

(2015) 09 KAR CK 0276

In the Karnataka High Court

Case No : W.P. Nos. 107994/2015 and 105085/2015 (S-RES)

Yallamma

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 186, 448, 506

Citation : (2015) 09 KAR CK 0276

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

Bench : Single Bench

Advocate : H.M. Dharigond, Advocate, for the Appellant; K. Vidyavathi, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—The petitioner Yallamma d/o Karkappa Hotter, filed both the writ petitions. W.P. No. 105085/2015 is filed for the following reliefs.

"A) A writ in the nature of certiorari to quash the impugned endorsement issued by the second respondent under No. UNIKO/MMAE/AUM. KAGRA.S. RA/2014-15 858 dated 05.06.2014 vide Annexure-K and notification issued by the third respondent under No. SHLA.YO.KU/AUM.KA.K/AUM.S/HU.KHA/MA/2015-16 dated 22.04.2015 VIDE ANNEXURE-N.

B) To issue a writ in the nature of mandamus direct the respondents to release the salary to the petitioner from April 2012 to till today by considering the representation of the petitioner dated 22.08.2014 vide Annexure-L

C) To pass any such order as deems fit in the facts and circumstances of the case including the award of costs in the interest of justice and equity."

W.P. No. 107994/2015 is filed for the following reliefs.

"A) A writ in the nature of certiorari to quash the impugned termination order

dated 20.12.2011 passed by the second respondent under No. UNIKO/MMAE/KUYO/AUM.KA.KA/GOU/SEVE/AMANYA/2011-12/3168 VIDE ANNEXURE-R.

B) To pass any such order as deems fit in the facts and circumstances of the case including the award of costs in the interest of justice and equity."

--

2. I have heard arguments of the learned counsel for the petitioner and also the learned Government Advocate appearing for the respondents and perused the records.

3. The petitioner claiming herself that she has been working as an Anganawadi worker at Gumagera village, Kustagi Taluk, Koppal District, she sought for permission to contest the election to Gram Panchayat proposed to be held in the year 2010. The respondent No. 3 -The Child Development Project Officer has issued a certificate dated 19.04.2010 certifying that the petitioner has been working as Anganawadi worker on honorary basis and the rules regarding the Government's Civil Servants do not apply to the petitioner and she is eligible to contest gram panchayat election. Accordingly, she had contested the election and elected as member of gram panchayat, Gumagera.

4. Immediately after the elections on 01.04.2011 the respondent No. 3- The Director of Woman and Child Development Department had sought for clarification from the Government, i.e., from respondent No. 2-The Deputy Director of Women & Child Development Department with regard to the elected members of Anganawadi workers. After getting clarification the respondent No. 3 addressed a letter dated 27.04.2011 calling upon the petitioner to resign to any one of the posts and submit the report within three days as per Annexure-C. As there was no response from the petitioner within the stipulated time again on 08.06.2011 the respondent No. 3 has called upon the petitioner to resign to any one of the posts, otherwise, he would recommend to higher authorities for necessary action. The petitioner, in fact, submitted her reply to the notice as per Annexure-E dated 21.07.2011 expressing her intention that she would like to continue in both the posts and sought for permission to continue in both the posts. Thereafter, the petitioner challenged notices dated 27.04.2011 and 08.06.2011 before this Court in W.P. No. 72623/2012 and the same was dismissed by this Court on 13.12.2012 directing the petitioner to select any one of the posts by tendering resignation to the other post.

5. Being aggrieved by the order in W.P. No. 72623/2012, the petitioner has filed a writ appeal in W.A. No. 30535/2013 before the Division Bench of this Court. During the pendency of the said writ appeal, petitioner also filed another representation dated 09.04.2013 marked as Annexure-F to permit her to continue in both the posts. On 29.07.2013 the writ appeal came to be dismissed. In the writ appeal this Court has made it clear that the petitioner cannot continue in both the posts and directed the petitioner to tender resignation to any one of the posts. It is worth to note here the specific observation made by the writ

appeal Court at paragraph No. 4 which reads thus:

"4. The authorities were justified in asking her to select one post among them and the learned Single Judge was justified in dismissing the writ petition challenging that notice. Unfortunately, people want to occupy more than one post not because of merit because they have political consideration and influence. At any rate, Article 226 is not a remedy, which is open to such persons. No merits. Appeal is dismissed."

(emphasis supplied)

6. In view of the above said decision it is made clear that people want to occupy more than one post not because of merit because they have political consideration and influence. In spite of knowing such observation made by the writ appeal Court and also the writ Court has dismissed her petition, the petitioner has not tendered resignation to the said post immediately. Therefore, it prompted the respondent No. 3 once again to issue an intimation letter to the petitioner on 12.09.2013 calling upon her to resign to any one of the post, if not done, directed the petitioner to give charge of Anganawadi Center to one Smt. Basamma. Otherwise, it would be recommended to the higher authorities for necessary action against her. The said document is also produced as per Annexure-G. In spite of such direction by the Government and also this Court in the writ appeal and the writ petition, the petitioner was so adamant to give one more representation on 26.09.2013 expressing her intention that she would like to continue in both the posts and gave a representation on 26.09.2013 as per Annexure-H.

7. Subsequently, nearly after nine months the petitioner has filed resignation letter opting to continue as an Anganawadi worker vide Annexure-J letter dated 12.05.2014. In the meantime, on 20.12.2011 itself her services as such Anganawadi worker had been terminated and a direction was issued to her not to continue the work at Anganawadi center and subsequently final notice was also issued on 17.09.2014. The said document is also marked at Annexure-M. Having not accepted the resignation letter of the petitioner, the respondent No. 3 issued a notification on 22.04.2015 calling upon the applications for the post of Anganawadi worker at Gumagera village in place of the petitioner. Then the petitioner being aggrieved by the action of the respondent approached this Court by way of the above said two writ petitions for various reliefs as noted above.

8. Learned counsel for the petitioner strenuously contended, the termination letter dated 20.12.2011 was not served on the petitioner and even after that she worked as Anganawadi worker up to 17.09.2014 and the salaries were also paid to her up to March 2012. But, after April 2012 the salaries were not given. Therefore, even after termination order on 20.12.2011 the salaries were given and she continued as Anganawadi worker. Therefore, she is entitled for quashing of the order dated 20.12.2011 removing her from the said post and also entitled for continuation in the said post as she has tendered resignation on 12.05.2014

as per her letter. She also requested the Court, in view of her resignation she is entitled to continue in the said post and entitled for all arrears of salary and also for quashing of the notification inviting application for the post of Anganawadi worker in place of the petitioner.

9. Per contra, learned Additional Government Advocate strenuously contends that conduct of the petitioner clearly goes to show that she enjoyed both the posts for more than four years by means of issuing notices and also filing writ petition and writ appeal before the Court. As she has failed in all her attempts even after, she has not tendered resignation. But she once again made unsuccessful attempt to continue in both the posts. From the facts it can be borne out that, after she being elected in the gram panchayat election and after enjoying post for more than four years she tendered resignation which was not rightly accepted by the Government. Reiterating the earlier termination order, petitioner was directed to hand over full charge to said Basamma vide intimation letter dated 12.09.2013 and final notice was issued on 17.09.2014.

10. The Government having found such illegal activity of the petitioner has also issued an endorsement on 05.06.2014 stating that she has continued in the post illegally after 20.12.2011 inspite of termination by coercing the officers through her political pressure. Therefore, she was called upon to explain why criminal case should not be filed against her.

11. Learned Government Advocate also produced some additional documents before this Court which are subsequent events which also show that a criminal case has already been lodged against the petitioner before the Kustagi Police Station for the offences punishable under Section 186 , 506 and 448 of the IPC in Crime No. 127/2015 and the Police are investigating the said matter. Therefore, the learned Government Advocate requested the Court to dismiss the writ petitions on exemplary costs.

12. Having heard arguments of the learned counsel this Court has to see whether the petitioner is entitled for any relief at the hands of this Court.

13. The factual matrix above stated clearly disclose that for more than four years the petitioner continued in two posts, i.e., as Anganawadi worker and Gram Panchayat member. It is seen from the records that the Government Order in No. MaMaEe/422/I.C.D./2011 dated 12.10.2012 and also in No. MaMaEe/422/I.C.D./2011 dated 12.10.2013. In these two circulars the Government has categorically imposed a restriction on continuing in both the posts. According to these circulars the person, if he is working as Anganawadi worker and if she contested election and successful in the election, then within one month she has to tender resignation to either of the posts to continue in another post. Therefore, it is very much clear that the Government has made it clear in the year 2012 itself that the party can only continue in any one of the posts. Further added to that, notices referred to above in the factual matrix of the case clearly disclose that the Government immediately after the election has issued notice to

the petitioner on 27.04.2011 as per Annexure-C calling upon her to resign to any one of the posts. Therefore, it is made clear in the said letter the intention of the Government not to continue such persons in both the posts. In spite of that, she did not resign to any one of the post. But, again made representation to the government to continue her in both the posts. Having considered the said requisition the Government again reiterated vide notice dated 08.06.2011 that she has to resign for any one of the posts. This also clearly goes to show the consistent stand of the Government that she has to resign for any one of the posts. Petitioner knowing fully well that she cannot continue in both the posts she was so adamant. She challenged the said notices before this Court by way of filing writ petitions and writ appeal as noted above. This Court dissatisfied with the conduct of the petitioner has directed her to tender resignation to any one of the posts immediately, in order to continue with another post. Consequence of such direction, in my opinion, play a very important role. When the judicial courts considering the fact of the conduct of a person, directed a particular person, to do some particular act, if that act has not been done, the intention of the government shall prevail that the petitioner is no more entitled to continue in the said post.

14. It is also worth to note that she was terminated on 20.12.2011. According to her, this notice was not served on her. But, in spite of that, she challenges the said order before this Court. It shows that the said order was well within her knowledge. But she did not want to comply with the said order of termination because of the reason she has filed the writ petition as well as writ appeal before this Court.

15. Be the facts noted as it may, learned counsel for the petitioner contended that even after issuance of the said termination order she did continue in service and notices have been given to her that she has not been properly discharging her duties and also that she continued to put her signature in the records of the Government for having served the Government as Anganawadi worker. Of course, there are documents to show that she continued in both the posts as noted above in spite of termination order. That ipso facto will not vest any right or authority with the petitioner to continue with such posts when it is specifically stated that she has to resign for any one of the posts. The entire facts and circumstances of the case clearly disclose that even much prior to she was elected for the panchayat as a panchayat member the Government had issued notification in No. 19-18/2009 CD-1 dated 25.05.2010 stating that the elected members should not continue in both the posts. The Government of India in the said letter has categorically clarified that they can only work in any one of the posts. It shows that much prior to she was elected as member to the Panchayat and even after the elections are held and she selected as panchayat member, the legal aspects remained the same and these government orders as noted above and earlier notices, orders have not been called in question before any Court. Therefore, the said Government Orders and notices are binding upon the persons who contested the elections and succeeded in the elections.

16. In view of the above said aspects of the matter the conduct of the petitioner is to be very seriously taken into consideration by this Court. Merely because by virtue of the writ petition and by virtue of giving representations she continued even after her termination from the said post, it cannot be said that it is a clear cut unimpeachable continuation in the said posts. It can be very safely concluded that they are litigious continuation of the two posts.

17. One more important aspect to be taken into consideration by this Court is that the writ petition was filed in the year 2012 and it was disposed of on 13.12.2012. Writ Appeal as noted above was disposed of on 29.07.2013. At least even after she failed in her attempt before the judicial courts immediately she would have tendered her resignation to one of the posts but she did not do so. The letter dated 26.09.2013 which was nearly two months after the disposal of the writ appeal, she further requested the Government that she may be permitted to continue in both the posts. This clearly indicates adamant attitude of the petitioner that even she did not want to give any respect to the Government Orders as well as the judicial verdict as noted above. Therefore, rightly the Government has not yielded to her request and ultimately after nine months of the disposal of the writ appeal, on 12.05.2014 she tendered her resignation to the gram panchayat membership. This conduct of the petitioner clearly goes to show that she is not a lady who respects the Government Orders and also the verdicts of the Court.

18. In the above said background, conduct of the petitioner, play a very dominant role. Writ jurisdiction is the prerogative of the High Court. The High Court must take note of the conduct of the parties and not to take technical view of the matter. The conduct of the parties if shows lack of good faith and intention to frustrate the transparent administration of the Government, under such circumstances, the same must not have been allowed to succeed by taking a technical view. Therefore, in this case though the petitioner shown to be continued as Anganawadi worker even after termination order and also inspections have been made by the Officers and found her in continuing with that work, such technicalities cannot be taken into consideration in order to allow the petitioner to perpetuate her ill-intentions.

19. It is worth to note here a decision of the Apex Court reported in Dalip Singh Vs. State of U.P. and Others, . The Apex Court has given verdict with regard to abuse of process of the Court. It is worth to note in this particular case which reads as under:

"For many centuries, Indian society cherished two basic values of life i.e., "Satya" (truth) and "Ahimsa" (nonviolence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed

the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new 2 creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

- - -

20. Applying the above said golden principle to this case, it is clear that the petitioner by hook or crook by her ingenious methods and also unscrupulous attitude she want to continue in both the posts as far as possible. It shows her intention is only for personal gain, it virtually amounts to snatching away food of another person who is in need of such jot as an Anganawadi worker. For a period of four years she stealthily taken away such food of another needy person. Knowing fully well the Government Orders and also the orders in the writ petition and writ appeal, she did not immediately tender her resignation but tried as far as possible to continue in both the posts. That shows the unethical attitude of the petitioner which makes her not entitled for any relief before the Court.

21. It is also to be noted that a prerogative remedy is not available to the persons as a matter of course even if they have got any right. The power vested with the Courts under Article 226 is an extraordinary power. In exercising such extraordinary power the Writ Court will bare in mind the conduct of the party who invoke such jurisdiction. If the petitioner does not disclose all the facts or is unethical in her standards and otherwise guilty of misleading the Court, the Court has to dismiss such action even without adjudicating the matter. Such role has to be followed in larger public interest to curb the tainted unscrupulous litigants from abusing process of the Court by making wrongful gain and also by doing wrongful loss to the Government or to the public at large.

22. Under the above said facts and circumstances of the case, I am of the considered opinion that the petitioner by her conduct has made out that she is not entitled for any remedy before this Court. Hence, both the writ petitions deserve to be dismissed. Accordingly dismissed.