

The Registrar General High Court Of ... vs M. Narasimha Prasad on 10 April, 2023

Author: V. Ramasubramanian

Bench: Pankaj Mithal, V. Ramasubramanian

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2023
(@ SPECIAL LEAVE PETITION (CIVIL) NOS. 25714-17 OF 2019)

THE REGISTRAR GENERAL,
HIGH COURT OF KARNATAKA & ANR.

... APPELLANT(S)

VERSUS

SRI M. NARASIMHA PRASAD

...RESPONDENT(S)

JUDGMENT

V. Ramasubramanian, J.

Leave granted.

2. Challenging a common order passed by the Division Bench of the High Court of Karnataka, setting aside a penalty of dismissal from service imposed upon the respondent herein, who happened to be a Civil Judge (Junior Division), the Registrar General of the High Court of Karnataka has come up with the above appeals.

3. We have heard Mr. Basava Prabhu S. Patil, learned senior counsel appearing the appellant-High Court and Ms. Anitha Shenoy, learned senior counsel appearing for the respondent.

4. The respondent was appointed as a Civil Judge (Junior Division) vide a notification dated 31.01.1995.

5. On certain allegations of gross misconduct, the respondent was placed under suspension by an order dated 25.01.2005, followed by the initiation of disciplinary proceedings, with the issue of Charge Memos dated 23.03.2005 in DI No.2/2005; DI No.3/2005; DI No.4/2005 and DI

No.5/2005.

6. Separate enquiries followed in connection with all the four Charge Memos namely DI Nos.2,3,4,5 of 2005, after the culmination of which, separate reports were submitted by the enquiry officer on 29.03.2007 and 27.04.2007. As per the enquiry reports, some charges stood proved and the other charges were not proved.

7. Therefore, second show cause notices were issued and thereafter the Full Court of the High Court of Karnataka resolved on 04.10.2008 to impose the penalty of dismissal from service upon the respondent. Based on the resolution of the Full Court, an order of dismissal from service was passed by the Governor of Karnataka, vide order dated 19.03.2009.

8. Challenging the findings of the enquiry officer, the respondent filed a set of three writ petitions and challenging the order of dismissal from service, the respondent filed a separate writ petition. All these writ petitions were dismissed by a learned Judge, through a common order dated 30.11.2011.

9. Aggrieved by the same, the respondent filed intra-court appeals. Those appeals were allowed by the Division Bench of the High Court by a very strange order, not only setting aside the order of penalty and the findings of the enquiry officer but also directing that no further inquiry can be held against the respondent. It is against such a common order passed in a batch of four intra-court appeals that the Registrar General of the High Court has come up with these civil appeals.

10. Before we proceed to consider the correctness of the view taken by the High Court, in the light of the rival contentions, it will be useful to extract in a tabular column the charges framed against the respondent under each of the Charge Memos; his reply to each of the charges and the findings of the enquiry officer in respect of those charges.

Charges against the Judicial Officer S. Charge Reply to Charge Held to be No. proved/not proved by the Inquiry Officer

1. That the judicial officer First suit- Absence of the Proved had granted an order of AGP (Mallaraja Gowda) on status quo on an several occasions. Case was interlocutory not adjourned application for unnecessarily. Within two temporary injunction months, the interim in a civil suit and had further granted an ex- injunction granted was parte order of vacated.

temporary injunction Second suit- Case of in yet another civil. forcible eviction.

suit against the State,
which was represented
by the defendants in

violation of Section
80(2) of the Code of
Civil Procedure.

Plaintiff had shown prima
facie case, therefore order of

status quo had been

granted. This was as per
procedure prescribed under
Order 39, Rule 3. Open to
the defendants to file

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| | | application for vacating the same, or advance the same depending on urgency, no such application was filed. | |
| 2. | That the judicial officer had not examined the witnesses present in court in several cases and was merely adjourning the same even though it was possible for him to have recorded the evidence of those witnesses. | Court was engaged in hearing other cases, and engaged in Lok Adalat. | Not proved |
| 3. | That the judicial, officer had issued bailable and non-bailable warrants to witnesses in spite of the witnesses in spite of the witnesses having appeared and seeking | Court was engaged in hearing other/old matters | Not proved |
| | to file applications for recalling of the warrants. | | |
| 4. | That the judicial officer had entertained a criminal case and issued a non-bailable warrant to six witnesses and when the witnesses not appeared, did not examine them and ordered that the said witnesses be bound over and insisted that they file applications to recall the warrants. | Court was engaged in hearing other/old matters. | Not proved |
| 5. | That the judicial officer had granted bail to an accused in a case involving offences under the Karnataka Forest Act, 1963. | Forest offence - exclusively triable by magistrate. Not a violation of Section 86, 87 nor was it an ivory case.

Was under Section, 104(A),

bail was granted after hearing APP who was given opportunity to file objections. That evidence of | Proved |

the APP cannot be relied on
has he is an interested
witness, had reported an
incident of misbehaviour of
his after which contempt
proceedings had been
initiated against him, was
now trying to falsely
implicate him.

1. The judicial officer Denied the charge. Stated that Proved

without preparing the he had never pronounced a text of the judgment single judgment without had pronounced the dictating it in its entirety. He operative portion of had a new stenographer, who the judgment in open was not in the habit of court and that the maintaining the stenographer judgment was a book, frequently made actually prepared later. mistakes and was irregular in taking dictation. The stenographer had admitted his shortcomings in a letter annexed to the reply, had resigned from service later.

Stenographer was a novice, was negligent and inefficient in his work. Text had several typographical errors, on several occasions needed retyping. Inefficiency of stenographer, several memos issued to him, he had tendered apology in writing.

No complaints from the parties in any of the cases, the complainant set up by Somasekhar and Mallaraja Gowda to falsely implicate him.

Allegations pertain to three suits- two were money suits where no written statement was filed and defendants place ex-parte.

Third suit, the judgment had been dictated, transcribed and pronounced in court. The text contained several mistakes and stenographer had been directed to retype the same.

Signed judgment was kept in an almirah, key was with the stenographer, that he had deliberately reproduced the typed unsigned text instead of the signed judgment, was aiding the two advocates-

trying to falsely implicate him.

2. That he had Denied the charge. Had Proved pronounced the dictated judgment well in judgment in a civil advance and signed it. suit on 09.10.2002 whereas the Claimed that some mischief judgment was may have been played by vested interests. There was no actually dictated on complaint from litigants/ on 11.10.2002 which advocates in this matter. remained unsigned That the present complainant by the judicial officer. is a fictitious person who is not a party in any of the cases mentioned, created by Advocate Somashekhar and the Assistant Public Prosecutor to take revenge against him.

Stenographer was also new and not accustomed to taking dictation, had admitted his shortcomings.

3. That the judicial officer Denied the charge. That he Proved prepared the judgment signed all judgments before in O.S.31/2001 but did pronouncement. There was not sign the judgment. never any complaint against him to this effect. That vested interests acting against him.

His stenographer was new and irregular in taking dictation, made mistakes, and admitted his shortcomings in a letter.

4. That the judicial officer Denied the charge. Proved prepared the judgment That vested interests may have in a civil suit on played mischief by replacing 5.2.2002 and it the signed full judgment with remained incomplete. partly printed judgment.

No complaint from any persons.
Fictitious person who filed the complaints.
Stenographer new and unaccustomed to dictation.

5. That the judicial officer Denied the charge. Proved pronounced the That vested interests like

judgment in a civil suit sheristedar may have played on 23.10.2002 and a mischief by replacing the portion of the judgment original judgment.

was typed on the order-sheet and a formal judgment was prepared only six days later.
No complaint from any persons.
Present complainant is a fictitious person created by Somasekhar, the APP for revenge.
Stenographer new and unaccustomed to dictation.

1. The judicial officer had, Somasekhar was the advocate Proved in a case involving appearing for the two accused, offences punishable had a grievance against him. under the Karnataka Conditional bail had been Forest Act, at the granted, application for instance of the counsel cancellation of bail was filed, for the accused, and counsel appearing for the preponed the case and accused did not refute granted bail and at the allegations in the application request of the on their failure to comply with Additional Public the conditions, Did not file Prosecutor, the case objections in writing or raise was again preponed any objections orally. and thereafter an order Non-bailable warrant issued in was issued for non- the interests of justice, acted bailable warrant to the in good faith. accused.

2. The judicial officer did Counter-claim by complainant Not proved not pass orders in a and accused for release of criminal case on the same property, therefore did application filed u/s not pass any order, and case 457 of Cr.P.C. and was to be taken for enquiry or released all the for trial properties.

3. The judicial officer did That the advocate started to Not proved not allow Somashekar, put irrelevant questions to the Advocate for the witness, even though warned accused to examine a many times. When he witness in a criminal persisted, case was adjourned case.

4. Application filed by Not proved Somashekar, Advocate who was not called out, but to the dismay of the advocate, it was found that the case had been adjourned earlier in the day without indicating any reasons.

1. The judicial officer had Account shreistedar and Proved brought properties for property clerk involved in sale in public auction preparing the sale list - all in criminal cases and ground work done by these while having brought officers.

to auction certain These material witnesses were articles like choppers, not examined. sickles, etc. had not Motor cycle was old, parked in placed teak-wood the open thus exposed to rain/ plants and a motor sunlight for more than 6 cycle for such auction. months - sold for Rs. 7000/-. But however, had Sheristedar misplaced auction recorded that the same records and thereafter tried to was sold at auction to falsely implicate him to save one Linga Raju who himself.

was related to court If subordinates had done typist and this something and he had affixed apparently was done in his signature due to oversight, the chambers of the should be pardoned for the judge. While it was also lapses.

alleged that the
appellant had not
prepared the estimated
value of the properties

before the same were
sold.

11. It is seen that among the charges held proved, some related to the judicial orders passed by the respondent. Therefore, we are prepared straightaway, to ignore those charges and see whether the order of penalty of dismissal from service was justified qua the other charges and whether the Division Bench of the High Court was right in setting aside the same.

12. Once those charges which revolve around the manner of disposal of certain cases are ignored, what remains are certain serious charges that revolve around pronouncement of operative portion of the judgment in open court without the whole text of the judgment being ready. Take for instance, Charge Nos. 1, 2, 4 and 5 in DI No.3/2005. These Charges are very serious in nature, where the respondent is alleged to have pronounced the operative portion of the judgment in open court without the whole of the judgment being ready. Similarly Charge No.1 in DI No.5/2005 related to the conduct of auction sale of properties, seized during the investigation. These are very serious in nature and the reply given by the respondent to these charges is wishy washy.

13. A judicial officer cannot pronounce the concluding portion of his judgment in open court without the entire text of the judgment being prepared/dictated. All that the respondent has done in the departmental enquiry is just to pass on the responsibility to the inefficient and allegedly novice stenographer. We do not know how the findings with regard to such serious charges have been completely white-washed by the High Court in the impugned judgment.

14. A look at the impugned judgment of the High Court shows that the Division Bench of the High Court was swayed away unduly by the animosity attributed by the respondent to a member of the local Bar and the Assistant Public Prosecutor. Let us assume for a minute that the charges were on the basis of complaints initiated by persons bearing ill-will and motive against the respondent. Even then, such ill-will and motive may not make the conduct of the respondent in not preparing judgments but pronouncing the outcome of the case, a condonable conduct.

15. It is true that some of the charges revolve around judicial pronouncements and the judicial decision-making processes and that they cannot per se, without anything more, form the foundation for departmental proceedings. Therefore, we are ignoring those charges. But the charges which revolve around gross negligence and callousness on the part of the respondent in not preparing/dictating judgments, but providing a *fait accompli*, is completely unacceptable and unbecoming of a judicial officer.

16. The defence taken by the respondent that the lack of experience and the inefficiency on the part of the stenographer has to be blamed, for the whole text of the judgment not getting ready even after several days of pronouncement of the result in open court, was entirely unacceptable. But unfortunately, the High Court not only accepted this panchatantra story, but also went to the extent of blaming the administration for not examining the stenographer as a witness. Such an approach is wholly unsustainable. If it was the case of the respondent that the entire blame lay upon the stenographer, it was for him to have summoned the stenographer as a witness. The High Court unfortunately reversed the burden of proof.

17. While considering a challenge to an order of penalty imposed upon a judicial officer pursuant to the disciplinary proceedings followed by a resolution of the Full Court of the High Court, the Court is obliged only to go by established parameters namely,

(i) whether the charges stood proved; (ii) whether the findings of the inquiry officer are reasonable and probable and not perverse;

(iii) whether the rules of procedure and the principles of natural justice have been followed; and (iv) whether the penalty is completely disproportionate, especially in the light of the gravity of the misconduct, his past record of service and any other extenuating circumstances.

18. Unfortunately, the High Court did not test the correctness of the order of penalty in this case, on the above parameters. Instead, the High Court has recorded a finding in Paragraph 26 of the impugned order, as though the learned judges had first hand information about the problems that the judicial officers faced at the lower level. The opinion of the High Court in Paragraph 26 of the

impugned order that the acts of omission and commission attributed to the respondent do not constitute grave misconduct, is very-very curious. Adding fuel to fire, the High Court has recorded in Paragraph 36 of the impugned order that “dismissing him from service itself is very atrocious”. Such a finding is nothing but a veiled attack on the Full Court of the High Court. After holding so, the High Court has gone to the extent of certifying the respondent as an innocent and honest officer. We do not know wherefrom the High Court came to such a conclusion.

19. One more reason articulated in the impugned order of the High Court is that the second show cause notice indicated the penalty proposed and that therefore, the same was contrary to law. In this regard the High Court placed reliance upon the decision of this Court in Himachal Pradesh State Electricity Board Limited vs. Mahesh Dahiya¹.

20. But the decision of this Court in Himachal Pradesh State Electricity Board Limited (supra), is one where the disciplinary authority-cum-whole time members of the Electricity Board were found to have formed an opinion to impose a major penalty even before forwarding the copy of the enquiry report to the delinquent. But in this case the Full Court of the High Court did not consider the enquiry report and did not take a decision in advance to impose the penalty of removal from service.

21. As a matter of fact, the history of evolution of law relating to second show cause notice is almost forty years old. The requirement of a second show cause notice relating to the proposed penalty was removed from Article 311 of the Constitution by the Constitution (42nd Amendment) Act, 1976. The same was upheld by a Constitution Bench of this Court in Union of India 1 (2017) 1 SCC 768 and Anr. vs. Tulsiram Patel². However, a two-member Bench of this Court opened a small window in Union of India and Ors. vs. E. Bashyan³, which led to the decision in Union of India and Ors. vs. Mohd. Ramzan Khan⁴, wherein this Court held that the opportunity to respond to the findings of the inquiry officer is different from the opportunity to respond to the penalty proposed. Eventually, the issue got clarified in The Managing Director, ECIL, Hyderabad and Ors. vs. B. Karunakar and Ors.⁵.

22. It is not the case of the respondent that the Full Court of the High Court took a decision to impose the penalty of dismissal from service even before furnishing the copies of the enquiry reports to the respondent. The show cause notices enclosing the enquiry reports, are dated 11.10.2007. The representations made by the respondent are dated 26.10.2007. It is only thereafter that the Administrative Committee No.1 considered the matter on 28.08.2008 and it was placed before the Full Court on 04.10.2008. Therefore, the opinion of the High Court that the second show 2 (1985) 3 SCC 398 3 (1988) 2 SCC 196 4 (1991) 1 SCC 588 5 (1993) 4 SCC 727 cause notices were in violation of the principles of natural justice is not factually and legally correct.

23. We have not come across a case where the High Court, while setting aside an order of penalty has held that there shall not be any further inquiry against the delinquent. But in this case, the High Court has done exactly the same, creating a new jurisprudence. The relevant portion of the impugned order of the High Court reads as follows:-

“Writ Appeal is allowed. Impugned order passed by the learned Single Judge in W.P.Nos.10756/2009 & 11030-32 of 2009 (S.DIS) dated 30.11.2011 is hereby set aside. Punishment order dismissing the appellant from service is hereby quashed. All Inquiry reports are quashed. There shall not be any further enquiry against the appellant. The appellant is to be treated as if he had been in service till the date of superannuation and pay all consequential monetary benefits with interest at 8% p.a. The compliance shall be within a period of three months.”

24. For all the above reasons, the appeals are liable to be allowed. Accordingly, they are allowed and the impugned order of the Division Bench of the High Court is set aside. The order of penalty imposed upon the respondent is upheld and the writ petitions filed by the respondent shall stand dismissed. No costs.

..... J.

(V. RAMASUBRAMANIAN) J.

(PANKAJ MITHAL) New Delhi;

April 10, 2023