

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26th DAY OF MARCH, 2020

PRESENT

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

AND

**THE HON'BLE MR. JUSTICE HEMANT
CHANDANGOUDAR**

W.P. NO.43810/2018 (GM-KLA)

BETWEEN:

1. *THE KARNATAKA STATE PRIMARY SCHOOL
*TEACHERS ASSOCIATION ®
*REP. BY ITS PRESIDENT
SRI.V.M.NARAYANA SWAMY
NO.4TH CROSS, 5TH MAIN,
GANDHI NAGAR, BENGALURU-560001
2. *THE KARNATAKA STATE PRIMARY SCHOOL
*TEACHERS ASSOCIATION ®
*BY ITS TREASURER,
SRI.S.T.GANGANNANAVAR,
NO.4TH CROSS, 5TH MAIN,
GANDHI NAGAR,
BENGALURU- 560 001 ...PETITIONERS

(* DELETED BY ORDER DTD. 04.10.2018)
(BY SRI.V.R.SARATHY, ADV)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS SECRETARY
DEPARTMENT OF EDUCATION
(PRIMARY), M.S.BUILDING
BANGALORE-560 001

2. THE KARNATAKA LOKAYUKTA
REP. BY ITS REGISTRAR,
M.S.BUILDING,
BENGALURU – 560 001

...RESPONDENTS

(BY SRI.N.BALAJI, AGA FOR R-1;
SRI. VENKATESH S. ARABATTI, ADV. FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED GOVERNMENT ORDER OF ENTRUSTMENT DATED 30.05.2018 (ANNEXURE-A) ISSUED BY THE 1ST RESPONDENT AND CONSEQUENTLY QUASH THE IMPUGNED SEC.12(3) REPORT DATED 14.06.2017 (ANNEXURE-B) AND THE ARTICLES OF CHARGES DATED 25.06.2018 (ANNEXURE-C) ISSUED BY THE 2ND RESPONDENT ARE ILLEGAL AND INOPERATIVE.

THIS PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP THIS DAY, **ARAVIND KUMAR J**, MADE THE FOLLOWING:

ORDER

Petitioners have sought for quashing of the order bearing No.ED309 PBS 2017, dated 30.05.2018 (Annexure-A) passed by first respondent, whereunder appropriate Government has entrusted conducting of

enquiry against the petitioners under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to the Upa-Lokayukta and have also sought for quashing of the report dated 14.06.2017 bearing No.Compt/ Uplok/ BCD-3752/2014/ARE-5 (Annexure-B) submitted by Upa Lokayukta under Section 12(3) of Karnataka Lokayukta Act, 1984 (for short 'Act') and consequently the Articles of Charges bearing No.UPLOK-1/DE/270/2018/ARE-4 dated 25.06.2018 issued by the second respondent against them.

2. Petitioners are the President and Secretary of Karnataka State Primary and Higher Primary School Teachers Association (for short 'Association') which is an institution registered under the provisions of the Karnataka Societies Registrations Act, 1960 (for short 'Societies Act'). Said association as per by-laws (Annexure-D) has been formed with the object of upholding and safeguarding the interest of its members and to fight for protection and better service conditions

for Government primary teachers as well as to provide assistance to the State Government in rendering better education facilities to the needy students while preparing curriculum. The said association is governed by an executive body which is otherwise called as state body at state capital apart from district bodies at each district head quarters and taluk bodies at each taluk of the State. Membership of the said association is available to all the teachers working in Government primary school and higher primary schools including its Head Masters on payment of requisite admission fee as well as membership fee which was renewed from time to time. State Government has recognized the said association as the body representing the Government Teachers. Petitioners are said to have been elected as president and secretary during the year 2009.

3. One Sri.Shankar Gowda. B. Patil who was the President of Dharwad District Teachers Association during the year 2009 to 2014 lodged a complaint on 06.11.2014 (Annexure-K) with the Karnataka Lokayukta-

second respondent making certain allegations against the association and sought for suitable action being taken against them. It was also alleged that acts of the petitioners amounted to misconduct. Lokayukta forwarded said complaint to the petitioners, upon which a reply came to be submitted by the petitioners on 14.10.2015. It is thereafter office of the Upa-Lokayukta called for a report from the Deputy Superintendent of Police and on receipt of said report, Upa-Lokayukta forwarded a report under Section 12(3) to the appropriate Government on 14.06.2017 (Annexure-B). Based on it appropriate Government by order dated 30.05.2018 (Annexure-A) entrusted conducting of enquiry against the petitioners under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to Upa-Lokayukta and thereafter Articles of Charges came to be issued to the petitioners on 25.06.2018 (Annexure-C). Hence, petitioners are before this Court for quashing of the entire proceedings now pending before second respondent.

4. It has been averred in the petition that entrustment of enquiry by the appropriate Government to the second respondent is without authority of law and complaint itself is not maintainable for being investigated by the office of the Lokayukta; it is also contended that acts of the petitioners do not constitute an act committed by a Government Servant within the meaning of Section 2(6) of the Act amenable to the jurisdiction of second respondent; second respondent without considering the aspect whether such allegations made in the complaint pertain to the members of the executive body is amenable for disciplinary enquiry under Section 2(12) of the Act, so as to hold petitioners would fall within the meaning of 'public servant' and without recording a finding to the said effect, complaint ought not to have been entertained; it is also contended that very authority of the second respondent to initiate proceedings by exercise of power vested under the Act, is not available, since petitioners are not public servants as their alleged acts of demurrer was in discharge of duties as office bearers of the Association, which is not a 'State' or

‘instrumentality of State’ and as such proceedings initiated by second respondent is wholly without jurisdiction and as such, it is liable to be quashed.

5. On being notified, second respondent has appeared and filed its statement of objections and contended that in view of clear finding in the report of Deputy Superintendent of Police that misdeeds committed by the petitioners have to be enquired into, reply submitted by the petitioners came to be considered by second respondent and they were found to be not satisfactory and the acts of the petitioners as office bearers of the association amounts to misconduct and hence disciplinary proceedings have been rightly initiated against petitioners by seeking entrustment of it to the second respondent and there is no infirmity, whatsoever, in the said procedure adopted. Traversing the petition averments and denying the same second respondent has sought for dismissal of the petition.

6. It is the contention of Sri Ravivarma Kumar, learned Senior Counsel appearing for petitioners that acts alleged against petitioners in the complaint is not an act committed by them as a Government servant within the meaning of Section 2(6) of the Act and as such investigation conducted pursuant to said complaint is without jurisdiction. He would also contend allegations made in the complaint against petitioners is on account of petitioners being members of the Executive Body of the Association and as such, they do not fall within the definition of “public servant” as defined under Section 2(12) of the Act which is a condition precedent for investigation being taken. He would also submit the second respondent without examining as to whether the Association of which petitioners were the office bearers would partake the character of public servant, has proceeded to investigate, which is without jurisdiction since the members of the Executive Body of the Association on account of they being Government servants, would not result in the entire Association being construed as a “public servant” and that too, in the

absence of a notification issued in the Official Gazette by the State Government. Hence, second respondent – authority could not have investigated and submitted report under Section 12(3) of the Act to the Government seeking entrustment of enquiry being conducted to ascertain the truth or otherwise of the allegations made in the complaint.

He would also submit that under Section 25 of the Karnataka Societies Registration Act, 1960 the Registrar is empowered to either enquire or examine the financial condition of a registered society, suo motu or otherwise and this being a statutory remedy available to an applicant, which has not been availed of, bars the complainant to ignite the proceedings under the Karnataka Lokayukta Act in the light of specific bar contained under Section 8(1)(b) of the Act.

He would also contend that though in the reply to the notice submitted by petitioners, several aspects have been dealt, none of these facts have been considered by second respondent and after lapse of four years of the alleged incident, complaint in question had been lodged,

which has not been verified by examining the plea put forward by the petitioners in their reply and the conclusion arrived at by the second respondent based on alleged report of the Deputy Superintendent of Police is without foundational facts and as such, it is liable to be quashed.

7. Per contra, Sri Venkatesh S Arabatti, learned counsel appearing for second respondent has supported the action initiated by second respondent by contending that petitioners being undoubtedly Government servants in terms of Section 2(12) of the Act, they are liable to be proceeded under the Act and Section 25 of the Karnataka Societies Registration Act, 1960 cannot take away the right of second respondent. Reiterating the grounds urged in the statement of objections, he prays for rejection of the petition.

8. Having heard the arguments of Sriyuths Ravivarma Kumar, learned Senior Counsel appearing on behalf of V.R.Sarathy for petitioners, Sri N Balaji, learned Additional Government Advocate appearing for first

respondent and Venkatesh S. Arabatti, learned counsel appearing for second respondent, we are of the considered view that following point would arise for our consideration:

“Whether the Lokayukta/Upa-Lokayukta under the Act has jurisdiction to investigate and hold an enquiry in respect of allegation made in the complaint against a person who is in the service or pay of a society registered under Karnataka Societies Registration Act, 1960 for mis-management, mis-appropriation failing to discharge his duty, mal-administration and the like?”

9. The jurisdiction of Lokayukta and Upalokayukta to investigate is circumscribed by the powers conferred under Section 7 of the Act. The jurisdiction so vested cannot extend beyond what is specifically provided thereunder. In other words, they have been conferred power to investigate a grievance or an allegation against a public servant as defined under

the Act. They have not been conferred any power to investigate a grievance or an allegation against a private individual.

10. A plain reading of Section 9 of the Act would indicate that any person can make a complaint under the Act to the Lokayukta or Upa Lokayukta, which is to be supported by an affidavit. Where the Lokayukta or Upa Lokayukta proposes after making preliminary enquiry, as deemed fit, to conduct any investigation under the Act, is required to forward such copy of the complaint to the “**public servant**” against whom complaint is made to the and the competent authority concerned. In other words, the public servant is afforded an opportunity to offer his comments to such complaint. Thus, a harmonious reading of Section 7 and Section 9 would indicate that investigation can be taken up against a “public servant” only. The expression “**public servant**” is defined under Section 2(12) of the Act, which reads:

“**2(12) “Public servant**” means a person who is or was at any time.-

- (a) the Chief Minister;
- (b) a Minister;
- (c) a Member of the State Legislature
- (d) a Government servant;
- (e) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State of Karnataka or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of Section 617 of the Companies Act, 1956 and such other corporations or boards as the State Government may, having regard to its financial interest in such corporations or boards, by notification, from time to time, specify;
- (f) member of a Committee or Board, statutory or non-statutory, constituted by the Government;
- (g) a person in the service or pay of.-
 - (i) a local authority in the State of Karnataka;
 - (ii) a statutory body or a corporation (not being a local authority) established by or under a State or Central Act, owned or controlled by the State Government and any other board or corporation as the State Government may, having regard to its financial interest therein, by notification, from time to time, specify;

(iii) a company registered under the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the State Government, or any company which is a subsidiary of such company;

(iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960, which is subject to the control of the State Government and which is notified in this behalf in the Official Gazette;

(v) a co-operative society;

(vi) a university;

Explanation.- In this clause, “co-operative society” means a co-operative society registered or deemed to have been registered under the Karnataka Co-operative Societies Act, 1959, and “university” means a university established or deemed to be established by or under any law of the State Legislature”.

“The expression **“Government servant”** as indicated in Section 2(12)(d) is defined in Section 2(6) and it reads:

“2(6) “Government Servant”
means a person who is a member of the Civil Services of the State of Karnataka or

who holds a civil post or is serving in connection with the affairs of the State of Karnataka and includes any such person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority or any person, whether incorporated or not, and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Karnataka;

11. A plain reading of Section 9 of the Act would clearly indicate that investigation against a 'Public Servant' under the Act can be undertaken by the Lokayukta or Upa-Lokayukta after making such preliminary inquiry as deemed fit and such allegation is made against a public servant for having abused his position as '*public servant*' to obtain any gain or favour to himself or to any other person or to cause undue hardship or harm to any other persons; was actuated in discharge of his function as a '*public servant*' by personal interest or improper and correct motives; fails to act in accordance with the norms of integrity and conduct which ought to be followed by public servant; or his guilty of corruption, favoritism or nepotism or lack of

integrity in his capacity. Thus, condition precedent for investigating under Section 7 or being proceeded under Section 9 to enquire into would be that such person against whom the proceedings under the Act is initiated should be a “Government servant”.

12. A person in the service of pay of such of the authorities as defined under Section 2(12) would also be amenable for being investigated by Lokayukta or Upa-Lokayukta. In the event of such person falling outside scope of section 2(12), it cannot be gainsaid by the Lokayukta or Upa-Lokayukta that such persons would still be amenable to their jurisdiction, inasmuch as, it is only a “public servant” as defined under Section 2(12), who would be amenable for being investigated under Sections 7 and proceeded with under Section 9 of the Act. In the event of a person against whom the allegation is made, does not fall within the definition of Section 2(12), then necessarily such person cannot be roped in for investigation or proceeded under The Lokayukta Act.

13. It would be of benefit to note that under Section 2(12)(g)(iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960 would also be amenable to the jurisdiction of Karnataka Lokayukta, subject to such society being under the control of State Government and which is notified in this behalf in the official gazette. Thus, primary requirement for investigation being taken-up against a person falling under Section 2(12) is; (i) he/she should be “public servant” as defined under Section 2(12) of the Act; (ii) and, if such person is a society as indicated in Section 2(12)(g)(iv), then such society should be registered under the Karnataka Societies Registration Act 1960, under the control of State Government which is notified in the Official Gazette.

14. Petitioners herein are being investigated for their alleged acts or misdeeds said to have been committed by them as office bearers of the Association, which Association is a society registered under the

Karnataka Societies Registration Act, 1960. It is alleged in the complaint dated 06.11.2014 (Annexure-K) that petitioners while holding the office of President and Secretary of said Association, had committed illegalities as specified thereunder. Petitioners are not being investigated for their acts committed in the capacity of a “Government Servant” as defined under Section 2(6) of the Act or for their acts as a “public servant” as defined under Section 2(12). On the contrary, it is to be noticed at the cost of repetition that the entire allegation made by the complainant in his complaint dated 06.11.2014 (Annexure-K) revolves around the acts alleged to have been committed by the petitioners as office bearers of the Association. Hence, we are of the considered view that petitioners do not fall under the definition of “public servant” as defined under Section 2(12) of the Act.

15. Petitioners as noted hereinabove were office bearers of a Society registered under Societies Registration Act. For Section 2(12)(g)(iv) being invoked against them, then such Society should be in the control

of the State Government and it should have been notified in the Official Gazette. These, twin tests are to be satisfied for Lokayukta or Upa-Lokayukta to clutch jurisdiction under the Act and take-up investigation against such persons, who are alleged to be public servant as defined under Section 2(12) and who are said to be employees of a society, registered under the Karnataka Societies Registration Act, 1960.

16. In the instant case, undisputedly there is no material on record to show that Association of which the petitioners were the office bearers of the society is controlled by the State Government and same has been notified in the official gazette issued in that behalf by the Government of Karnataka. The audit report of the Association which is at Annexure-E relates to the period ending 31.12.2009 does not disclose of any shares or contribution having been made by the Government of Karnataka, so as to hold that said society was in the control of the State Government and same having been

notified. On this score itself petitioners would be entitled to the relief sought for.

17. However, to put to rest, the contentious issues, it would be necessary for us to further observe that allegations made in the complaint dated 06.11.2014-Annexure-K are all relating to the period 2009 - 2010 and the complaint in question has been filed before the Lokayukta on 06.11.2014-Annexure-K. A perusal of Section 8(2)(d) would indicate that where allegation is made after expiry of five years from the date on which the action complained against is alleged to have taken place, should not be investigated under Section 9 by the Lokayukta. However, Lokayukta can entertain a complaint referred to in clause (d) if he is satisfied that complainant had sufficient cause for not lodging the complaint within the period specified under clause (d) in the light of proviso to clause (d) of Section 8(1). In other words it all depends on the facts and circumstances obtained in each case to entertain the complaint beyond prescribed period.

18. In the instant case as noticed hereinabove the complainant has made allegations of misdeeds against petitioners which relates to non maintenance of accounts of the conference held during 2009-2011 at Kudalasangama, Bangalore and on 15.02.2014 at Hubballi and certain amounts having been deducted from the salary which was during 2010 for issuing smart cards; and having collected crores of rupees in 2010 through the house building society for allotment of sites to the Member of the Association. Thus, allegations relating to non-maintaining of the accounts of the conference held during the year 2009 cannot attract clause (d) of Section 8(2) and as such, complaint would be maintainable on said issue. However, insofar as other allegations complaint may not be time barred. It is for this reason that while forwarding the report under Section 12(3) of the Act judicious application of mind requires to be exercised, as otherwise it would cause prejudice to the right of persons like petitioners. Merely based on the allegations made in the complaint and

report submitted by the investigating officer, by itself would not form the basis for the Lokayukta to submit a report to the State Government under Section 12(3) of the Act. It is for this reason, copy of the complaint when received by the office of the Lokayutka, is to be forwarded to the person against whom allegation is made in the complaint to submit his/her comments and/or reply. In the instant case such an exercise was undertaken by the second respondent by issuance of notice to the petitioners on 06.12.2014 by forwarding the complaint lodged by Sri.Shankargowda B. Patil to petitioners. Same has been duly replied by the petitioners on 14.10.2015- (Annexure-M) highlighting all aspects including the grounds urged in the present writ petition. However, while forwarding the report under Section 12(3) of the Act the Upa Lokayukta seems to have ignored the reply submitted by the petitioners and has merely held that it is not acceptable. No reasons, whatsoever, is forthcoming except the following remarks.

“In view of the report, of I.O, comments submitted by the respondents are not acceptable to drop the proceedings against them”.

19. It is this exercise which was undertaken by second respondent is also under challenge in this writ petition by the petitioners, and rightly so. Reply submitted by the petitioners has not been examined by second respondent at all. It is required to be stated that objections raised by the petitioners is not at all considered and no reasons whatsoever have been assigned as to why it is not being accepted. In fact, report forwarded under Section 12(3) of the Act itself should disclose that there has been judicious application of mind. In the absence of such an exercise having been undertaken, report submitted by the second respondent under Section 12(3) of the Act cannot be held to meet the test of law. While considering objections and submitting the report under Section 12(3) caution will have to be taken to address the issues raised in objections and then decision should be taken by the Lokayukta or Upa Lokayukta. In such circumstances, the decision so

taken would not amenable to scrutiny under the writ jurisdiction, in as much as, the decision will not be amenable to judicial review but the decision making process would be amenable to judicial review. From the facts obtained in the instant case, we are of the considered view that it would not meet the said requirement of law and as such report submitted by second respondent under Section 12(3) to State Government would also not be sustainable. Yet another reason we say so, is on the ground that issue of limitation, though not raised was required to be examined, considered by the second respondent in the light of section 8(2)(d) which is the mandate under the law, so that investigation is not undertaken where allegations is made in the complaint after period of 5 years from the date on which the action of complaint against is alleged to have taken place.

20. Sri.Venkatesh S.Arabatti, learned counsel appearing for second respondent would vehemently contend that limitation as prescribed under clause (d) of

sub-section (2) of section 8 would commence only after expiry of the five years period and in the instant case accounts was submitted on 18.07.2010 upon which the complainant came to know of the allegation of irregularities and misconduct and as such the period of five years would commence from the said date. As such he contends that in the facts obtained in the instant case, question of limitation would not arise as the complaint was lodged on 06.11.2014 i.e., well within the period of 5 years and hence in relation to the alleged misconduct which gave rise to the cause of action for filing complaint is within time. Though, the said arguments looks attractive at the first blush, it is not so, for the reason that complainant was the President of Dharward District Teachers Association and has participated in all three conference and was in the know how of the all the financial transactions that took place and only on completion of his tenure as elected representative he has started filing petitions and complaints. As to when limitation commenced was a question of fact which was necessarily required to be

examined by the Upa Lokayukta before submitting a report under Section 12(3) and such an exercise having not been undertaken by the Upa Lokayukta, it cannot be gain said by Sri.Venkatesh S. Arabatti that initiation of investigation was well within the time. However, on account of there being no clarity with regard to the exact date and even otherwise the complainant himself being in the know how of alleged misconduct of petitioners relating to the period 2009 having not complained well within period of five years, it cannot be held that complaint was required to be investigated by second respondent though it was barred under clause (d) sub-section (2) of Section 8. As such said contention stands rejected subject to observation made hereinabove.

21. In fact, Deputy Superintendent of police's report would also indicate about contribution made by the members of the association was relating to the conference held in the year 2009. If it were to be so, as to how the complaint filed in the year 2014 was being

investigated is not forthcoming from the report submitted under Section 12(3) of the Act.

22. The contention of learned senior counsel appearing for petitioner raised with regard to impugned orders being liable to be quashed on the ground of lack of opportunity or principles of natural justice having been violated, cannot be accepted, in as much as on receipt of complaint, copy of the same has been forwarded to the petitioners on 06.12.2014 and petitioners have also replied on 14.10.2015- Annexure-M and additional reply was also submitted by them on 19.01.2017- Annexure-N and as such with their eyes wide open and knowing fully well allegation made against them, reply has been submitted and there is due compliance of principles of natural justice.

For the reasons aforestated, we proceed to pass the following:

ORDER

- (1) Writ petition is allowed.

- (2) Government order bearing No.ED309 PBS 2017, dated 30.05.2018 (Annexure-A) and report No.Compt/ Uplok/BCD-3752/2014/ARE-5 submitted by the second respondent dated 14.06.2017- Annexure-B and consequential Articles of Charge dated 25.06.2018 Annexure-C issued to the petitioners are hereby quashed.
- (3) Rule made absolute.

**SD/-
JUDGE**

**SD/-
JUDGE**

RU/sp