

Dhudappa Vs. The Chief Executive Officer and Others

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Court : Karnataka

Decided On : Nov-08-2016

Judge : D. Sreenivase Gowda

Appeal No. : Writ Petition No. 106694 of 2015 (S-DIS)

Appellant : Dhudappa

Respondent : The Chief Executive Officer and Others

Judgement :

(Prayer: This Petition is filed under Articles 226 and 227 of Constitution of India, Praying to Quash the order Passed by Respondent No.1 dated 01.04.2015 as Per annexure-E and Etc.

1. Petitioner has preferred this writ petition seeking a writ of certiorari to quash the impugned order at Annexures-E, F and G passed by the respondents No.1, 2 and 3 respectively dismissing the petitioner from service.

2. Heard the learned counsel for the petitioner and respondents No.1 to 3. Respondent No.4 is served and remained unrepresented. Perused the impugned orders at Annexures-E, F and G passed by the respondents No.1, 2 and 3 respectively.

3. Learned counsel for the petitioner submits petitioner was appointed as Bill Collector by the 4th respondent Gram Panchayat, Ramput as per the resolutions

passed at Annexures-A and B subject to approval of his appointment by the Zilla Panchayat and subsequently his appointment was approved by the Zilla Panchayat as per Annexure-C dated 7/11/2012.

4. Learned counsel submits petitioner has been working as Bill Collector to the best of his ability without giving room for any complaints. That being so the third respondent based on the false complaint made by public has sought for permission of the second respondent to initiate disciplinary proceedings against the petitioner. Whereas, first respondent though is not the competent authority to dismiss the petitioner from service has passed an order dated 1/4/2015 at Annexure-E directing the respondent No.2 to take steps to dismiss the petitioner from service. Pursuant to which the second respondent by order at Annexure-F dated 1/4/2015 directed the 3rd respondent to dismiss the petitioner from service and report the same to him.

5. Learned counsel submits 3rd respondent without holding any enquiry as contemplated under Section 113 of the Karnataka Panchayat Raj Act (herein after referred to as the Act for short), as to the allegations of the public about the functioning of the petitioner, based on the orders Annexures-E and F passed by respondent Nos. 1 and 2 respectively ordered for dismissal of the petitioner from service as per Annexure-G, dated 7/4/2015. Therefore, the learned counsel prays for allowing the petition by setting aside the orders Annexures-E and F and G passed by respondent Nos.1, 2 and 3 respectively. 6. Learned counsel appearing for respondent Nos. 1 to 3 fairly submits as per Section 113 of the Act, it is the 3rd respondent-Gram Panchayat which has appointed the petitioner as Bill Collector has to take steps to dismiss the petitioner from service. Learned counsel submits, respondent Nos.1 and 2 by orders Annexures-E and F have just directed the 3rd respondent to take appropriate steps to dismiss the petitioner from service. Accordingly, 3rd respondent has taken steps and dismissed the petitioner from service. Learned counsel further submits the petitioner has forged the signature of the president of the Gram Panchayat while securing appointment and his function was not satisfactory and there were lot of complaints by the public. It is in this background, the respondents 1 and 2 have directed the 3rd respondent to take appropriate steps for dismissal of the petitioner from service. Accordingly, 3rd

respondent has taken steps and dismissed the petitioner from service and it is in accordance with law. As such there is no illegality or infirmity in the orders Annexures-E, F and G passed by the respondent Nos.1, 2 and 3 warranting interference of the Court and he prays for dismissal of the petition.

7. A perusal of Annexure-A would show that 3rd respondent, considering the fact that seven villages would come under the jurisdiction of their Panchayat recovery work is pending and it is not possible by two existing Bill Collectors and one more Bill Collector is required and the fact that petitioner was earlier working in their Panchayat on Commission basis, in the meeting held on 10/10/2006 unanimously resolved to appoint the petitioner as Bill Collector on monthly salary of Rs.1,800/- and pay him salary after obtaining necessary permission from the Zilla Panchayat and forwarded the resolution to the Zilla Panchayat for their approval through the Taluk Panchayat. Perusal of Annexure-B would show that the 3rd respondent in its meeting held on 7/3/2007 has resolved to ask the petitioner to report for duty. Accordingly, the 3rd respondent by order Annexure-C dated 7/11/2012 informed the 2nd respondent Taluk Panchayat to direct the petitioner to join for duty on appointment of the petitioner if approved with effect from 7/11/2012 subject to the conditions stipulated in the Government order dated 4/1/2006.

8. That being so the 2nd respondent by letter at Annexure-D dated 31.3.2015 directed the 3rd respondent to initiate the disciplinary action against the petitioner for the irregularities pointed out in his letter. In the meanwhile, the first respondent by order Annexure-E dated 1/4/2015 directed the Executive Officer of the Taluk Panchayat to dismiss the petitioner from service forthwith and copy of the said order was also marked to 3rd respondent.

9. As could be seen from Annexure-E, first respondent himself examined the alleged irregularities committed by the petitioner and viewed the same seriously and directed the second respondent to remove the petitioner from service forthwith. Pursuant to Annexure-E, the second respondent by order at Annexure F dated 4/4/2015 directed the 3rd respondent to remove the petitioner from service and report the same, 3rd respondent without initiating the disciplinary proceedings against the alleged irregularities stated to have been committed by the petitioner

and without taking steps as contemplated under Section 113 of the Act, passed an order at Annexure-G dated 7/4/2015 and removed the petitioner from service.

10. In order to appreciate the contention of the learned counsel appearing for the parties, it is useful to extract the provision of Section 113 of the Act which reads as under:-

113. Appointment and control of employees: (1) Subject to the provision of Sections 111 and 112 the Grama Panchayat may, with the prior approval of the Chief Executive Officer appoint other employees of the Grama Panchayat and pay their salaries from the Grama Panchayat fund.

Provided that in making appointments the appointing authority shall reserve posts for the Scheduled Castes, the Scheduled Tribes and other socially and educationally backward classes of citizens in the same manner and to the same extent as is applicable for the recruitment to posts in the State Civil Services.

(2) The (Panchayat Development Officer) may, by order, fine or withhold the increment of any employee appointed by the Grama Panchayat.

(3) The Grama Panchayat may reduce in rank, remove or dismiss any employee appointed by it.

(4) An appeal shall be against an order passed by the (Panchayat Development Officer) under sub-section (2) to the Executive Officer and against an order passed by the Grama Panchayat under sub-section (3) to the Chief Executive Officer.

(5) Any appeal under sub-section (4) pending before the Mandal Panchayat or the Zilla Parishad on the date of commencement of the Karnataka Panchayat Raj Act, 1993, shall stand transferred respectively to the Executive Officer and the Chief Executive Officer and such appeal shall be decided by them as if it had been filed before them .

11. A perusal of the Annexures-A, B and C would show that the appointment of the petitioner as Bill Collector by the 3rd respondent Gram Panchayat is in accordance with the provision of Section 113 of the Act, whereas while ordering to dismiss him

from service, the respondent Nos.1 to 3 have ignored the provision of Section 113 of the Act. As per Subsection 3 of Section 113 of the Act, it is only the Gram Panchayat which appointed the petitioner as Bill Collector has not the power to remove him from service. Therefore, the order Annexure-E passed by the First respondent directing the second respondent to remove the petitioner from service and the order Annexure-F passed by the second respondent directing the 3rd respondent to remove the petitioner from service and report the same are contrary to the mandatory provisions of Section 113 of the Act and therefore, they are not sustainable in law.

12. A perusal of Annexure-G, termination order passed by the respondent No.3 would show that respondent No.3 without initiating disciplinary action against the alleged irregularities of the petitioner, removed the petitioner from service as directed by the respondent Nos.1 and 2 vide Annexures-E and F respectively. Therefore, orders at Annexures-E, F and G passed by respondent Nos.1, 2 and 3 respectively are not sustainable.

13. At this stage, the learned counsel appearing for respondent Nos.1 to 3 submits in the event of this Court allowing the writ petition and setting aside Order Annexures-E, F and G passed by respondent Nos.1, 2 and 3 respectively liberty may be given to respondent No.4 to take steps as contemplated under Section 113 of the Act.

14. Hence, the following order:-

The writ petition is allowed. Impugned order Annexures-E, F and G passed by the respondent Nos.1, 2 and 3 are set aside. It is open for the respondent No.4 to take appropriate steps against the petitioner by following the procedure as contemplated under Section 113 of the Act.

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