Authority. Thus, there is merit in the submission made by Sri. A.M. Patil that it is not open to the petitioner to assail the penalty order as at Annexure-B, i.e. in the absence of challenge to the order passed by Appellate Authority.

7. In the case of K. D. Sharma v. Steel Authority of India Limited and others (2008) 12 SCC 481, it has been held that jurisdiction of High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. It has been held that the party approaching the Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek relief. It has been further held that if there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading Court, his petition is liable to be dismissed on the threshold without considering the merits of the case.

8. In the case of Vijay Syal and another v. State of Punjab and others (2003) 9 SCC 401 Apex Court held as follows:

"24. In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a

proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice."

9. In the case of *Oswal Fats and Oils Limited v. Additional Commissioner (Administration), Bareilly Division, Bareilly and others* (2010) 4 SCC 728, after surveying the previous decisions, Apex Court has held as follows :

"20. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."

10. In the case of *A. S. Parameshwaraiah and others v. State of Karnataka and others* (2010) 6 KLJ 504 (DB), one of the points considered was "Whether there is suppression of material information and the records by the writ petitioners/appellants?" And while answering the said point, it was held as follows :

"8.....A person who approaches the Court under Article 226/227 of the Constitution, must come with frank and full disclosure of facts. If there is an attempt to overreach the Court by withholding true information or material documents, which would have a bearing on the question, the writ petition is liable to be dismissed. The non-disclosure of the facts which were well-within the knowledge of the appellants, certainly amounts to suppression of material facts. The appellants despite having the knowledge of the proceedings and the records, noticed supra, have indulged in act of suppression and hence, the learned single Judge is justified in observing that there is misadventure on the part of the writ petitioner of "supressio veri et suggestio falsi"

(Emphasis is supplied)

11. The jurisdiction of Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. Hence, the petitioner, who approaches the Court must come with the clean hands, put forward all the facts before the Court without concealing or suppressing any material fact. There should be candid disclosure of relevant facts and the petitioner should not be guilty of misleading the Court. If it is found that there is any concealing or suppressing of material facts or an attempt is made to mislead the Court, the petition without consideration of the merit of the case is liable to be rejected in limine.

12. In the present case, the petitioner has not come forward with all the facts. He has chosen not to make a mention of the appeal filed by him before respondent No. 2 and its rejection as per order dated 25.01.2014, which became

available to him on 28.01.2014 itself, as the same is apparent from the initial and date affixed on it by the petitioner. The act of the petitioner certainly amounts to suppression of material fact.

13. In view of the above, petition is disposed of, reserving liberty to the petitioner to assail the order impugned in this petition and the order passed by the Appellate Authority on 25.01.2014 within a period of one month from the date a copy of this order becomes available. It is made clear that the petitioner shall not suppress any material facts nor state the facts in a manner suited to him in any future proceedings.