
(2009) 04 KL CK 0048
In the High Court Of Kerala
Case No : WA No. 736 of 2009

State of Kerala

APPELLANT

Vs

Ivan Rathinam Pillai

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Government Servants Conduct Rules, 1960 — Rule 3
Kerala Police Act, 1960 — Section 41
Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 — Rule 15, 7, 7(1)
Penal Code, 1860 (IPC) — Section 497

Citation : (2009) 1 KLJ 280 : (2009) 2 KLT 543

Hon'ble Judges : M.L. Joseph Francis, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—The respondents in the Writ Petition are the appellants. The writ petitioner is the respondent herein. The learned Single Judge by the judgment under appeal, quashed Ext.P11 order of the Government dated 16.12.2008, as per which the respondent/writ petitioner was suspended from service, pending decision in the disciplinary enquiry going on against him. Aggrieved by the said decision of the learned Single Judge, the official respondents in the Writ Petition have filed this Writ Appeal.

2. The brief facts of the case are the following. The respondent filed the Writ Petition, making the following pleadings. He is presently working as Assistant Commandant in the Armed Police at Malappuram. He joined the police in 1991 and has rendered meritorious service for more than 17 years. He has received several good service entries. While so, a lady, hereinafter referred to as Mrs.X, started filing complaints against him repeatedly before various authorities. She is married to Mr. Y and two children are born in that wedlock. The respondent is

also married and is living with his family at Alappuzha. The main complaint raised against him by Mrs.X was that he has committed adultery with her and her second son Master Z was born out of that relationship. She has moved superior police officers, demanding action against him. She has also filed a private complaint before the competent criminal court, alleging that the respondent has physically attacked and manhandled her and her son. She has filed a suit before the competent Munsiff's Court, seeking a declaration that the respondent is the father of her second child. She has moved the Family Court, claiming maintenance. She moved the Women's Commission, seeking action against him. The District Police Complaints Authority, Alappuzha was also moved. The respondent submitted that the allegations of manhandling, etc. made against him by Mrs.X were enquired into by the Deputy Inspector General of Police, Ernakulam Range. It was found that the allegations were unfounded. He further submitted that the complaint before the Women's Commission was also closed. The District Superintendent of Police, Alappuzha has also held an enquiry into some of the allegations against the respondent. They were also found to be baseless. But, the District Police Complaints Authority filed Ext.P8 report dated 3.5.2008, making certain prima facie findings against him and suggesting initiation of disciplinary action. Apparently, based on that report, he has been served with Ext.P1 memo of charges dated 26.8.2008. The allegation against him was that he had adulterous relationship with Mrs.X for the last few years, while he was working as Assistant Commandant in the District Armed Reserve. He is alleged to be the father of the second child of Mrs.X. Abusing his official position, he has manhandled the said child and also defamed Mrs.X. By the above conduct, he has marred the good name of the police force and has committed gross misconduct, disclosing moral turpitude.

3. An enquiry officer was appointed to enquire into the charges. While the enquiry was progressing, allegedly under the influence of Mrs.X, the Director General of Police filed a report before the Government and based on that report, the Government suspended him by Ext.P11 order. The relevant portion of that order reads as follows:

As per the order read as 1st paper above an Oral Enquiry was ordered against Sri.Ivan Rathinam, Assistant Commandant, Armed Reserve, Malappuram for his official misconduct and moral turpitude. Later, Director General of Police has, as per the letter read as 2nd paper above, reported that the Police Complaints Authority had made some serious observations on his moral turpitude and official misconduct and recommended departmental action against him. The Director General of Police has also pointed out that the continuance of the officer in service is undesirable and hence recommended to place him under suspension.

In the circumstance Government order that Sri.Ivan Rathinam, Assistant Commandant, Armed Reserve, Malappuram be placed under suspension with immediate effect under Rule 7(1)(a) of the KPDIP & A Rules, 1958, in public interest, pending final decision in the Oral Enquiry ordered.

4. The respondent filed the Writ Petition, challenging the suspension order Ext.P11. He stated that all the allegations in the charge memo are unfounded. At any rate, they cannot be the subject-matter of any disciplinary action. He has been suspended because of the political influence of the father of Mrs.X. He was already transferred from Ernakulam to Malappuram. The enquiry is almost over. Therefore, there was no necessity to suspend him. So, the suspension is vitiated. Based on these and other grounds, the Writ Petition was filed, challenging the suspension order.

5. The appellants/respondents filed a counter affidavit. They submitted that the respondent/writ petitioner was suspended on valid grounds. In an enquiry conducted by the Inspector General of Police, Ernakulam Range, it was disclosed that the respondent had illicit relationship with Mrs.X. The Police Complaints Authority also, prima facie, found that the respondent had adulterous relationship with Mrs.X. Therefore, the respondent was suspended from service. In the counter affidavit, it is stated as follows:

Government found that the continuance of the petitioner in service would become an obstacle for the smooth conduct of the enquiry. Moreover, it is against the public interest to allow a Government employee to continue in service, who possessed extra-marital relations, which became public and seriously observed by a legally constituted body like Police Complaints Authority.

The respondent was transferred on 24.5.2008 to Malappuram, long before the initiation of the disciplinary proceedings. This has nothing to do with the enquiry ordered against him, it was submitted. The official respondents denied the allegations against them and supported the suspension order as one passed in accordance with law.

6. The learned Single Judge, after hearing both sides, allowed the Writ Petition by the judgment under appeal. The learned Judge noted that since the respondent is working in Malappuram, the chances of his interfering with the enquiry or influencing the witnesses are remote. Therefore, it was unnecessary to suspend him. The Government failed to notice the above aspect before ordering his suspension. So, it was found that the suspension order was passed only to victimise the respondent and it amounted to abuse of the power vested in the Government. At any rate, it was held that there was no administrative necessity to place him under suspension on the date of Ext.P11. Based on the above findings, Ext.P11 order was quashed.

7. The appellants preferred this appeal, seriously aggrieved by the above findings of the learned Single Judge. According to them, if the above findings of the learned Judge are allowed to stand, the disciplinary action itself will become a futile exercise. Further, it is pointed out that whether the delinquent will influence the witnesses or interfere with the enquiry, is only one of the relevant considerations. There are other considerations as well, which are relevant. It is against public interest to retain such an officer in service, whose adulterous

relationship has become public. So, the appellants prayed for allowing the appeal.

8. We heard the learned Counsel on both sides. The learned Government Pleader Mr. Benny Gervasis highlighted the above contentions of the appellants. The learned Counsel for the respondent Mr. Dinesh R. Shenoy reiterated the contentions raised in the memorandum of Writ Petition, which were upheld by the learned Single Judge.

9. Going by the judgment under appeal, we feel that the Court has exercised appellate function over the administrative decision of the Government, contained in Ext.P11. Before examining this aspect in depth, we would first re-state some fundamental principles governing judicial review. The doctrine of ultra vires is the basis of judicial review. The superior courts of England claimed inherent power to examine whether the actions of inferior Tribunals and statutory authorities were taken within the limits of their powers. If any action taken by them was found to have exceeded the limits of their power, such actions were condemned as ultra vires, unauthorised and therefore, void by the Courts. The juristic foundation of judicial review is the concept of ultra vires. Professor H.W.R. Wade and C.F. Forsyth in Administrative Law, 9th Edition, stated as follows:

The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law. The juristic basis of judicial review is the doctrine of ultra vires. To a large extent, the courts have developed the subject by extending and refining this principle, which has many ramifications and which in some of its aspects attains a high degree of artificiality.

De Smith, Woolf and Jowell, in Judicial Review of Administrative Action, have stated:

In essence, the doctrine of ultra vires permits the courts to strike down decisions made by bodies exercising public functions which they have no power to make. Acting ultra vires and acting without jurisdiction have essentially the same meaning, although in general the term "vires" has been employed when considering administrative decisions and subordinate legislative orders and "jurisdiction" when considering judicial decisions, or those having a judicial flavour.

10. In this case, admittedly, the Government have power under Rule 7 of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958, to suspend the respondent. Rule 7 of the said Rules reads as follows:

7.(1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf, may place a member of a Service under suspension, where-

(a) an inquiry into his conduct is contemplated, or is pending, or

(b) a complaint against him of any criminal offence is under investigation or trial.

(2) A member of a Service who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended by the appointing authority under this rule.

(3) An order of suspension under Sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate.

A contention was sought to be urged to the effect that once the enquiry is over, the suspension cannot be continued, in view of the words contained in Clause (a) of Sub-rule (1) of Rule 7. We find it difficult to accept that contention. Suspension is permissible even in contemplation of disciplinary proceedings. So, it can continue till the disciplinary authority passes final orders. The enquiring authority holds the enquiry for the disciplinary authority. The disciplinary authority, on receipt of the enquiry report, decides whether the same may be accepted or not and after following due procedure, passes the final order. The enquiry will be over in substance only when final orders are passed. If the delinquent is to be reinstated immediately after the enquiry by the enquiring officer is over, the same will produce an anomalous result, that is, the first part of the above said clause enables suspension, even in contemplation of an enquiry, whereas the latter part does not permit continuance of the suspension after the completion of the enquiry by the enquiry officer, even if the delinquent is found guilty. So, we feel that it will be irrational to interpret the rule to mean that the suspension cannot be continued till the final orders are passed.

11. But, a public authority having jurisdiction to do something, while doing that something, may step outside its jurisdiction and the same will render its decision ultra vires and therefore, it will become a nullity. In this context, it is apposite to quote a few words from the speech of Lord Pearce in the House of Lords in *Anisminic Ltd. v. Foreign Compensation Commission* 1969(2) AC 147. The relevant portion of the said speech reads as follows:

Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

If the Government have failed to advert to the relevant matters or have taken into account irrelevant matters, the decision will be vitiated. According to the respondent, the Government did not take into account the relevant matter that he is working in Malappuram and therefore, the suspension was unnecessary. The Government also failed to notice that the enquiry was almost over and

therefore, the suspension, which was meant to prevent interference with the enquiry, was unwarranted. The above contention has been accepted by the learned Single Judge. But, we find it difficult to accept the above proposition. A police officer in service, irrespective of whether he is working in Ernakulam or Malappuram, can influence the conduct of the enquiry and also the witnesses. We notice that in Ext.P3 enquiry report submitted by the Deputy Inspector General of Police, it is seen that the said officer has questioned a lady residing in the neighbourhood of the respondent. She has deposed that she has not seen the alleged incident. A lady residing in the neighbourhood of a senior police officer, going by normal human conduct, would not dare to depose against him. So, if a police officer, even if transferred out, if he is continuing in service, can be a cause of influence on the witnesses. So, the finding that because of his transfer to a distant place, the suspension of the respondent is unwarranted, is unsustainable. Even assuming that the enquiry is over and therefore, there is no question of influencing any witnesses, still, we feel that there is yet another important reason for keeping the delinquent officer under suspension. When a senior police officer is accused of serious offences involving moral turpitude, it is in public interest to keep him outside the force. His presence will sully the discipline of the force and show it in poor light in the eyes of the general public. So, public interest, being an overriding consideration, demands that such officers, especially, in disciplined police force, accused of serious derelictions, should be kept out. This very important aspect, which was highlighted in the counter affidavit, also was not noted by the learned Judge.

12. Even if a public authority has jurisdiction to do something, if it acts in a manner, which no man in his senses will do, then its action can be safely described as ultra vires and unauthorised. We cannot say Ext.P11 is so arbitrary or irrational or "so absurd that no sensible person could ever dream that it lay within the powers of the authority" (Lord Green M.R. in *Associated Provincial Picture House, Ltd. v. Wednesbury Corpn.* 1948 (1) KB 223). We notice the prima facie findings made by the Police Complaints Authority against the respondent in Ext.P8. The Police Complaints Authority consists of a retired District Judge, an I.A.S. officer and an I.P.S. officer. Their findings against the respondent are summarized as follows:

(i) He failed to deny the execution of letters in possession of Smt. X alleged to have been sent by him which disclose that he is the father of the child.

(ii) There was a series of photographs of the child and Shri.Ivan Rathinam together, for which, he failed to give any satisfactory explanation.

(iii) The evidence before the Police Complaints Authority prima facie disclosed that the child was begotten out of sexual relationship of Smt. X with Shri.Ivan Rathinam. Evidence adduced if unrebutted is sufficient to prove that Shri.Ivan Rathinam had sexual intercourse with her in the year 2000 while subsistence of marriage of her with Y. It was clear from the provisions of Section 497 IPC that he had committed the offence of adultery.

(iv) His conduct was one punishable u/s 41(d) of Kerala Police Act 1960.

(v) His conduct was in violation of Rule 3 of the Government Servants Conduct Rules 1960.

(vi) His conduct will be a good and sufficient reason to impose penalty as per Rule 15 of KPDIP & A Rules, if proved in a full-fledged enquiry.

Finally, the authority recommended as follows:

We unanimously recommend to the Appointing Authority/Disciplinary Authority/ Government of Kerala to initiate departmental proceedings against the respondent on the basis of the allegation that he had sexual intercourse with the complainant during subsistence of her marriage with Mr. Y.

As per the provisions of the Police Amendment Act, 2007 (Act 21/2007), when such a recommendation of the Police Complaints Authority is received, the disciplinary authority is bound to take disciplinary action, though the disciplinary authority or the enquiring authority should not be influenced by the prima facie findings of the Police Complaints Authority.

13. The respondent was not suspended when disciplinary action was initiated by serving Ext.P1 charge memo. But, later the Director General of Police addressed a communication on 12.12.2008 to the Government and based on that communication, the Government decided to suspend him. Going by the allegations against the respondent, it cannot be contended that this is not a fit case to place him under suspension, in public interest. The view taken by the Government in this regard cannot be described as arbitrary or perverse or one, which no man in his senses will take. The fact that at the first instance the respondent was spared, does not mean that subsequently the Government cannot wake up, when it was alerted by the Director General of Police and order suspension. While reviewing an administrative action, the court should bear in mind that on the same set of facts, different views are possible. Even if the view taken by the Government is different from the view entertained by the Court, it is not a ground to interfere with the administrative action concerned. Lord Hailsham LC said:

Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable". (In *Re W. v. An Infant* 1971 AC 682). Lord Diplock in his speech in *Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside* 1977 AC 1014 said:

The very concept of administrative discretion involves a right to choose between more than one possible course of action, upon which, there is room for reasonable people to hold differing opinions as to which is to be preferred.

Our Apex Court in *U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others*, held as follows:

In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities. They have a certain amount of discretion available to them.... The Court cannot substitute its judgment for the judgment of the administrative authority in such case.

14. Even assuming, in the view of the court, a different or better view is possible, still, the court cannot substitute its decision for that of the Government. Professor H.W.R. Wade and C.F. Forsyth in Administrative Law (Ninth Edition) have stated as follows:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. When a Divisional Court yielded to that temptation by invalidating a Secretary of State's decision to postpone publication of a report by company inspectors, the House of Lords held that the judgments "illustrate the danger of judges wrongly though unconsciously substituting their own views for the views of the decision-maker who alone is charged and authorised by Parliament to exercise a discretion. The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits....

The above statement of law has been quoted and followed by our Supreme Court in G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, . Going by the above mentioned well-settled principles of judicial review, we feel that no ground has been made out, warranting interference with Ext.P11.

15. Even if the view taken in the judgment under appeal, mentioned earlier, that it is not necessary to suspend the respondent to prevent him from influencing the witnesses is accepted, still, his suspension is justified in public interest. The learned Judge failed to advert to that relevant aspect. Further, we notice that the finding of the learned Judge that the suspension order was passed only to victimise the respondent and it will amount to abuse of the power vested in the Government, is not supported by any material on record. Of course, the respondent has made certain self serving statements regarding the mala fide action from the part of the State. But, the appellants in their counter affidavit have denied those allegations of mala fide also. Allegations of mala fide are easily made, but they are seldom sustained. In this case, the respondent is accused of serious misconduct and pending enquiry, he has been suspended. There is nothing unusual, irregular or irrational about it. It cannot be said that this is a case where the respondent would not have been suspended, but for the

political clout of the father of Mrs.X.

16. We have gone through the decisions relied on by the learned Single Judge. Going by the principles laid down in A.K. Veeramani v. State of Kerala 1974 KLT 630, the decision of the Government to suspend the respondent is fully justified. This Court in Mathew v. State of Kerala 2000(1) KLT 245 held that there should be application of mind before suspending an employee. The decisions in Surendran K v. Government of Kerala ILR 2008 Ker 587 and Vikraman Nair v. State of Kerala 2008(4) KLT 63 (case No. 59) are rendered on the special facts of those cases. The observations in those cases have no application to the facts of this case.

17. In the result, the Writ Appeal is allowed. The judgment of the learned Single Judge is reversed and the Writ Petition is dismissed. But, this judgment will not stand in the way of the Government, either suo motu or on application, reviewing the suspension order and reinstating the respondent in service, if it thinks fit.