

(2009) 01 KL CK 0025

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19779 of 2007 (D)

Gangadharan C.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Kerala Service Rules, 1958 — Rule 56, 56B, 57, 58

Citation : (2009) 1 ILR (Ker) 554 : (2009) 1 KLJ 600 : (2009) 1 KLT 713 :
(2009) 6 SLR 88

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.M. Pareeth, for the Appellant; P. Nandakumar, G.P., for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The sole issue raised in this writ petition is regarding the entitlement of the petitioner to get his pay and allowances for the period of suspension after treating the period as duty for all purposes. By the impugned order, Ext. P8, the same has been limited to subsistence allowance already drawn by him. The petitioner's claim is based on the fact that even though a criminal investigation was launched against him consequent on which, he was suspended, that was dropped as there was no material against him. After reinstatement in service, a departmental enquiry was ordered in which also he was fully exonerated. The question is whether the same has to be considered under Rule 56B of Part I K.S.R. or under Rule 57 of the same Part.

2. The necessary facts for disposal of the writ petition are the following: The petitioner has retired on superannuation as Deputy Tahsildar on 30-6-2006. The action culminating in his suspension arose when he was working as a Village Officer, Morazha Village. Along with a Villageman, he was arrayed as an accused in a Vigilance Case No. VC 1/03/KNR. The allegation was demand of bribe from a person for issuing possession certificate and site plan. He was also arrested along

with the Villageman and was remanded to judicial custody. The arrest was on 17-1-2003. Ext. P1 is the order of suspension dated 20-1 -2003 wherein he was placed under suspension with effect from 17-1 -2003.

3. Ext. P2 is the report of the Director of Vigilance and Anti-corruption Bureau, submitted to the Government after the investigation. This is dated 20-11 -2003. It was reported that there is no evidence to connect A1 except the oral statement of the complainant. Accordingly, it is decided to prosecute A2 only and it is also recommended to take departmental action against Shri. C. Gangadhara, A1, who is the petitioner herein. He was reinstated in service on 22-1-2004.

4. Ext. P3 is the memo of charges issued on 24-5-2005 and he submitted Ext. P4 written statement. Ext. P5 is the enquiry report which revealed that there were no lapses on his part. It was conclusively found in the report that money was received by the Villageman and ultimately it was recorded in the following terms: "In a nutshell, no serious lapse, negligence or undue delay is seen established on the part of Shri. C. Gangadharan, formerly Village Officer of Morazha in issuing possession certificate and the site plan".

5. The disciplinary action was finalised as per Ext. P6, by the Government. After perusing the enquiry report it was found that "there is no concrete evidence against the accused Shri. Gangadharan, that he had demanded and accepted bribe from the applicant for possession certificate. Moreover, the charges against him are not proved in the enquiry. In the above circumstances, the Government takes a lenient view in the matter and drop further action against Shri. C. Gangadharan, formerly Village Officer, Morazha Village". The disciplinary action against him was accordingly finalised.

6. By Ext. P7 show cause notice Government proposed to treat the period of suspension as duty for all purposes except salary to limit the pay and allowances to the subsistence allowance already received. Ext. P8 is the final order passed stating that he was exonerated from the charge after the Government taking a very lenient view and therefore the suspension is justified.

7. In the counter affidavit, it is averred that there was no concrete evidence to connect the petitioner with the trap case. Hence, the action against him was dropped. Even then, it cannot be said that he was fully exonerated from the charges. Hence, it cannot be said that the suspension is wholly unjustifiable. Again, in para 6 it is stated that the disciplinary action initiated against him was dropped, as there was no concrete evidence against him and in this case, the suspension was justified and hence the period of suspension was treated as duty for all purposes except for pay and allowances.

8. Learned Counsel for the petitioner submitted that the said approach made by the Government in Ext. P8 is not correct. It is submitted that herein, the suspension was ordered when a criminal case was registered. But it was not charge-sheeted at all, finding that there is no evidence against him. After the disciplinary enquiry was ordered, he was not suspended in continuation of the

disciplinary enquiry. Before the memo of charges was issued, he was reinstated. It is therefore submitted that it is not a case where the suspension was ordered again pending the disciplinary enquiry. As the criminal action was dropped, Rule 57 Part I K.S.R. will apply. Since no criminal action was proposed against him after the initial investigation, his case is better than a case where a person is seeking for the benefits on the ground that he has been acquitted of blame. Here, the charge was never laid against him and there was no occasion to be tried also.

9. Learned Govt. Pleader, relying upon the averments contained in the counter affidavit, submitted that the finalisation of the disciplinary proceedings is after the Government took a lenient view. There is absolute discretion for the Government under Rule 56B of Parti. K.S.R.

10. The legal position as regards the exercise of power by the Government in such circumstances, is well settled by various decisions of this Court. Reference is made to the following decisions:

Messiah Das v. The State of Kerala and Ors. ILR 1977 Ker. 561, Ramachandran Pillai v. K.S.E.B. 1980 KLT 608 K. Vikraman Pillai Vs. The State of Kerala and The Director, Directorate of State Water Transport Department, , Santhosh Kumar S. v. State of Kerala and Ors. ILR 2007 Ker. 101; and P.A. Mohandas Nair Vs. State of Kerala, The Additional Secretary and The Transport Commissioner, .

In this case is evident that the suspension was based on his involvement in a criminal case. He was not prosecuted after the case was registered, since there was no evidence against him. Thus, he was reinstated. During departmental proceedings, he was not under suspension. Under Rule 57 of Part I K.S.R., "an officer who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, or in 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...until he is reinstated in service". The second limb is important. It is stated that "an adjustment of his pay and allowances for such periods should therefore 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 expression "acquitted of blame" has been interpreted in various decisions of this Court. In Santhosh Kumar S. v. State of Kerala ILR 2007 Ker. 101, the above concept was examined. Reference was made to an earlier decision of this Court in Mohammed Easa Sahib v. D.I.G. of Police 1990 (2) KLT 462 wherein it was held that the expression "acquitted of blame" must mean something more than a mere acquittal and that it should be an acquittal that leaves no doubt or trace about the guilt or culpability of the accused officer. What is intended is absence of any element of blame attaching to the officer, despite the prosecution". Ultimately, it was held in Santhosh kumar's case (supra) that "the enquiry must be whether the finding of the criminal court amounts to mere acquittal as contemplated by the provisions

of the Code of Criminal Procedure or is tantamount to exonerating the petitioner the blame as contemplated in Rule 57 of Part I K.S.R.". Para 3 of the above judgment shows that this Court was considering a case where the person concerned was acquitted after the prosecution had failed to establish that the accused was guilty of the offences alleged against him. Ultimately a declaration was granted that the petitioner in that case was entitled to full pay and allowances after finding that he was acquitted of blame.

11. The question is whether the view taken in Ext. P8 is therefore correct. The justification sought for in Ext. P8, which is supported by the counter affidavit, is that in the departmental enquiry he was exonerated after the Government took a lenient view and therefore the suspension is justified. For one thing, as noted above, during the pendency of the departmental proceedings, he was not suspended. Even prior to the initiation of the said proceedings, he was reinstated. Therefore, it is not a case where Rule 56B directly applies. The effect of Ext. P2 report has not been considered in Ext. P8 at all. The stand taken in the counter affidavit that he was not fully exonerated from the charges, cannot be supported, since in the order Ext. P6, the Government has clearly found that there is no concrete evidence against the petitioner that he had demanded and accepted any bribe from the applicant for possession certificate and that the charges against him are not proved. It is true that in the operative portion it is stated that the action is dropped by taking a lenient view. But in the light of the earlier findings, as referred to above, there was no other alternative for the Government but to drop the disciplinary enquiry in the absence of any proof in the enquiry of the charges against him. That means, the effect Of Ext.P6 is that he has been fully exonerated from the charge. Hence, the stand taken in the counter affidavit that he has not been fully exonerated from the charges and therefore it cannot be said that the suspension is wholly unjustifiable, is not correct.

12. The question raised in this case is almost identical to the one considered in Ramachandran pillai's case 1980 KLT 608. There also the suspension was in connection with a crime which was registered under the Prevention Corruption Act. After the case ended in acquittal, reinstatement was ordered. While considering the question whether it is Rule 57 or Rule 58 that will apply to the facts of the case, it was observed in para 12 in the following terms:

The re-instatement was for no other reason than the case having ended in acquittal. There is, therefore, no other circumstances available for evaluating the degree of gravity of the situation which warrants the exercise of the discretion by the authority concerned. That possibility is the reason why a departure from the procedure contemplated in Rule 56 is seen to have been made under Rule 57 so far as the case of a person who is reinstate on acquittal of the case against him.

Thus, a parallel can be drawn with the situation that arises in this case, wherein the petitioner was reinstated after the further action in the criminal case was dropped and the suspension was ordered only in relation to the launching of the

prosecution and not because of the intimation of the departmental enquiry subsequent to Ext.P2.

13. Then the question is whether because of his arrest and of the consequential suspension, it could be said that the suspension was not wholly unjustifiable. Here, I may have to refer to Rule 57, as according to me, the principles contained in Rule 57 alone will apply in this case. Going by Ext.P2, it was reported by the Vigilance Director that there was nothing to connect A1 with the crime. Accordingly, no charge sheet was laid against him. Thus, it cannot be said that this will not come within the meaning of the term "acquitted of blame". As held by this Court in Santhosh kumar's case ILR 2007 (3) Ker. 101, when there is total absence of evidence against the accused and the prosecution has failed to establish that he was guilty of the offence alleged against him, it will come within the ambit of the expression "acquitted of blame" within the meaning of Rule 57 Part I K.S.R. There is no element of blame attached to the officer to prosecute him

14. In fact, in P.A. Mohandas Nair Vs. State of Kerala, The Additional Secretary and The Transport Commissioner, , the entire case law relating to Rule 56B and Rule 57 have been examined. After elaborately considering the various decisions, it was held in para 21 in the following terms:

Except in cases where the acquittal by the criminal court is an "honourable acquittal or cases where the Government servant is acquitted of blame" in all other cases, the competent authority is entitled to exercise its discretion and decide the manner in which the period during which the Government servant was kept out of duty should be treated and the quantum of the pay and allowances given to him subject, of course, to the condition that it shall not be lower than the subsistence allowance which he has already drawn.

This being the principle that is to be followed, the judgments of this Court, viz. K. Vikraman Pillai Vs. The State of Kerala and The Director, Directorate of State Water Transport Department, , Messiah Das's case ILR 1977 Ker. 561 and that of the Apex Court in Smt. K. Ponnamma Vs. State of Kerala and others, will not apply to the facts of this case going by the wording of Rule 57, full amount will be given in the case of the officer being acquitted of blame. Therefore, it is not a case where sub-rule of Rule 56B applies wherein the authority should consider whether the suspension was wholly unjustified while ordering reinstatement to see whether full pay and allowances have to be paid to him.

15. As noted already, going by Ext.P2, there was no evidence against him and hence it will come within the meaning of the expression "acquitted of blame". Going by the principles stated in Santhoshkumar's case ILR 2007 Ker. 101 and Mohammed Easa Sahib's case 1990 (2) KLT 462 there is no element of blame attached to the officer after the prosecution was launched. Regarding the culpability of the accused officer there is no trace or doubt and that is why the criminal case was not pursued against him. In that view of the matter, the stand

taken in the counter affidavit justifying the order Ext.P8, cannot reflect the correct legal position.

16. Therefore, Ext.P8 is quashed. It is declared that the petitioner is entitled to get his pay and allowances for the period of suspension undergone by him treating the said period as duty for all purposes. Appropriate orders will be passed within a period of six weeks from the date of receipt of a copy of this judgment and the pay and allowances excluding the subsistence allowance already drawn, between the period from 17-1-2003 to 21-1-2004 will be disbursed. Since the petitioner has already retired from service, the revision of retirement benefits consequent on the above, shall also be made, as enjoined by law.

17. The writ petition is allowed as above. No costs.