

(1998) 11 KL CK 0053

In the High Court Of Kerala

Case No : O.P. No. 7288, W.A. No's. 231 and 376 of 1998

Muraleedharan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Constitution of India, 1950 — Article 309, 311, 311(2)
Penal Code, 1860 (IPC) — Section 324, 325, 335, 341, 409
Probation of Offenders Act, 1958 — Section 12, 4

Citation : (1998) 2 KLJ 902

Hon'ble Judges : K. Narayana Kurup, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : P.C. Sasidharan, for the Appellant; O.V. Radhakrishnan and Govt. Pleader (Alexander Thomas), for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, J.—By consent of all parties, both the Original Petition and the Writ Appeals were taken up for final disposal. Aggrieved by the order issued by the respondents in the Original Petition removing him from service solely for the reason that he was convicted in a criminal case, against which an appeal is pending and sentence suspended, the petitioner B. Muraleedharan Nair, preferred the above Original Petition. The petitioner is the appellant in both the Writ Appeals. The appeals are preferred against interim orders passed by the learned single Judge in O.P.16834 of 1997 filed by one Mr.K. Mohanan, who is the first respondent in both the Writ Appeals. While working as Sub Inspector of Police, Mannar Police Station, a private complaint was filed against the petitioner before the Judicial First Class Magistrate Court, Chengannur alleging offences punishable under Secs. 341, 324 and 325 of the Indian Penal Code. The case was numbered as CC 91 of 1992. The learned Magistrate found the petitioner guilty of the offence punishable under Sec.325 IPC, convicted and sentenced him to undergo imprisonment for a period of six months with a fine of Rs.20,000/-. Petitioner filed Criminal Appeal No.28 of 1997 before the Additional Sessions

Court. Mavelikkara and the said court suspended the sentence until further orders under Ext.P1. Based on the conviction imposed on the petitioner the Director General of Police, Trivandrum, by order dated 26-3-1997, dismissed the petitioner from service under Ext.P2. On the basis of Ext.P1, petitioner preferred a representation before the Director General of Police requesting him to reinstate the petitioner in service pending disposal of the appeal. By Ext.P3 order dated 29-3-1997, the Director General of Police reinstated the petitioner in service without prejudice to a further disciplinary action that may be taken against him subsequently. Pursuant to Ext.P3, petitioner was reinstated in service and was continuing as such.

2. One Mr.K.Mohanan, who was working as Scientific Assistant, was dismissed from service without conducting any enquiry on the mere fact that a conviction was imposed on him by a criminal court. He challenged his removal from service in O.P.16834 of 1997. A learned single Judge of this court, in C.M.P.29992 of 1997, passed an order on 20-10-1997 directing the Secretary to Vigilance Department to file a counter affidavit explaining the policy adopted by the government in the matter of allowing officers in service, against whom charges of corruption and embezzlement of government money are proved, on the mere ground that appeals are pending. An affidavit was filed as directed by this court. In the affidavit, a reference was made against the petitioner, Muraleedharan Nair. Petitioner in OP 16834 of 1997, K. Mohanan, quoted the name of the petitioner in the present Original Petition as an example in support of his case. Apprehending that action is likely to be taken against him based on the observation made by this court, Muraleedharan Nair filed a petition for impleading and sought a clarification and direction not to take any action against him. This court, by order dated 30-12-1997, as an interim measure, directed the respondents not to take action for a period of two weeks. The stay was later vacated and CMP 41270 of 1997 was dismissed. Aggrieved by the order of the learned single Judge, petitioner filed W.A.231 of 1998 and the said appeal is also posted before us. Petitioner also filed WA 376 of 1998 against the order in CMP 29992 of 1997 in OP 16834 of 1997 and the same is also pending and posted before us for consideration along with OP 7288 of 1998. Since both the Writ Appeals are directed against the interim orders passed by this court, we do not propose to deal with the appeals on merits and, therefore, we dismiss both the Writ Appeals subject to the decision in the main original petition.

3. On 27-3-1998, petitioner was issued with an order dated 18-1-1998 informing that he is removed from service, which is filed and marked as Ext.P5. It is stated in Ext.P5 that the petitioner is removed from service as he is convicted in CC 91 of 1992 dated 21-1-1997 of Judicial First Class Magistrate Court, Chengannur as per the provisions contained in R.64(2) of Manual of Disciplinary Proceedings. Thus, it is seen that the petitioner was removed from service solely for the reason that he was convicted in the criminal case. A reference is also seen made to the orders issued by this court. The order of removal of the petitioner from service is challenged in the Original Petition. It is submitted that the order of

removal is arbitrary, illegal and violative of all canons of law.

4. We have heard arguments of Mr.P.C.Sasidharan for the petitioner, Government Pleader Mr.Alexander Thomas for the State and Mr.O.V. Radhakrishnan for the Public Service Commission.

5. The points that arise for consideration in this original petition are:

(1) When the punishment imposed on the petitioner by the criminal court is not in connection with the discharge of any of his official duties or matters adversely affecting discharge of his public duties, can the authorities impose such a major punishment without considering the nexus between the criminal charge and the conduct of the official concerned?

(2) Whether the imposition of a conviction and sentence by a criminal court automatically warrant a dismissal from service of a delinquent employee dispensing with an enquiry either in terms of Art.311 of the Constitution of India or in terms of the Kerala Police Departmental Enquiries Punishment and Appeal Rules, 1958 (for short "the Rules")?

6. Learned counsel for the petitioner invited our attention to the Rules framed by the government in exercise of the powers conferred on it by proviso to Art.309 of the Constitution of India. The Rules which is the statutory rules, governing the enquiry, punishment and appeal in relation to members of police service, deals extensively with the manner and procedure to be adopted in the matter of imposing punishment on an officer. Rule 17 deals with procedure for imposing penalties. In this case, we are concerned with Rule 17(i)(b) and 17(ii) which run as follows:

(b) In all cases where it is proposed to impose any of the penalties mentioned in clauses (j), (k), (l) and (m) of sub-rule (1) of rule 15, the authority competent to impose the penalty shall call upon the member of the service to show cause within a reasonable time, not exceeding one month, against the particular penalty proposed to be inflicted. The member of the service shall also be served with a copy of the report of inquiry together with the findings thereon. The representation, if any, submitted by the member of the service shall be taken into consideration before the final order imposing the penalty is passed by the competent authority. Where the competent authority is the government and it thinks, on a consideration of such representation of the member of the service that any of the penalties mentioned above should be imposed, it shall consult the Commission except in cases where such consultation is not necessary under the Kerala Public Service Commission (Consultation) Regulations, 1957. While consulting the Commission, government shall forward the following records:

(i) Enquiry records together with the findings;

(ii) Notice issued to the Government servant together with his representation, if any

Explanation:-- An opportunity to show cause against the imposition of any of these penalties referred to in this sub-rule shall be given, after the authority competent to impose the penalty arrives at a provisional conclusion in regard to the penalties to be imposed, either by such authority himself or under his direction, by a subordinate authority who is superior in rank to the officer on whom it is proposed to impose the penalty.

(ii) The requirement of sub-rule (b) shall not apply where it is proposed to impose on a member of the service any penalty on the basis of facts which had led to the conviction in a criminal court or by a Court Marshal or where member of the service concerned has absconded or where it is for other reasons not reasonably practicable to communicate with him.

Our attention was also invited to Art.311 of the Constitution of India. Art.311 runs thus:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:-- (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;

Provided

Provided further this clause shall not apply:--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b)

(c)

7. Placing reliance on the above Article, Mr.Sasidharan submitted that imposition of conviction by a criminal court on a member of police service will not automatically empower the disciplinary, authority to dispense with an enquiry of the procedure mandated in the Constitution and in the Rules of service. The words appearing in the Rules that "any penalty on the basis of facts which had led to the conviction in a criminal court" and the exception in the second proviso to Art.311(2) that "on the ground of conduct which has led to his conviction on a criminal charge" assume great importance. He also relied on certain decision of the Supreme Court. According to learned counsel, Art.311 gives power to the Government to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge. That power like any other power has to be exercised fairly, justly and reasonably and not for trivial charges or

charges which are not serious in nature as it will adversely affect the service of the person. If retaining of such a person is not against the public interest, dispensing of with enquiry, and resorting to action in the nature of dismissal is not contemplated or intended by the rule makers. He would further submit that the right to impose penalty carry with it the duty to act justly.

8. Mr. Sasidharan has also submitted that for imposing a major punishment on a government servant, consultation with the Public Service Commission is a condition precedent. Since the Public Service Commission was not consulted before imposing a major punishment, the entire action of the respondents is illegal and unsustainable in law.

9. Per contra, Mr. Alexander Thomas would submit that the requirement of Rule 17(b) of the Rules shall not apply when it is proposed to impose on a member of the service any penalty on the basis of facts which had led to the conviction in a criminal court or by a court marshal or where a member of the service concerned has absconded or where it is for other reasons not reasonable to communicate with him. According to Mr.Alexander Thomas, no enquiry is contemplated in a case like this when a person is dismissed or removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge.

10. We have carefully analysed the rival submissions made by both sides. As already noticed, though charges were framed against the petitioner alleging offences punishable under Secs. 341, 324 and 325 I.P.C., the learned Magistrate found him guilty for offence punishable under Sec.325 IPC only and convicted and sentenced him to undergo imprisonment for a period of six months with a fine of Rs.20,000/-. Section 325 IPC deals with punishment for voluntarily causing grievous hurt. The section says that "whoever, except in the case provided for by Sec.335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". It is seen from records that a private complaint was filed against the petitioner with personal animosity. The person who complained against the petitioner is an accused in a criminal case and he was arrested in connection with certain offences and due to that he had filed the said private complaint. According to Mr.Sasidharan, the enquiry before imposing a major punishment ought to not have been dispensed with. Clause (a) of the second proviso to Art.311 (2) of the Constitution confers on the government the power to dismiss a person from service "on the ground of conduct which had led to his conviction on a criminal charge". The Supreme Court in Shankar Dass Vs. Union of India (UOI) and Another, has said that the power conferred under Art.311(2) has to be exercised, like every other power, fairly justly and reasonably and that persons like the petitioner may not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Art.311(2) makes the provisions of that Article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. The Supreme Court has also observed that the

said right to impose penalty carries with it the duty to act justly. We are of the opinion that in the instant case, the conviction of the petitioner in the criminal case does not deserve or warrant any extreme punishment of dismissal, removal or compulsory retirement from service. In our opinion, the relevant factor would be in matters like this for taking disciplinary action when appeal is pending against the conviction is the conduct of the government servant which led to his conviction. The charge proved against the petitioner is under Sec.325 IPC. In our view, the said charge and the conduct of the petitioner have no nexus with the discharge of his official duties. The satisfaction of the officials that it is not advisable to retain such a person in service assumes great importance and should be based on materials and it is on such a satisfaction that the punishment should be imposed. A reading of Ext.P5 would show that the punishment of removal from service was imposed because of the direction issued by this court in OP 17834 of 1997 filed by one K.Mohanan. This court has ordered only a review of those who continue in service in spite of their conviction. In the light of the direction of this court in the said original petition, the present petitioner was placed under suspension with immediate effect as per order dated 13-12-1997. Yet another reason stated in Ext.P5 is the dismissal of CMP 41270 of 1997 on 13-1-1998. Ext.P5 does not say or discuss as to the reason for imposing such an extreme punishment of removal from service. In our view, the parties are within their limits to postpone the action until the appellate court confirms the conviction or to take further action in the matter in accordance with law. That does not mean that a conviction by a criminal court will automatically entitle dismissal or removal of the civil servant from service.

11. A learned single Judge of this court held in *Bhagaval Das v. State of Kerala* (1994 (1) KLT 94) that the authorities are enjoined to consider the circumstances and the word "consider" necessarily implies a mental process in which the pros and cons of the proposed action have to be considered in the light of the circumstances to which the delinquent officer may draw attention. The reason for issuing Ext.P5, in our opinion, is unsustainable. The punishment imposed on the petitioner by the criminal court is not in connection with any charge of his official duties or matters adversely affecting the discharge of his public duties. The authorities, in our view, have not considered this aspect of the matter before issuing Ext.P5.

12. In this view, we shall now consider some of the judgments cited by both sides.

13. *Shankar Dass Vs. Union of India (UOI) and Another*, (three Judges Bench) was cited by learned counsel for the petitioner in support of his contention. In that case, the appellant Shankar Dass was retrenched by the Ministry of Rehabilitation whereupon he was employed as a clerk by the Delhi Milk Supply Scheme Department. He was prosecuted for breach of trust in respect of a sum of Rs.500/-. He repaid that amount and pleaded guilty to the charge. Accepting that plea, the learned Magistrate convicted him under Sec.409 IPC, but in view of

the peculiar circumstances relating to the crime and the criminal, he released the appellant under Sec.4 of the Probation of Offenders Act, 1958. As a result of the conviction, the appellant was dismissed from service summarily with effect from 14-4-1964. Appellant filed a suit in 1966 for setting aside his dismissal from service. That suit was dismissed on the ground that since the appellant was convicted by a criminal court, he was liable to be dismissed under clause (a) of the second proviso to Art.311(2) of the Constitution. The decree of the trial court was confirmed by the first appellate court. The second appeal filed by the appellant was allowed by the Delhi High Court. The High Court accepted the contention of the appellant that by reason of the provision contained in Sec.12 of the Probation of Offenders Act, he could not be dismissed from service without affording him a reasonable opportunity of being heard as required by Art.311(2) of the Constitution. The Government of India filed a Letters Patent Appeal against the judgment of the learned single Judge which was allowed by a Division Bench. Appellant thereafter filed the appeal before the Supreme Court. In para.7 of the judgment, the Supreme Court has observed thus:

It is to be lamented that despite these observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Art.311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since cl.(a) of the second proviso to Art.311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

The Supreme Court allowed the appeal by the appellant and ordered his reinstatement in service.

14. The principles laid down in the above judgment, in our opinion, squarely applies to the facts and circumstances of the case on hand. We have already dealt with the facts and circumstances of the case which led to the conviction of the petitioner. Considering the facts and circumstances, of the present case, we are also of the opinion that the removal from service imposed upon the appellant is totally unwarranted and should not have been imposed.

15. In Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, , a two Judge Bench of the Supreme Court held that Art.311(2)

second proviso (a) can be resorted to only where the misconduct leading to conviction was such that the same deserved any of the three major punishments mentioned in the service law. The Supreme Court has also referred to the judgment reported in Shankar Dass case (supra). Their Lordships held in para. 10 of the judgment as follows:

What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice.

In that case, the Supreme Court felt that the delinquent was found guilty of corruption by a criminal court and, therefore, until the said conviction is set aside by any higher courts, it may not be advisable to retain such a person in service. However, the Supreme Court has made it very clear that what is really relevant is the conduct of the government servant which has led to his conviction on a criminal charge. Applying the above test to the case on hand, we are of the opinion that the petitioner herein has been found guilty of only an offence punishable under Sec.325 IPC which is comparatively a trivial offence and, therefore, there is nothing wrong in continuing such a person in service.

16. In the instant case, the petitioner has 16 years of service in the Department and during this period he was awarded a large number of merit certificates, cash awards and good service entries in the service records. Taking into consideration his merit and ability, he was promoted to the post of Circle Inspector of Police in the year 1994. According to the petitioner, he had an unblemished service career. Considering the totality of the circumstances of the case, we are of the opinion that the retention of the petitioner in service can by no stretch of imagination be construed as one against the interest of public service.

17. In so far as the contention of the petitioner that imposing of a major punishment without consulting the Public Service Commission is bad and since the mandatory condition precedent has not been followed, the order imposing the punishment of removal from service is illegal, we are unable to countenance the said contention. Rule 6(1) of the Public Service Commission (Consultation) Regulations says that it shall not be necessary for the Commission to be consulted on any disciplinary matter affecting a person serving in connection with the affairs of the State except where the government propose to pass an original order imposing any of the punishments, namely, (i) reduction to a lower rank in the seniority list or to a lower post or time scale, or to a lower stage in a time-scale; (ii) recovery from pay of the whole or part of any pecuniary loss caused to the government or to the central government or to a local authority by negligence or breach of orders; and (iii) compulsory retirement. In the instant case, the punishment was imposed not by the State, but the order of punishment

was passed only by the Director General of Police. Therefore, as rightly pointed out by learned Government Pleader, the Public Service Commission need not be consulted at all. Rule 17(b) of the Rules also provides that where the competent authority is the Government and it thinks on a consideration of such representation of the member of the service that any of the penalties mentioned in the Rule should be imposed, it shall consult the Service Commission except in cases where such consultation is not necessary under the Kerala Public Service Commission (Consultation) Regulations, 1957. As already noticed, the authority who imposed the punishment is the Director General of Police and not the government. Therefore, there is no need for the Government to consult the Public Service Commission. We, therefore, order reinstatement of the petitioner in service forthwith with effect from the date on which the impugned orders were made. The reinstatement shall take effect as if the impugned orders were not made. We make it clear that the reinstatement now ordered will be subject to the final outcome of the Criminal Appeal pending before the Additional Sessions Court, Mavelikkara. We make it further clear that if the conviction is set aside, there is no need to go further and the reinstatement will stand. On the other hand, if the conviction is confirmed, it is open to the government to consider the nature of punishment to be imposed on the petitioner other than removal, dismissal or compulsory retirement from service.

The Original Petition is allowed. Both the Writ Appeals are dismissed. No costs.