

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2022

BEFORE

THE HON' BLE MR. JUSTICE S.G. PANDIT

WRIT PETITION NO.17708/2022 (S-RES)

BETWEEN:

1. SRI ANIL KUMAR
S/O PADMAKAR BHAT,
AGED ABOUT 63 YEARS,
RETIRED EXECUTIVE ENGINEER,
R/A NO.269, GURU DHAMA
6TH MAIN, 6TH CROSS,
JANAPRIA APARTMENT ROAD,
KENCHANAHALLI, R R NAGAR,
BENGALURU-560 098.
2. SRI T. MALLANNA
S/O SIDRAMAPPA TAYAMAGOL,
AGED ABOUT 65 YEARS,
RETIRED EXECUTIVE ENGINEER,
NOW RESIDING AT 176,
SRINIVASA 201, 2ND FLOOR,
BANK COLONY KOTI,
HOSAHALLI, SHANKARANAGAR,
BENGALURU-560 092.

...PETITIONERS

(BY SRI RANGANATH S. JOIS, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY THE SECRETARY,
DEPARTMENT OF HOUSING,
VIKASA SOUDHA,
BENGALURU-560 001.
2. THE KARNATAKA HOUSING BOARD
REP. BY THE COMMISSIONER,
3RD AND 4TH FLOOR,

KAVERIBHAVAN, K.G. ROAD,
BENGALURU-560 009.

...RESPONDENTS

(BY SRI M.V. RAMESH JOIS, AGA FOR R-1;
SRI H.L. PRADEEP KUMAR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RELEVANT RECORDS PERTAINING TO THE IMPUGNED CHARGE MEMO NOTICE BEARING NO.KaGruMam/Aadalitha/Sisha/PR45/2012-13 DATED 21.6.2022 VIDE ANNEXURE-C PASSED BY THE R2 AND THE ORDER BEARING NO.KaGruMam/Aadalitha/Sisha 1.PR45/2012-13 DATED 20.08.2022 VIDE ANNEXURE-D PASSED BY THE R2, PERUSE AND QUASH THE SAME AS ARBITRARY, ILLEGAL AND VIOLATIVE OF 214 OF KCSR, AND ARTICLE 14, 16(1) AND 20(2) OF THE CONSTITUTION OF INDIA AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard the learned counsel Sri.Ranganatha S. Jois for the petitioners, learned Additional Government Advocate Sri.M.V.Ramesh Jois for respondent No.1 and learned counsel Sri.H.L.Pradeep Kumar for respondent No.2. Perused the writ petition papers.

2. Learned counsel for the petitioners would submit that the petitioners retired from second respondent – the Karnataka Housing Board (for short KHB) on attaining the age of superannuation on

30.06.2018 and 31.08.2020 respectively. Subsequent to their retirement, Annexure-C, Charge Memo dated 21.06.2022 is issued to the petitioners initiating enquiry in respect of an event taken place in the year 2005-06. Learned counsel would submit that in terms of Rule 214 (2) (b)(ii) of the Karnataka Civil Services Rules [for short KCSRs], Charge memo would not be maintainable and no enquiry could be initiated against a retired person in respect of an event which had taken place more than four years prior to institution of enquiry against retired Government Servant. Thus, he submits that only on the ground that initiation of enquiry under Annexure-C, Charge Memo dated 21.06.2022 is barred under Rule 214 (2) (b)(ii) of the KCSRs, it is liable to be set aside.

3. Learned counsel Sri.H.L.Pradeep Kumar on instructions would submit that initially enquiry was initiated against the petitioners while they were in service on 28.09.2013 and thereafter under Annexure-B, order dated 21.08.2014, petitioners were exonerated of the Charges. Subsequently on the

recommendation of the Public Accounts Committee, the present proceedings is initiated. Thus, he submits that there is continuation of cause of action. Hence, he justifies the Charge Memo issued against the petitioners.

4. It is not in dispute that petitioners retired on 30.06.2018 and 31.08.2020 respectively on attaining the age of superannuation. Charge Memo at Annexure-C dated 21.06.2022 was issued subsequent to retirement of petitioners. The first charge against the petitioners reads as follows:

"(1) ಶ್ರೀ.ಐ.ಮಲ್ಲಣ್ಣ, ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು, ಸಮನ್ವಯ ಕಛೇರಿ, ಗುಲ್ಬರ್ಗಾ ಹಾಗೂ (2) ಶ್ರೀ.ಅನಿಲ್ ಕುಮಾರ್, ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು, ಕೇಂದ್ರ ಕಛೇರಿ, ಬೆಂಗಳೂರು, ಆದ ನಿಲವುಗಳು ಹಿಂದೆ ಬೆಳಗಾಂ ಕಛೇರಿಯಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿದ್ದಾಗ ನಿಮ್ಮ ಬೇಜವಾಬ್ದಾರಿತನ ಹಾಗೂ ಕರ್ತವ್ಯ ನಿರ್ಲಕ್ಷ್ಯತೆಯಿಂದ ಬೆಳಗಾಂ ಜಿಲ್ಲೆಯ ಕಂಕನವಾಡಿ ಗ್ರಾಮದ ರಾಮದುರ್ಗ ಮುಖ್ಯರಸ್ತೆಗೆ ಹೊಂದಿಕೊಂಡಿರುವ ಸರ್ವೆ ನಂ.7ಎ ಹಾಗೂ 8ಎ ರಲ್ಲಿ 15-19 ಎಕರೆ ಜಮೀನನ್ನು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳಲು ಶಿಫಾರಸ್ಸು ಮಾಡಿ, ತದನಂತರ ಉಪಬಿಭಾಗಾಧಿಕಾರಿ, ಬೈಲಹೊಂಗಲ ರವರು ದಿನಾಂಕ

26.08.2006 ರಂದು ಸದರಿ ಜಮೀನುಗಳಲ್ಲಿ ಟ್ರಯಲ್ ಪಿಟ್‌ಗಳನ್ನು ಹಾಕಿದ್ದು, ಅದರಲ್ಲಿ 8 ರಿಂದ 10 ಅಡಿ ತಗ್ಗು ತೋಡಲಾಗಿದ್ದರೂ ಸಹ ಗಟ್ಟಿ ಪಾಯ ಇರುವುದಿಲ್ಲ ಎಂಬುದಾಗಿ ತಿಳಿಸಿದ್ದರೂ ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ವಸತಿ ಯೋಜನೆ ಕೈಗೊಂಡು ಭಾಗಶಃ ಕಾಮಗಾರಿ ಅನುಷ್ಠಾನಗೊಳಿಸಿ ನಂತರ ಪ್ರವಾಹದಿಂದ ಮುಳುಗಡಿಯಾಗುತ್ತಿದೆ ಎಂಬ ಕಾರಣದಿಂದ ಸದರಿ ಕಾಮಗಾರಿಗಾಗಿ ರೂ.1.99 ಕೋಟಿ ವೆಚ್ಚ ಭರಿಸಿ ಮಂಡಳಿಗೆ ಆರ್ಥಿಕ ಸಹ್ಯ ಉಂಟು ಮಾಡಿರತ್ತೀರಿ. ಇದು ನಿಮ್ಮ ಉದಾಸೀನತೆ ಹಾಗೂ ಕರ್ತವ್ಯ ಲೋಪವನ್ನು ತೋರಿಸುತ್ತದೆ.”

A reading of the above Charge would clearly indicate that the Charge is against an incident which had taken place in the year 2006.

6. Rule 214 (2)(b)(ii) of the KCSRs reads thus:

“214 (2) (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.

(i)

(ii) shall not be in respect of any event which took place more than four years before such institution.”

The above Rule which is applicable to the employees of KHB would not permit initiation of enquiry in respect of an event which took place more than 4 years before such institution in respect of a retired employee.

7. In the case on hand, initiation of enquiry and issuance of Charge Memo dated 21.06.2022 (Annexure-C) is in respect of an event which took place more than 4 years before such institution against retired petitioners. Thus, the institution of enquiry under Charge Memo is barred by Rule 214 (2)(b)(ii) of KCSRs. Thus, the Charge Memo is not sustainable in law. Hence, the following:

ORDER

- a) Writ petition is allowed.
- b) Annexure-C, Charge Memo bearing No.ಕಗ್ಯಮಂ/ಅಡಳಿತ/ಸಿಶಾ:ಪಿಆರ್45/2012-13 dated 21.06.2022 as well as Annexure-D,

appointment of Enquiry Officer bearing
No.ಕಗ್ಯಮಂ/ಅಡಚತ/ಸಿಶಾ:ಪಿಆರ್45/2012-13
dated 20.08.2022 are quashed.

- c) The respondent No.2 is directed to settle the terminal benefits of the petitioners if there is no other enquiry or impediment to release within three months, if not already settled.

**Sd/-
JUDGE**

NC.