

KARNATAKA LOKAYUKTA

No:COMPT/LOK/BGM/2674/2017/ARE-20

M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru, Dt: 13-10-2021

**REPORT UNDER SECTION 12(1) OF
KARNATAKA LOKAYUKTA ACT, 1984**

Sub: Proceedings for compliance to pay retirement benefits to the complainant Sri.Krishna Purushotham Naik, R/o. Mirjan Village and Post, Kumta Taluk, Uttara Kannada District as per the Government Official Memorandum No.೧೨೨೮೮/67/ ಗ್ರಾಪಂಸಿ/2008, ಬೆಂಗಳೂರು ದಿನಾಂಕ: 4-1-2008 - Reg.

On the basis of a complaint filed by Sri.Krishna Purushotham Naik, R/o. Mirjan Village and Post, Kumta Taluk, Uttara Kannada District (herein after referred to as complainant for short) against the Chief Executive Officer, Zilla Panchayath, Uttara Kannada District (herein after referred to as respondent for short) an investigation was taken up u/s. 9 of Karnataka Lokayukta Act, 1984.

2) Brief facts of the complaint:

It is alleged in the complaint that the complainant is a retired Class-IV employee of Gram Panchayath, Mirjan in Uttara Kannada District. He was appointed in the year 1976 as Waterman/Pump Operator/Mechanic by virtue of the order No.CDP-SR:3991 dated 15-1-1977 of District Development Officer. He retired in the year 2004. He is not provided with the benefits of the retirement of his service in the said Gram Panchayath. He made application to the said Gram Panchayath



to sanction retirement benefits to him as per rules. But his application has been rejected.

3) It is repeated contention of the respondent that the complainant, who worked as Water Pump Operator in Mirjan Gram Panchayath, Kumta Taluk, is not approved or authorized appointee and as such as per the Government Order No. ರಾಜಪ/14/ ರಾಜಂಸಿ/2002, ಬೆಂಗಳೂರು ಐನಾಂಕ: 20-6-2003, he is not entitled for the retirement benefits.

4) In terms of the order dated 7-12-2018 made by me, the respondent was directed to submit a report regarding the recruitment procedure and relevant Government circulars which were in force in the year 1977 when complainant was appointed in the Gram Panchayath and whether approval of the CEO, ZP, as per the order No. ರಾಜಪ/14/ ರಾಜಂಸಿ/2002, ಬೆಂಗಳೂರು ಐನಾಂಕ: 20-6-2003, was necessary for the appointments made by the Gram Panchayath in the year 1976-77. In response to this notice, respondent has forwarded his letter dated 21-4-2019 reiterating same stand that the appointment of the complainant in the Gram Panchayath was not authorized one since Gram Panchayath had not taken approval of the CEO, ZP, Karwar, as per the above noted Government order dated 20-6-2003.

5) Subsequently, I have made an order dated 10-5-2019 directing the respondent to verify the correct factual situation and submit his comments on the following:

- 1) What was the procedure adopted or any Government Circular was issued with regard to the appointment made by the Gram Panchayath in Uttara Kannada District and in other parts of the State prior to the

Circular No. ರಾಜಪ/14/ ರಾಜಂಸಿ/2002, ಬೆಂಗಳೂರು ಐನಾಂಕ: 20-8-2003, relied upon by the respondent?

2) Whether any other staff of Gram Panchayath who was similarly appointed to the Government Circular dated 20-6-2003 where the retirement benefits by the Gram Panchayath/ Zilla Panchayath or by the Government are given, even though the appointment was not approved by the Chief Executive Officer of Zilla Panchayath?

6) A letter dated 7-1-2020 was received from the respondent in which it has been stated that **prior to the Circular No. ರಾಜಪ/14/ ರಾಜಂಸಿ/2002, ಬೆಂಗಳೂರು ಐನಾಂಕ: 20-8-2003, Gram Panchayaths could make appointments, not exceeding limited strength**, as per the provisions of Karnataka Panchayath Act-1993 and as per the Government Order/Circulars dated 10-1-1994 and 21-4-1994. Further, it is stated that as per the report of the Executive Officer of the Taluk Panchayath, there is no instance of retirement benefits granted to the Gram Panchayath employees, whose appointment was not approved by the CEO, ZP.

7) Thereafter, the respondent was directed to make available the copies of Government Circulars dated 10-1-1994 and 21-4-1994 and further notice was issued to the E.O., T.P., Kumta, to submit a report relating to the letter dated 24-1-2013 issued by the PDO and President Mirjan Gram Panchayath and further notice was issued to the complainant to produce his appointment order No.CDP-SR-3991/2015-1 1977 of 21/14-2/1977.

8) Along with the letter dated 13-10-2020, the respondent has made available the copy of Government Order dated 10-1-1994.

9) In the report dated 4-9-2020, the E.O., T.P., Kumta, has stated that as per the report of the Gram Panchayath dated 13-7-2020, complainant was working as Waterman in Gram Panchayath, Mirjan from 1976-77 till 19-3-2014 on which dated he retired from the service and the resolution passed by the said Gram Panchayath to grant retirement benefits to the complainant was submitted to the Taluk Panchayath and then approval of CEO, Zilla Panchayath, was sought for. However, approval was not granted on the ground that there is no provision to grant retirement benefits to the employee of the Panchayath whose appointment was not approved by the CEO, ZP.

10) Thus, it is an undisputed fact that **the complainant had worked as Waterman in the said Gram Panchayath for about 35 years from 1976-77 till his retirement on 19-3-2014.** A resolution was also passed in the meeting dated 10-1-2013 of the Gram Panchayath to submit a proposal to the Z.P., for approval of the appointment of the complainant which was made long back in the year 1976-77.

11) Appointment of the complainant in the said Gram Panchayath was made prior to the coming into force of the Karnataka Panchayath Raj Act-1993. Respondent has produced copy of Government Order No. ೧೨೨೨: ಪಿಇಎಲ್:೨೦, ಬೆಂಗಳೂರು ದಿನಾಂಕ: 10-1-1994, which was issued in exercise of



power conferred U/S.112 of the said Act-1993. It is stated in last Para of this Government Order which reads as under:

“ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳ ನೌಕರರು ಸರ್ಕಾರಿ ನೌಕರರಲ್ಲ ಮತ್ತು ಅವರು ಸರ್ಕಾರಿ ನೌಕರರಾಗಿ ಲಭ್ಯ ಇರುವ ಯಾವುದೇ ಸೇವಾ ಸೌಲಭ್ಯಗಳನ್ನು ಹೊಂದಲು ಹಕ್ಕುದಾರರಾಗಿರುವುದಿಲ್ಲ. ಗ್ರಾಮ ಪಂಚಾಯತಿ ನೌಕರರಾಗಿ ರಜೆ, ಪ್ರವಾಸ ಭತ್ಯೆ ಮತ್ತು ಸೇವಾ ಸೌಲಭ್ಯಗಳನ್ನು ನೀಡುವ ಬಗ್ಗೆ ಗ್ರಾಮ ಪಂಚಾಯತಿಗಳು ಸೂಕ್ತವಾಗಿ ನಿರ್ಧರಿಸಿ, ಜಿಲ್ಲಾ ಪಂಚಾಯತಿಯ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿಗಳ ಅನುಮೋದನೆಯನ್ನು ಪಡೆದು ನಿರರ್ಥಕತೆಗೊಳಿಸಬಹುದು.”

There is nothing in this Government Order to show that it has retrospective effect i.e. it is also applicable to the employees of Gram Panchayaths appointed prior to 10-1-1994.

12) As observed earlier, it is an undisputed fact that appointment of the complainant as Waterman in the Gram Panchayath was made in the year 1976-77. He continued as employee of the Gram Panchayath i.e. Waterman even after coming into force of the Karnataka Panchayath Raj Act-1993 and also above noted Government Order No. ಗ್ರಾ.ಪಂ.102: ಪಿಇಎಲ್:90, ಬೆಂಗಳೂರು ದಿನಾಂಕ: 10-1-1994 was passed.

Service of the complainant was not terminated after coming into force of the Karnataka Panchayath Raj Act-1993 or after above noted Government Order No. ಗ್ರಾ.ಪಂ.102: ಪಿಇಎಲ್:90, ಬೆಂಗಳೂರು ದಿನಾಂಕ: 10-1-1994 was passed on the ground that his appointment was unauthorized since no approval has been obtained for his appointment from the CEO, ZP, Karwar. **Therefore, the respondent having allowed the complainant to continue in the service for**

such long 35 years and having not terminated his service on the ground that no approval of the CEO, ZP, was obtained for his appointment, he cannot be allowed to contend that complainant is not entitled for retirement benefits since his appointment was not approved by the CEO, ZP. Respondent is estopped from taking such a stand after the retirement of the complainant from the service. It must be held that since the complainant was allowed to work and his services having been taken, the Authorities concerned had held out to him that he was entitled for all the retirement benefits payable to the employees of the Panchayath who are governed by Panchayath Raj Act and the Rules framed therein. It is relevant to point out that it was the duty and responsibility of the concerned officers/officials of Mirjan Gram Panchayath to take steps to get the approval from the CEO, Zilla Panchayath, Uttara Kannada District regarding the appointment of the complainant as Class-IV employee. Therefore, the complainant cannot be made to suffer on account the fault or failure on the part of the concerned officers of Gram Panchayath and on this ground alone the pensionary benefits cannot be denied to the complainant. In this connection it is useful to refer to the judgment of *Hon'ble Supreme Court of India in the case of D.S. Nakara and others Versus Union of India in (1983) 1 SCC 305 in which it has held that;*

"(1) Pension is neither a bounty not a matter of grace depending upon the sweet will of the employer, nor ex gratia payment. It is a payment for the past service rendered. It is a

social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules."

13) Further, the Hon'ble Supreme Court in the case of **Dr. Hira Lal Vs State of Bihar and others (Civil Appeal No. 1677-1678 of 2020)** at paragraph no. 13.4 has held that the 'right to receive pension' is 'right to property' under Article 31(1) of the Constitution of India. It is useful to extract paragraph no. 13.4 of the said judgement, which reads as hereunder;

13.4 It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and unblemished service.4 The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the 4 (2013) 12 SCC 210 15 Constitution by a Constitution bench

**of this Court in Deokinandan Prasad v.
State of Bihar5.....,**

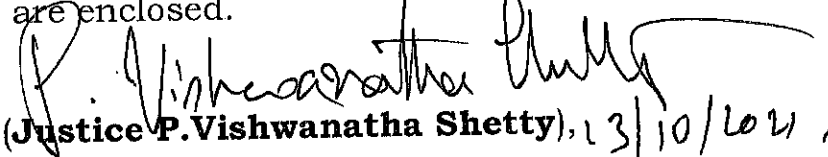
14) As per the Government Official Memorandum No. ಗ್ರಾಅಪ/67/ ಗ್ರಾಪಂಸಿ/2008, ಬೆಂಗಳೂರು ದಿನಾಂಕ: 4-1-2008, the retired employees of the Gram Panchayath or the legal dependants of the deceased employees of the Gram Panchayath shall be paid with allowance equal to 15 days pay for completion of each year of service, but not exceeding 15 months pay in total, shall be paid from the funds of the Gram Panchayath after getting approval of Executive Officer, Taluk Panchayath. In view of this Government Official Memorandum, the complainant is claiming the retirement allowance. Prima facie, I find no reasons to reject the claim of the complainant for payment of retirement benefits in terms of Government Official Memorandum dated 4-1-2008. Based on the materials collected during the course of the investigation of this proceeding, I am satisfied that the complainant has suffered injustice/undue hardship on account of the inaction on the part of the respondent. Therefore, it is necessary to make a recommendation to the Competent Authority U/Sec.12(1) of the Karnataka Lokayukta Act-1984 to grant retirement benefits to the complainant as per the Government Official Memorandum No. ಗ್ರಾಅಪ/67/ ಗ್ರಾಪಂಸಿ/2008, ಬೆಂಗಳೂರು ದಿನಾಂಕ: 4-1-2008.

15) In the light of what is stated above, exercising the powers conferred on me under Section 12(1) of the Karnataka Lokayukta Act, 1984 a recommendation is made to the Competent Authority to pay retirement benefits to

the complainant as per the Government Official Memorandum No. ೧೨೨೮೮/೬೭/ ೧೨೨೮೮/೨೦೦೬, ಬೆಂಗಳೂರು ಐನಾಂಕ: 4-1-2008 within three months from the date of this order with interest 8% from the date of retirement till the date of payment for the belated retirements benefits as per Government Order No. FD (Spl) 1 PEN 03 BANGALORE, DATED 21.08.2003.

16) Further, as per Section 12(2) of Karnataka Lokayukta Act, 1984, the Competent Authority is required to intimate this Authority within **one month** after expiry of three months time fixed for compliance, the action taken or proposed to be taken on this report.

Connected records are enclosed.


(Justice P. Vishwanatha Shetty), 13/10/2021,
Lokayukta,
State of Karnataka.