
(1967) 02 KL CK 0013
In the High Court Of Kerala

Bhaskaran Pillai (N.)

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-02-1967

Acts Referred:

Fundamental Rules — Rule 54(2)

Citation : (1969) 1 LLJ 642

Hon'ble Judges : V.P. Gopalan Nambiar, J

Bench : Single Bench

Judgement

V.P. Gopalan Nambiar, J.—The petitioners in these writ petitions were teachers in Government schools, who were placed under suspension by orders dated 29 March 1955, pending disposal of Calendar Case No. 16 of 1955 on the file of the First-class Magistrate's Court, Alwaye. The two petitioners herein were the accused in the said case. On 28 January 1867, the case ended in acquittal of the accused by giving them the benefit of the doubt. They applied for reinstatement, which was ordered by proceedings of the Director of Public Instruction dated 8 March 1960, a copy of which has been produced as Ex. P. 1 in Original Petition No. 2254 of 1965. By the said proceedings, it was ordered that as the petitioner (in Original Petition No. 2254 of 1965) had not been honourably acquitted, he may be given subsistence allowance from the date of his suspension till the date of his rejoining at certain rates shown in the order. A similar order was passed in the case of the petitioner in Original Petition No. 2509 of 1965. The petitioners applied to the Director of Public Instruction for payment of full salary and allowances from the date of suspension to the date of rejoining after reinstatement. Not getting any response, they applied to the Government. Their requests were declined by Government proceedings filed as Ex. P. 3 in Original Petition No. 2554 of 1965 and as Ex P. 4 in Original Petition No. 2509 of 1965. The order is one, common to both the petitioners. It is this order that is sought to be quashed in these original petitions.

2. The withholding of entire salary and allowances and the disbursement of

subsistence allowance at rates ordered by the Director of Public Instruction was justified under the orders impugned by reference to Sub-clause (ii) of Clause (6) of Article 132 of the Travancore Service Regulations.

3. Article 132(b)(ii) of the Travancore Service Regulations reads as follows:

132. (b) * * *

4. If the suspension of an officer as a penalty for misconduct is upon reconsideration or appeal held to have been unjustifiable or not wholly justifiable, or if an officer dismissed from office or suspended pending enquiry into his alleged misconduct is, after enquiry, or upon reconsideration or appeal, reinstated, then the revising or appellate authority may grant to the officer, for the period of his absence from duty:

(i) If the officer is honourably acquitted an allowance equal to the full salary to which he would have been entitled if he had continued to hold the appointment from which he was dismissed ; and also by an order to be separately recorded any conveyance, local or other allowance which he may have been in receipt of prior to his suspension or dismissal.

(ii) Otherwise, an allowance equal to such proportion of the full salary as aforesaid, as the revising or appellate authority may deem expedient.

5. According to the petitioner's counsel the concept of an "honourable acquittal" is unknown to law. Besides, the provisions of Rule 132(6) of the Travancore Service Regulations, properly understood, refer only to a reinstatement after a departmental enquiry and not one following the discharge or acquittal in a criminal case. Support for both these propositions is sought from the decision in *Union of India v. Jayaram Damodhar Timiri* 1960-II L.L.J. 212, where, construing the language of Rule 193(6) of the Civil Service Regulations, almost similarly worded, the learned Judges of the Madras High Court observed that they were unable to understand the legal significance of expressions like " honourably acquitted " and that certainly the Code of Criminal Procedure did not support the conception. They further observed that Article 193(b) was intended to apply only to cases of departmental enquiries into misconduct. It is to be observed that the Madras case was by way of appeal from a regular suit, filed for the recovery of moneys due from the Union of India. The scope for examining the ambit and content of Article 193(b) was definitely much wider than what is available in these proceedings.

6. In *Sipahi Lal Vs. Section Officer, G.R.P.E. Section and Others*, , the scope of Rule 54(2) of the Fundamental rules came up for consideration In writ proceedings. The said rule gave the competent authority a power to decide whether a Government servant reinstated after having been previously dismissed, removed or suspended had been fully exonerated, or in case of suspension, whether it was wholly unjustified. If the findings on this question were in favour of the Government servant, he was entitled to the full pay which

he would have received had he not been dismissed, removed or suspended. In all other cases, the competent authority had full discretion what amount of pay and allowance the official was to receive after reinstatement. Construing the rule, it was observed that the competent authority, after perusal of the judgment of the High Court acquitting the writ petitioner, had held that he had not been fully exonerated and that no reason had been made out to hold that the order of the competent authority was wrong. It was further observed that the conclusion of the authority that the order of acquittal does not have the effect of fully exonerating the writ petitioner, as it merely gave him the benefit of the doubt, was justified. A similar view would appear to have been taken (as seen from the Digest) in . The report is sta 1963 MPLJ 116ted to be not available. The learned Advocate-General relied on these cases.

7. The question before me is not so much whether the conclusion of the Government in the impugned orders is right, as whether it can be said to disclose an error of law apparent on the face of the record. Rule 132(b) of the Travancore Service Regulations undoubtedly does refer to an "honourable acquittal" on a criminal charge. It may be that such a conception is unknown to the legal parlance of the Criminal Procedure Code. It seems to me that the view taken by the Government in the face of this provision cannot be said to be patently wrong or illegal merely because they did not ransack the provisions of the Criminal Procedure Code and find out if the concept of "honourable acquittal" was unknown to the language of the Code.

8. Besides, the Travancore Service Regulations do not have any statutory force and violation or contravention of the same can hardly found a claim under Article 226. The petitioner's remedy, if any, is certainly not in proceedings under Article 226.

9. I dismiss these writ petitions but make no order as to costs.