

B.G. Dayananda Murthy Vs. State of Karnataka and anr.

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Court : Karnataka

Decided On : Aug-06-2002

Reported in : ILR2002KAR3892; 2002(5)KarLJ378

Judge : P. Vishwanatha Shetty, J.

Acts : [Karnataka Urban Water Supply and Drainage Board Act, 1973](#) - Sections 65; Karnataka Civil Service Rules - Rule 419; [Constitution of India](#) - Articles 14, 16, 226 and 227

Appeal No. : Writ Petition No. 23425 of 2002

Appellant : B.G. Dayananda Murthy

Respondent : State of Karnataka and anr.

Advocate for Def. : L.K. Srinivasamurthy, Government Adv. for Respondent-1 and ;D.L. Jagadeesh, Adv. for Respondent-2

Advocate for Pet/Ap. : X.M. Joseph, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P. Vishwanatha Shetty, J.

1. The petitioner in this petition is presently working as Superintending Engineer on independent charge. In this petition he has called in question the correctness of the Official Memorandum dated 7th June, 2002, a copy of which has been produced as Annexure-E to this petition, wherein the 2nd respondent-Karnataka Urban Water Supply and Drainage Board (hereinafter referred to as 'the Board') resolved to spare the services of the petitioner on deputation basis at the disposal of the Karnataka Urban Infrastructure Development and Finance Corporation (hereinafter referred to as 'the Corporation').

2. It is the case of the petitioner that the petitioner being a permanent employee of the 2nd respondent-Board, his services could not have been lent on deputation basis to the Corporation without his consent and the impugned order is vitiated on account of mala fides on the part of the Managing Director of the Board. It is his case that the Managing Director of the 2nd respondent-Board has developed ill-will against the petitioner ever since the year 1998.

3. Sri X.M. Joseph, learned Counsel appearing for the petitioner challenging the impugned order submitted that since the petitioner is a permanent employee of the Board, it is not permissible for the Board to send the petitioner on deputation to the Corporation and place his services at the disposal of the Corporation without his consent. The learned Counsel pointed out that the impugned order to the extent it places the services of the petitioner at the disposal of the Corporation, seriously affects the service conditions of the petitioner and the same is liable to be struck down as being contrary to the right guaranteed to the petitioner under Articles 14 and 16 of the [Constitution of India](#). It is his submission that since the petitioner is a permanent employee of the Board, the petitioner cannot be compelled to work against his wish in the Corporation with whom the petitioner has no relationship of master and servant. In support of his submission, the learned Counsel appearing for the petitioner relied upon the decision of Hon'ble Supreme Court in the cases of Pashupati Nath Sukul v. Nem Chandra. Jain and Ors., : [1984]1SCR939 , State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors, 2. : (1983)ILLJ284SC ; K.C. Joshi v Union of India and Ors., : (1985)ILLJ416SC and Umapati Choudhary v State of Bihar and Anr., : [1999]3SCR752 . However, he further submitted that though the petitioner has made allegations of mala fide against the Managing

Director of the Board, the petitioner does not press the said allegations of mala fide and withdraws the same.

4. The contention of Sri Joseph is strongly countered by Sri D.L. Jagadeesh, learned Counsel appearing for the Board and also Sri L.K Srinivasamurthy, learned Additional Government Advocate. It is the submission of Sri Jagadeesh that the Board has adopted the Karnataka Civil Service Rules (hereinafter referred to as 'the KCSR') as part of the service conditions of the employees of the Board. He pointed out that though Rule 419(a) of the KCSR provides that no Government servant can be transferred to a foreign service against his will, the proviso given to the said rule enables for transfer of a Government servant to service of a body, incorporated or not which is wholly or substantially owned or controlled by the Government. Elaborating this submission, the learned Counsel submitted that the Corporation being a body wholly owned and controlled by the State Government, it was permissible for the Board to pass the impugned order placing the services of the petitioner at the disposal of the Corporation. In support of this contention that the Board has adopted KCSR, he referred to me the notification dated 7th October, 1976, issued by the Board, wherein KCSR was adopted by the Board to the officers and the servants of the Board. He also pointed out that the services of the petitioner were placed at the disposal of the Corporation in the light of the request made by the Corporation that if the services of the petitioner is made available to the Corporation, it would serve a larger public interest and would enable the Corporation to carry out its activities more effectively and purposefully. It is his submission that the State Government had sanctioned implementation of Karnataka Urban Development and Coastal Environmental Management Project (hereinafter referred to as 'the KUDCEMP') and the said projects were required to be implemented at ten places located in the three districts of North Kanara, Udupi and Dakshina Kannada and at a cost of Rs. 1,056.20 Crores. In this connection, he referred to me the statement made in paragraphs 4 to 6 of the statement of objections which reads as hereunder:

'4. It is further submitted that the Government has sanctioned the implementation of Karnataka Urban Development and Coastal Environmental Management Project (in short, 'KUDCEMP'). The ten projects are at Ankola,

Bhatkal, Dandeli, Karwar, Kundapur, Mangalore, Puttur, Sirsi, Udupi and Ullal with a budgetary cost of Rs. 1,056.20 Crores. The above project scheduled to be implemented over a period of 5 years commencing from November 2000 with KUIDFC as implementing agency. The Government has formulated the pattern of loan and grant assistance to the project towns vide G.O. No. UDD-2/PRJ-99(P), Bangalore, dated 21-12-2000. Thus, the Managing Director of KUIDFC has requested to sent a panel of names of experienced officers from the Board on deputation basis.

5. It is further submitted that the subject-matter was placed before the 169th Board Meeting which was held on 20-2-2001 for taking a decision and approval for deputing the technical personnel from the respondent-Board for implementing the KUDCEM Project and the respondent-Board has accorded approval for deputing the Technical Personnel to KUIDFC on deputation basis without causing inconvenience to the respondent-Board works. Based on the request of the KUIDFC Authority sent the panel of names of Engineers, in turn of KUIDFC selected the Engineers and requested the Board to depute the Engineers which includes the name of the petitioner. Thus, the petitioner is also deputed to the said project. A copy of the panel of names sent to KUIDFC and the Board Meeting proceedings are herewith produced and marked as Annexures-R1 and R2.

6. It is further submitted that the works discharging by the petitioner and the works entrusted on deputation basis are similar in nature and will not affect in any way the interest of the petitioner. Thus, the apprehension of the petitioner that there will be alteration of seniority, promotion and fitments to the higher cadre are conditions of the employment is altered are all imaginary and concocted stories of this petitioner. Thus, the apprehension cannot be maintained in the writ petition and the same is liable to be rejected'.

It is the further submission of the learned Counsel appearing for the Board that there is absolutely no truth in the allegations of mala fide made by the petitioner against the Managing Director of the Board; and that the decision to send the petitioner on deputation was taken in larger public interest by the Board of Directors of the Board which consists of very high ranking officers of the State. It is

his further submission that the impugned order in no way affects the service conditions of the petitioner; and since the impugned order has been passed keeping in mind the larger public interest and to assist the implementation of the project in respect of huge money sanctioned by the Government, this Court should not interfere against the impugned order in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the [Constitution of India](#). He also brought to my notice that except the petitioner all the other nine Engineers in the cadre of Executive Engineer and Assistant Executive Engineer, whose services were lent on deputation basis, whose names are found in Official Memorandum dated 10th June, 2002, Annexure-F, had accepted the order of deputation. Sri L.K. Srinivasamurthy, learned Additional Government Advocate supported the contentions of the learned Counsel appearing for the Board.

5. In the light of the rival contentions advanced by the learned Counsels appearing for the parties, the only question that would arise for consideration in this petition is, as to whether it is permissible for the Board to lend the services of the petitioner to the Corporation on deputation basis? The answer to this question depends upon the answer to be given to the question, whether the Board has accepted the KCSR? The notification dated 7th October, 1976 placed before me by the learned Counsel appearing for the Board makes it clear that the Board in exercise of the power conferred on it under Sub-sections (1) and (2) of Section 69 of the [Karnataka Urban Water Supply and Drainage Board Act, 1973](#) (hereinafter referred to as 'the KUWSDB Act'), adopted and made KCSR as applicable to the officers and servants of the Board. It is useful to extract the said notification which reads as under:

'Notification dated 7th October, 1976

Sub: Karnataka Urban Water Supply and Drainage Board Service Regulations, 1977 -- Service conditions of the officers and servants of the Board -- Applications of Rules, Codes, etc., of State Government.

Ref.: (1) Proceedings of the ninth meeting of the Board held on 28th February, 1977 and 1st March, 1977.

(2) Letter No. HUD 137 MNE 77, dated 1st October, 1977 from the Commissioner and Secretary to Government of Karnataka, Housing and Urban Development Department, Bangalore, communicating approval of Government to the above regulations.

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In exercise of the powers conferred by Sub-sections (1) and (2) of Section 69 of the [Karnataka Urban Water Supply and Drainage Board Act, 1973](#) (Karnataka Act 25 of 1974), the Karnataka Urban Water Supply and Drainage Board with the previous approval of Government of Karnataka, hereby makes the following regulations in respect of service conditions of the officers and servants of the Board:

(1) Title and commencement.--These regulations shall be called 'the Karnataka Urban Water Supply and Drainage Board Service Regulations,1977'.

(2) Applicability of certain Rules, Codes, etc., made by the State Government to officers and servants of the Board.

The Karnataka Civil Service Rules, the Karnataka Financial Code, the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, the Karnataka Government Servants (Conduct) Rules, 1957 and all other rules regulating the conditions of service of the civil servants of the State Government for the time being in force with amendments issued from time to time by Government shall mutatis mutandis be applicable to the officers and servants of the Board'.

Therefore, from the reading of the said notification issued by the Board as hack as in the year 1976, it is clear that the KCSR is made applicable as part of the service conditions of officers and servants of the Board. Further, as pointed out by the learned Counsel appearing for the respondents, the petitioner in paragraph 11 of the petition has stated that the petitioner is governed by the provisions of KCSR. It is useful to extract the submission made by the petitioner in paragraph 11 of the petition which reads as hereunder:

'11. The petitioner is governed by the provisions of Karnataka Civil Service Rules (KCSR). Though petitioner on deputation would stand protected by Rules 50 and 60 of the KCSR, such a deputation will run contrary to Rule 419 of the KCSR'.

Therefore, there cannot be any doubt that the KCSR has been made applicable as part of service conditions of the officers and servants of the Board and this position is also accepted by the petitioner in his petition. Therefore, the petitioner cannot be permitted to urge before this Court, while invoking its jurisdiction under Articles 226 and 227 of the [Constitution of India](#) to contend that the KCSR is not made applicable as the part of the service conditions of the staff of the Board; and as a matter of fact, I do not find any merit in the said contention of Sri Joseph. The Clause (a) of Rule 419 of the KCSR no doubt states that no Government servant can be transferred to the foreign service against his will. However, proviso given to the said rule makes an exception to the said rule and provides that the said provision would not apply for the transfer of a Government servant to the services of a body incorporated or not which is wholly or substantially owned and controlled by the Board. It is useful to extract Rule 419(a) along with the first proviso given to the said rule which reads as follows:

'419(a). No Government servant may be transferred to foreign service against his will: Provided, that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not which is wholly or substantially owned or controlled by the Government'.

It is not in dispute that the Corporation is wholly owned and controlled by the Government of Karnataka. Therefore, once the Rule 419 of the KCSR is made applicable to the employees of the Board, the employees of the Board are governed by Rule 419 of the KCSR. I am unable to accept the submission of Sri Joseph that the petitioner being an employee of the Board and the petitioner not being the Government servant, the said rule cannot be made applicable. In my view, this submission is totally misconceived and there is no merit. Rule 419 of the KCSR cannot be understood in the way Sri Joseph has put forward his argument. The substance of the matter is, Rule 419 of the KCSR is made applicable by the Board to the officers and servants of the Board. In the place of words 'Government

servant', the words 'employees of the Board' or 'officers or servants of the Board' has to be substituted and the rule has to be read in that manner. If the rule is so understood and read, I am unable to accept the submission of learned Counsel for the petitioner that Rule 419 of the KCSR cannot be made as part of the service conditions of the staff of the Board, Otherwise, the decision by the Board to make Rule 419 of the KCSR becomes redundant and it would be inapplicable. When a decision was taken by the Board, as noticed by me earlier, to make the said rule applicable, the Court while construing the rule cannot read the rule in such a way to make it inapplicable. The decision of the Board has to be given effect. Therefore, the contention of Sri Joseph that Rule 419 of the KCSR has no application, has to be rejected as one devoid of any merit.

6. Now the next question is, whether the decision taken by the Board placing the petitioner at the disposal of the Corporation is required to be interfered with by this Court? Section 4 of the Act of the Board provides for constitution of the Board. As it could be seen from the constitution of the Board, the Board consists of:

'4. Constitution of the Board.-

(1) a. a Chairman;

b. a Managing Director;

c. three Directors to represent respectively the Government Secretariat Department dealing in.-

(i) Finance;

(ii) Health and Municipal Administration;

(iii) Public Works;

d. . four Directors to represent the local authorities, one from each revenue division;

e. eight other Directors of whom four shall be persons possessing wide experience in the field of public health engineering with reference to water supply or drainage

or disposal of industrial wastes, who are not employed by the Government or a local authority or a Corporation owned or controlled by the Government.

(2) The Chairman and the Managing Director shall possess the prescribed qualification. They and the other Directors shall be appointed by the Government'.

Therefore, it is clear that the Board consists of very high ranking officers of the State and other persons who possess wide experience in the field of public health engineering with reference to the water supply or drainage or disposal of industrial waste, etc. If such a Board, in its discretion, has thought it fit to place the services of the petitioner at the disposal of the Corporation on deputation, I am of the view that there is absolutely no justification for this Court to interfere against the said decision of the Board. The service conditions of the petitioner are in no way affected on account of the impugned order. The stand taken in the statement of objections indicate that since the service of the petitioner is required by the Corporation in a larger public interest; and with a view to enable the Corporation to implement its projects at a cost of Rs. 1,056.20 crores at different places in three districts of the State viz., North Kanara, Udupi and Dakshina Kannada, the service of the petitioner was placed at the disposal of the Corporation. Along with the petitioner few other Executive Engineers and Assistant Executive Engineers were also deputed to the Corporation. When a decision is taken by the Board in a larger public interest, in my considered view, the said decision should not be lightly interfered with by this Court in exercise of its power under Articles 226 and 227 of the [Constitution of India](#). In my view, none of the decisions cited by Sri Joseph, referred to above, is of any assistance to him in support of the contention urged by him. Therefore, I find it unnecessary to refer to them. There is no question of the petitioner being picked up for any hostile discrimination. The petitioner has failed to make out the case that the rights guaranteed to him under Articles 14 and 16 of the [Constitution of India](#) have been affected in any manner. Since the Counsel for the petitioner, in my view, rightly, did not press his attack made on the order impugned on the ground of mala fides, I find it unnecessary to consider the same.

7. In the light of the discussion made above, this petition is liable to be rejected. Accordingly, it is rejected. However, no order is made as to costs.

