
(2005) 02 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 15002 of 1994

Sankaran Nair

APPELLANT

Vs

K.S.S.I.D. Corporation Ltd.

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Citation : (2005) 105 FLR 803 : (2005) 3 ILR (Ker) 49 : (2005) 2 KLT 245

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : N. Nandakumara Menon and B.G. Bidan Chandran, for the Appellant;
K.C. Peter, Vakkom N. Vijayan and P.B. Sahasranaman, for the Respondent

Judgement

K.S. Radhakrishnan, J.—This Writ Petition has been placed before us on a reference made by the learned Single Judge of this Court expressing the opinion that the decision in Abdul Kareem v. Canara Bank (1991 (1) KLT 521) requires reconsideration. While holding so, learned Single Judge stated as follows:

"The Classification, Control and Appeal Rules which is binding on the petitioner provides for different kinds of punishment which includes dismissal as well as recovery. As both these were imposed as part of one and the same charge according to him, this does not amount to double jeopardy. An analogy may be drawn as regards punishment under the Indian Penal Code and the Code of Criminal Procedure which contemplate sentence in prison besides imposition of fines. The decision in Depot Manager, Andhra Pradesh State Road Transport Corporation v. N. Ramulu and Anr., (1997) 11 SCC 319 also supports this view."

2. We may point out that the decision of the learned Single Judge in Abdul Kareem's case, supra (1997 (1) KLT 521) has been subsequently reversed by a Division Bench of this Court in W.A. No. 1088 of 1997. The Bench opined as follows:

"The language used by the rule making authority in Sub Regulation 3 of Regulation 7 is that the disciplinary authority can impose any of the penalties.

According to us, the word "any" in this sub regulation taking into consideration the context in which it is used and the subject matter of the Statute would only mean "all" or "every" or "some" and at any rate, not one. We cannot lose sight of the fact that the regulation in question pertains to a banking institution which is custodian of other people's money and when it suffers a pecuniary loss as in the present case because of negligence on the part of the delinquent who is entrusted with the money, bank cannot just censure its employees without taking measures to recover the same from him either from his pay or from any other amounts due to him because it is accountable to the customers' money. Therefore, invocation of one penalty does not preclude resorting to other penalty. If the contention of the delinquent employee/respondent that the disciplinary authority is competent to impose only one of the penalties specified in the Regulation is accepted, it would certainly lead to anomalous consequences disabling the banking institutions from realising the loss suffered by it from the employees."

3. We fully concur with the view expressed by the Division Bench in the above case. The Apex Court in *Depot Manager, Andhra Pradesh State Road Transport Corporation v. N. Ramulu and Anr.*, (1997) 11 SCC 319 was dealing with the scope of Regulation 8 (v) and Explanation Clause (5) of the A.P. State Road Transport Corporation Employees (CCA) Regulations, 1967. In that case departmental enquiry was instituted for rash and negligent driving which culminated in removal of the delinquent driver from service. Learned Single Judge of the High Court directed to reinstate the delinquent employee with 50% backwages and deduction therefrom of the amount of Rs. 500 by way of damages. The Division Bench modified the said order and held that the delinquent driver is entitled to full backwages on the ground that the learned Judge's order amounted to double jeopardy. Setting aside the order of the Division Bench the Apex Court held as follows:

"It is true that reimbursement of the loss caused to the appellant A.P. State Road Transport Corporation has been shown to be a penalty under Regulation 8(v) of the Regulations. But the penalty for the act of negligence was removal from service. The explanation to Regulation 8, however, enumerates various penalties which are not to be treated as penalties and one of them is as Clause (5) thereof says: "The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders." This clause clearly says that the penalty of recovering loss caused to the management under Regulation (1)(v) shall not preclude the management from imposing any other penalty. The High Court was, therefore, wrong in thinking that this was a case of double jeopardy. We think that the order passed by the learned Single Judge was eminently just and fair and the Division Bench of the High Court should not have interfered with that order."

4. Petitioner was working as Junior Superintendent in SIDCO, Government of Kerala undertaking. Disciplinary proceedings were initiated against him and ultimately he was dismissed from service and amount of Rs. 29,443.81 misappropriated by him was ordered to be recovered. Contention was raised that the recovery of the amount would amount to punishment. Rule provides for different kinds of punishments which include dismissal and recovery. Both these punishments were imposed as part of the one and the same charge which in our view is supported by the rules and would not amount to double jeopardy. We therefore endorse the view of the Division Bench in W.A. No. 1088 of 1997 and the decision in Abdul Kareem 's case, supra is not been correctly decided. We are informed by the writ petitioner that he is aged 70 years and substantial amount has been paid. Amount already recovered would be adjusted towards the liability and the respondent is directed not to effect any further recovery. Writ Petition is disposed of as above.