
(2015) 05 KL CK 0133
In the High Court Of Kerala
Case No : O.P. No. 4179 of 2000

S. Baby

APPELLANT

Vs

Managing Director, KSRTC and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 447

Citation : (2015) 3 ILR Ker 566 : (2015) 3 KLJ 365

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : Pirappancode V.S. Sudhir and V. Varghese, for the Appellant; Sojan James, Sr. GP, Sajeevkumar K. Gopal, M. Gopikrishnan Nambiar and Babu Joseph Kuruvathazha, SCs, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil K. Narendran, J—The petitioner is a conductor in the Kerala State Road Transport Corporation (hereinafter referred to as "the KSRTC"), While the petitioner was working in the Kilimanoor unit of the KSRTC, he, was charge sheeted alleging misconduct. The misconduct alleged against the petitioner is that, on 17.5.1994, he along with another conductor manhandled one Dharmaseelan at his residence, who was an empanelled driver in the KSRTC, for his non-participation in the strike called by the KSRTC employees. The petitioner was placed under suspension by Ext. P1 order dated 25.6.1994 of the Assistant Transport Officer, Kilimanoor. A reading of Ext. P1 order would show that, Crime No. 140/1994 of Kadakkal Police Station was registered against the petitioner and one J. Gopakumar, another conductor in the Kilimanoor unit of the KSRTC, on a charge that, on 17.5.1994 at about 20.00 hrs., the petitioner and the aforesaid Gopakumar assaulted Sri. S. Dharmaseelan, who was working as an empanelled driver in the Kilimanoor depot of the KSRTC, at his house for the reason that he had reported for duty on 17.5.1994, the first day of the strike. The Disciplinary Authority appointed an Enquiry Officer who submitted Ext. P2

Enquiry Report, concluding that the charge levelled against the petitioner stands proved and he is guilty of the charge. As seen from Ext. P3, the Disciplinary Authority concurred with the finding of the Enquiry Officer. Though the charge proved against the petitioner is of serious nature, which deserves maximum punishment, the Disciplinary Authority took a lenient view and imposed a punishment of withholding of the next increment for a period of one year, with cumulative effect, and it was also ordered that the period of suspension would be treated as eligible leave.

2. As borne out from Ext. P4 judgment of the Judicial First Class Magistrate-II, Kottarakkara dated 26.8.1995 in C.C. No. 657 of 1994, the case charge sheeted against the petitioner and another ended in acquittal. A reading of Ext. P4 judgment would show that, the injured, who was examined as PW1, was declared hostile and it was brought out in his cross-examination that, the case was settled between the parties. Though the injured filed a compounding petition, it was rejected on a finding that some of the offences alleged are non-compoundable. Further, the independent witness, who was examined as PW2, was also declared hostile and it was in such circumstances the learned Magistrate came to the conclusion that the prosecution failed to prove the case against the accused and hence acquitted them under Section 255(1) of the Code of Criminal Procedure, 1973.

3. Challenging Ext. P3 order passed by the Disciplinary Authority, the petitioner filed Ext. P5 appeal before the Managing Director of the KSRTC, the first respondent herein, contending that, the entire period during which he was kept out of service in connection with the case may be treated as duty for all service benefits. The Appellate Authority considered Ext. P5 appeal on merits and allowed the same by Ext. P6 order dated 7.3.1998. Last paragraph of Ext. P6 order reads thus:--

"I have gone through the records relevant to the case and the enquiry report in the light of the points raised by the appellants. It is seen that criminal case and disciplinary proceedings are taken simultaneously on same set of facts. So findings of the Criminal Court has to be given due consideration while disposing the disciplinary proceedings. Since the Criminal Case No. 657/94 of the Judicial First Class Magistrate, Kottarakkara ended in their acquittal, it is just only to exonerate them from the charges. On the reasons stated above, the appellants are exonerated from the charges. The period of suspension undergone by them are also ordered to be regularised. Pay and allowances for the period is restricted to subsistence allowance only. The appeals are partially allowed to the extent indicated above."

A reading of Ext. P6 order would show that, the petitioner has been exonerated from the charge solely on the ground that the criminal case, namely, C.C. No. 657 of 1994 ended in acquittal by Ext. P4 judgment of the Judicial First Class Magistrate, Kottarakkara. In Ext. P6 order it was also ordered that, the period of suspension undergone by the petitioner shall be regularised, but the pay and

allowances for the aforesaid period shall be restricted to subsistence allowance only.

4. Aggrieved by Ext. P6 order, the petitioner preferred Ext. P7 revision before the KSRTC Appellate Tribunal, contending that, when the Appellate Authority had allowed the appeal and exonerated him from, the charge, the Appellate Authority ought to have treated the period of suspension as duty with all pay and allowances, instead of treating the said period as eligible leave and restricting the pay and allowances to subsistence allowance only. The Tribunal by Ext. P8 order dated 23.10.1999 dismissed the revision petition and the last paragraph of Ext. P8 order reads thus:--

"The Disciplinary action against the petitioner and Gopakumar was initiated for misconduct in as much as they assaulted one Dharmaseelan who was working as an empanelled driver for his non participation in the strike. The Enquiry Officer found the delinquent guilty and punished. The petitioner now bank upon his acquittal in the criminal proceedings, and since it was acted upon by the Appellate authority and exonerated him there is no justification in denying the pay and allowance for the period of suspension. But the criminal prosecution will not stand in the way of departmental proceedings against the delinquents for misconduct. Invariably criminal prosecution end in acquittal for lack of independent evidence regarding the occurrence. But the misconduct on the part of the delinquent employees is not likely to be taken in all its aspects by that Court. Unless the accused is completely exonerated he will not be entitled to claim all service benefits during the period of suspension. The case at hand being an offspring of the strike by the employees, it is likely that the striking persons may indulge in unlawful acts and also misconduct towards persons not participating actively in the agitation. In appreciating evidence in criminal prosecution by the Court the specific charges will have to be proved beyond doubt which may not strictly cover minor cases of misbehaviour on the part of delinquents. So an accused can be acquitted on diverse reasons. It is not evident that the petitioner was declared as innocent in all respects. The appellate authority though exonerated the petitioner from the charges and ordered regularisation of the period of suspension the pay and allowance for the period is restricted to subsistence allowance only, apparently because the conduct of the petitioner and co-delinquent were not free from doubt so as to favour them with pay and allowance for the period when they were not attending to their job. Hence I see no reason to interfere with the order of the Appellate authority. The Revision Petition fails."

It is aggrieved by Ext. P6 order of the Appellate Authority and Ext. P8 order of the Tribunal, the petitioner is before this Court in this Original Petition, seeking a writ of certiorari to quash those orders to the extent of restricting his pay during the period of suspension as subsistence allowances only and also seeking writ of mandamus commanding the respondents to pay him full pay and allowances for the period of suspension.

5. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the KSRTC.

6. The learned counsel for the petitioner would contend that, the acquittal in the criminal case by Ext. P4 judgment would lead to automatic exoneration in the disciplinary proceedings initiated against him on the very same charge. Further, when the Appellate Authority by Ext. P6 order exonerated the petitioner from the charge levelled against him, on a finding that the criminal case charge sheeted against him ended in acquittal, the period of suspension should have been regularised as duty with all consequential monetary benefits. Though the said illegality in Ext. P6 order passed by the Appellate Authority was under challenge before the Tribunal in Ext. P7 revision petition, the same was wrongly dismissed by Ext. P8 order, by confirming the finding of the Appellate Authority that, the pay and allowances for the period of suspension shall be restricted to subsistence allowance only.

7. Per contra, the learned Standing Counsel for the KSRTC would contend that, a mere acquittal in the criminal case would not lead to automatic exoneration in the disciplinary proceedings initiated against delinquent employee on the very same charge, since the proof required in a disciplinary proceedings and that in a criminal proceedings are entirely different. The learned Standing Counsel would contend further that, the Appellate Authority and Tribunal were perfectly justified in restricting the pay and allowances for the period of suspension to subsistence allowance only.

8. I have considered the rival submissions made at the Bar.

9. As borne out from the pleadings and the documents on record, disciplinary proceedings were initiated against the petitioner on a grave charge of misconduct, that on 17.5.1994, he along with another conductor assaulted one Dharmaseelan at his house, who was an empanelled driver in the Kilimanoor depot of the KSRTC, since he reported for duty on the first day of the strike. A reading of Ext. P4 judgment of the Judicial First Class Magistrate, Kottarakara, would show that the petitioner was charge sheeted in Crime No. 140/1994 of Kadakkal Police Station for offences punishable under Sections 143, 147, 447 and 323 read with Section 149 of the Indian Penal Code, 1860. During trial, the injured, who was examined as PW1, turned hostile and it was brought out during his cross-examination that, the case is settled between the parties. A reading of Ext. P4 judgment would also show that, the injured has filed a compounding petition, which was rejected by the Magistrate Court on a finding, that, some of the offences are non-compoundable. Further, an independent witness, who was examined as PW2, was also declared hostile and it was in such circumstances the learned Magistrate came to the conclusion that the prosecution failed to prove the case against the accused and hence acquitted them under Section 255(1) of the Code of Criminal Procedure, 1973.

10. It is trite law that, disciplinary proceedings before a domestic tribunal are of

a quasi-judicial character, therefore, the minimum requirement of the rule of natural justice is that, the conclusions arrived at by the domestic tribunal should be based on some evidence, i.e., evidential materials which with some degree definiteness points to the guilt of the delinquent in respect of the charges levelled against him. The standard of proof required in a criminal case and that in disciplinary proceedings before a domestic tribunal are entirely different. In a criminal case the charge has to be proved by the standard of proof of beyond reasonable doubt, whereas, in disciplinary proceedings before a domestic tribunal the standard of proof for proving the charge is preponderance of probabilities.

11. In *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, AIR 2003 SC 1571 : (2003) 96 FLR 1067 : (2003) 2 JT 78 : (2003) 2 LLJ 181 : (2003) 2 SCALE 42 : (2003) 4 SCC 364 : (2003) SCC(L&S) 468 : (2003) 1 SCR 1034 : (2003) 2 SLJ 65 : (2003) AIRSCW 944 : (2003) 2 Supreme 93 the Apex Court held that, acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. Therefore, it is well settled that the acquittal in criminal case per se would not entitle the employee to claim immunity from the disciplinary proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application.

12. In *The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal*, AIR 1994 SC 552 : (1994) 1 BC 379 : (1994) 68 FLR 22 : (1993) 6 JT 266 : (1994) LabIC 80 : (1994) 1 LLJ 642 : (1993) 4 SCALE 360 : (1994) 1 SCC 541 : (1993) 3 SCR 586 Supp : (1994) 1 SLJ 147 : (1994) 1 UJ 53 , the Apex Court held that, a mere acquittal does not entitle an employee to reinstatement in service. The acquittal has to be an honourable one. But the said decision of the Apex Court was in the context of the provisions contained in Regulation 46(4) of the Reserve Bank of India (Staff) Regulations, 1948, which states that when an employee has been dismissed on account of his conviction by the lower court, he is entitled to be reinstated in service if the conviction is set aside by the higher court and the employee is honourably acquitted.

13. The Apex Court in *The Deputy Inspector General of Police and Another Vs. S. Samuthiram*, AIR 2013 SC 14 : (2013) 1 CTC 931 : (2013) 136 FLR 99 : (2013) LabIC 446 : (2013) 1 RCR(Criminal) 329 : (2012) 11 SCALE 420 : (2013) 1 SCC 598 a decision relied on by the learned Standing Counsel for the respondents, held that the expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Indian Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

14. In S. Samuthiram's case (supra), the Apex Court has referred to its earlier decision in R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 , wherein it was held that, even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In S. Samuthiram's case (supra), the Apex Court has also referred to its another decision in State of Assam and another v. Raghava Rajgopalachari, 1972 SLR 45 , wherein the Apex Court quoted with approval the views expressed by Lord Williams, J., in Major Robert Stuart Wauchope Vs. Emperor, AIR 1933 Cal 800 which reads as follows;

"The expression "honourably acquitted" is one which is unknown to Court of justice Apparently it is a form of order used in Courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted"."

15. In S. Samuthiram's case (supra) the Apex Court, after referring to its earlier decisions in R.P. Kapoor's case (supra) and Raghava Rajgopalachan's case (supra), held that in the absence of any provision in the service rule for reinstatement, if an employee is "honourably acquitted" by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a Criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. Paragraph 23 of the judgment reads thus;

"23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court. no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a Criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a Criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The Court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent

was honourably acquitted by the Criminal Court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

16. In the case on hand, the disciplinary proceedings initiated against the petitioner is governed by the provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. In the absence of any provisions in the said Rules, entitling a delinquent employee to claim automatic reinstatement in service even in the case of a "honourable acquittal" in the criminal case arising out of the very same charge, the contention raised by the learned counsel for the petitioner that, the acquittal in the criminal case by Ext. P4 judgment would lead to automatic exoneration in the disciplinary proceedings initiated against him on the very same charge can only be rejected and I do so.

17. A reading of Ext. P6 order would show that, the petitioner has been exonerated from the charges solely on the ground that the criminal case ended in acquittal by Ext. P4 judgment of the Magistrate Court. The reasoning of the Appellate Authority in Ext. P6 is that, when criminal case and disciplinary proceedings are taken simultaneously on same set of facts, the findings of the Criminal Court has to be given due consideration while disposing the disciplinary proceedings. When none of the provisions under the Kerala Civil Services (Classification, Control and Appeal) Rules entitle a delinquent employee to claim automatic reinstatement in service, even in a case of "honourable acquittal" in the criminal case arising out of the very same charge, the above finding of the Appellate Authority in Ext. P6 is nothing short of a perverse conclusion arrived at in total disregard to the statutory provisions governing the field and also the principles laid down in a catena of the decisions of the Apex Court that, the acquittal in criminal case per se would not entitle the delinquent employee to claim immunity from the disciplinary proceedings.

18. In Ext. P6 order passed by the Appellate Authority it was also ordered that, the period of suspension undergone by the petitioner shall be regularised, but the pay and allowances for the aforesaid period shall be restricted to subsistence allowance only. Aggrieved by Ext. P6 order, the petitioner preferred Ext. P7 revision before the Tribunal, contending that, when the Appellate Authority allowed the appeal and exonerated him from the charge, the period of suspension ought to have been treated as duty with all pay and allowances, instead of treating the said period as eligible leave and restricting the pay and allowances to subsistence allowance only.

19. The Tribunal constituted under Regulation 3 of the Kerala State Road Transport Corporation (Appellate Tribunal) Regulations, 1981, is exercising appellate powers in terms of Regulation 5(a) and revisional powers in terms of Regulation 5(b) of the said Regulations, in disciplinary matters in respect of imposition of punishment of the nature described in Clauses (i) to (viii) of Regulation 5(a). The revisional power of the Tribunal under Regulation 5(b) is for entertaining revision petitions from the employees of the Corporation against

orders issued by the General Manager or Chairman as Appellate Authority in disciplinary matters in respect of imposition of punishment of the nature described in Clause (i) to (viii) of Regulation 5(a).

20. Regulation 11 deals with consideration and disposal of appeals and revisions by the Tribunal. Going by Regulation 11, the Tribunal after considering the appeal or revision petition and the oral representation made before it by the appellant or revision petitioner as also the remarks offered and documents produced by the Corporation and after examining such further records as may be called for by the Tribunal, shall dispose of the appeal or revision after hearing the person, having regard to the matters enumerated in Clause (i) to (v) of Regulation 11 viz.

"(i) Whether the facts on which the order was based have been established;

(ii) Whether the facts established afford sufficient ground for taking action;

(iii) Whether the procedure prescribed by the relevant disciplinary rules have been complied with and if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;

(iv) Whether the findings are justified;

(v) Whether the penalty imposed is excessive."

21. Going by Regulation 12, which deals with orders of the Tribunal, the Tribunal after considering all matters relevant to the appeal or revision petition shall pass orders in writing;

"(i) Setting aside, modifying or reducing confirming the penalty;

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

22. A conjoint reading of regulations 5, 11 and 12 of the Regulations make it explicitly clear that, while entertaining an appeal or revision under Regulation 5(a) or 5(b) the Tribunal cannot go beyond the scope of that appeal or revision, as the power of the Tribunal is circumscribed by the provisions under Regulation 11, as per which, the Tribunal shall dispose of the appeal or revision, having regard to the matters enumerated in Clauses (i) to (v) of Regulation 11. Regulation 12 provides further that, the Tribunal after considering all matters relevant to the appeal or revision petition pass orders in writing, setting aside, modifying or reducing or confirming the penalty; or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

23. Therefore, in an appeal or revision filed by an employee of the Corporation under Regulation 5(a) or 5(b), challenging an order passed by the Disciplinary Authority or the Appellate Authority, as the case may be, to the extent the said order is against such employee, the Tribunal in exercise of its powers under

Regulation 11 has to consider whether the order to that extent was based on facts established: whether such facts afford sufficient ground for taking such an action; whether there was compliance of the procedure prescribed under the disciplinary rules and if not, such non-compliance has not resulted in any violation of the provisions of the Constitution or in failure of justice; whether the findings are justified; and whether the penalty imposed is excessive. In Ext. P6 order, the Appellate Authority exonerated the petitioner from the charge levelled against him solely for the reason that, the criminal case ended in acquittal by Ext. P4 judgment of the Magistrate Court. The reasoning of the Appellate Authority in Ext. P6 is that, when criminal case and disciplinary proceedings are taken simultaneously on same set of facts, the findings of the Criminal Court has to be given due consideration while disposing the disciplinary proceedings. As I have already noticed, the above finding of the Appellate Authority is nothing short of a perverse conclusion arrived at in total disregard to the statutory provisions governing the field and also the principles laid down in a catena of decisions of the Apex Court.

24. However, in Ext. P7 revision filed by the petitioner challenging Ext. P6 order of the Appellate Authority to the extent he was denied regularisation of the period of suspension as duty with pay and allowances, the Tribunal has absolutely no authority either to clarify or modify the above finding made by the Appellate Authority while exonerating the petitioner from the charge levelled against him, which finding has already attained finality. It is a settled proposition of law that, what cannot be done directly cannot be permitted to be done indirectly. Therefore, the conclusions of the Tribunal in Ext. P8 order that, unless the petitioner is completely exonerated in the criminal case, he will not be entitled to claim all service benefits during the period of suspension and that, the Appellate Authority though exonerated the petitioner from the charge and ordered regularisation of the period of suspension, the pay and allowance for that period was restricted to subsistence allowance only, apparently because the conduct of the petitioner was not free from doubt so as to favour him with pay and allowances for the period when he was not attending to his job, cannot be sustained.

25. Once the Appellate Authority exonerated the petitioner from the charge levelled against him solely on the basis of the acquittal in Ext. P4 judgment of the, Magistrate Court, the petitioner cannot be denied regularisation of the period of suspension as duty with pay and allowances. Therefore, Ext. P6 order passed by the Appellate Authority to that extent cannot be sustained. Similarly, Ext. P8 order passed by the Tribunal confirming Ext. P6 order to that extent cannot also be sustained. In the result, this Original Petition is allowed setting aside Ext. P6 order of the Appellate Authority to the extent the pay and allowances of the petitioner for the period of suspension was restricted to payment of subsistence allowances only. Ext. P8 order passed by the Tribunal is also set aside. Consequently, the petitioner will be entitled for pay and allowances for the period of suspension, treating the said period as on duty. The

arrears payable to the petitioner, less subsistence allowance already paid, shall be disbursed to him within a period of three months from the date of receipt of a certified copy of this judgment.

No order as to costs.

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