
(2014) 04 KAR CK 0261

In the Karnataka High Court

Case No : Writ Petition No. 11706/2014 (S-RES)

T.H. Prakashappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 3 AKR 515 : (2014) 3 KCCR 2434

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

Bench : Single Bench

Advocate : K. Puttegowda, Advocate for the Appellant; M.S. Prathima, HCGP for R1 and Sri D.R.P. Babu, Advocate for R2, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Having been selected as Lecturer in Orthopedics by the Sanjay Gandhi Accident Hospital and Research Institute (for short "the Hospital"), Bangalore-11 and pursuant to an appointment order issued by its Director, the petitioner reported to duty on 22.02.1997. Petitioner was promoted on 24.01.2004 as Assistant Professor and on 25.02.2009 as Associate Professor, later re-designated as Professor. On 12.12.2013, a three year old child by name Mariyam Kowsar was admitted to the casualty/emergency ward of the Hospital and was treated by the petitioner and others. The child was later on taken to another hospital, wherein, it was alleged that she had not been taken care of properly by the Doctors of the Hospital and hence, the condition of the child has deteriorated. A case was registered on 26.12.2013 at MICO Layout Police Station against the petitioner and other doctors of the Hospital and FIR was submitted to the II Addl. Chief Metropolitan Magistrate Court, Bangalore. A Television Channel covered the issue alleging negligence on the part of the petitioner and few other doctors of the Hospital. An investigation team constituted having submitted a report to the State Government, an order dated 10.01.2014 vide Annexure-D was passed, ordering the suspension of the petitioner. A consequential office order dated 10.01.2014 vide Annexure-E was issued by the Director of the

Hospital, keeping the petitioner under suspension. This writ petition is directed against the Government order as at Annexure-D and consequential office order issued as at Annexure-E. Sri K. Puttegowda, learned advocate, contended that the suspension of the petitioner vide Annexure-D was passed by an authority not competent to do so and the consequential office order vide Annexure-E being a mechanical act and there being arbitrariness on the part of both the respondents, interference is called for.

2. The power to suspend a member of the staff of the Hospital is available to the Director of the Hospital in terms of Rule 4.0 of the Sanjay Gandhi Accident Hospital and Research Institute (Cadre, Recruitment, Condition of Service and Miscellaneous Provisions) Rules, 1999. Rule 4.0 reads thus:

4.0 SUSPENSION:

1) The Director in the case of members of the staff appointed by him, and the Board of Appointment in the case of others may place a member of the staff under suspension;

a) where a disciplinary proceedings against him is contemplated or is pending; or

b) where a case against him in respect of any criminal offence is under investigation or trial;

A plain reading of the said rule shows that the power to place a member of the staff under suspension can be exercised by the Director.

3. Indisputably, the Director of the Hospital is the Appointing Authority of the petitioner. The Director can impose the penalty, if any, on the petitioner, who is a member of the staff of the Hospital and an appeal is provided to the Board.

4. Respondent No. 1 has passed the order as at Annexure-D. It was decided therein, that a disciplinary enquiry in terms of the bye-law 20 of the Hospital is required to be held against the petitioner. In contemplation of disciplinary enquiry, petitioner was kept under suspension. The relevant portion of the said order, in this behalf, reads as under:

5. Respondent No. 2 has issued the office order as at Annexure-E, in view of the Government Order as at Annexure-D, keeping the petitioner under suspension. Material part of the said order reads thus:

6. It is trite that in case an order is bad in its inception cannot be sanctified at a subsequent stage. In *State of Orissa and Another Vs. Mamata Mohanty*, , Apex Court has held as follows:

37.....If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.

7. In *State of Orissa Vs. Bimal Kumar Mohanty*, , Apex Court has held as follows:-

12.....the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or a trial of a criminal charge.

(emphasis supplied)

8. The order as at Annexure-E does not show that the respondent No. 2 being satisfied that a disciplinary proceeding against the petitioner being contemplated, there is a need to keep the petitioner under suspension. There is no application of mind on the part of the respondent No. 2 much less is there any satisfaction recorded, while passing the order as at Annexure-E. Respondent No. 2 by issuing the office order as at Annexure-E, has merely implemented the order as at Annexure-D of respondent No. 1. Thus, there is a mechanical act on the part of respondent No. 2 and as such, the order as at Annexure-E suffers from the vice of non application of mind and non-recording of satisfaction for the need to keep the petitioner under suspension.

9. In State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , in the matter of administrative action involving discretion, Apex Court has held as follows:

55..... The authority cannot permit its decision to be influenced by the dictation

of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority...

(emphasis supplied)

In the instant case, the order at Annexure-E, passed by the 2nd respondent is wholly influenced by the order as at Annexure-D of respondent No. 1 i.e., by surrendering to the dictates of respondent No. 1. Hence, the order at Annexure-E fall foul of the ratio of law laid down in the decision, noticed supra.

10. Smt. M.S. Prathima, learned HCGP, conceded that the petitioner is not an employee of respondent No. 1 and hence, respondent No. 1 has no authority to order the suspension of the petitioner. Sri D.R.P. Babu, learned advocate for respondent No. 2, submitted that in view of the Government Order as at Annexure-D, respondent No. 2 issued the office order as at Annexure-E, keeping the petitioner under suspension, since disciplinary proceeding against the petitioner is contemplated. Learned counsel, however, conceded that respondent No. 2, while passing the order as at Annexure-E, has not taken into consideration whether it is expedient to keep the petitioner under suspension, pending disciplinary action. In view of the submissions made by Smt. M.S. Prathima and Sri D.R.P. Babu, it is clear that the order as at Annexure-D is not by the competent authority and that the order at Annexure-E is a mechanical action on the part of the respondent No. 2, in as much as, he has only implemented the suspension order passed by respondent No. 1 vide Annexure-D. Office order as at Annexure-E suffers from vice of non-application of mind and non-recording of satisfaction to pass the order of suspension and is vitiated. In the circumstances, the impugned orders as at Annexures-D and E are illegal and arbitrary.

In the result, the writ petition is allowed. The impugned orders as at Annexures-D and E are quashed. However, it is made clear that this order would not come in the way of respondent No. 2, taking action afresh against the petitioner by keeping in view the observations made supra.

No costs.