

Chandrashekar Chavan Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Feb-21-2009

Reported in : 2009(4)KarLJ649; 2009(4)KCCR2555; 2009(4)AIRKarR178

Judge : P.D. Dinakaran, C.J. and ;A.N. Venugopala Gowda, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 13(1) and 13(2); Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 - Rules 8, 10(1) and 15(1)(2C)

Appeal No. : Writ Petition No. 4531 of 2009

Appellant : Chandrashekar Chavan

Respondent : State of Karnataka and ors.

Advocate for Def. : Niloufer Akbar, Government Adv.

Advocate for Pet/Ap. : D.N. Nanjunda Reddy, Sr. Counsel for ;Basavaraj V. Sabrad, Adv.

Disposition : Petition dismissed

Judgement :

P.D. Dinakaran, C.J.

1. The writ petition is directed against the interim order dated 11-2-2009 made in Application No. 602 of 2009 by the Karnataka Administrative Tribunal, Bangalore, wherein the petitioner had chosen to challenge the order of suspension dated 2-2-2009 passed by the first respondent herein on the basis of the case registered in Crime No. 14 of 2008 by the Lokayukta Police under Section 13(1)(e) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#), alleging that the petitioner had amassed wealth disproportionate to his known source of income.

2. According to the petitioner, he was appointed as Assistant Engineer in the Public Works Department and was promoted as Assistant Executive Engineer. According to him, his services were lent from the parent department (PWD) to the lending department, namely, the second respondent. As per Rule 15(1)(2C), it is only respondent 2 who has got the power to initiate the impugned disciplinary proceedings, much less, to pass the impugned suspension order pending the departmental enquiry.

3. The said contention of the petitioner has not been accepted by the Tribunal on the ground that Rule 15(1)(2C) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, does not take away the power of the Government under Rule 10(1)(aa) of the said Rules.

4.1 We had the benefit of the submission of the learned Senior Counsel appearing for the petitioner.

4.2 The learned Senior Counsel invited our attention to Rules 10(1)(aa) and 15(1)(2C) of the KCS (CC and A) Rules.

Rule 10(1)(aa) reads as hereunder:

(aa) Where there is prima facie evidence to show that he was found in possession or had at any time during the discharge of his official duty been in possession of pecuniary resources or property disproportionate to known source of income, by the persons authorised to investigate offences under the [Prevention of Corruption Act, 1988](#) or under any other law.

Rule 15(1)(2C) reads as hereunder:

15(1)(2C). Notwithstanding anything contained in these rules.:

(i) the Government in Water Resources Department in respect of Government servant holding a Group 'A' or 'B' posts whose services are lent to Cauvery Neeravari Nigam Limited, Krishna Bhagya Jala Nigam Limited, Karnataka Neeravari Nigam Limited.

(ii) the Managing Director, Cauvery Neeravari Nigam Limited, Krishna Bhagya Jala Nigam Limited, Karnataka Neeravari Nigam Limited in respect of a Government servant holding a Group 'C or Group 'D' post whose services are lent to the Cauvery Neeravari Nigam Limited, Krishna Bhagya Jala Nigam Limited, Karnataka Neeravari Nigam Limited as the case may be;

shall have the powers of the Appointing Authority for placing such Government servant under suspension and of the Disciplinary Authority for the purpose of taking a disciplinary proceedings against him and to impose any of the penalties specified in Clauses (i) to (iv-a) of Rule 8 on such Government servant. It shall not be necessary for the Government in Water Resources Department or the Managing Director, to get the approval of, or to consult, the lending authority or the Appointing Authority as the case may be, before placing such Government servant under suspension or imposing on him any of the said penalties, but it is necessary to intimate of such penalty to the lending authority or Appointing Authority.

4.3 According to Mr. Reddy, learned Senior Counsel for the petitioner, in view of non obstante clause in Rule 15(1)(2C), the borrowing authority, namely, the second respondent alone has got power and jurisdiction either to initiate impugned disciplinary action or to pass the order of suspension pending criminal or departmental enquiry, much less to impose any punishment, of course, after intimating such proposal to the lending authority. We are unable to appreciate the said contention because the non obstante clause found in Rule 15(1)(2C), referred to notwithstanding anything contained in the rules, but not notwithstanding anything contrary to the rules. The argument of Mr. Reddy, learned Senior Counsel, questioning the power and jurisdiction of the lending authority, namely, parent department, as against that of the borrowing authority would hold good, only if the non obstante clause in Rule 15(1)(2C), reads as 'notwithstanding

anything contrary to the provisions of the rules, but not as provided in Rule 15(1)(2C) as 'notwithstanding anything contained in the rules'. The intention of using the words 'notwithstanding anything contained in the rules' would only empower both the authorities, viz., lending authority as well as borrowing authority to take a decision in the matter whenever prima facie evidence is available to invoke such power conferred on such authority to initiate disciplinary proceedings against the delinquent and place him under suspension pending such departmental enquiry. When such is the intention of the Legislature, we feel it difficult to accede to the contention of the petitioner that in case of lending a Government employee to the borrowing authority, the lending authority has no power and jurisdiction to initiate any disciplinary proceedings and to pass an order of suspension pending departmental enquiry. In any event, this argument is misconceived because in the instant case, by the impugned proceedings the petitioner had been repatriated to the parent department and the lien of his vacancy is transferred to the Government, viz., the lending authority.

5. Consequently, the writ petition is dismissed. But, however, liberty is reserved to the petitioner as well as the respondents to put forth all other contentions before the Tribunal, if they are so advised and the same shall be dealt with in accordance with law.