

(1972) 10 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 780 of 1972

N. Subramonian

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-10-1972

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 10

Citation : (1973) KLJ 31

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : M.P.R. Nair and V.G. Pillai, for the Appellant; M.A. Manhu and Government Pleader, for the Respondent

Judgement

V. Balakrishna Eradi, J.—The petitioner, while holding the post of Superintendent, Central Jail, Cannanore was placed under suspension as per the order Ex. P1 dated 19-1-1972 passed by the State Government. He has approached this court with this writ petition challenging the validity of Ex. P1 and praying that it should be quashed. Before proceeding to deal with the contentions put forward by both sides it is necessary to extract the full text of the impugned order. Ex. P1 reads:

The report of the Inspector General of Prisons read above reveals a prima facie case of dereliction of duty on the part of Sri. N. Subramonian, Superintendent, Central Jail, Cannanore in not making proper arrangements for the admission of the large number of remand prisoners concerned in the recent disturbances in Tellicherry and in not taking timely action against the subordinate officers against whom there were allegations that they assaulted some of the prisoners. Government order that a detailed enquiry into the matter will be conducted by the Inspector General of Prisons immediately and a report submitted to Government within a month. Government also order that in view of the preliminary findings contained in the report cited above and as the continuance of Shri. N. Subramonian as Superintendent, Central Jail, Cannanore during the pendency of the detailed enquiry will not be in public interest, Shri. N.

Subramonian will be placed under suspension with immediate effect. Shri. N. Subramonian will be paid eligible subsistence allowance with the maximum D.A. admissible under the Rules.

The petitioner contends that the impugned order has been passed not on the basis of a bona fide satisfaction arrived at by the State Government that valid grounds exist justifying the petitioner's being kept under suspension but on account of pressure brought to bear on the concerned Minister by the Muslim League and that the order is lacking in good faith and is vitiated by mala fides. It is also alleged in the writ petition that the then Inspector General of Prisons, on the basis of whose report Ex. P1 purports to have been passed, was ill disposed towards the petitioner on account of the fact that the petitioner had made some allegations against the then Inspector General in O.P. No. 47 of 1971 filed before this court challenging the validity and propriety of an order passed by the Inspector General overlooking the seniority of the petitioner in the matter of promotion to the post of Superintendent, Central Jail. It is alleged that this enraged the 2nd respondent and that it was only with a motive to wreak his vengeance against the petitioner that the 2nd respondent recommended, to the State Government that the petitioner should be suspended from service.

2. Two batches of remand prisoners concerned with some incidents of rioting in Tellicherry were admitted into the Central Jail, Cannanore on 1-1-1972 and, 3-1-1972 respectively; most of them were released on 7-1-1972 on instructions having been received from the Executive First Class Magistrate, Tellicherry that they had been enlarged on bail. It would appear that subsequent to the release of the said prisoners reports were received by the Minister in charge of Prisons that they had complained to the 4th respondent that some of them had allegedly been subjected to ill treatment at the time of their admission into the Central Jail. The impugned action purports to have been taken on the basis of the results of a preliminary investigation made into that matter. What is alleged against the petitioner is that he had failed to make proper arrangements for the admission of the large number of remand prisoners concerned in certain occurrences of rioting that took place in Tellicherry and that the petitioner had also not taken timely action against the subordinate officers against whom there were allegations that they assaulted some of the prisoners.

3. The petitioner has averred in the writ petition and the supporting affidavit that as soon as he received information from the Sub Collector, Tellicherry on the 1st January, 1972, that a large number of remand prisoners concerned in the incidents of rioting that took place at Tellicherry were being sent to the Central Jail, Cannanore for custody, he immediately made necessary arrangements for providing additional staff to attend to the work of admission of the prisoners by directing that an Assistant Jailor, who was off duty on that day should also be present in the Central Jail to help in making the admissions. It is further stated by the petitioner that the concerned jail staff attended to the work of admission as per rules and all the fifty six prisoners who were brought to the jail on the 1st

January, 1972 were duly admitted on the very same day, the jail staff having worked till 9-30 p.m. to complete all the admissions. Similarly, on 3-1-1972 also on receipt of information that another batch of remand prisoners was being sent to the Central Jail the petitioner made necessary arrangements for having the work of admitting those prisoners attended to by providing two Assistant Jailors to deal with the extra work involved. These allegations are not denied in the counter affidavit filed on behalf of the respondents. All the prisoners who were admitted on the two days were subsequently seen by the petitioner personally on 3-1-1972 and 4-1-1972 respectively when he conducted the personal verification as required by the rules. The petitioner has categorically sworn that neither at the time when he met the prisoners and conducted the personal verification nor at any subsequent point of time before the prisoners were released from the jail did any of the prisoners complain to him of any kind of ill treatment having been meted out by the jail staff. The petitioner has also stated that during the course of their stay in the prison the prisoners had been seen by the Jail Medical Officer as well as by the District Medical Officer, Cannanore and no complaints had been made to either of them by the prisoners about the alleged assault; on the other hand the Medical Officers had noted in the journals that there, was nothing special to report. Ex. P3 is a copy of the entry made in the journal by the District Medical Officer (Health) on 7-1-1972. It is therefore submitted by the petitioner that in the absence of any complaints from the prisoners either to himself or to the Medical Officers and in the face of the reports of the Medical Officers that everything was perfectly normal there was no occasion at all for the petitioner to conduct any investigation or initiate action against any of the jail staff. These sworn statements of the petitioner have also not been controverted in the counter affidavit filed on the side of the respondents.

4. It is stated by the petitioner that on the night of 7th January the 4th respondent who was formerly a supply contractor to the jail and who is said to be an influential member of the Muslim League Party called the petitioner on the telephone at about 9-45 p.m. and complained that some persons belonging to his party who had been admitted into the Central Jail on 1st January, 1972 had been ill treated by the jail staff and that the personal belongings of some of those prisoners consisting of two gold rings and two fountain pens had not been returned to them at the time of their release. The petitioner has averred that he told the 4th respondent over the telephone that he had not received any complaints at all from the prisoners about any ill treatment even though he had met them at the time of the personal verification, but nevertheless he promised to look into the said matter and also into the question of the alleged non return of the personal belongings of the prisoners. It is alleged by the petitioner that the 4th respondent thereupon cautioned the petitioner that the matter had been already reported to the higher authorities at Trivandrum. On 9-1-1972 at about midnight the petitioner is said to have been called by the Inspector General of Prisons over the trunk telephone from the latter's camp office at Quilon and it is alleged that the 2nd respondent told the petitioner that there had been very

serious complaints against the petitioner that the prisoners belonging to the Muslim League who had been remanded to prison in connection with the Tellicherry riots had been ill treated. The petitioner says that he thereupon told the 2nd respondent that he had not received any complaints from the prisoners themselves at any time during their stay in the prison and that he was, however, enquiring into the matter in view of the oral complaint made to him by the 4th respondent over the telephone. The petitioner has alleged that the 2nd respondent thereupon warned the petitioner that the petitioner would have "to face the consequences". Even though the 2nd respondent has filed a counter affidavit in the case he has not denied the truth of the aforesaid allegations made by the petitioner. Thereafter things moved with extraordinary rapidity. On 10-1-1972 the Deputy Inspector General of Prisons (3rd respondent) came to the Central Jail, Cannanore, and questioned some of the prisoners who were still in custody. He also obtained from the petitioner details regarding the names and addresses of the prisoners who had been admitted to the jail on 1-1-1972 and were released on 7-1-1972. On 11th January 1972 the 3rd respondent is seen to have visited Tellicherry and met some of the ex-prisoners at various places and obtained statements from them. On the 12th January the 3rd respondent again visited the Central Jail and recorded statements from the petitioner as also from the two Assistant Jailors and some of the other jail officials. On 17-1-1972 the Inspector General of Prisons passed the order Ex. P5 placing under suspension one of the Assistant Jailors and two of the Warders attached to the Central Jail, Cannanore. Thereafter on 19-1-1972 the Government passed the impugned order suspending the petitioner. These in brief are the broad facts which are not in controversy.

5. The petitioner contends that the charge that he had not made proper arrangements for the admission of the remand prisoners concerned in the disturbances at, Tellicherry is not even prima facie supported by any of the materials that were before the State Government. It is pointed out in this context that there is no denial in the counter affidavits filed on behalf of the respondents that on receipt of information from the Sub Collector, Tellicherry that the remand prisoners were being sent to the Central Jail, the petitioner had immediately posted the necessary additional staff and that the admission of the prisoners had as a matter of fact been completed on the very days on which they were brought to the jail, in spite of the fact that there were a large number of prisoners and they were all brought during the late evening hours. The learned advocate appearing on behalf of the petitioner took me through the relevant provisions of the Kerala Prisons Rules, 1958, dealing with the duties and responsibilities attached to the post of Superintendent and those of the Jailor and the subordinate officers. He relied strongly on R. 138 which lays down that the jailor is the chief executive officer of the jail and that it is he who is generally responsible for the observance of all rules and orders and for the supervision of the subordinate staff. Reliance was also placed by the petitioner's counsel on R. 139 which states that the jailor's first duty is the maintenance of discipline

among prisoners and subordinates and that for this purpose he is expected to be always present at the jail during the day, except when he leaves it for his meals, to attend a court of justice or on permission from the Superintendent, Reference was then made by the counsel to R. 157 which states that the work of admission and search of newly received prisoners is one of the duties appertaining to the post of Deputy Jailor who, as per R. 159, is to share the Jailor's responsibility for the maintenance of discipline among prisoners and the subordinate staff. It is pointed out on behalf of the petitioner that on the relevant dates, namely 1-1-1972 and 3-1-1972 the Jailor Shri. Othenan was on duty and he was also functioning as the lock up officer. The duties of the Superintendent are dealt with in Chap. 4 of the Rules and it is submitted by the petitioner's advocate that it is nowhere stated in the rules that the Superintendent should himself personally supervise the admission of prisoners, whatever be the nature of the offence in which they are implicated. It is argued that the petitioner as Superintendent was ordinarily entitled to expect that such duties will be properly performed by the Jailor and the subordinate officers in whom the functions of admission of prisoners, search of their persons, the taking over of their personal belongings and keeping them in safe custody etc. are vested under the rules. According to the petitioner's advocate it is a strange feature in this case that though it is the Jailor who as the chief executive officer of the Central Jail is much more directly concerned with supervising the work of admission of prisoners which is to be carried out by the Assistant Jailors and with the maintenance of discipline by them and by their subordinate staff, he is left completely free from any blame in the matter and the petitioner who is only the Superintendent has been picked up for the contemplated disciplinary action; what is worse, while suspending the petitioner from service, the Jailors; is placed in full charge of the duties of the Superintendent. It is alleged by the petitioner that this has been resorted to only because there was a loud clamour, from a particular political party which was also published in the said political party's newspaper demanding that action should be taken against the jail staff and that it is only to appease that section by showing that action had been taken against a top ranking officer that the petitioner has been made a scapegoat. On this basis it is contended that the impugned order has been passed not for bona fide administrative reasons but on extraneous considerations which were politically motivated.

6. The power of the State Government to place a Government servant under suspension is derived from R. 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Under its provisions the appointing authority may at any time place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending. Despite the apparent wide wording employed in the rule, it is now well settled that the object underlying the conferment of the said power is to enable the appointing authority to remove an officer to whom serious allegations of misconduct are imputed, from the sphere of his activity if: (a) the allegations against him are such that in the interests of the maintenance of the purity and probity of the administration

or the upkeep of proper standards of discipline and morale in the service it will not be desirable to allow the officer to continue in service until he is cleared of the charges; or (b) where the position occupied by the officer is such that his continuance in service would render the conduct of the investigation against him difficult or embarrassing. If the appointing authority, after taking into account the facts and circumstances which are available before it, at that stage, forms the opinion that the Government servant against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at rest after holding a thorough enquiry, a suspension of the officer from service would be perfectly warranted see *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, and Abdulsalam v. State of Kerala*, ILR 1972 (1) Ker 296. It is, however, mandatory that before an officer can be validly placed under suspension under R. 10, the authority passing the order must address its mind to the relevant aspects and come to the bona fide conclusion that for either of the two reasons mentioned above or both the officer cannot be allowed to function in any post in the service until the enquiry against him is concluded.

7. The respondents have no case that the petitioner was even indirectly involved in the alleged incidents that are said to have taken place in the Central Jail, Cannanore at the time of admission of the prisoners on the 1st and 3rd of January, 1972. The only accusation levelled against the petitioner is that he had not made proper arrangements for the admission of the large number of remand prisoners concerned in the Tellicherry disturbances and that he had not taken timely action against the subordinate officers against whom there were allegations that they assaulted some of the prisoners. I shall not express any opinion about the merits of the said charges since they form the subject matter of a pending departmental enquiry. Even if those allegations are regarded as true they do not involve any moral turpitude and hence the case cannot be brought under the first category enumerated above, namely where the officer's temporary removal from the entire sphere of official activity is necessitated for the purpose of maintaining the purity of administration. No such ground is mentioned in Ex. P1 also. If, on the other hand, the charge against the officer was that he was corrupt or that he had been personally involved directly or indirectly in the ill treatment allegedly made out to the prisoners, totally different considerations would arise and the suspension of such a person from the service may very well be regarded as justified. In the present case, however, it is made very clear in Ex. P1 that the suspension of the petitioner is based only on the ground that the Government considered that the petitioner's continuance as Superintendent, Central Jail, Cannanore, during the pendency of the detailed enquiry will not be in public interest. In other words, the satisfaction arrived at by the Government was only that the petitioner could not be permitted to occupy the post of Superintendent, Central Jail, Cannanore, during the pendency of the enquiry and not that he cannot be retained in service in the category of Superintendent of Central Jail and posted to some other station either for the

reason that his continuance in service will affect its purity or morality or that it would prejudice or embarrass the proper conduct of the investigation or departmental enquiry.

8. Although suspension is not one of the punishments enumerated in R. 11 of the Kerala Civil Services (Classification, Control and Appeal) Rules, an order of suspension is not to be lightly passed against a Government servant, for the reality cannot be ignored that an order of suspension brings to bear on the Government servant consequences far more serious in nature than several of the penalties made mention of in R. 11. It has a disastrous impact on the fair name and good reputation that may have been earned and built up by a Government servant in the course of many years of service. The damage suffered by the Government servant is largely irreversible because the denigration and disgrace visited on him by the order of suspension is seldom wiped out by his being subsequently exonerated from blame and reinstated in service. Hence it is imperative that the utmost caution and circumspection should be exercised in passing orders of suspension under R. 10 resulting in such grave consequences to the Government servant concerned. It is also necessary to remember that the power of suspension is to be sparingly exercised and that is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority or the Government in respect of any act of commission or omission on the part of the officer.

9. The Government Pleader has placed before me the report of the Inspector General of Prisons which is referred to in Ex. P1. In the said report no personal involvement of any kind is attributed to the petitioner in regard to the incidents that are said to have taken place on the 1st and the 3rd of January, 1972. What is stated is only that the petitioner had failed to take action against the subordinates against whom allegations of ill treatment of prisoners had been put forward. I do not consider it appropriate that this court should express any definite opinion at this stage touching the merits of this aspect of the charge against the petitioner. But it has to be observed that there is considerable force in the argument of the petitioner's advocate that when the Deputy Inspector General of Prisons had himself personally taken up investigation into the allegations against his subordinates on 10th January, 1972 itself, and when the allegation of ill treatment had been brought to the notice of the petitioner for the first time only on the night of the 7th by the 4th respondent and admittedly no complaints had been made to the petitioner by any of the prisoners before they were discharged on the 7th, it is rather difficult to appreciate how the petitioner can be said to have been guilty of dereliction of duty in not taking timely action against his subordinate officers. It is also seen from the file produced by the Government Pleader that the petitioner had convened a meeting of all the subordinate staff of the Central Jail on the 8th January itself in view of the oral complaint received by him from the 4th respondent and had questioned them regarding the matter. On the 9th the petitioner had issued a circular administering a stern warning to the staff that they should not give any occasion

for any such complaints and on the 10th the petitioner had also called for explanations from the two Assistant Jailors who were on duty at the time of the admission of prisoners on the 1st and 3rd January, 1972. It is against the background of these facts that the reasonableness of the conclusion expressed in Ex. P1 that the petitioner had to be placed under suspension has to be judged.

10. As already noticed, the ground stated in Ex. P1 is only that the continuance of the petitioners as the Superintendent of the Central Jail, Cannanore, during the pendency of the enquiry will not be in the public interest. I do not find it possible to say that this conclusion is not a reasonable one. But that by itself will not be a justifiable ground for placing the petitioner under I suspension, because the purpose mentioned in Ex. P1 would very well have been served by transferring the petitioner to some other station. The secretariat file where the matter has been dealt with at the Government level was produced by the Government Pleader for my perusal. There is nothing therein to disclose that the Government had formed any conclusion that the retention of the petitioner in the service of the State Government during the pendency of the enquiry against him would create any administrative difficulty or embarrassment in the matter of completing the investigation or conducting the departmental enquiry. In view of the fact the allegations against the petitioner are more in the nature of mere technical irregularities or alleged lapses in the matter of taking prompt disciplinary action against certain subordinate staff, it is quite understandable that the Government did not think it fit to reach any such conclusion.

11. The resulting position is that the petitioner has been placed under suspension without even a proper application of the Government's mind on the most crucial question as to whether such a course of action was really called for. It will not be a reasonable exercise of the power under R. 10 to place an officer under suspension merely on the ground that it is not in the public interest to retain him in a particular post at a particular station. Unfortunately, however, that is exactly what has been done in the present case. I have no hesitation to hold that Ex. P1 constitutes an unreasonable exercise of the power under R. 10 and is therefore ultra vires and void. In this view I do not consider it necessary to go into the merits of the other contention raised by the petitioner alleging that the impugned order has been passed without good faith and on extraneous considerations. The original petition is accordingly allowed and Ex. P1 is quashed. The petitioner will be reinstated into service forthwith and given a posting as Superintendent of any prison other than the Central Jail, Cannanore. The parties will bear their respective costs.

A carbon copy of this judgment will be furnished forthwith to the counsel appearing for the petitioner on payment of the requisite charges.