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Rudre Gowda Vs. State of Karnataka

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Court : Karnataka

Decided On : May-27-1985

Reported in : ILR1985KAR3106; (1986)ILLJ448Kant

Judge : S.G. Doddakale Gowda, J.

Acts : Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 8; Indian Penal Code (IPC), 1860 - Sections 303; Constitution of India - Articles 14 and 311

Appeal No. : W.P. No. 7095 of 1985

Appellant : Rudre Gowda

Respondent : State of Karnataka

Advocate for Pet/Ap. : Shri. Savanur

Judgement :
ORDER

1. Government provisionally accepting finding of guilt recorded by Commissioner of Enquiries (State vigilance Commission) and recommendation of Vigilance Commissioner issued show-cause notices dated 4th March, 1985 and 6th March, 1985 (Marked as Annexure-F and G). Enquiry Officer relying on result of phenolphthalein test and oral evidence let in on behalf of the prosecution recorded a finding that charge of misconduct of acceptance of illegal gratification is

established. On a consideration of representation made pursuant to show cause notices. Government concurred with the finding of Enquiry Officer as also recommendation of Vigilance Commissioner and ordered compulsory retirement as per impugned order date 24th April, 1985 (marked as Annexure-J).

2. While challenging impugned order both on irregularities committed in the conduct of enquiry as well as finding on its merits, petitioner has challenged vires of proviso to Rule 8 of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as the 'Rules') on the ground that it violates Art. 14 of the Constitution of India.

In order to appreciate the merit of this contention, it is better to extract provision itself.

'8. Nature of penalties :- One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely :-

(i) fine in the case of Government servants belonging to State Civil Services, Group-D;

(ii) censure;

(iii) withholding of increments;

(iii-a) withholding of promotion;

(iv) recovery from pay of the whole on part of any pecuniary loss caused by negligence or breach of orders to the State Government or to the Central Government, any other State Government any person, body or authority to whom the service of the Officer had been lent;

(vi-a) reduction to a lower stage in the time-scale of pay for specified period with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay;

(v) reduction to a lower time scale of pay, grade, post or service which shall, unless otherwise directed, be a bar to the promotion of the Government servant to the time-scale of pay, grade, post on service from which he was reduced, with or without further directions regarding :-

(a) seniority and pay in the scale of pay, grade post or service to which the Government servant is reduced.

(b) conditions of restoration to the scale of pay, grade or post of service from which the Government servant was reduced and his seniority and pay on such restoration to that scale of pay, post or service;

(vi) compulsory retirement;

(vii) removal from service which shall not be a disqualification for future employment;

(viii) dismissal from service which shall ordinarily be a disqualification for future employment.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the disciplinary authority, no penalty other than those specified in Clause (vi) to (viii) shall be imposed for an established charge of corruption.'

3. Contention of Shri Savanur, Learned Counsel for petitioner, is that Disciplinary Authority has no choice or discretion to impose any one of the penalties enumerated in Rule 8 of the Rules if charge of corruption is established as such a provision is opposed to principles enunciated in Mithu and others v. State of Punjab : 1983 CriLJ811 . Submission is that reasons assigned by Supreme Court to quash S. 303 I.P.C. holds good to invalidate the present proviso.

4. The proviso consists of two parts-first part states that in the absence of special or adequate reasons to the contrary mentioned in the order, punishment to be imposed if charge of corruption is proved are as specified in Cls. (vi) to (viii). Thus, by assigning special or adequate reasons, a lesser penalty can also be imposed. It

is only in case no reasons are assigned, second part which stipulates imposition of penalty, specified in Cls. (vi) to (vii) operates. Sub-clause (vi) provides for imposition of compulsory retirement; Sub-clause (vii) provides for removal from service which shall not be a disqualification for future appointment; and Sub-clause (viii) provides for dismissal from service which shall ordinary be a disqualification for future employment. Thus, Disciplinary Authority has got choice to impose any one of these punishments. It is not as if Disciplinary Authority has no discretion to impose any one of these punishments provided in Rule 8 of the Rules as it was the case in Mithu's case (supra). Hence, I find no merit in the plea that provision is ultra vires.

5. Nextly, it is contended that denial of opportunity of hearing by a Government before taking a final decision infringe principles of natural justice. The scheme of Rule provides for an opportunity of hearing at the time of conduct of enquiry and after enquiry before accepting the report, Disciplinary Authority is required to give an opportunity to make representation so as to comply with principle of natural justice even after amendment of Art. 311 of the Constitution of India, as pointed out in Mahabaleshwar Pandrinath Naik v. State of Karnataka and others (1982-I K.L.J. 105). Rules don't envisage oral hearing at this stage. Hence, no merit in this contentions also.

6. Next submission is that delinquent official was not provided with sufficient opportunity to establish his innocence. Petitioner has been provided with an opportunity of cross-examination of witnesses examined on behalf of the prosecution and also to examine his witnesses. Nobody has prevented him to examine such of the witnesses as he desired or to produce such other document as he intended to establish innocence. Under these circumstance, I don't find any substance in this contention also.

7. By referring to Annexure C, an affidavit of Sri T. M. Subramanyam and discrepancies in evidence of prosecution witnesses, it was contended that acceptance of illegal gratification is not proved to the hilt. This Court is not acting as an Appellate Court and it is impermissible for this Court to substitute its finding on reappraisal of entire evidence. Annexure-C, an affidavit alleged to have been

given by T. M. Subramanyam has not been confronted to him when he was in the witness box. Even otherwise nothing prevented Enquiry Officer as well as Disciplinary Authority to rely on retracted statement or statement resiled for the purpose of recording a finding coupled with other materials available on record.

8. No merit in this Writ Petition. Writ Petition rejected.

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