

(2001) 03 KL CK 0047
In the High Court Of Kerala
Case No : O.P. No. 7357 of 2001

Abdul Gafoor

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Citation : (2001) 2 KLJ 31

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Philip Antony Chacko, for the Appellant; P.V. Asha (Sr. Govt. Pleader), for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor

1. The petitioner has approached this court with this writ petition challenging Ext. P8 order whereby he was placed under suspension. He submits that Ext. P8 order has been passed without application of mind. In order to exercise the power conferred on Government as per Rule 10 of the Kerala Civil Services (Classification, Control & Appeal) Rules to suspend an official, application of mind to the facts of the case is an essential requirement. Suspension of an official is not a matter to be dealt with lightly. It is also not automatic as and when there is allegation of any misconduct. The authority conferred with the power to place an official under suspension, has to apply his mind to the facts and circumstances of the case. Ext. P8 does not reveal any such application of mind. The petitioner attempts to reinforce his submission relying on the decision reported in Thomas v. State of Kerala (1994 (2) KLT 162). Another contention of the petitioner is that merely because there is an allegation, an official cannot be placed under suspension. Even though suspension is not a punishment, it will certainly visit, especially a senior officer like the petitioner, with adverse consequences as he will be viewed by the public, after having placed under suspension, that he is a culprit. In such circumstances, it is necessary that for placing an official under

suspension pending disciplinary action, the misconduct to be proceeded against shall be a grave misconduct. In other words, the nature of misconduct alleged or suspected is an important criterion, while passing an order of suspension. In this case the petitioner has not even committed any misconduct at all. He has not ordered restoration of forest land to the power of attorney holder of the applicants made mention of in Ext. P8. On the other hand, when it was noticed that the Range Officer had restored an area in excess of the eligibility of the applicants concerned, the petitioner attempted to recover the land to Government possession. Therefore, there was absolutely no misconduct to be attributed against the petitioner. Therefore, while passing the impugned suspension order, Government did not take into account the gravity of the situation or the nature of the misconduct. This contention is sought to be reinforced relying on the decision of this court reported in Mathew v. State of Kerala (2000 (1) KLT 245). It is further contended relying on the decision reported in Muhammed v. State of Kerala (1997 (2) KLT 394) that the factual matrix concerning the necessity of a delinquent to be placed under suspension shall be elaborately considered by the Government. The Government cannot suddenly come to the scene and place an official under suspension without examining the issue. The petitioner further, relying on a very recent decision of the Supreme Court reported in K. Sukhendar Reddy Vs. State of Andhra Pradesh and Another, , contends that before placing an official under suspension, the report of the investigation ought to have been obtained. He further contends that he should have been afforded an opportunity. Thus, there is flagrant violation of the principles of natural justice in so far as the issuance of the impugned order is concerned. The petitioner seeks to draw support from the decision reported in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . It is in the light of these contentions that the legality or otherwise of Ext.P8 order of suspension has to be considered.

2. It has to be borne in mind that the competence of Government to place an officer like the petitioner under suspension is not disputed in this case. It is also not a contention by the petitioner that Ext. P8 is tainted with malafides.

3. A reading of Ext. P8 shows that Government had placed the petitioner under suspension based on a report of the Chief Conservator of Forests. Ext. P8 further shows that there was a preliminary enquiry into the alleged serious lapses on the part of the petitioner in restoring forest land to the power of attorney holder of the applicants in O.A. Nos. 119/95 and 121/95 in excess of their eligibility and there was an illegal handing over of 6.946 acres of vested forest. After examining the said report in detail and finding that a prima facie case has been revealed against the petitioner warranting initiation of disciplinary action, he was placed under suspension. In such situation, it cannot be taken that the dictum laid down by this court in the decision reported in Thomas v. State of Kerala, 199.4 (2) KLT 162 is attracted. There is thus consideration of the materials and application of the mind while examining the materials disclosed in the report.

4. Handing over of Government forest land in excess of the eligibility and contrary to the finding by the statutory tribunal which had been confirmed by this court in a statutory appeal, is certainly a grave misconduct alleged against the petitioner. The nature of such misconduct also is not so light as contended by the petitioner. Handing over of property from the hands of Government to the extent of more than 6 acres into private hands is a grave allegation and the nature of the misconduct involved is also very grave. In such circumstances, it cannot be stated that suspension order has been passed without considering the gravity of the allegations raised against the petitioner or the nature of the misconduct attributed against the petitioner. The consideration of these aspects in Ext.P8 order is sufficient enough to indicate that the Government had elaborately considered the details as required to pass a suspension order in terms of Rule 10 of the Kerala Civil Services (Classification, Control & Appeal) Rules. Therefore, the decision reported in *Muhammed v. State of Kerala*, 1997 (2) KLT 394 or that in *Mathew v. State of Kerala* 2000 (1) KLT 245 cited by the petitioner has no relevance at all to the fact frame of the case.

5. The decision of the Supreme Court in *K. Sukhendar Reddy Vs. State of Andhra Pradesh and Another*, also has no application to the factual aspect of this case, because that was on suspension of an official against whom a criminal investigation was pending. Actually there was no misconduct alleged against the incumbent therein. On the other hand, the factual aspects detailed above is conclusive enough to show that there is an allegation of misconduct so far as the petitioner is concerned and it is not a case of any criminal investigation. There was a preliminary enquiry and that preliminary enquiry report has been considered by the Government.

6. Suspension does not prejudice an official because it is now settled that suspension does not amount to a punishment. The lien of the officer is still continued in the service. He is only kept away from discharging duty pending disciplinary action. He will get ample opportunity to defend himself, during the course of the enquiry, to be conducted against him. It is only at that stage the principles of natural justice arise. An incumbent is not entitled to be heard, in terms of the statute governing the disciplinary action before placing one under suspension. So it cannot be stated that there is violation of the principles of natural justice. Rule 10 does not require that an incumbent shall be heard before the order of suspension is passed. Even then, in this case, as is revealed by Ext. P6 memo of the Conservator of Forests in conjunction with Ext. P7 submission made by the petitioner in reply thereto, it can be seen that the Conservator of Forests obtained the remarks of the petitioner. It is after that the letter referred to in Ext.P8 was forwarded by the Chief Conservator of Forests to Government and it is based on that report, Ext. P8 order has been passed. Therefore, fairness had been shown to the petitioner before Ext. P8 order has been passed. Therefore, that contentions now raised against Ext. P8 do not hold good. In such circumstances, *Kraipak*'s case has no relevance at all.

7. It is contended by the petitioner that he had nothing to act in the matter of restoration of forest land to the power of attorney holder of the applicants in the O.As. mentioned above. The restoration was done by the Range Officer, his immediate subordinate. When the irregularity and discrepancy and the loss sustained to Government was noticed, it was the petitioner who had taken prompt action in getting the land resumed from the power of attorney holder of the applicants in the O.As. taken prompt action in getting the land resumed from the power of attorney holder of the applicants in the O.As. Therefore, the petitioner was acting in accordance with law to protect the interest of Government. This factual aspect also cannot be accepted, The files placed before me show that an application had been submitted by the power of attorney holder directly to the petitioner on 28-4-2000 wherein he claimed that "the total extent actually to be restored in both the cases altogether is 30 acres and the Department can verify and ensure the correctness of this extent on scrutiny of their records of actual possession taken". Thus, even the power of attorney holder who applied for restoration had appraised the petitioner while submitting the said application on 28-4-2000 that the matter has to be verified from the records. Instead, when the petitioner received that representation on 9-5-2000, he noted in the margin portion as follows:

It is not justice to delay the restoration further. The files may be given.

Later, the petitioner received a letter from his subordinate, the Range Officer, stating that the power of attorney holder had earlier claimed only 23 acres of land and that "subsequently he claimed the entire extent of 40 acres. On verification of the O.A. judgment and files the facts are found to be correct as only 30 acres are vested as per VSC item 90". Steps may be taken to restore 30 acres of land....." This is the letter by the Forest Range Officer.

The petitioner's contention is that the Forest Range Officer had restored the land in excess of the eligibility. But this letter from the Range Officer addressed to the petitioner indicates that the Range Officer has asked the petitioner to take steps for restoration of 30 acres. It is based on these, the petitioner had addressed the Superintendent of Survey as per Ext. P21 dated 5-6-2000 noting that the applicants in the O.A. "had applied for restoration of 40 acres of land as per the judgment" (emphasis applied). Thus, it is clear that in spite of the power of attorney holder drawing attention of the petitioner to the judgment and other records to ascertain his real entitlement, he had not gone through the records. He himself was of the view that as per the judgment 40 acres had to be restored. Thus, if the Government suspects in such a situation that the petitioner had misconducted while restoring 40 acres of land to the power of attorney holder, the petitioner cannot say that he had no role in the matter. Of course, he had taken steps to resume the excess land from the power of attorney holder of the applicants in the O.A. That was far later than when the cat had come out of the bag. Thus, the contention of the petitioner that he had no role in the matter, for the time being, cannot be believed. That is a matter to be gone at length while

disciplinary action is to be initiated against the petitioner.

89. The disciplinary or enquiry authority shall not take anything contained in this judgment as basis for finding to be entered into in the disciplinary action. The findings herein are exclusively to examine the challenge against the suspension order. Ext. P8 discloses that the suspension is pending disciplinary action. That is perfectly competent so far as the Government is concerned based on the power conferred on the Government under Rule 10 of the Kerala Civil Services (Classification, Control & Appeal) Rules. The action contemplated against the petitioner shall be expedited.

The original petition fails and is dismissed.