

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 28TH DAY OF MARCH 2016/8TH CHAITHRA, 1938

WP(C).No. 30610 of 2004 (R)

PETITIONER:

A.ABDUL SALIM, ASST. TALUK SUPPLY OFFICER
THIRUVALLA.

BY ADVS. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.K.K.RATNALATHA

RESPONDENTS:

1. THE MANAGING DIRECTOR,
KERALA STATE CIVIL SUPPLIES CORPORATION,, MAVELI BHAVAN,
GANDHI NAGAR, ERNAKULAM.
2. THE REGIONAL MANAGER,
KERALA STATE CIVIL SUPPLIES CORPORATION,, KOTTAYAM.
3. THE COMMISSIONER & THE DIRECTOR OF CIVIL SUPPLIES,
THIRUVANANTHAPURAM.
4. THE STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT
FOOD AND CIVIL SUPPLIES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE POONTHOTTAM,SC, KSCSC
R4 BY GOVERNMENT PLEADER
R1 & 2 BY ADV. SRI.LAKSHMI NARAYAN, SC, SUPPLYCO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-03-2016,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30610 of 2004 (R)

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF THE PROCEEDINGS NO.E-4 6845/95 DATED 15.01.1996**
- P2: TRUE COPY OF THE MEMO OF CHARGES NO.E4-6845/95 DATED 26.6.1996**
- P3: TRUE COPY OF THE REPLY DATED 02.07.1996**
- P4: TRUE COPY OF THE PROCEEDINGS NO.E4-6845/95 DATED 14.8.1997**
- P5: TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 5.10.1997**
- P6: TRUE COPY OF THE ORDER NO.(CS) C8-42742/97 DATED 30.05.2001**
- P7: TRUE COPY OF THE REVISION PETITION DAED 10.01.2002**
- P8: TRUE COPY OF THE NO. G.O.(RT) NO.159/04/PCS & CAD, DATED 7.6.2004**
- P9: TRUE COPY OF THE ORDER GPO NO.P-02/DC/G/36527107**
- P10: TRUE COPY OF THE MARRIAGE PERMISSION STATEMENT DATED 16.08.2005
ISSUED BY THAMARAKULAM MUSLIM JAMATH COMMITTEE**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 30610 of 2004 (R)

Dated this the 28th day of March, 2016

J U D G M E N T

Despite the above writ petition of 2004 being shown as Targeted For Disposal (TFD), none appears for the petitioner or the respondent Corporation when the matter was called. Considering the fact that the writ petition has been pending here for the last 12 years, it was deemed fit that the matter be disposed of after looking into the records. I have also heard the learned Government Pleader.

2. The challenge raised is against Ext.P4 order of the Managing Director of the respondent Corporation, acting as the disciplinary authority of the petitioner, an employee of the Corporation. The petitioner, while working as a Senior Assistant Grade-I, was suspended

from service as per Ext.P1, on detection of irregularity in the stock maintained by the Corporation. The irregularities were noticed in an enquiry conducted by the Internal Audit Wing of the Corporation, which included damage to commodities for reason of negligence, failure to obey the instructions of the superior officer, misappropriation of stocks, forgery of records and large scale diversion of commodities on the cover of it being damaged stock. The petitioner was proceeded against since he was the custodian of stock during the said period and, hence, the suspension of the petitioner.

3. The memo of charges was issued at Ext.P2, which detailed specifically nine charges of misconduct; viz: dereliction of duty, gross negligence and utter irresponsibility. Explanation was sought for by Ext.P2, which also contained detailed statement of allegations.

The petitioner filed his explanation; produced at Ext.P3. The order passed against the petitioner is seen at Ext.P4. One need not look into the facts or the allegations raised, since the primary ground raised against the order, as seen at Ext.P5 appeal filed before the Commissioner of Civil Supplies, is the following:

“It is respectfully submitted that the impugned order is not legally sustainable as it is issued in gross violation of the principles of natural justice. The Managing Director did not conduct any enquiry in respect of memo of charge served on the appellant.

If an enquiry had been accorded all the allegations could be negatived in corroboration with the relevant records and evidence by the witness. Hence, on this ground also, the order is liable to be nullified.”

4. It is trite that this Court would not sit in appeal of the disciplinary proceedings and the order

passed by the disciplinary authority nor could there be a fresh appreciation of facts. This Court, under Article 226 of the Constitution of India, would only interfere when there is a procedural irregularity inter alia on account of violation of principles of natural justice or the findings having been entered into without any materials on record as substantiating evidence. This Court could also interfere if the findings of the enquiry authority and the disciplinary authority are perverse and does not reasonably or necessarily emanate from the evidence on record.

5. In the present case, suffice it to notice that Ext.P4 proceedings was a unilateral decision taken by the Managing Director, after hearing the petitioner. Apposite would be reference to the 'Subject', as noticed in Ext.P4, which is extracted herein under:

“KSCSC - IAW - Audit Report on the accounts of Taluk Depot, Changanacherry - Irregularities detected - Disciplinary action against Sri. A. Abdul Salim, S.A.I - suspended from service - Memo of charges issued - explanation obtained - Personal hearing conducted - Reinstated into service - Punishment proposed - concurrence obtained - final orders issued -”

6. What is revealed is that on the basis of the audit report, irregularities were disclosed and disciplinary action against the petitioner was initiated, suspended him from service and then issued a memo of charges. Explanation was also obtained and after personal hearing the petitioner was reinstated into service and punishment proposed, for which concurrence is obtained and orders passed.

7. Essentially, it is to be noticed that no disciplinary enquiry was carried out wherein the petitioner was first called upon to answer the charges and then evidence being laid on behalf of the management; wherein the delinquent employee, was given sufficient opportunity to peruse the documents relied on and cross examine the witnesses. After completion of the management evidence, it was also incumbent upon the enquiry officer, whether it be a person authorised by the disciplinary authority or the disciplinary authority itself, to proffer an opportunity for the delinquent employee to offer his defence with witnesses and documents and the procedure so having completed, it was also incumbent on the enquiry officer to submit a report to the disciplinary authority, which had to be supplied to the delinquent employee before findings are entered and punishment is proposed, as

has been laid down in **Managing Director, ECIL v. B. Karunakar - (1993) 4 SCC 727**. A hearing as to the objections of the petitioner against the report also would be a necessary requirement for full compliance of the principles of natural justice.

8. In the present case, none of the formalities were carried out by the disciplinary authority. The disciplinary authority itself could carry out the enquiry without authorising a third party, as has been done in this case. But the explanation having been called for by the Managing Director, the disciplinary authority, the delinquent was called upon for a personal hearing and then a punishment proposed, concurrence obtained, presumably from the Board and final orders passed. The enquiry report at Ext.P4 shows that the disciplinary authority listed out the charges, the explanation to each

of such charges and then the findings. The findings are on the basis of the registers and the statement made by the Junior Manager (QC) reporting the irregularities. Neither were any witnesses examined nor were the documents produced in the manner required in a disciplinary enquiry. The findings recorded were, at best, a subjective opinion of the Managing Director and in such circumstance the order at Ext.P4 cannot at all be sustained.

9. The counter affidavit of the respondent Corporation also does not speak of any proper enquiry having been conducted by taking evidence and affording adequate opportunity to the delinquent employee to put forward his defence.

10. The Managing Director, at Ext.P4, had imposed a punishment of barring of three increments with cumulative effect, which was confirmed

throughout. The Managing Director also ordered recovery of Rs.1,14,104/- from the petitioner's salary and on any outstanding remaining, at the time of retirement, from the DCRG. The petitioner, as was noticed above, filed an appeal before the Commissioner of Civil Supplies as per Ext.P5. The Commissioner of Civil Supplies, by Ext.P6, concurred with the findings of the Managing Director and the recovery was reduced to Rs.57,697.93. The punishment of barring of three increments with cumulative effect was confirmed by Ext.P6 by the Commissioner and in Ext.P8 by the Government. The Government too, at Ext.P8, reduced the recovery to a further amount of Rs.31,262.93.

11. The enquiry proceedings having been found to be totally vitiated for reason of absolute violation of principles of natural justice, Ext.P4 order would stand set aside, so also would Exts.P6 and P8 orders. The

petitioner, as is indicated from the records (Ext.P9 - Gratuity Payment Order by the Office of the Accountant General (A&E), Kerala), has already retired. It is trite that if a disciplinary enquiry is set aside on the ground of procedural irregularity, the employer be given an opportunity to continue the enquiry from the stage at which it occurred. Herein, there is no question of such opportunity being given since the petitioner employee has already retired from the services of the Corporation. Further, the incidents which led to the disciplinary enquiry itself is prior to 1996 and there would be no purpose served in now remanding the matter to the employer.

12. In such circumstance, the orders of the disciplinary authority having been set aside, the petitioner's increments would be restored and any recovery made also would be paid back to the

petitioner. The pay and allowance shall be computed by restoring the increments at the proper time and the arrears due shall be paid within a period of four months from the date of receipt of the certified copy of this judgment. The DCRG and other retirement benefits, including pension, if eligible, shall be revised and arrears on that count shall also be paid within the time afore mentioned.

The writ petition would stand allowed, setting aside Exts.P4, P6 and P8. The Registry shall send a copy of the judgment to the petitioner and the 1st respondent Corporation, free of cost.

Sd/-
K.VINOD CHANDRAN,
JUDGE