

K. Mallappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Mar-14-1985

Reported in : ILR1985KAR2030; 1985(2)KarLJ199

Judge : Doddakale Gowda, J.

Acts : Karnataka Civil Service Rules, 1958 - Rule 214

Appeal No. : WP No. 15671 of 1982

Appellant : K. Mallappa

Respondent : State of Karnataka

Advocate for Def. : S.V. Narasimhan, HCGP

Advocate for Pet/Ap. : U.L. Narayana Rao, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Doddakale Gowda, J.

1. Articles of Charges framed under Rule 214 of the Karnataka Civil Services Rules as against petitioner read thus:-

The report of investigation disclosed that Sri K. Mallappa while functioning as Director of Public Instruction (Pry. Edn.) Bangalore gave approval in January 1978 to the appointment of five teachers for the said Institution in excess of the number of teachers that could have been provided to that school as per the norms prescribed by Government under the Grant-in-Aid Code for primary Schools. The strength of the students in the Kamala Nehru Makkala Mandir, Bangalore as on 1-6-1976 was 505 and there were 9 teachers. With the appointment of 5 more teachers, the total strength of teachers increased to 14 with effect from 1-6-1976. Though the required number of teachers as per the said code was only 12, Sri K. Mallappa approved the appointment of the five more teachers resulting in the total strength of teachers to 14, when there was provision to appoint only three more teachers. Thus, Sri K. Mallappa exceeded the limit prescribed in the grant-in aid Code and caused loss of Rs. 53, 055-60 to Government on account of salary of the two surplus teachers.

Government have considered the report of the State Vigilance Commission and have decided that since Sri K. Mallappa has sustained pecuniary loss to Government to the tune of Rs. 53,055-60. Departmental Enquiry should be conducted against him for recovering the said amount and accordingly pass the following orders.'

2. Validity or correctness of this proceedings is challenged mainly on three grounds viz., (i) after settlement of pension payable to petitioner there remained nothing for the department to hold an enquiry; (ii) statement of imputation as contained in charge will not constitute misconduct or negligence; and (iii) in the absence of essential ingredients of Rule 214 of the Rules, proceedings initiated or action taken to hold an enquiry is without jurisdiction and illegal.

3. Undisputed facts are:

Petitioner retired from service on 15.5.1980. Article of charge is framed on 8-12-1981, but served on petitioner on 10-12-1981 in respect of an incident that has occurred in the year 1978. Pension claim has been settled as per endorsement dated 26-8-1980, vide Annexure-B and 75 per cent of DCRG has also been ordered to be paid-vide Annexure-C, and what remains to be paid is only 25

per cent of DCRG. Though there is nothing left with Department to withhold, it is submitted on behalf of Respondent that State is competent to deduct out of payment to be made every month, hence, I find no substance in the first contention.

4. Now, coming to second contention, it is urged by Sri U.L.N. Narayana Rao that petitioner has not transgressed any provisions of law, rules or regulation which has resulted in loss to State. In support of his contention, it is contended that what was permitted by petitioner is in consonance with provisions contained in Grant-in-Aid Code. Particular averment on this aspect in additional statement of facts filed reads thus:-

'It is further submitted that as seen from the impugned notice-Annexure-D, that the allegation made against the Petitioner is that the Petitioner made an order in January 1978 for appointment of five more teachers in respect of Kamala Nehru Makkala Mandira, Bangalore, in excess of the number of teachers that could have been provided to the said school as per the norms prescribed by the Government under the Grant-in-Aid Code for primary Schools. It is further averred in the said notices that the strength of the students in the said Institution in question as on 1-6-1976 was 505 and that there were 9 teachers, as a result of which, with the appointment of 5 more teachers, the total strength of teachers increased to 14 with effect from 1-6-1976 and though the required number of teachers as per the Grant-in-Aid Code was only 12, the Petitioner purported to have approved five more teachers, rendering a pecuniary loss of Rs. 53,055-60 ps to Government on account of salary of two surplus teachers. In this connection, it is seen that there shall be one teacher for every 40 pupils on the roll and 30 pupils on the average attending the school. Where these norms are exceeded by 50% in any Section, i.e., where the pupils strength in a class exceeds 60 on the roll, with 45 attending on the average, the Section shall be bifurcated and additional teacher sanctioned.'

The relevant Rule in Grant-in-Aid Code on this aspect reads thus:-

'There shall be one teacher for every forty pupils on the roll and thirty pupils on the average attending the school. Where these norms are exceeded by fifty per cent in

any section, i.e., (where the pupil strength in a class exceeds sixty on the roll with forty five attending on the average the section shall be bifurcated and an additional teacher sanctioned. Any additional teacher exceeding this limit shall be disallowed for purposes of grant-in-aid. If the number of teachers is more than ten, one additional teacher, preferably a trained graduate may be admitted who will be the head of the institution.'

5. It is with reference to these facts and provisions, it is contended by Sri U.L. Narayana Rao, Learned Counsel for the petitioner, that sanction accorded for additional staff was well within its province and exigencies demanded such sanction. It is contended that exercise of power, having due regard to strength of pupils, will not constitute misconduct or negligence. In other words, so long as the strength of pupils and power to sanction remain undisputed he has not committed any sin to be visited with this agony after retirement. Sanction of excess staff strength, if any, may under the circumstances, at best, be an error of judgment and does not suffer from malice or bad faith. It may lie in realm of appreciation of material placed on record as contended by the Government Pleader or may not. As last contention is a formidable one on which petitioner has to succeed, there is no necessity to dwell much on this aspect.

6. Two essential ingredients required to initiate or to continue proceedings under Rule 214 of the Karnataka Civil Services Rules are- (i) Pecuniary loss to the State; and (ii) that loss must have occurred on account of grave misconduct or negligence.

Cardinal rule is to give effect to all words and phrases, clauses contained in a statute and nothing can be treated as superfluous or insignificant. Epithet 'grave' is not entirely without significance. It connotes enormity of misconduct in juxtaposition with technical trifle or misconduct simpliciter.

'Misconduct is a generic term and means to conduct amiss; to mismanage; wrong or improper conduct; bad behaviour; unlawful behaviour or conduct' and includes malfeasance, misdemeanour, delinquency and other offences. The term 'misconduct' does not necessarily mean corruption or criminal intent. In *Bhagwat Parshad - v. - Inspector General of Police* it is stated: 'The word 'grave' is

used in many senses and implies seriousness, importance, weight etc. There is, however, a distinction between misconduct, and grave misconduct. The adjective 'grave' in this context makes the character of the conduct, serious or very serious.....'Misconduct' in order to earn the epithet of gravity has to be gross or flagrant.'

The word 'grave' intent to indicate super eminent or a very high degree of misconduct. Bare allegation in articles of charges, that loss has been caused on account of negligence or misconduct will not meet the requirement of Rule 214 of the Rules. Essence of the charge must be that loss has been caused or occasioned on account of grave misconduct or negligence. Let alone characterises the offence as grave. Charge does not even specify whether loss is caused on account of misconduct or negligence or both.

A Division Bench of this Court in C. Krishnappa - v. - the State of Mysore & Others has held that right of with-holding or withdrawing pension or any part of it can be resorted to, if pensioner is found guilty of causing loss on 1. 2. W. P. 5040 of 1969 account of grave misconduct or negligence during the period of his tenure. Further it is stated-

'as Rule 214 is the only rule, on the strength of which, enquiry already instituted, is sought to be continued and the condition necessary therefore does not exist, it is impossible to sustain the order for continuance of the departmental enquiry.'

As article of charges extracted above, lacks essential ingredient, it must be held that proceedings initiated or action taken is without jurisdiction and illegal.

7. For the reasons stated above, Writ Petition succeeds. Impugned proceedings initiated under Rule 214 of K.C.S. Rules as per Annexure-D is hereby quashed. Rule made absolute.