The State Vs. Mohammed Ghouse

The State Vs. Mohammed Ghouse

SooperKanoon Citation : sooperkanoon.com/1194947

Court : Karnataka

Decided On : Oct-21-2016

Judge : Jayant Patel and Aravind Kumar

Appeal No. : WP 40643/2016

Appellant : The State

Respondent : Mohammed Ghouse

Advocate for Def. : Mr. Aravind H, Sri. H. Aravind

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE21t DAY OF OCTOBER, 2016 PRESENT THE HONBLE MR.JUSTICE JAYANT PATEL AND THE HONBLE MR.JUSTICE ARAVIND KUMAR Writ Petition Nos.40643/2016 and 42245/2016 C/W Writ Petition No.44096/2016 and Writ Petition No.40642/2016 (S-KAT) In W.P.Nos.40643/2016 & 42245/2016: Between:

1.

2. The State of Karnataka, Represented by its Secretary to Government, DPAR Services-2, Vidhana Soudha, Bengaluru. The Additional Regional Commissioner, (Revenue matters and others) Office of the Regional Commissioner, Mysore Division, Mysore. Petitioners (By Sri.H.T.Narendra Prasad, AGA) And:

1. Mohammed Ghouse, 2 S/o Late Mohammed Ibrahim, Aged 64 years, Retired KAS officer, R/at No.19/2, 3rd Cross, Kauser Nagar, R.T.Nagar Post, Bengaluru-560 032. D.Radhakrishna, S/o. M.S.Doreswamy Iyengar, Aged 65 years, Retied Shirestedar, No.1047/17A, 2nd Main, 6th Cross, Vidyaranyapuram, Mysore-570 008. Respondents 2. (By Sri.Ranganatha.S.Jois for Sri.Aravind.H., Advocate for R-1 and R-2) These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to call for the records in Application No.3223-3224/2010 and to quash Annexure-A No.3223-3224/2010 Administrative Tribunal. 16.09.2015 by dated passed in the Application Karnataka In W.P.No.44096/2016 Between: The State of Karnataka, Through the Secretary to Govt., Revenue Department, M.S.Building, Bengaluru. The Deputy Commissioner, Chamarajanagar District, Chamarajanagar. 1.

2. 3 The Accountant General Government of Karnataka Bengaluru. Petitioners 3. (By Sri.H.T.Narendra Prasad, AGA) And: D.Radhakrishna, S/o M.S.Doreswamy Iyengar, Aged 71 years, Retied Shirestedar, No.1047/17A, 2nd Main, 6th Cross, Vidyaranyapuram, Mysuru-570 008. Respondent (By Sri.Ranganatha.S.Jois for Sri. Aravind.H, Advocate) This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to call for the records in Application No.5987/2010 and to quash the impugned order - Annexure-A dated 16.09.2015 passed by the Karnataka Administrative Tribunal in Application No.5987/2010. In W.P.No.40642/2016 Between:

1.

2. The State of Karnataka, Rep. by the Secretary Department of Personnel and Administrative Reforms, Vidhana Soudha, Bengaluru - 560 001. The Accountant General Government of Karnataka Bengaluru-560 001. (By Sri.H.T.Narendra Prasad, AGA) Petitioners 4 And: Sri.Mohammed Ghouse, S/o Sri. late Mohammed Ibrahim, Aged about 64 years, Retired K.A.S. officer, R/at No.19/2, 3rd Cross, Kauser Nagar, R.T.Nagar Post, Bengaluru-560 032. Respondent (By Sri. Ranganatha.S.Jois for Aravind.H. Advocate) This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to call for the records and to quash the Annexure-A dated 16.09.2015 passed by the Honble Karnataka

Administrative Tribunal in Application No.7376/2010. These petitions coming on for Preliminary Hearing this day, JAYANT PATEL J., passed the following: FINAL

ORDER

Rule. Mr.Ranganath S. Jois for Sri. Aravind H. appears for the respondents and waives notice of the petitions.

2. As all petitions arise from the similar orders passed by the Tribunal, they have been considered simultaneously and with the consent of learned 5 Advocate appearing for both sides, they are taken up for final disposal.

3. Writ petition Nos.40643/2016 & 42245/2016 are directed against the order dated 16th September 2015 passed by the Tribunal in Application Nos.3223-3224/2010 and whereas, the Writ petition No.44096/2016 and Writ petition No.40642/2016 are directed against the order dated 16th September 2015 passed by the Tribunal in Application No.5987/2010 and Application No.7376/2010 respectively.

4. The crux of the case appears to be that, inquiry was initiated against the respondents concerned by the Department on the alleged ground of mis-appropriation. A Retired District Judge was appointed as the Inquiry Officer. Inquiry was concluded and as per the retired Judge, who was appointed as Inquiry Officer, charges were not proved. The report of the Inquiry Officer was considered by the Disciplinary Authority and the Disciplinary Authority, by the impugned order passed in 6 the year 2009, found that there was sufficient evidence about the involvement in the alleged mis-appropriation and therefore, directed for further inquiry. After taking decision for further inquiry, the same Officer was appointed as the Inquiry Officer. However, the said Officer declined to go ahead with the inquiry and therefore, Tahasildar (Audit & CCA), Office of the Regional Commissioner, Mysuru Division, was appointed as the Inquiry Officer. Under the circumstance, the concerned respondents preferred petitions before the Tribunal, challenging the said order directing for further inquiry/re-inquiry. The Tribunal, in the impugned order found that, once the inquiry was already concluded and the evidence was recorded, fresh inquiry under Rule 11 -A (1) was not permissible, nor there is any provision for ordering of the fresh inquiry. Under the circumstances, the Tribunal,

set aside the order passed by the authority for holding re- inquiry/further inquiry and allowed the applications. 7 Under the circumstance, the present petitions before this Court.

5. We have heard Mr. H.T. Narendra Prasad, learned Additional Government Advocate, appearing for the petitioners in all the petitions and Mr. Ranganath S. Jois, for Mr. Aravind H., learned counsel for the respondents in all the petitions.

6. The contentions raised on behalf of the petitioners was that, as per Rule 11 (1), the further inquiry could be ordered. As per learned Government Advocate, since the competent authority found that sufficient evidence was not considered the order was passed for further inquiry. He submitted that the Tribunal committed error in interpreting the impugned order passed by the Authority, since it was not a matter of fresh inquiry, but was the matter of father inquiry and hence, this Court may set aside the order passed by the Tribunal and allow the Authority to proceed with the further inquiry. 8 7. Whereas, Mr.Ranganath S. Jois for Sri. H. Aravind, learned counsel for respondents-employees contended that, it was a case for ordering of fresh inquiry/re-inquiry and not of further inquiry. He contended that once the inquiry was conducted and the evidence was recorded, fresh inquiry was not at all permissible nor even re-inquiry was permissible by examining all the witnesses who were already examined. He submitted that, the Tribunal has rightly interpreted the impugned order of the Authority as that of fresh inquiry and hence, this Court may dismiss the petitions.

8. In order to appreciate the controversy, we may reproduce the correct translation of the order passed by the Authority, wherein, the relevant of which reads as under: Even though there are many evidences that the accused officers involved, the enquiry officer submitted the enquiry report that the proved. On charges have not Examination the government decided not to accept the enquiry report and report been the 9 the matter was remitted back to the enquiry officer requesting for further enquiry and to submit report. In the letter read at Sl.No.(4) above Sri. S.S.Sangolli, Retired District Judge submitted the proposal and expressed his inability to continue as enquiry officer on personal grounds. 9. The aforesaid shows that the Disciplinary Authority passed the order on the premise that there

are many evidences that the accused officers are involved in mis-appropriation. The relevant aspect is that, the finding is not recorded, nor there is recital that there were witnesses who could have been examined, but not examined to prove the evidence against the delinquent officers for involvement in the alleged charge. The resultant effect is that, the so called inquiry by the impugned order of September 2009 has been ordered on the premise that there was sufficient evidence in the inquiry.

10. We may extract Rule 11- A (1) and (2) of Karnataka Civil Services (Classification, Control and 10 Appeal) Rules, 1957 (hereinafter referred to as Rules) for ready reference which read as under: 11-A. Action on the inquiry report: (1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 11 as far as may be. the (2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose. 11. As per the aforesaid Rules, if the Disciplinary Authority for the reasons recorded in writing may remit the matter to the Inquiry Officer for further inquiry, whereas, as per Sub- Rule (2), if the evidence is already recorded and the Disciplinary Authority disagrees with the findings of the Inquiry Officer, it may record reasons for disagreement for recording its conclusion that the charges are proved. Thereafter, the opportunity to the 11 delinquent officers to be given is another aspect which is not material in the present matter, therefore, we may not make any further observation in this regard. In view of the Scheme of Rule 11-A (1), the condition precedent is that, the Authority has to record reasons and the second is that, the power is available only for further inquiry. When one talks for further inquiry meaning thereby not a fresh inquiry nor the re-inquiry. But further inquiry would mean left out witnesses or left out evidence can be led in the inquiry before the Inquiry Officer who is appointed for further inquiry.

12. If the observations made by the Tribunal are considered in the light of the aforesaid, the Tribunal is right in holding that there is no provision made for fresh

inquiry under Rule 11- A (1). Even as per the Scheme, in our view, fresh inquiry is not permissible and what is permissible is only further inquiry. What is meant of further inquiry is already observed by us hereinabove. Therefore, the finding recorded by the Tribunal that no 12 fresh inquiry is permissible can be said as correct. But at the same time, one cannot lose sight of the fact that, if the evidence was already there on record and Disciplinary Authority finds that the conclusion recorded by the Inquiry Officer that the charges not proved is not correct then by virtue of Sub-Rule 2 of Rule 11-A, the reasons for disagreement are required to be recorded and the further procedure will be required to be followed. The Tribunal, after having found that fresh inquiry was not permissible, even if was of the view that the impugned orders of the Authority were illegal, it ought to have observed that the Disciplinary Authority shall be at the liberty to take action based on the Inquiry Report in accordance with law, which may include the recording of reasons for disagreement and further action in accordance with law. The Tribunal proceeded on the basis that, once the impugned order of the Authority is set aside, in respect of some of the employees, it has directed the payment of retiral 13 benefits as if the disciplinary proceedings are concluded and on the date of retirement of the concerned respondent/employee, there were no disciplinary proceeding pending at all but such in our view can be said as erroneous approach.

13. In view of the aforesaid observation and discussion, the impugned order passed by the Tribunal, so for as setting aside of the order of the Authority for holding inquiry is not interfered with. But, with further observation that if as per the Disciplinary Authority, there is sufficient evidence in the inquiry itself, it would be open to the Disciplinary Authority to follow the procedure under Rule 11-A (2) and to conclude the Disciplinary Proceeding after following the procedure in accordance with law. It is observed that, if the Disciplinary Authority decides to proceed under Rule 11-A (2), the said process shall be completed as early as possible, preferably, 14 within a period of three months from the receipt of the certified copy of the order of this Court. It is also observed and clarified that, in the event, if the Disciplinary Authority does not take any action of resorting to the procedure under Rule 11-A (2), within a period of three months, the respondents-original applicants before the Tribunal would be entitled to the retrial benefits in accordance with law. The petitions are allowed to the aforesaid extent. Rule made

absolute accordingly. No orders as to costs. In view of the above referred order, the Writ petition No.44096/2016 and Writ petition No.40642/ 2016 would not survive. Hence, shall stand disposed of accordingly. No order as to cost. Sd/- JUDGE Sd/- JUDGE tsn*