

Keshavayya (V.) Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-28-1963

Reported in : (1965)IILLJ588Kant

Judge : B.M. Kalagate and ;H. Hombe Gowda, JJ.

Acts : Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 - Rules 11, 11(9) to 11(12), 14A(1) and 14C(2)

Appeal No. : Writ Petition No. 606 of 1961

Appellant : Keshavayya (V.)

Respondent : State of Mysore

Advocate for Pet/Ap. : Sri. Venkataranga Ayyangar

Judgement :

ORDER

Hombe Gowda, J.

1. The petitioner, V. Keshavayya, was working as a first division clerk in the Office of the Director of Sericulture in Bangalore. On the basis of the information that the petitioner was demanding a sum of Rs. 20 as illegal gratification from one Hombe Gowda, patel, Avaregere village, Ramanagaram taluk, to show an official favour in connexion with the grant of a sericulture loan to him, a trap was arranged and the

petitioner was found having accepted a sum of Rs. 20 from Hombe Gowda in the Vishnu Bhavan Hotel, Kempe Gowda Road, Bangalore City, on 28 January, 1956. After necessary preliminary investigation the Deputy superintendent of Police attached to the Anti-Corruption Measures submitted his report to the Special Officer, Efficiency Audit, to hold a departmental enquiry against the petitioner. The special Officer, being convinced that a prima facie case was made out against the petitioner, nominated Sri H. N. Shankarappa, Gazetted Assistant to the Special Officer, Efficiency Audit, as the enquiring authority for holding the departmental enquiry against the petitioner under rules 14A(1)(b) and 14C(2) of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. The enquiring authority framed a charge against the petitioner to the effect that the petitioner while functioning as a first division clerk in the office of the Director of Sericulture, Bangalore, accepted a sum of Rs. 20 as illegal gratification from Hombe Gowda, Patel, Avaregere village, Ramanagaram taluk, in the Vishnu Bhavan Hotel, Kempe Gowda Road, Bangalore, to show an official favour to him in connexion with the grant of a sericulture loan and that the said sum of Rs. 20 had been paid to him in pursuance of an earlier demand of Rs. 30 and that the petitioner had thereby rendered himself liable for grave misconduct as a Government servant. The copy of the charge framed was served on the petitioner and he was asked to show cause why disciplinary action should not be taken against him on the said charge by the enquiring authority.

2. The petitioner submitted a written statement denying the charge and asked for an oral enquiry. The petitioner was given an opportunity to examine the connected records, cross-examine the prosecution witnesses and to examine witnesses, in support of his defence. He cross-examined the several witnesses examined by the prosecution to prove the charge against him. But he did not examine any witnesses on his behalf. After the conclusion of the enquiry the petitioner filed a detailed written statement before the enquiring authority. The enquiring authority held that the charge had been proved and submitted its report to the Special Officer, Efficiency Audit. The Special Officer who scrutinized the report concurred with the finding of the enquiry officer and held that the explanation offered by the petitioner was unsatisfactory and had been rightly rejected by the enquiring authority. Having accepted the finding of the enquiry officer, the Special Officer,

Anti-corruption Department, recommended to the government that the petitioner should be dismissed from service as the charge of corruption had been proved beyond all doubt and as there was no extenuating circumstance in his favour. The Government issued a notice to the petitioner before imposing the penalty suggested by the Special officer as laid down in the provisions of sub-rules (9) to (12) of rule 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. The Government having provisionally decided to dismiss the petitioner from service, issued a notice to him to show cause why he should not be so dismissed from service for the offence proved against him. Copies of the statements of the finding of the Government, the finding of the enquiry office and also the report of the Special Officer were sent to the petitioner along with the show-cause notice. The petitioner submitted his explanation within the time prescribed. The explanation of the petitioner, the statement of the finding of the Government, the finding of the enquiry officer and that of the Special officer were sent to the Public service Commission for their opinion. The Public Service Commission agreed with the finding of the Special officer, which was accepted by the Government, that the charge against the petitioner had been proved. It was of the view that the punishment proposed by the Special officer was the proper and appropriate punishment to be inflicted to the petitioner. After receiving the opinion of the Public Service Commission the Government examined the matter afresh and passed an order dismissing the petitioner from service on 15 December, 1960. A copy of the order of dismissal was served on the petitioner. Thereafter the petitioner presented a petition on 11 April, 1961 for review of the order passed by the Government dismissing him from service and the same was rejected on 25 April, 1961. The petitioner has filed this petition under Art. 226 of the Constitution of India praying for the issue of a writ of certiorari quashing the order dated 15 December, 1960 bearing No. clause 18 SET 59 passed by the State dismissing him from service.

3. It is urged by Sri Venkataranga Ayyangar, the learned counsel for the petitioner, that the order passed by the Government dismissing the petitioner from service after accepting the finding of the Special officer, Anti-Corruption, is illegal and is liable to be quashed for the following reasons :

(1) that the enquiry held by the Special Officer is illegal inasmuch as, if the Director of Sericulture who is the disciplinary authority had held the enquiry under rule 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, then the petitioner should have had an opportunity to prefer an appeal to the Government. The enquiry held under rule 14A of the rules is opposed to natural justice and amounts to a denial of a reasonable opportunity to the petitioner to prove his innocence;

(2) that the enquiry conducted by the Special officer, Efficiency Audit, and by the enquiring authority appointed by the said officer without adopting the normal procedure prescribed under rule 11 of the Mysore Civil services (Classification, Control and Appeal) Rules, 1957, is discriminatory and offends Art. 14 of the constitution;

(3) that the Government has not recorded its finding on the charge against the petitioner : there is nothing in the impugned order indicating that the Government had applied its mind and had found the petitioner guilty of the charge; and

(4) that the State had allowed irrelevant and inadmissible materials to influence its decision, to wit, it had relied upon the opinion of the Special Officer about the previous record of the petitioner to which the petitioner's attention had not been specifically drawn and his explanation had not been obtained.

4. We will proceed to consider each of these contentions in the order in which they are presented to us by the learned counsel for the petitioner.

5. The first two contentions of Sri Venkataranga Ayyangar, learned counsel for the petitioner, can conveniently be considered together as they relate to the legality of the enquiry conducted by the Special Officer, Anti-Corruption Department, which resulted in the dismissal of the petitioner. It is contended that the proper and appropriate authority to conduct an enquiry into the alleged charge of misconduct against the petitioner is the Director of Sericulture, who is the 'disciplinary authority' and that the enquiry held by the Gazetted Assistant attached to the Special Officer, Efficiency Audit, is therefore illegal. It is also contended that the right of the petitioner to prefer an appeal to the Government against the action

taken by the disciplinary authority was taken away as the enquiry was held by the Gazetted Assistant to the Special Officer at the instance of the Special Officer, Efficiency Audit, and it amounts to a denial of a fair and reasonable opportunity to the petitioner to prove his innocence and that it is discriminatory and is, therefore, liable to be quashed. The Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, are framed by the Governor of Mysore in exercise of the powers conferred on him by the proviso to Art. 309 of the Constitution of India. Rule 11 of the said rules prescribes the procedure to be adopted by the disciplinary authority for imposing major penalties. The disciplinary authority in the instant case is the Director of Sericulture. Rule 11 prescribes that the disciplinary authority may himself hold an enquiry or specify any authority to hold the enquiry after framing definite charges on the basis of the allegations on which the enquiry is proposed to be held. The rule further prescribes that if the disciplinary authority is not the enquiring authority, he should, on receipt of the report of the enquiring authority, record his own findings on the charges and then communicate the same to the officer and serve a notice to show cause as to why the punishment tentatively proposed in the notice should not be inflicted on him. Under the rules the delinquent officer on whom one of the major penalties is inflicted is entitled to file an appeal, against the finding and the punishment, to the Government. Rule 14A prescribes special procedure in certain cases of misconduct of a Government servant. The said rule prescribes that the Director of Anti-Corruption and Technical Audit, Public Works Department (he was being called as the Special officer, Efficiency Audit), may either suo motu or on a reference made by the Government take up any investigation and conduct the enquiry himself or authorize any officer of the Directorate of Anti-Corruption and Technical Audit, Public Works Department, to conduct such an enquiry. It is urged by Sri Venkataranga Ayyangar that in the absence of any specification on the basis of a reasonable classification of the nature or class of offences or class of persons who should be subjected to the special enquiry under rule 14A, the investigation conducted by the Special Officer is arbitrary and offends Art. 14 of the Constitution of India. We are unable to subscribe to this contention. It is not disputed that the procedure prescribed for holding an enquiry under rule 14A of the Mysore Civil Services (classification, control and Appeal) Rules, 1957, is not different from the procedure prescribed

under rule 11 of these rules. Sub-rule (1)(b) of rule 14A states :

'The officer authorized to conduct the inquiry under clause (c) shall conduct the inquiry in accordance with the provisions of sub-rules (2), (3), (4), (5), (6) and (7) of rule 11 and for the purpose of such inquiry shall have the powers of the specially empowered authority referred to in the said rule.'

6. The main grievance of the petitioner is that the right of appeal to the Government which was available to him if an enquiry had been conducted under rule 11 is curtailed by virtue of the enquiry under rule 14A and therefore amounts to a denial of a fair and reasonable opportunity and is also discriminatory. Rule 14A prescribes that after the enquiry is conducted by the Director of Anti-Corruption and Technical Audit, Public Works Department, or by any authority specially empowered by him, the officer should submit his finding to the Government who will pass necessary orders. There is no provision made for an appeal against the order so passed. The only point for consideration is Whether the mere fact that the right of the petitioner to prefer an appeal which he would have had if the enquiry is conducted under rule 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, is taken away by virtue of the enquiry being held under rule 14A is discriminatory and contravenes Art. 14 of the Constitution. This question is no longer *res integra*. The Supreme Court has in a recent decision in *State of Orissa v. Bidyabhushan Mohapatra* [1963 - I L.L.J. 239] held that such a procedure does not offend Art. 14 of the constitution. It held that the mere fact that under the classification rules there is a right of appeal from an order imposing a penalty passed by a departmental head to the Government, whereas there is no such right of appeal against the order passed by the Governor imposing penalty upon a public servant under a separate set of rules in the classification rules, cannot be regarded as a ground sustaining a plea of unlawful discrimination. Their lordships rejected a contention similar to the one advanced before us with the following observations :

'The plea that there was discrimination because there was a right of appeal against an order imposing penalty under one set of rules, and no such right under the other, was rejected in 1961 - II L.L.J. 166. It must therefore be held that the

existence of a right of appeal against the order of an administrative head imposing Penalty and absence of such a right of appeal against the order of Governor under the tribunal rules does not result in discrimination contrary to Art. 14 of the Constitution.'

7. In the light of the above, the first two contentions of Sri Venkataranga Ayyangar should be rejected.

8. The Next contention of Sri Venkataranga Ayyangar is that the Government had not recorded its own finding on the charge against the petitioner and the statements found in the impugned order, Ex. B, that

'Government having considered the record of the enquiry agree with the finding of the enquiry officer with regard to the charge framed against you and purpose to dismiss you from service for the offence proved against you.'

9. does not satisfy the requirements, and does not indicate that the Government applied its mind and came to the conclusion that the petitioner was guilty of the charge and therefore the order is liable to be quashed. He contended that the mere fact that in the notice issued to the petitioner the Government stated that it 'agreed' with the finding of the Special Officer, Efficiency Audit, is not sufficient and the Government must apply its mind independently and record its 'finding' on the charge framed against the petitioner. Sri D. M. Chandrasekhar, the learned Assistant Advocate-General, placed the records of the enquiry before us for our perusal and we perused them. The records indicate that after the receipt of the report of the special Officer, Efficiency Audit, the Government dealt with the matter thoroughly. The file relating to the enquiry was examined by more than one Minister of the Government of Mysore and they had recorded their opinion. As there was some difference of opinion with regard to the punishment to be inflicted, the matter was considered at a Cabinet meeting and a decision was taken. It is, therefore, idle for the petitioner to contend that the Government had not applied its mind to the facts of the case and had not recorded its finding on the charge.

10. The last contention urged by the learned counsel for the petitioner is that the Government had allowed irrelevant and inadmissible materials to influence their

decision and therefore the order is vitiated. He particularly referred to the observations made by the Government in Ex. A which indicated that the Government had relied upon the opinion of the Special Officer relating to the previous conduct of the petitioner and that the attention of the petitioner had not been specifically drawn to it by the Government in the notice issued to him and, therefore, he had no opportunity to have his say about it. It is not denied that a copy of the report of the Special Officer, Efficiency Audit, was made available to the petitioner. The petitioner had, therefore, an opportunity to refer to the opinion of the Special Officer and to offer his explanation in his explanation submitted to the Government in reply to the notice served on him under Art. 311 of the Constitution of India. The petitioner admittedly did not do so. Moreover, the fact that the previous record of service of the petitioner was not quite satisfactory had been made only in connection with the punishment proposed to be inflicted to him and it had nothing to do with the finding on the charge framed against the petitioner. It is only after the Special Officer held that the charge against the petitioner had been satisfactorily proved that he referred to the previous conduct of the petitioner and recommended that the dismissal would be a proper and appropriate punishment in the circumstances of the case. It has been held by the Supreme Court in *State of Orissa v. Bidyabhusan Mohapatra* [1963 - I L.L.J. 239] (vide supra) that the Court is not, in a case in which an order of dismissal of a public servant is impugned, concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established in the case. We cannot, therefore, go into the reasons which induced the punishing authority if there has been an enquiry consistent with the prescribed rules. There is thus no substance in any of the contentions raised by the learned counsel for the petitioner and this writ petition must fail.

11. In the result, therefore, for the reasons stated above, this writ petition fails and the same is dismissed but without costs. Advocate's fee Rs. 100.

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