

Kelkar (V.R.) Vs. State of Mysore

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Court : Karnataka

Decided On : Mar-24-1964

Reported in : [1964(9)FLR98]; (1965)IILLJ515Kant; (1964)1MysLJ335

Judge : K.R. Gopivallabha Ayyangar and ;M. Sadasivayya, JJ.

Acts : [Constitution of India](#) - Articles 22, 22(1), 226 and 311(2); Civil Services (Classification, Control and Appeal) Rules - Rule 11

Appeal No. : Writ Petition No. 1409 of 1961

Appellant : Kelkar (V.R.)

Respondent : State of Mysore

Judgement :

ORDER

Gopivallabha Ayyangar, J.

1. The petitioner in this case was working as a muster clerk in Public Works Department, Haveri, during the year 1959. After a preliminary enquiry, charges were framed against the petitioner alleging that he while working as a muster clerk marked false attendance, as present in respect of mazdoor Peerappa Shivappa from March 21, 1959 to April 20, 1959, even though the said Peerappa Shivappa did not attend to the work on those days, and the pay of the said mazdoor

Peerappa Shivappa was claimed, taking a receipt with the thumb-impression of one Thippanna and misappropriated a sum of Rs. 42.47, being therefore guilty of fabricating false evidence by marking false attendance and also misappropriating Government money to the extent of Rs. 42.47. The payment is alleged to have been made on May 12, 1959. In support of the charges six witnesses were examined including mazdoor Peerappa, Thippanna and the handwriting expert, D. J. Doddamani. In answer to the charges framed against him, the petitioner filed his written statement on 20 April, 1960 stating that during the relevant period mazdoor Peerappa was working and that his attendance had been marked correctly. He also stated :

'I endorsed the thumb-impressions on ascertaining from the respective coolies that they had received payments accordingly, as it was usual routine affair'.

2. He also asked for permission to engage a lawyer for his defence for the reason that he did not know how to express in English.

3. Thippanna in his evidence has stated that he was literate; that he never put his thumb-impression at any time for receiving payment and that on this occasion he was asked by the petitioner to put his left thumb-mark. He identifies his thumb-impression on the relevant entry relating to the sum of Rs. 42.47. Thippanna also states that Peerappa was not working during the relevant period. This evidence is corroborated by Peerappa who states that he did not do any work during the relevant period and that he did not receive any payment. D. J. Doddamani, who is the finger-print expert, has deposed that the admitted thumb-impression of Thippanna is identical with the thumb impression corresponding to the payment of Rs. 42.47. Nothing is elicited in the cross-examination of these persons to indicate that their statements are unworthy of credence. On the basis of the evidence recorded and the statements filed by the petitioner, the enquiring officer in a detailed and well-considered order came to the conclusion that the charge against the petitioner was proved and recommended the dismissal of the petitioner from service. The Government agreed with the findings of the enquiring officer. The petitioner was also served with a show-cause notice, with the findings recorded by Government and the report of the enquiring officer, on 15 November, 1960. The

representation of the petitioner dated 8 December, 1960 was considered to be unsatisfactory. The opinion of the Public Service Commission was also against the petitioner. The respondent, therefore, passed orders on May 18, 1961 dismissing the petitioner from service.

4. It is this order of 18 May, 1961 that is challenged in this writ petition. In support of this, Sri Datar, the learned counsel for the petitioner, urges two grounds. One is that the conclusion of the respondent that the petitioner was guilty of the charges framed against him is unsustainable on the basis of the evidence recorded by the enquiring officer. It is not open to the petitioner to ask us to review the evidence recorded by the enquiring officer, as if we are sitting in appeal over his conclusions. It is enough to state that the findings of the enquiry officer as accepted by the State, are based on evidence available in the case. We are not concerned in these proceedings with the question whether that evidence is adequate to support the conclusion.

5. Secondly, it was contended by Sir Datar that the petitioner had not been given a reasonable opportunity to explain his case. In para. 11 of the affidavit filed by the petitioner, it is stated that the petitioner filed an application for permission to engage a pleader but the said application was rejected without any justifiable cause. It may be mentioned that, as a matter of fact, no application for permission to engage a pleader has been made by the petitioner. In the explanation submitted by petitioner on 20 April, 1960 he merely states :

'I request that I should be permitted to engage a lawyer for my defence as I do not know how to express in English.'

6. There is nothing to indicate that this request was seriously pressed before the enquiring officer when he started the enquiry. On the other hand, it is seen that without any protest the petitioner has cross-examined the witnesses in support of the chargesheet. Further, the enquiring officer was not called upon to consider whether in the circumstances of the case he should permit a pleader to appear for the petitioner in the enquiry. Sri Datar, in support of his contention that in being refused the services of a lawyer the petitioner was denied a reasonable opportunity of showing cause against the action proposed to be taken in regard to

him, strongly relies on the decision in *Muniswami v. State of Mysore* [1962 - II L.L.J. 694]. In this decision, their lordships did not express any opinion on the question whether for fully availing the reasonable opportunity ensured by art. 311(2) of the Constitution, counsel as of right should be appointed in every such proceeding. Therefore, the observations made in the aforesaid decision supporting the view that the denial of the right to delinquent official to be represented by a counsel would amount to denial of reasonable opportunity are obiter dicta. It also appears to us that a delinquent Government servant cannot be equated to an accused facing a criminal prosecution. A Government servant is in a responsible and privileged position. The opportunity that can be afforded to explain the charges against him need not be identical with that which is allowed to an ordinary accused. It is sufficient if the opportunity is reasonable opportunity. A reference may be made to Art. 22 of the Constitution in which provision is made in respect of an arrested person regarding legal assistance. Under Art. 22(1),

'No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.'

7. The right given here is an unqualified right to have the assistance of a legal practitioner of his (arrested person's) choice. But, in Art. 311(2) the right secured is only a 'reasonable opportunity.'

8. The decision in *Muniswami* case [1962 - II L.L.J. 694] (vide supra) is referred to in two subsequent decisions, viz., *Vijayachary, Hosur v. State of Mysore* [Writ Petition No. 1463 of 1960, dated 9 August, 1963] and *Basavarajappa v. State of Mysore* [(1964) 1 Mys. L.J. 307] of this Court and the observations in *Muniswami* case [1962 - II L.L.J. 694] (vide supra) which are obiter dicta have not been followed. On the other hand, in *Basavarajappa* case [(1964) 1 Mys. L.J. 307] (vide supra) their lordship indicated that some of the propositions stated in *Muniswami* cases [1962 - II L.L.J. 694] (vide supra) may require reconsideration. The observations in *Muniswami* case [1962 - II L.L.J. 694] (vide supra) place a Government servant in the same position as an accused in a criminal case. With respect, we do not think that this is a correct approach. In this context we may

refer to the following observations of the Supreme Court in State of Andhra Pradesh v. Sri Ram Rao [1964 - II L.L.J. 150] :

'There is no warrant for the view expressed by the High Court the in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid.'

9. The enquiry in question is a disciplinary enquiry and it does not attract the formalities attached to a proceeding in a Court of law. Restrictions in regard to the right of representation as provided in Clause (5) of rule 11 of the Civil Services (Classification, Control and Appeal) Rules are not unreasonable and do not amount to a denial of fair and reasonable opportunity to the delinquent Government servant to defend himself. The Supreme Court in Kalandi v. Tata Loco and Engineering Company, Ltd. [1960 - II L.L.J. 228] has also held that the denial to a workman of his request for being represented through another person in a domestic enquiry is not opposed to the principles of natural justice.

10. Even if it were to be assumed that the disciplinary authority should take the circumstances of the case into consideration to decide whether a Government servant should be permitted to engage a legal practitioner to represent him in the enquiry, the circumstances of this case do not warrant any such permission. In the first place, such permission was not specifically sought for and the enquiry officer was not called upon to exercise his discretion in this matter. The petitioner has cross-examined the witnesses without any protest. The case is also a simple one as can be seen from the facts narrated above. The case against the petitioner is not one which can be considered to be a complicated or difficult one, nor is it a case where the Government servant is embarrassed in any manner to take part in the enquiry. Further, in the statement filed by the petitioner no such difficulty was pleaded. He only expressed his inability to express in English. This inability has not in any manner prejudiced the petitioner as can be gathered from the record of

the enquiry.

11. Therefore, the contention of Sri Datar that the petitioner had no reasonable opportunity to explain his case cannot be accepted.

12. For the above reasons, we see no ground to exercise the power under Art. 226 of the Constitution and therefore this writ petition is dismissed with costs.

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