
(2012) 06 KL CK 0094

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17850 of 2010-E

T.R. Mohanakumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 06 KL CK 0094

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : T.C. Govinda Swamy and Sri. G. Shyam Raj, for the Appellant; P. Parameswaran Nair, Assistant Solicitor General Of India For R1, Sri. Mathews K. Uthuppachan for R2, Sri. Joseph Kodianthara , For R3, Sri. Abraham Markos, Sri. Mathews K. Uthuppachan, Terry V. James, John Prakash B.J., Tom Thomas Kakkuzhiyil, Sri. V. Abraham Markos, For R4 and R5 and Sri. Binu Mathew, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Facing disciplinary proceedings and having suffered an order of punishment, the petitioner moved this Court. Ultimately, a bunch of writ petitions filed by him was taken up by the Division Bench and decided as per the judgment reported as T.R. Mohanakumar, Deputy Secretary Vs. The Chairman, Rubber Board and Sri. K.J. Mathew, (Former Chairman) . It was categorically found therein that the findings of the Enquiry Officer cannot be treated as violative of principles of natural justice or perverse. It was noted that the findings of the disciplinary authority cannot be treated as patently illegal, or the punishment imposed as shockingly disproportionate, to be visited by this Court in judicial review under Article 226 of the Constitution of India. Of course, the Bench had also noted that not having taken recourse to the statutory appellate remedy available against the disciplinary order and punishment order, the employee had suffered the situation where there was no further scope for assimilation of materials by the statutory appellate authority. The Bench also held that the punishment imposed is not disproportionate considering the

charges proved in the domestic enquiry. With all that the writ petitions filed by the petitioner stood dismissed. Later the petitioner, statedly after a futile attempt before the Apex Court, filed a review petition. That was decided as per Exhibit P46. Reading paragraph 4 of Exhibit P46 order, we are clear in our mind that none of the findings contained in Exhibit P45, which we have noted above, have been specifically vacated in exercise of the power of review. What has been done is to give the appellate authority the freedom to decide a statutory appeal untrammelled by anything stated in Exhibit P45. This means that any finding of fact by the domestic enquiry authority and those contained in the punishment order could have been interfered with by the appellate authority, notwithstanding the finding in Exhibit P45 that there was no ground for judicial review under Article 226 of the Constitution. For all intent and purposes, Exhibit P45 has to govern the field. We would also sound the word of caution; to the effect that repeated scouting to the superior courts in such matters should not only be discouraged, but also deserve to be viewed seriously even when certain issues get left open by the administrative department.

2. Be that as it may, by now it appears that the petitioner would have suffered the punishment imposed; his present stand is that he may be considered for appointment as the Secretary of the Rubber Board. That is an exercise to be carried out by the Central Government. We can never insist that appointment has to be made on the basis of any earlier notification. It is left to the wisdom of the Rubber Board and Central Government to notify the vacancy, if it still subsists. If the petitioner is eligible for being considered, that again is a matter for the competent authority under the Rubber Act to consider it. If the Central Government feels that there is any hitch owing to the continuance of Exhibit P51, the present appellate order, it would be at liberty to recall that order, if it deems it appropriate to do so, to pave way for consideration of the petitioner's request, if any, for being reckoned for the post of Secretary of the Rubber Board.

This writ petition is ordered accordingly.