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**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 3RD DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

WRIT PETITION NO.105477 OF 2023 (S-KAT)

BETWEEN:

THE KARNATAKA LOKAYUKTA
R/BY ITS REGISTRAR
M.S. BUILDING, B.R. AMBEDKAR VEEDHI,
BENGALURU 560001.

...PETITIONER

(BY SRI. ASHOK HARNAHALLI, SENIOR COUNSEL FOR
SRI. ANIL KALE, ADVOCATE)

AND:

1. SRI. ISHWAR
S/O KRISHNA APPAJI WADAKAR
AGE. 52 YEARS, OCC. SECRETARY,
GRAM PANCHAYAT,
R/O. JAGALBET 581129, JOIDA,
TQ. UTTARA KANANDA, DIST. KARWAR.

2. THE STATE OF KARNATAKA
R/BY. ITS PRINCIPAL SECRETARY,
DEPARTMENT OF RURAL DEVELOPMENT

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AND PANCHAYAT RAJ,
GOVERNMENT OF KARNATAKA,
M.S. BUILDING, AMBEDKAR VEEDHI,
BENGALURU 560001.

3. THE CHIEF EXECUTIVE OFFICER
ZILLA PANCHAYAT,
OFFICE OF THE ZILLA PANCHAYAT,
KARWAR 581129.

...RESPONDENTS

(BY SRI. RAGHVENDRA GAYATRI, ADVOCATE FOR
SRI. SOURAB HEDGE, ADVOCATE FOR R1,
SRI. G.K. HIREGOUDAR, GOVERNMENT ADVOCATE FOR R2
NOTICE TO R3 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE ORDER DATED 07.12.2021 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BELAGAVI IN APPLICATION NO.5116/2018 PRODUCED AT ANNEXURE-A, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN GROUP 'B', THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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CORAM: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT)

This Writ Petition by the Lokayukta invokes writ jurisdiction of this Court for the quashment of Service Tribunal's Order dated 07.12.2021 whereby respondent – employee's Application No.5116/2018 having been favoured the punishment order of compulsory retirement dated 07.04.2018 has been set aside.

2. Learned Senior Advocate Shri Ashok Harnanahalli argues that there are two significant infirmities in the impugned order namely: (i) the Tribunal has recorded a finding that there is violation of Section 9(3) of the Karnataka Lokayukta Act, 1984 when apparently there is compliance and therefore there was absolutely no scope for invoking Section 9(3)(a) & (b) of the Act vide

N. Gundappa Vs. State of Karnataka[1]; (ii) in any event, after quashment of punishment order, the Tribunal could not have foreclosed the proceedings, but could have remanded the matter for consideration afresh. He also points out that long pendency of a matter is no ground for foreclosing the proceedings more particularly when the delinquent employee is still in service.

3. After service of notice, the delinquent employee being the first respondent has entered appearance through his private advocate who vehemently resists the petition on the ground of lack of *locus standii* of the Lokayukta; the Tribunal has after examining the records has entered a finding as to non-compliance of Section 9(3) of the 1984 Act and that does merit a deeper examination in the writ jurisdiction; the Tribunal has given a cogent finding as to why it has foreclosed the proceedings; lastly, the Articles of Charge are not specific. So contending, he seeks dismissal of the petition.

[1] ILR 1990 KAR 223

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4. Having heard the learned counsel appearing for the parties and having perused the petition papers we are inclined to grant indulgence in the matter for the following reasons:

4.1 The contention of the respondent – employee that the Lokayukta has no *locus standii* in a matter like this is bit difficult to countenance: Firstly, the Tribunal has faltered the action on the ground that Section 9(3) of the 1984 Act has not been complied with by the Lokayukta; secondly, the Articles of Charge have not been properly framed. Both these actions apparently fall within the domain of Lokayukta as an Institution. Thirdly, the Lokayukta was a party *eo nomine* to the proceedings before the Tribunal and it had made all endeavors to justify its action by pointing out that Section 9(3) was duly complied with. Fourthly, if at all there is violation of said provision, the matter ought to have been remitted back to the stage of violation for consideration afresh and despite that having not been done, the Government has not chosen to

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challenge the Tribunal's Order. Inaction on the part of Government/Competent Authority would infuse additional elements of *locus standii* in favour of Lokayukta.

4.2. An argument to the contrary of the above view, if accepted, would leave a wrong order of the Tribunal with impunity forever and the employee who has been found guilty of misconduct would go scathe free. That would not auger well to the Rule of Law, which requires protection of the innocent and punishing of the guilty. Otherwise, the interest of administration would be badly affected. Added, the Lokayukta is not a busy body; it is established as a statutory entity for playing a pivotal role in the prevention of maladministration. It functions as a watch dog of public administration in a Welfare State as ordained by the Constitution of India. It is not that in the every case wherein relief is accorded to a public servant, as matter of course, the Lokayukta will have *locus standii*. It all depends upon facts and circumstances of individual case brought before the Court.

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4.3 A Co-ordinate Bench of this Court in **Hon'ble Lokayukta Vs. Shri Prakash T.V.**[2] has observed as under:

> *"52 The facts of the case reveal that though the State Government has entrusted the matter to the Lokayukta to conduct an enquiry, the State Government is disinterested in challenging the order of the Tribunal. There are allegations of corruption against large number of officers and other persons. The reason in not challenging the order passed by the Tribunal appears to be the pressure of the officers involved in the case. Therefore, the Lokayukta, being a statutory body constituted to curb the menace, has an institutional interest and as well as the locus."*

The Apex Court in S.L.P. No(s).13209-13210/2021 vide order dated 26.09.2023 has negatived challenge to the said decision. However, the aspect of *locus standii* was not discussed in the said SLP, which went on other grounds. The said decision lends credence to our view.

4.4. The above being said, the observations of Co-ordinate Bench in respect of their precedential proposition, textually

[2] 2021 SCC OnLine KAR 15733

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appear to be too broad, is true and therefore, the Bar is justified in asking us to delineate the correct scope of the ratio laid down by the Co-ordinate Bench in ***Prakash*** supra and more particularly para 52 reproduced above. The said observations need to be construed in their true spirit and in the light of the scheme collectively emerging *inter alia* from the provisions of Sections 9 & 12 of the 1984 Act read with Rule 14A of the 1957 Rules. Caution needs to be taken while applying the principle of judicial precedents since the decision of the Court and its observations have to be read in context in which they appear. In a judgment, discussion is meant to explain and not to define. A Full Bench of Bombay High Court in ***EMKAY EXPORTS VS. MADHUSUDAN SHRIKRISHNA***[3], at para 11, has observed as under:

> *"……that precedents are to be applied with due regard to facts while adhering to the principles of "ratio decidendi". Precedents are described as, "Authorities to follow in determinations in Courts of Justice". Precedents have always been greatly regarded by the Sages of the Law. The*

[3] 2008 (4) CTC 212

> *Precedents of Courts are said to be the laws of the Courts; and the Court will not reverse a judgment, contrary to many Precedents. Even for a precedent to be binding, it cannot be without judicial decision of arguments that are of no moment. To be a good precedent, it has to be an adjudged case or decision of a Court of competent jurisdiction considered as furnishing an example or authority for an identical or similar case or a similar question of law afterward arising. It is the ratio understood in its correct perspective that is made applicable to a subsequent case on the strength of a binding precedent. ….”*

The precedential value of a judgment is not derived from the exact words employed in it; it is the abstract principle as ascertained on a consideration of the judgment in relation to its subject matter, which alone has the binding force. One has to ascertain which principle has been accepted and applied as a necessary ground of the decision.

4.5 Keeping the above in consideration, one can with no risk of contradiction postulate that where the Tribunal has

interfered in delinquent employee's cause *inter alia* on the ground that the proceedings held by the Lokayukta or its delegate suffer from legal or factual infirmity, the Lokayukta will have *locus standii* to knock at the doors of Writ Court; it is more so, when the competent authority, for whatever reason, does not chose to challenge the order of the Tribunal, within a reasonable time, say six months or so, despite intimation by the Lokayukta. This is the true scope of the ratio laid down in ***Prakash*** supra. All other observations are only supportive reasons for the said ratio; those reasons *per se* cannot be treated as expanding the delineated ratio.

4.6 It is not that in every case, *locus standii* needs to be conceded to the Lokayukta, as a matter of course. Answer to the issue of *locus standii* depends upon facts and circumstances of each case. We do not propose to illustrate in what all circumstances Lokayukta can gainfully claim *locus standii.* Such an exercise, if undertaken, would only produce a plethora of *obiter dicta*, the said circumstances

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apparently being absent in the case at hand. Lokayukta is a statutory entity, of course of great significance, whereas Government of the State is a constitutional institution. We do not want to give an impression that the former is competing with the latter; it is not, is obvious. However, the institution of Lokayukta has a great role to play in minimizing the cases of maladministration, within the statutory limits, as delineated by rulings of courts.

4.7. There is one more aspect which needs to be mentioned in so many words: We have come across several cases wherein the action of Lokayukta made under the provisions of Section 12 of the 1984 Act or that of its delegates viz., the Registrars of Enquiries having been faltered, relief has been granted to the delinquent employees. There are other cases wherein the order under Rule 14A entrusting the Disciplinary Enquiry to the Lokayukta has been voided, and nothing more is stated in the operative portion of judgments. There is no clarity as to whether such cases should be treated as of remand for fresh consideration or an

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outright foreclosure of proceedings. At times, after reading such judgments, the stakeholders gather an impression that the proceedings have been quashed once for all and therefore, no remand is made, when a careful perusal thereof indicates the contra. In a case involving quashment of government order made under Rule 14A, the matter almost invariably goes back to the stage of Section 12(3) of the 1984 Act, unless the Tribunal/Court expressly says otherwise, and therefore, such cases need to be treated as of remand. It is highly desirable that the quashment orders, whatever be the ground, should specifically make that clear and prescribe the timeline for the disposal of remand. We are in the times when what is obvious needs to be obviated. Otherwise, judgments may become breeding grounds for injustice.

4.8 There is force in the submission of learned Senior Advocate appearing for the Lokayukta that the finding of the Tribunal as to the non-compliance of Section 9(3)(a) & (b) of the 1984 Act. The delinquent employee in his

representation dated 25.05.2014 a copy whereof avails at Annexure-A3 has sent para wise reply to the complaint of the individual and notice of the Upa-Lokayukta, the same runs into nine pages that are closely printed. Each of the allegations is sought to be met by explanation. In paragraph No.3 of his pleadings before the Tribunal, he has admitted about this stating "… In the meanwhile in respect of complaint and on receipt of notice, the Applicant also submitted a representation on 25.05.2014 …" That being the position, ruling in **N. Gundappa** *supra* was not invokable. Thus, there is an error apparent on the face of Tribunal's order.

4.9 The contention of the learned counsel appearing for the delinquent employee that the Enquiry Officer has not conducted the disciplinary enquiry strictly following Rule 11 of KCS (CCA) Rules, 1957, is again difficult to agree with. In pith & substance, we see, there is compliance. The spirit of the Rule is adhered to. Every insignificant deviation does not give a cause of action or ground for challenge. The

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Government after duly considering all aspects of the matter had entrusted the enquiry to the Lokayukta under Rules 14-A of these Rules; the designated Enquiry Officer of the Lokayukta i.e., Additional Registrar (Enquiries-10) having framed the Articles of Charge held the proceedings after giving full opportunity of participation to the stake holders. It is not that the charges were vague and that the delinquent employee therefore was in a disadvantageous position to defend. The observations of Tribunal to the contra are unsustainable.

4.10 The contention of Mr. Gayatri that there is violation of mandatory provisions of Rule 11(3) of the 1957 Rules again does not merit acceptance. A Co-ordinate Bench of this Court in **Dr. M.Basappa Reddy Vs. State of Karnataka**[4] has observed at para 27 as under:

> *"27. At the cost of repetition, we re-iterate that all the powers of the Disciplinary Authority are fully vested with the Enquiring Authority u/s.14A(2)(c) of the said Rules for the purposes of enquiry. It is virtually the special procedure to be adopted by the Lokayuktha with reference to*

[4] 2017(3) Kar.L.J. 160 (DB) - PARA 27

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> *the delinquent employee. In view of the same, we do not find any strong reason to quash the disciplinary enquiry conducted by the Additional Registrar of Lokayuktha, inasmuch as the same is not vitiated by any serious incurable defect.*

These observations repel contention of the kind.

4.11 Learned counsel Mr. Gayatri submits that pursuant to quashment of the compulsory punishment, the applicant has been reinstated in service and that he has a short stint of period to retire and therefore the Tribunal is justified in not remanding the matter to the stage of infirmity, he is liable to be rejected. Period spent in judicial or quasi judicial, at times longer than required, *per se* is not a ground for foreclosing the enquiry. The Apex Court in **A.R. Antulay Vs. R.S. Nayak**[5] invoked *actus curiae neminem gravabit* to mean that act of the Court hurts none. Pendency of proceedings at whatever level is one such act. However, justice of case would be met if the punishment order of compulsory retirement is given effect to from this day instead of 07.04.2018.

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[5] (1988) 2 SCC 602

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In the above circumstances, this writ petition succeeds and a writ of certiorari issues quashing the Tribunal's order dated 07.12.2021 and as a consequence the order of punishment dated 07.04.2018 is revived. However, the compulsory retirement shall be effective from 31.08.2024 and the services rendered by the delinquent employee hitherto shall be reckoned for the purpose of all terminal benefits.

Costs made easy.

Sd/-
(KRISHNA S.DIXIT)
JUDGE

Sd/-
(VIJAYKUMAR A.PATIL)
JUDGE

VNP, CT:VP
LIST NO.: 1 SL NO.: 0