

State of Karnataka Vs. Veeranna

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Court : Karnataka

Decided On : Apr-02-1986

Reported in : ILR1986KAR2245

Judge : Rama Jois and ;Ramakrishna, JJ.

Acts : [Constitution of India](#) - Article 411(2)

Appeal No. : W.A. No. 2088 of 1982

Appellant : State of Karnataka

Respondent : Veeranna

Advocate for Def. : M. N. Hegde, Adv.

Advocate for Pet/Ap. : Chandrasekharaiah, Govt. Adv.

Disposition : Writ appeal allowed

Judgement :

Rama Jois, J.

1. This Writ Appeal is presented by the State against the order of the learned Single Judge allowing the Writ Petition of the respondent-an ex-Village Accountant in the Revenue Department of the State Government and setting aside the order imposing the penalty of dismissal from service against him.

2. The facts of the case, in brief, are as follows :- Disciplinary proceedings were instituted by the Government against the respondent, who was a Village Accountant. The inquiry on the charges levelled against him was conducted by the Vigilance Commission, who found the respondent guilty of the charges. Accepting the finding, the disciplinary authority i.e., the State Government, imposed the penalty of dismissal from service against him. Aggrieved by the order, the respondent presented the Writ Petition.

3. The Writ Petition was allowed solely on the ground that a copy of the report of the inquiring authority was not furnished to the respondent and thereby an opportunity to put-forth his say against the report of the inquiring authority before the disciplinary authority was denied and therefore there was violation of rules of natural justice. The learned Single Judge, while allowing the Writ Petition, relied on a Division Bench decision of this Court in Mahabaleshwar Pandarinath Naik v. State of Karnataka and Ors., 1982(1) Kr. L.J. 105. In the said decision, the Division Bench held that even after the amendment of Article 411(2) of the Constitution by the 42nd Amendment to the Constitution, deleting the provision which required the giving of second opportunity, in all cases where the inquiry was held by an Officer other than the Disciplinary Authority, principles of natural justice required that a copy of the report of the inquiry must be furnished to the delinquent official and he should have an opportunity of contesting the findings recorded by the inquiring authority and that if no such -opportunity was given, the order of dismissal was liable to be quashed.

4. Sri Chandrasekharaiah, learned Government Advocate appearing for the State submitted that clause (2) of Article 411 of the Constitution as it stands after the Constitution 42nd Amendment has been interpreted by the Supreme Court in the case of Union of India v. Tulasiram Patel, : (1985)ILLJ206SC and the Supreme Court, after tracing the history of Article 411(2) as it stood at the commencement of the Constitution, which did not expressly provide forgiving opportunity at two stages; its interpretation by the Supreme Court in Khemchand v. Union of India, : (1959)ILLJ167SC and other cases to the effect that the Clause contemplated the giving of the opportunities one at the inquiry and another after the recording of finding, before imposing the penalty; the 15th Amendment to the Constitution

bringing Article 311(2) in conformity with its interpretation by the Supreme Court by expressly incorporating the requirement to give two opportunities ; and the further amendment of Article 411(2) by the 42nd Amendment to the Constitution deleting the requirement of giving second opportunity ; had held that after the 42nd Amendment, the only requirement to be observed before imposing any one of the penalties viz., dismissal, removal or reduction in rank against a Government servant was, that an inquiry should be held giving a reasonable opportunity of being heard in respect of the charges levelled against the delinquent Government servant and no further opportunity after the recording of finding was necessary. In view of this the learned Counsel submitted that the decision of this Court in M.P.Naik's case, 1982(1) Kr. L.J. 105 was no longer a good law.

5. Relevant portion of the Judgment in Tulsiram Patel's case² on which he relied is at paragraph 68. It reads:--

'It should be borne in mind that show-cause notice at the punishment stage was originally there as a result of the interpretation placed by the Judicial Committee in Lall's case (AIR 1948 PC 121) and by this Court in Khem Chand's case : (1959)ILLJ167SC upon the phrase a reasonable opportunity of showing cause against the action proposed to be taken in regard to him'. Clause (2) as substituted by the Constitution (Fifteenth Amendment) Act merely reproduced the substance of what was held in Khem Chand's case The words which originally found a place in Clause (2), 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him', do not any more feature in Clause (2). All that Clause 2) now provides is an inquiry in which the Government servant is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Clause (2) taken by itself even without the first proviso does not provide, expressly or impliedly, for any opportunity to make a representation against the proposed penalty. After the Constitution (Fifteenth Amendment) Act this second opportunity formed a separate part of Clause (2), which part was deleted by the Constitution (Forty-second Amendment) Act.'

(Underlining by us)

A reading of the above paragraph, in particular the underlined portion of the Judgment unmistakably indicates that the Supreme Court has interpreted Article 411(2) after the 42nd Amendment to the Constitution, which came into force on 1-1-1977 holding that all that Clause (2) now provides is an inquiry in which the Government servant concerned was informed about the charges levelled against him and a reasonable opportunity of being heard is given to the Government servant concerned in respect of those charges.

6. We are convinced that the submission is unexceptionable. The Parliament, which had amended Article 411(2) by the 15th Amendment so as to make it in conformity with the interpretation of the Article holding that it required the giving of two opportunities again in its wisdom considered that the giving of second opportunity was inexpedient and therefore deleted the provision regarding second opportunity by amending Article 411(2) by the 42nd Amendment. In this background, the Supreme Court held that the Article 411(2) as it now stands requires the giving of only one opportunity.

7. In M.P.Naik's case¹, the Division Bench took the view that even after 42nd Amendment, if the inquiry in a given case was held by the inquiring authority, the disciplinary authority should furnish the inquiry report to the delinquent official before acting on the report, and that such a requirement flowed from the principles of natural justice.

8. This view cannot stand in the face of the interpretation of Article 411(2) by the Supreme Court in the case of Tulasiram Patel². Whether the inquiry is held by the disciplinary authority itself and it records a finding of guilt on the charges or it is held by an inquiring authority appointed by it, and it records a finding of guilt and the same is accepted by the disciplinary authority, which, it can do without recording any reasons. (See: State of Madras v. Srinivasan : AIR 1966 SC1827 it makes no difference, for as held by the Supreme Court in Tulasiram Patel's case², only one opportunity by way of holding an inquiry is required under Article 411(2) after its amendment by the 42nd Amendment to the Constitution. In view of this interpretation of Article 411(2) found at paragraph 68 of the Judgment which is binding on us, we hold that the interpretation of Article 411(2) in M.P. Naik's case¹

by a Division Bench of this Court, is no longer valid.

9. As can be seen from the order of the learned Single Judge, the Write Petition was allowed only on the ground that a copy of the Inquiry Report was not furnished to the respondent following the ratio of the decision in M.P. Naik's case¹. Therefore, we have got to consider the other grounds urged in the Writ Petition.

10. The only other ground urged in the Writ Petition was that the Disciplinary Authority had considered the evidence of some of the witnesses and had not considered the evidence which was favourable to the respondent.

11. From the Annexures produced along with the Writ Petition, it may be seen that the Assistant Director of Vigilance, who is a Judicial Officer of the rank of a Civil Judge, deputed to the Vigilance Commission, conducted the inquiry. He recorded a finding that the charge of accepting illegal gratification of Rs. 50/-levelled against the respondent was proved. The Disciplinary Authority accepted the finding recorded by the Inquiring Authority. The finding recorded by the Assistant Director of Vigilance was on appreciation of the entire evidence on record and the same had been accepted by the Disciplinary Authority. Therefore, we find no substance in this ground also.

12. In the result, we make the following order :--

(i) The Writ Appeal is allowed ;

(ii) In reversal of the order of the learned Single Judge, the Writ Petition is dismissed.

(iii) No costs.