
(1997) 12 KL CK 0026
In the High Court Of Kerala
Case No : W.A. No. 2010 of 1997

Rajeswaran

APPELLANT

Vs

Chief Judicial Magistrate

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 15(1)

Citation : (1998) 2 ILR (Ker) 91 : (1999) 3 LLJ 575

Hon'ble Judges : T.V. Ramakrishnan, J; A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : P.V. Mohanan, for the Appellant; L.G. Suresh Babu, G.P., for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachala Moorthy, J.—The unsuccessful petitioner in O.P. No. 14039 of 1997 on the file of this Court is the appellant herein.

2. The brief facts necessary for the disposal of this writ appeal can be stated as under. At the relevant time the appellant was working as U.D. Clerk in the Court of Honorary Special Judicial Magistrate of II Class, Kozhikode. The Honorary Special Judicial Magistrate of II Class, Kozhikode submitted a report on October 7, 1996 alleging dereliction of duty against the appellant. Thereafter by order dated October 14, 1996 in proceedings No. A3-5774/96, the appellant was placed under suspension with effect from the said date. The appellant was served with a memorandum of charges dated January 29, 1997 for which he submitted his explanation dated February 24, 1997.

3. The Chief Judicial Magistrate, Kozhikode initiated enquiry and by proceedings No. A3-5774/ 96 dated March 3, 1997 appointed Sri P. Madhavan, Judicial Magistrate of First Class II (Mobile) Kozhikode, third respondent herein as Inquiry Authority to enquire into the allegations. The appellant entered appearance on the hearing dated, i.e., on April 4, 1997 and denied the charges and requested

for examination of witnesses.

4. The said Inquiry Officer P. Madhavan, third respondent herein, submitted his report Ext. P-3 dated June 20, 1997 before the first respondent disciplinary authority. In the said report the Inquiry Officer has stated that in spite of several notices the witness Sri Sadanandhan, the Honorary Special Judicial Magistrate of II Class, Kozhikode, failed to appear before him and finally on June 20, 1997 he was rather compelled to close the evidence as there is no material witness who can be examined to prove the allegations made in the report made by Sri Sadanandhan to the Chief Judicial Magistrate on October 7, 1996. The Inquiry Officer has stated specifically in his report that there is no mention in the statement of witness Sri. Sadanandhan that he did not receive the notice in time and in this view of the matter he came to the conclusion that the prosecution has completely failed to prove the allegations made in the memo of charges against the appellant.

5. Thereafter the first respondent received a letter dated June 23, 1997 from the Honorary Special Judicial Magistrate of II Class, Kozhikode Sri Sadanandhan, namely the complainant wherein he has explained about his inability to attend the enquiry on one occasion about which he had sufficiently in advance informed the Inquiry Officer and on other occasions as to how he did not receive the intimation before the proposed date of hearing. He has also mentioned about his contacting the office of the Inquiry Officer in person on various dates. In the said letter the complainant has stated that there was no deliberate or wilful negligence on his part in attending the proceedings before the Inquiry Authority as witness and that in fact he has made all possible efforts to substantiate the case and it is further categorically stated that there was no proper service of notice on him before finalising the matter.

6. The first respondent herein, after considering the report of the Inquiry Officer as well as the letter dated June 23, 1997 of Sri Sadanandhan, the Honorary Special Judicial Magistrate of II Class, Kozhikode, passed an order on July 1, 1997 as under :

"The Inquiring Authority filed his report without examining any of the witnesses cited in the Memo of charge. There is no procedure or rule to discharge a witness in a departmental enquiry, if his presence can be secured by legal means.

In this case, all the three witnesses cited are officers working in the Criminal Judicial Department and as such there is no difficulty to secure their presence. The report of enquiry is not based on evidence and fact. Hence it cannot be accepted. Accordingly the report read (2) above is rejected".

On the following date, namely on July 2, 1997 the 1st respondent herein passed a fresh order appointing Sri Paul Simon, the second respondent herein, as the Inquiry Authority under Rule 15(1)(b)(iv) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 to enquire into the very same allegations raised against the above mentioned Sri K. Rajeswaran, the appellant

herein, as per the charge memorandum dated January 29, 1997. Aggrieved by the said order the appellant herein filed O.P. No. 14039 of 1997 praying this Court to set aside the order Ext. P-4 dated July 2, 1997 of the first respondent and to further direct the first respondent to remit the enquiry report to the third respondent to record further evidence and to submit a fresh report. In the said original petition the main contention is that the order directing for a second enquiry is without jurisdiction and that he would be prejudiced seriously if the enquiry is proceeded with by the second respondent. It is also further stated that the first respondent cannot reopen the proceedings since the rule does not vest with him such a power and in the absence of power under the law, second enquiry ordered by the disciplinary authority is not proper.

7. The learned Single Judge took the view after considering the entire matter that the absence of the main witness Sri Sadanandhan was not deliberate and the explanations given by him are quite satisfactory and that apart the Inquiry Authority, third respondent, did not examine the other two witnesses who are in the witness list. The learned single Judge held that the conclusion of the third respondent that the prosecution has miserably failed to prove the case against the appellant cannot be accepted without ordering a second enquiry and therefore that this is a fit case where the first respondent can exercise his jurisdiction in ordering a second enquiry because the earlier enquiry officer did not consider the matter in the proper perspective and also did not attempt to examine the witnesses in the witness list. Under the circumstances it cannot be said that the order of the first respondent in ordering a fresh enquiry by the second respondent is without jurisdiction.

8. Before us the learned counsel for the appellant reiterated his submissions, namely that the first respondent has erred in rejecting the first report and ordering a fresh enquiry by a new enquiry officer. It is settled law as laid down by the Apex Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, , that the rule provides only for one enquiry and that in case in a given case there has been no proper enquiry because of some serious defects or some important witnesses were not available and hence not examined at the time of enquiry, the disciplinary authority may ask the Inquiry Officer to record further evidence. In this case, we do not propose to go into the question as to whether the notices of hearing were served well in advance to Sri Sadanandhan by third respondent or that Sri Sadanandhan's absence on the hearing date is fully justified, in view of the nature of the order that we are inclined to pass. We consider that it will be a futile exercise to go into those questions and give a finding on that as to whether the third respondent was at fault or the Honorary Special Judicial Magistrate Sri Sadanandhan was at fault, in as much as those findings are not going to decide the issue in question and what we are only concerned is that proper enquiry is conducted against the appellant.

9. As far as the present case is concerned, the fact remains that the complainant namely the Honorary Special Judicial Magistrate was not examined in the

enquiry. Similarly two other witnesses have also not been examined. As already pointed out the settled legal position is that a second fresh enquiry cannot be ordered only because the first enquiry was concluded without examining certain important witnesses. The proper and correct course would be to see that the disciplinary authority directs the inquiring Authority, 3rd respondent herein, to record further evidence and submit a fresh report. In these circumstances and in the fitness of things we would pass the following order:

i) The impugned order Ext. P-4 dated July 2, 1997 passed by first respondent will stand quashed.

ii) The enquiry report Ext. P-3 dated June 20, 1997 filed by the third respondent is set aside.

iii) The third respondent shall proceed with the enquiry which he had begun earlier and examine all the three witnesses mentioned in the complaint of the Honorary Special Judicial Magistrate Sri Sadanandhan. The third respondent shall give sufficient notice to all the three witnesses about the date of hearing. Both the third respondent and Sri Sadanandhan, the Honorary Special Judicial Magistrate shall bear in mind their responsibility in holding a proper and fair enquiry.

iv) We are confident that the third respondent who is a Judicial Officer will hold a proper enquiry and follow the rules strictly in recording the evidence and in arriving at the conclusions.

The appeal stands allowed accordingly.