
(2014) 12 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 2186 of 2005 (I)

M. Kumaran

APPELLANT

Vs

The Director, National Institute of Technology

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 KL CK 0039

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Sivan Madathil, Advocate for the Appellant; K.P. Dandapani, Sr. Adv., E.S. Muhammed Kabir, ADD. CGSC, Thomas J. Anakkalunkal, CGC, N. Nagaresh, Assistant Solicitor General, Advocates Millu Dandapani and John Varghese, Assistant SG, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—Under challenge in this writ petition are Ext. P12 order by which the petitioner was removed from service of the first respondent by dismissal and Ext. P14 Appellate Order passed by the second respondent confirming Ext. P12.

2. While the petitioner was working as Junior Superintendent in the office attached to the National Institute of Technology, Calicut, he was placed under suspension alleging irregularities in accounting. The petitioner alleges that the day to day accounting made by the petitioner have been supervised, controlled and cross checked by the Senior Superintendent, the Financial Assistant and the Deputy Registrar. He alleges that suppressing the role played by the said official superiors, the first respondent found fault with the petitioner only and without conducting an enquiry, examining the witnesses and affording the petitioner an opportunity to cross examine them, a major penalty of removal of the petitioner from service by way of dismissal was imposed upon him in an unfair and illegal manner. He alleges that he had unblemished service of 21 years under the first respondent.

3. The respondents filed a statement contending as follows:

"The petitioner indulged in misappropriation and defalcation of sizeable amounts of the respondent's college fund and embezzlement of large sums from the personal claims of several serving and retired members of the staff of the respondents. Therefore, he was issued with Ext. P2 memo of charges. The petitioner submitted Ext. P4 explanation. As it was found unsatisfactory, he was suspended from service with immediate effect. Thereafter Ext. P6 charge memo was issued to him. He gave Ext. P9 reply. The petitioner himself has admitted the charges levelled against him and admitted his liability to refund the amount to the respondents by Annexure-R1. Subsequently, he refunded an amount of Rs. 1,62,097/- to the respondents. Therefore, the respondents did not resort to any criminal action or revenue recovery proceeding against the petitioner. In the light of the misappropriation committed by the petitioner, a confidential note dated 4.2.2003 was issued to the Deputy Registrar (Finance) who is the head of the Finance Department directing him to consider and order action, if any, to be taken against the supervisory staff on laxity and slackness in the supervision and day to day management of the affairs of the section. A copy of the confidential note issued to the Deputy Registrar (Finance) is produced as Annexure R1(a). Based on the report filed by the Deputy Registrar and explanations submitted, punishments were imposed on other two officers. The IFO and Financial Assistant who were found responsible for the slackness were also proceeded against. As the petitioner virtually admitted the charges and agreed to refund the amount, he was served with Ext. P10 proposing on him the punishment of dismissal from service and directing him to file objections. The petitioner filed Ext. P11 representation. As the same was unacceptable, he was dismissed from service without any retirement benefits including DCRG. The punishment was confirmed by the Chairman, Board of Governors and the second respondent after considering Ext. P13 appeal. The petitioner was given an opportunity of being heard also. The principles of natural justice have not been violated. As the petitioner had admitted his charges and no departmental enquiry was warranted against him. Hence, they prayed for a dismissal of the writ petition."

4. Arguments have been heard.

5. While the petitioner was working as Junior Superintendent under the first respondent, he was transferred to the Training and Placement Cell of the Institute as per Ext. P1 proceedings. He took charge in the transferred place with effect from 23.5.2002. In the place of the petitioner, one Hassan, an Upper Division Clerk was posted by transfer. The petitioner points out that in the order of transfer, nothing was mentioned about the enquiry contemplated.

6. In answer to the said submission, the learned counsel for the respondents would submit that at the time of transfer, the irregularities committed by the petitioner was not noted by the respondents and only subsequent to his transfer that the misappropriation and embezzlement of money was brought to light. Evidently, on 14.6.2002, the Principal of the first respondent (formerly, the first respondent institution was known as Regional and Engineering College, Calicut)

issued Ext. P2 memo alleging irregular handling of cash etc. and seeking explanation of the petitioner for the irregularities. He was granted 10 days time from the date of receipt of memo to give a detailed reply. The petitioner submitted Ext. P3 reply on 24.6.2002 wherein he sought further time of 15 days to submit his explanation. In response to Ext. P3, a further time of 15 days was granted. Accordingly, the petitioner submitted Ext. P4 detailed reply dated 10.7.2002. The petitioner alleges that without properly appreciating his reply, he was placed under suspension with effect from 12.7.2002 with immediate effect as per Ext. P5 order. Thereafter Ext. P6(a) memo of charges and Ext. P6(b) statement of allegations were issued to the petitioner. The petitioner, by Ext. P7, sought further time to submit a detailed explanation. The petitioner points out that in the meantime, by a communication dated 11.9.2002, he sought copies of documents cited in the memo of charges. In response to the request, the first respondent informed the petitioner that there is no provision in the rules to provide copies of documents cited in the memo of charges. This is admitted in the counter affidavit filed by the respondents. However, he was told that he could peruse those documents in the presence of an officer who was already mentioned in the memo of charges. Though it was stated that the petitioner could take extract of those documents, if he desires, it was stated that no copy of the document would be issued to him. Ext. P8 is the said letter. However, the first respondent granted 15 days more from 24.5.2012 to submit the written statement of defence. He submitted Ext. P9 statement of defence dated 8.10.2002. The petitioner alleges that the principal of the first respondent, out of sympathy, called the petitioner to his cabin whereupon the petitioner explained his innocence and detailed before him that the day to day accounts of the office were checked, scrutinized and countersigned by his official superiors after due verification of the entries made in the relevant registers and the entries in the register were made as instructed by his superiors, and he had only obeyed the direction of the superiors and the principal in turn promised that he would be able to help the petitioner by reinstating him into service, if he admitted the responsibilities by himself and reduced it in writing. The petitioner alleges that believing the promise that he would be reinstated in service in order to protect the job and interests of the family from escaping starvation, he pledged his sole residence and property appurtenant thereto, secured the amount and deposited the same as permitted by the first respondent. The petitioner alleges that contrary to the assurance and understanding, it so happened that the first respondent issued a communication on 28.1.2003 proposing the punishment on the petitioner of removal from service by way of dismissal and also stating that the petitioner would not be eligible for the retirement benefits including DCRG. Ext. P10 is the said communication. In response to this, the petitioner gave Ext. P11 reply. However, by Ext. P12 memo dated 17.12.2013, the first respondent imposed punishment of removal of the petitioner from service by way of dismissal and ordering that he was not eligible to get the retirement benefits including DCRG. Thereupon the petitioner submitted Ext. P13 memorandum of appeal before the Board of Governors which also could not evoke any response

as it was dismissed by Ext. P14 confirming Ext. P12 order.

7. The stand taken by the respondent is that the petitioner has admitted the charges levelled against him and therefore, an enquiry was not warranted. The so called assurance given by the first respondent was also denied. Ext. P3 is the first reply given by the petitioner wherein he has stated that he was only a link in the Account Section and the day to day affairs were supervised by his superiors and they have not pointed out any laches on his part. In Ext. P4 which is the detailed explanation he has stated that he has not misappropriated any amount and the irregularities pointed out in the memo might have occurred due to oversight. He further submitted that had there been any mistake on his part, while he was functioning as a cashier, a detailed enquiry has to be made and if the institution had suffered any loss on account of his laches, he would take the responsibility of paying back the amount. It was thereafter he was placed under suspension. In Ext. P9 explanation also, he has undertaken to make good the loss, if any, sustained to the institute on account of his laches and he has also undertaken that there would not be any laches on his part in future. In addition to Ext. P9, the petitioner had sent Annexure-R1 by which he had requested the first respondent to inform the exact amount of loss caused to the institution due to his laches, if any, so that he could remit the same within thirty days. Admittedly, the amount was remitted by the petitioner. However, ignoring the same, Ext. P10 memo proposing the punishment was issued. In Ext. P11 also, he re-iterated his plea of innocence and requested the respondents to reinstate him in service.

8. It is crucial to note that in none of the explanations submitted by the petitioner i.e. either in Ext. P9 or in Ext. R1, he has admitted that he has misappropriated or embezzled money of the first respondent. It is true that the petitioner has compensated the loss caused to the institution on account of his laches by depositing the amount. The same cannot be reckoned as an admission of the alleged charge as in the first explanation itself, the petitioner had requested for a detailed enquiry. Without resorting to a domestic enquiry, the respondents have straight away proposed the punishment of removal from service, disintitling him to claim DCRG and other allowances.

9. Annexure-R1(a) is the confidential note dated 4.2.2013 issued by the first respondent to the Deputy Registrar (Finance) directing him to consider and order action, if any, to be taken against the supervisory staff. In Paragraph-2 of the note, there is reference regarding the punishment imposed on the petitioner and the reason for the same. It reads as follows:

"Punishment is being imposed on Sri. M. Kumaran, Cashier mainly due to the reason that the money dealings in the Cash Section is the sole responsibility of the Cashier. No one other than the Cashier is responsible for the handling of the money. Hence, Sri. Kumaran as Cashier, deserves maximum punishment."

10. Evidently, the first respondent jumped into the conclusion that the petitioner

was responsible for the irregularities in the cash section and the loss on account of the same was for the reason that the petitioner was the cashier. This was without making a real probe into the issues. Loss may occur due to variety of reasons. It may be due to misappropriation, negligence, lack of professionalism, skill etc. which could be established only in a proper enquiry.

11. It is crucial to note that the other employees in the Account Section were given flee bite punishments and they were allowed to continue in service. It is also crucial to note that the first respondent has dropped criminal prosecution against the petitioner for the reason that he has deposited the money.

12. Any action on the part of the first respondent in not conducting an enquiry as per law to find out the persons responsible for the irregularities or the reason for the loss amounts to victimisation of the petitioner. If at all the petitioner has committed any irregularity, it does not warrant the major penalty of removal from service by way of dismissal as the petitioner had compensated the loss on account of his laches by depositing the money and respondents 1 and 2 has chosen to restrain themselves from not making any enquiry known to law on the irregularities alleged against the petitioner. Ext. P12 order of removal from service by way of dismissal imposed on the petitioner is bad in law as it was issued arbitrarily and illegally. This court cannot loose sight of the fact that the petitioner had an unblemished service of 21 years under the first respondent.

13. While passing Ext. P14 order, the second respondent did not evaluate the records to find out the real issue involved and therefore, it has to be held that the statutory duty cast on the second respondent was not exercised properly.

14. On a consideration of the entire materials now placed on record, this Court is of the definite view that Ext. P12 and Ext. P14 orders are to be interfered with.

In the result, this writ petition is allowed. Exts. P12 and P14 are hereby quashed. The first respondent is directed to conduct a denovo enquiry from the stage at which the petitioner has given Ext. P9 statement of defence. The enquiry shall be completed within a period of six months from the date of receipt of a copy of this judgment. The petitioner shall be supplied with all copies of the documents relied on by the first respondent. As Ext. P12 and Ext. P14 orders are quashed, the period from the date of Ext. P12 till the period of final orders to be pronounced after the enquiry shall be reckoned as period of suspension.

Needless to say that the petitioner shall be entitled to have subsistence allowance eligible as per rules during the said period. The subsistence allowance eligible as per rules till date shall be released to the petitioner within a period of one month from today.