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**(1963) 10 KL CK 0027**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 39 of 1963**

State of Kerala

APPELLANT

Vs

Velayudhan

RESPONDENT

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**Date of Decision :** 17-10-1963

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1964) KLJ 49

**Hon'ble Judges :** T.K. Joseph, J; T.C. Raghavan, J

**Bench :** Division Bench

**Advocate :** K. Kunhirama Menon, for the Respondent

**Final Decision :** Allowed

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## Judgement

Joseph, J.—The respondent, who was a head-constable in State service, was dismissed from service by the Government and the petition filed by him under Article 226 of the Constitution was allowed by Vaidialingam J., quashing the order of dismissal. The State has preferred this appeal from the order. There were several charges against the respondent and these, along with certain charges against the Sub-Inspector of Police of the same station, were enquired into by Shri P. D. Nandana Menon, Enquiry Commissioner and Special Judge, who found the respondent guilty of having received a sum of Rs. 50/- as illegal gratification from P. W. 7. The evidence on the point consisted of the testimony of P. Ws. 7 and 8. Believing their evidence, the Enquiry Commissioner and Special Judge recommended that the respondent be dismissed from service. In the order under appeal it was held that there were glaring inconsistencies in the evidence of the witnesses and that the Enquiry Commissioner had a duty to satisfy himself as to whether there was such a discrepancy and to decide whether such discrepancy would affect the conclusion reached by him. It was further held that the vital basic facts have not been established and that on the other hand the charge stood disproved by the evidence of P. Ws. 7 and 8. The order of dismissal was accordingly quashed.

2. The only point urged on behalf of the appellant-the State-is that the learned Judge exceeded his jurisdiction in embarking on an appreciation of evidence. The learned Judge observed:

I am well aware of the fact that it is not the province of this Court to constitute itself as a court of appeal to consider and appreciate the evidence adduced in this case. But I am referring to this aspect because if the Tribunal had adverted to this aspect and came to a conclusion that notwithstanding these discrepancies it is satisfied that by and large the case of the prosecution regarding the demand of illegal gratification and the payment has been established 1 would be very reluctant to interfere in proceedings under Article 226.

This, if we may say so with respect, is the correct position. The function and powers of the High Court in such cases have been defined by the Supreme Court in *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, . After referring to an earlier decision in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , the Supreme Court observed:

It was pointed out in that case that the principle underlying the jurisdiction to issue a writ or order of certiorari was no more in doubt; but the real difficulty arose, as it often did, in applying the principle to the particular facts of a given case. It was also pointed out that the High Court had exercised its supervisory jurisdiction in that case in respect of errors which could not be said to be errors of law apparent on the face of the record; if at all they were errors, they were errors in appreciation of documentary evidence or affidavits, error in drawing inferences or omission to draw inferences. In other words, it was further observed, these were errors which a Court sitting as a court of appeal only, could have examined and, if necessary, corrected. In the present case also we feel, with respect, that what the High Court has done is to correct what may be errors in appreciation of documentary evidence or errors in drawing inferences. We are, therefore, of opinion that there was no error of law apparent on the face of the record in this case which would justify interference by the High Court with the order of the Deputy Custodian General, who undoubtedly had jurisdiction to deal with the matter and did not in any way exceed that jurisdiction or fail to deal with the matter in accordance with the essential requirements of law which he was authorised and required to administer.

To the same effect are the observations in *Major U.R. Bhatt Vs. Union of India (UOI)*, where it was held :

The order of discharge from service passed against him by order of the Governor General is not liable to be questioned on the ground that the materials may not have justified the passing of that order. It is not within the competence of a civil court to sit in judgment over the decision of the authority who is competent by law to dismiss a public servant provided he has been afforded an opportunity to defend himself consistently with the substance of the Constitutional guarantee.

In a recent case, *State of Orissa v. Murlidhar* (A. I. R. 1963 S. C. 404) it was

held:

Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However in subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate.

It was further held that the only consideration so far as a finding of fact was concerned was whether it was supported by any evidence.

3. Judged in the light of these principles we are of the opinion that this Court is not competent to appreciate the evidence afresh to see whether the conclusion drawn by the Tribunal is correct. It is seen from the report of the Enquiry Commissioner, Ext. P. 5, that his attention was drawn to the fact that there were inconsistencies in the evidence of P. Ws. 7 and 8. He stated:

Then the question is whether the evidence regarding the payment of bribe can be believed. The defence contention is that there is discrepancy in evidence regarding the pledge of the jewels and that vitiates the evidence. These discrepancies are referred to in paragraph 5 of Ext. P. 7..... I hold that their evidence is sufficient to prove that the second defendant received some illegal gratification in connection with the water course dispute, from P. W. 7.

This shows that the Commissioner did consider the question whether P. Ws. 7 and 8 could be believed, notwithstanding the inconsistencies in their evidence. This Court cannot constitute itself into a Court of appeal over the findings of the Tribunal. It is true that the appreciation of evidence by the Tribunal appears to be quite defective. Vaidialingam J. has made detailed reference to this aspect of the case, and we are in complete agreement with his conclusion that the inferences drawn by the Tribunal do not appear to be warranted by the evidence when the inconsistencies are taken into consideration. But, as stated earlier, it is not within our province to set aside the order of dismissal on this ground.

4. Before parting with the case we may observe that this is a case which merits re-examination by the Government in case a motion for the same is made. In the result, we allow the appeal and set aside the order quashing the dismissal. In the circumstances of the case we make no order as to costs.