

(2001) 03 KL CK 0079
In the High Court Of Kerala
Case No : W.A. No. 1350 of 1999

Appukuttan Piilai	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 304

Citation : (2001) 2 KLJ 112

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : G. Janardhana Kurup, for the Appellant; C.K. Pavithran (Government Pleader), for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—Appellant approached this court challenging Ext.P5 order dated 28-4-1993 to the extent of denying him pay and allowances for the period from 26-2-1984 to 30-11-1988 when he was out of service. Short facts which are necessary for disposal of this case are as follows: Petitioner was working as provisional roller driver in Public Works Department. He was appointed as provisional roller driver by the said department on 3-3-1982. His appointment was subject to the condition that the service would be terminated when regular P.S.C. hands report for duty and that the said appointment would not confer on him any right other than the right for emoluments pertaining to the post. While working as provisional roller driver he was arrested on 26-2-1984 in connection with a criminal case which was tried as Sessions Case No. 157 of 1984 before the Sessions Court, Trivandrum. Appellant was convicted under Sec. 304 Part I I.P.C. and sentenced to undergo rigorous imprisonment for six years. Being a provisional employee his service was terminated with effect from 26-2-1984 by me Assistant Executive Engineer, N.H. Sub Division, Thiruvananthapuram. His conviction and sentence were however, set aside by the High Court in Criminal Appeal No. 130 of 1985 on 3-3-1987 accepting his plea of private defence.

2. Appellant then submitted a representation before the Government to restate him in service as roller driver in the Public Works Department. The question of regularisation of 26 roller drivers in the Public Works Department was considered by the government at that time. Government then passed G.O.Rt 1112/87/PW&T dated 24-6-1987 ordering regularisation of 26 roller drivers with effect from the date of their joining duty subject to the condition that their suitability for recruitment would be decided by the Kerala Public Service Commission and their appointments would be regularised if they were found suitable for appointment. The request made by the petitioner for the reinstatement was also considered by the Government and the Government passed Order GO.Rt. No. 17. V88/PW&TD dated 10-11-1988 which reads as follows:

In the G.O. read as 2nd paper above (24-6-87), orders were issued for the regularisation of the provisional service of 26 roller drivers in the public works department, subject to their being found suitable for appointment after a suitability test to be conducted by the Public Service Commission, later Sri. Appukuttan Pillai was one among those provisional" roller drivers, whose services were originally proposed for regularisation. His provisional service as roller driver would have been regularised along with the other persons, but for his involvement in the above murder case. Government have examined the matter in detail. The petitioner is now overaged and the chances of his getting another appointment are remote. In the circumstances, government viewed his case with sympathy and order that Sri. K. Appukuttan Pillai, be reinstated in service as provisional roller driver in the Public Works Department with immediate effect, the Chief Engineer (General, Building & Local Works) will issue orders accommodating him suitably.

On the basis of the above mentioned order the petitioner rejoined duty on 1-2-1988.

3. Government subsequently passed an order dated 9-12-1988 referring the case of the petitioner also to the Public Service Commission for conducting suitability test along with other 26 persons. Public Service Commission later informed the Government that all the 25 candidates called for the practical test were found suitable and recommended for regularisation in the post of roller driver in the Public Works Department. Government therefore passed an order G.O.MS.52/91/PW&T dated 6-7-1991 regularising service of the petitioner also along with others as per the provisions contained in rule 18(a) part II KS & SSR with effect from 1-10-1980.

4. Petitioner subsequently retired from service in October, 1992. Petitioner had submitted a representation on 15-3-89 for regularising the break in service for the period from 26-2-1984 to 30-11-1998 when he was out of service due to the pendency of the criminal case. The said request was considered by the Government and Government passed an order dated 28-4-1993 stating as follows:

Sri. Appukuttan Pillai is reported to have retired from service during October, 1992 and the Chief Engineer has requested for orders regularising the break period in question. Government have examined the matter in detail and are pleased to order that the break period from 26-2-1984 to 30-11-1988 during which Sri. K. Appukuttan Pillai, roller driver (Retd.) was out of service be treated as duty for all purposes of pensionary benefits except for pay and allowances.

5. Appellant then submitted a representation dated 4-7-1993 requesting to grant him pay and allowances for the period from 26-2-1984 to 30-11-1988 on the ground that he was found not guilty and acquitted honourably by the High Court. Since no action has been taken by the Government petitioner preferred this writ petition. Learned single Judge did not grant the relief prayed for and dismissed the writ petition. Aggrieved by the same this appeal has been preferred. When the matter came up for hearing we heard counsel for the appellant Sri. G. Janardhana Kurup as well as the learned Government Pleader Sri. C. K. Pavithran.

6. Counsel for the appellant submitted that since petitioner was acquitted by the High Court he is entitled to get full pay and allowances for the period he was kept out of service. Counsel submitted since he was honourably acquitted of the offence alleged against him as per Rule 57 Part I K.S.R. he is entitled to get full amount for the period he was kept out of employment. Learned Government Pleader submitted that Government has got discretion to deny pay and allowances since petitioner had not worked during the said period. According to him, the power to be exercised under Rule 57 is discretionary depending upon the facts of each case. Further when he v, us out of service he was only a provisional employee. He was regularised in service only subsequently after he was reinstated. Provisional employee, according to the counsel, has no legal right to claim salary and allowances during [he period he was out of service.

7. In order to examine the rival contentions it is necessary to examine the scope of Rules 56 and 57 in Part I which appears in Chap.VII of me Kerala Service Rules. Chap.VII deals with dismissal, removal and suspension and the pay and allowances to be paid to an employee during the said period. Rule 56(1) envisages passing of a specific order how the period of absence is to be reckoned. The said provision generally deals with cases of dismissal, removal and compulsory retirement as a result of departmental proceedings. Rule 57 deals with an office who is detained in custody whether on a criminal charge or otherwise. In this connection it is profitable to refer to Rule 56(1) which is extracted below:

56(1) When an officer who has been dismissed, removed or compulsorily retired including an officer who has been compulsorily retired under Rule 60A. is reinstated as a result of appeal or review or would have been so re instate, but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the officer for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be,

(b) whether or not the said period shall be treated as a period spent on duty and

(c) in the case of an officer who was compulsorily retired under Rule 60A and subsequently reinstated for the recovery of the relevant benefits if any already paid to him.

8. Scope of Rules 56 and 57 Part I K.S.R. came up for consideration before the Apex Court in *Ponnamma v. State of Kerala*, (1997) 9 SCC 36.

In that case the petitioner therein and her husband were charge sheeted for an offence under Sec. 302 and also Sec. 201 IPC. While the husband of the petitioner was convicted, she was acquitted of the offences getting her the benefit of doubt. Consequently, she was reinstated in service, but backwages were denied. After referring to the above mentioned provisions, the apex court held as follows:

Where an officer has been kept under suspension, on account of the pendency of the charges/detention for 48 hours and continued to remain under suspension pending the trial of the criminal charge, statutorily he/she is disabled to perform the duties of the post. On reinstatement under R.56, the competent authority shall have a duty to consider whether, on reinstatement, suspended officer would be entitled to the payment of full pay etc. for the period of his suspension. The mandate of R.56 is that the competent authority should consider the case in accordance with the rule and pass the order. The nature of the order is discretionary depending upon the facts in the case. It is seen that on account of the involvement of the petitioner, in a criminal charge by statutory operation, she was under suspension till she was acquitted. On acquittal, the departmental enquiry was conducted as to the nature of the order to be made under Rule 56. Accordingly the authority in its discretion, found that the payment of the salary during the period of suspension except suspension allowance already paid, could not be granted. It being in accordance with the Rules, we do not think that the High Court has committed any error warranting interference."

9. The scope of Rule 57 of Part I K.S.R. also came up for consideration before a learned single Judge of this court in *Mohammed Easa Sahib v. D.I.G. of Police*, 1990 (2) KLT 462. In that case petitioner was accused in Crime No. 94/80 of Aranmula Police Station. The Sessions Court acquitted him giving the benefit of doubt. During the pendency of the criminal case he was out of service from 18-8-1980 to 25-8-1981. The said period was treated as on duty only for the limited purpose of pension. Petitioner took the stand that since he was acquitted of blame he is entitled to get full pay and allowances. After survey of various decisions of different High Courts learned Judge examined the scope of the order of the acquittal and found no infirmity in the decision of the authority in denying the pay and allowances on the plea that he was not acquitted of blame.

10. We are of the view when an officer who is detained in custody whether on a criminal charge or otherwise and subsequently reinstated in service on acquittal, his case has to be considered in the light of Rules 55, 56 and 57 of Part I K.S.R. As is evident from Rule 57 the payment of subsistence allowance and other allowance during the period he was not in service would be granted in accordance with Rule 55 until he is reinstated in service. A person who has been terminated from service on the basis of a criminal charge and on acquittal his case has to be considered in the light of Rule 56 Part I K.S.R. On acquittal a specific order has to be passed by the authorities regarding the pay and allowances to be paid to the officer. Rule 57 also says an adjustment of pay and allowances for the period he was kept out of service thereafter be made according to the circumstances of the case. In this case it is relevant to refer to the relevant rule which is extracted below.

57. An officer who is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, or is undergoing imprisonment, shall be deemed to be under suspension with effect from the date of commencement of the detention or imprisonment, as the case may be, and shall not be allowed to draw any pay and allowances during such period of suspension other than any subsistence allowance and other allowances that may be granted in accordance with rule 55 until he is reinstated in service. An adjustment of his pay and allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame of (if the proceedings taken against him were for his arrest for debt) its being provided that the officer's liability arose from circumstances beyond his control.

Rule 57 says that an officer who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours, or is undergoing imprisonment shall be deemed to be under suspension with effect from the date of commencement of the detention or imprisonment, as the case may be, and shall not be allowed to draw any pay and allowances during such period of suspension other than any subsistence allowance and other allowances that may be granted in accordance with Rule 55 until he is reinstated in service.

11. We notice in this case because of the petitioner's involvement in criminal case his service was terminated with effect from 26-2-1984 and not actually suspended from service. Since his service was terminated a specific order under Rule 56 has to be passed by the authorities with regard to the pay and allowances for the period he was kept out of service. Rule 57 says that adjustment of his pay and allowance for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame. The judgment by which he was acquitted does not say that he was acquitted of blame. We may extract the operative portion of the judgment for easy reference.

The circumstances established in the evidence in the case are sufficient to prove

in all probability that appellant had the apprehension of danger to his life before he attacked. He was, therefore, fully justified in exercising the right of private defence. The conviction recorded against the appellant is to be set aside.

Judgment shows that the petitioner was acquitted accepting his plea right of private defence. We have to examine the question whether acquittal on the basis of a plea of private defence would amount to an acquittal of blame. The expression used in Rule 57 is "acquitted of blame" and not mere "acquittal". Rule making authority has intentionally used the expression "acquitted of blame".

12. The Kerala Service Rules are intended to apply to a set of Government Officers and by those who adopt the K.S.R. Rule making authority wanted their decision on the question of acquitted of blame be the basis for the claim for pay and allowances for the period out of service on involvement in a criminal case. Under the relevant provision of the Indian Penal Code he might have got an acquittal on the charges on the plea of private defence. All the same the authorities exercising powers under the K.S.R. has to decide whether the officer has been "acquitted of blame".

13. We are of the view in a case of this nature, considerable amount of discretion is vested in the authorities as held by the Apex Court in Ponnammamma's case. The authorities have to examine the circumstances of each case as is provided in rule 57 in spite of the fact that an officer is acquitted by the criminal court. We may notice this is a case where an officer is claiming salary and allowances for the period he had not worked while he was only a provisional employee. We find in this case there is no illegality in the exercise of the discretion by the authorities denying pay and allowances for the period petitioner had not worked. We also notice during the period he was out of service he was only a provisional employee. Though subsequently he was regularised with retrospective effect.

Under such circumstances we find no reason to grant the relief prayed for by the appellant. Appeal therefore lacks merits and the same is dismissed.