

(2008) 09 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 21779 of 2003, 25070 of 2005 and 6284 of 2007

T.R. Mohanakumar, Deputy Secretary

APPELLANT

Vs

The Chairman, Rubber Board and Sri. K.J. Mathew, (Former Chairman)

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Rubber Act, 1947 — Section 6(A)(2)

Rubber Board Service (Classification, Control and Appeal) Rules, 1961 — Rule 10, 11

Citation : (2008) 09 KL CK 0053

Hon'ble Judges : Thomas P. Joseph, J;J.B. Koshy, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Joseph Kodianthara, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—These writ petitions are filed by the very same petitioner and are inter-connected. Hence, they were heard together. Exhibits marked in W.P.(C) No.21779 of 2003 are referred in this judgment unless specifically mentioned otherwise. Petitioner was working as Deputy Secretary in the respondent Rubber Board which is a statutory authority constituted under the Rubber Act, 1947 for development of rubber industry. He applied for the post of Secretary along with various other persons. The first rank holder was selected and his selection was challenged by the petitioner on the ground that as per the notification published maximum age fixed for the candidate at the time of application was 45, the first rank holder exceeded the above age limit and, therefore, the selection was illegal. The above contention was accepted by this Court by judgment in O.P. No.13652 of 1998 (Ext.P1 in W.P.(C) No.25070 of 2005). The contention of the rubber Board was that even though age was relaxable in the case of Rubber Board employees, that was omitted to be mentioned in the advertisement. The

learned single Judge held that when an advertisement mentions a particular maximum age, the candidates who crossed that age cannot be appointed as several persons might not have applied considering the age prescribed in the advertisement and if such appointment is allowed, it will be a fraud on the public. Therefore, selection of the third respondent was set aside and the petitioner who was second rank holder was directed to be appointed. Appeals were filed against the above judgment. A Division Bench of this Court even though stayed the above judgment, by Ext.P3 judgment the writ appeal was dismissed. The matter was taken up before the Hon"ble Supreme Court. The Hon"ble Supreme Court admitted the appeal as Civil Appeal No.6272 of 1999. Meanwhile, disciplinary action was taken against the petitioner and he challenged that action by filing O.P. No. 26416 of 2002. Before disposal of the above writ petition, the Hon"ble Supreme Court disposed of the appeal (C.A. No. 6272 of 1999) by Ext.P1 Order with the following observation:

Having regard to what is stated above, in our view, it is just and proper to dispose of these appeals in the following terms:

Shri T.R. Mohanakumar shall be considered for appointment as Secretary to the Rubber Board pursuant to the direction given by the High Court, but, subject to the result of the O.P. No. 26416/2002 pending before the High Court of Kerala. The High Court of Kerala is requested to dispose of the said writ petition within a period of three months from the date of the receipt of the copy of this order.

We make it clear that the retiral benefits of Shri Thomas Ouseph, if any, shall remain unaffected as he has superannuated and if he is entitled to all such benefits.

The selected candidate continued as the Secretary till his superannuation. After his retirement, by Ext.P4 office order dated 9.7.1999 all the functions of the Secretary except, statutory functions provided under the Rubber Act was ordered to be discharged by the Director (L & ED) in addition to his regular duties and responsibilities.

2. A Board meeting was convened to be held on 4.12.1999. Petitioner, by Ext.P5 issued notice to all members of the Board that without a duly appointed Secretary, such Board meeting cannot be held. He is also alleged to have informed some of the Board members over the phone that they should not attend the meeting. Two Board members have written complaints by Exts.P17 (a) and P17 (b). The minutes of the Board meeting is produced as Ext.P7. The petitioner was charge-sheeted for 13 serious misconducts. Petitioner challenged the charge-sheet. The learned Judge by judgment in O.P. No. 8118 of 2000 (Ext.P8) held that charge Nos.4, 5 and 13 are relating to matters connected with the case pending in the Supreme Court and, therefore, those charges were quashed. Enquiry was conducted in respect of the other charges. On the basis of the findings in the enquiry, disciplinary authority dismissed the petitioner from service. The Appellate Authority modified the order by order dated 19.6.2001.

The order of dismissal was set aside and punishment was changed to reduction of pay by three stages for a period of three years. It was also ordered that he will not earn any increment during the said period of three years. 75% of the backwages were also ordered to be paid to him. Then, the petitioner filed O.P. No.20864 of 2001. It was found by a learned single Judge of this Court by judgment in O.P. No. 20864 of 2001 (Ext.P9) that some of the charges relating to publication of reports in the newspapers etc. is defamatory to the Chairman as there was likelihood of bias on the part of the appellate authority, the matter was remanded to the Appellate Authority. It is also stated in the judgment that no views are expressed regarding the merits of those misconducts as they have to be considered by the appellate authority. Again, the Appellate Authority considered the matter and passed an order similar to the previous order.

3. Again, petitioner challenged that order and by Ext.P11 judgment in O.P. No. 26416 of 2002, the learned single Judge found that charge Nos.6, 7 and 9 relate to use of abusive language and preventing the Chairman and Board members from addressing the board members etc. and, therefore, findings on charge Nos.6, 7 and 9 of the disciplinary authority were quashed. Charge Nos.6, 7 and 9 are as follows:

6. Attempted to prevent the Chairman, Rubber Board from discharging the duties/functions as envisaged in the Rubber Act, 1947 and Rubber Rules, 1955 by issuing notice to the Chairman directing him to stop/prevent/withdraw and dispense with the meetings of the Committee/Board and also moved the Hon"ble High Court of Kerala by preferring Original Petition No.30215 of 1999, indirectly attempting to stall the meetings and other proceeding of the Board, when he was in no way concerned with the affairs of the meetings of the Board and thereby acted against the interest of the Board.

7. Attempted to prevent the Members of the Board from participating in the Committee meetings and Board meeting scheduled to be held on 27.11.1999, 30.11.1999 and 4.12.1999 by issuing notices dated 16.11.1999 to them, requiring them that they shall not participate in the Committee/Board meetings convened under the orders of the Chairman, when he was in no way concerned with the convening of the meetings of the Committee/Board and acted against the interest of the Board.

9. Criticized the Secretary to Government of India and the Chief Executive of the Board on 16.11.1999 using intemperate expressions by standing in front of the staff and public near the reception of the Head Office with the deliberate intention to denigrate and tarnish the image of the authorities.

According to the learned single Judge, the then Chairman has got interest in these matters and there was likelihood of bias. The then Chairman was relieved and another person was appointed as Chairman. Therefore, disciplinary authority was directed to consider the above charges afresh. Accordingly, fresh order was passed by the disciplinary authority. Ext.P13 order dated 25.6.2003 was passed

by the disciplinary authority imposing the following punishment:

Accordingly, in exercise of the powers conferred on me under rule 11 read with rule 10 of the Rubber Board Service (CCA) Rules, 1961, I impose the penalty of reducing the pay of Sri. T.R. Mohanakumar by three stages from Rs. 11,300/- to Rs. 10,325/- in the time scale of pay of Rs. 10,000-325-15,200 for a period of three years with effect from 2.7.2001. It is further ordered that during the currency of the punishment, he will not earn normal increments of pay and on expiry of the period of penalty, the reduction will not have the effect of postponing his future increments of pay. It is further decided to regulate the period of absence from duty of Shri T.R.Mohanakumar including the period of his suspension from 14.12.1999 to 1.7.2001, preceding the date of his reinstatement in service on 2.7.2001 as period spent on duty for all purposes including pension and to regulate the pay of Sri.T.R.Mohanakumar during the said period by sanctioning him an amount at the rate of 75% of pay with admissible allowance. Out of the sum so payable, the subsistence allowance and other amount, if any, drawn by him shall be reduced.

Without filing an appeal as per rules, the petitioner approached this Court by filing W.P.(C) No.21799 of 2003 to quash Exts.P13 order of the disciplinary authority and finding of enquiry officer and also to grant consequential benefits.

4. W.P.(C) No.25070 of 2005 was filed by the petitioner to direct the Union of India to appoint him as Secretary of the Rubber Board with retrospective effect from 18.3.1999, the date of judgment in O.P. No.13652 of 1998 with consequential monetary and other benefits and also with cost. In the counter affidavit dated 16.3.2006 filed by the Union of India it is stated as follows:

6. The Hon''ble Supreme Court while considering the civil appeal disposed the same in the following terms:

The petitioner shall be considered for appointment as Secretary to the Rubber Board but subject to the result of the W.P.(C) No.26416/2002 pending before this Hon''ble Court. This Hon''ble Court considered the W.P.(C) No.26416/2002 and allowed the same quashing the disciplinary proceedings but it is held that it is open for the disciplinary authority to proceed afresh in the matter and if it decides so the disciplinary authority may do so within three months from the date of receipt of a copy of the judgment. The disciplinary authority proceeded afresh against the petitioner after hearing the petitioner and passed fresh order by order No.C1/2000-Vig. dated 25.6.2003. In the order the disciplinary authority found the petitioner guilty of five charges and imposed the penalty of reduction in pay by three stages for a period of three years. The petitioner challenged the same order by filing W.P. (C) No.21779 of 2003 and the said writ petition is pending. The 1st respondent considered the case of the petitioner for appointment to the post of Secretary as per the direction of the Hon''ble Supreme Court taking into account the findings of this Hon''ble Court and the order dated 25.6.2003. Imposing penalty upon the petitioner by the 2nd

respondent, found that the petitioner is not suitable for the appointment to the post of Secretary to the second respondent in view of the penalty, which is still in currency. It is submitted that in the above circumstances, the petitioner is not entitled for any relief sought in this writ petition.

5. Ext.P6 order dated 3.10.2006 in W.P.(C) No. 6284 of 2007 was passed holding that the petitioner, Shri Mohanakumar is not suitable to be appointed to the post of Secretary. The above order was passed in pursuance of the interim order passed in O.P. No.25070 of 2005. It contains the reasons why he was not appointed as the Secretary. The relevant portion of the order is re- produced below:

2. In pursuance of this direction, a Committee was constituted comprising Additional Secretary (Plantations), Department of Commerce, Chairman, Rubber Board, Chairman, APEDA and Director (Plantations) with Commerce Secretary as Chairman of the Committee to assess the suitability of Sri.Mohanakumar as Secretary, Rubber Board. The Committee met on 28 September 2006 to consider the claim of Shri T.R. Mohanakumar to the post of Secretary, Rubber Board in compliance with the directions of the Hon"ble High Court of Kerala given in the interim order dated 24.05.2006 in W.P. (C) No.25070/2005.

3. The Committee took note of the Recruitment Rules and the process of selection. It was observed that the Secretary, Rubber Board is appointed by the Central Government u/s 6(A)(2) of the Rubber Act. The post is filled by direct recruitment failing which by transfer on deputation. The age limit of 45 years is relaxable in the case of Government servants and servants of the Rubber Board. It was noted that the post of Secretary fell vacant on 31.3.1998. A notification was issued on 14.2.1998 by the Rubber Board inviting applications for the post but the age relaxation clause was inadvertently left out in the said advertisement.

4. The existing Recruitment Rules for the post of Secretary, Rubber Board had been framed in 1974. In its references to the Department of Commerce, the Department of Personnel and Training (DOP & T) had advised that as the post of Secretary, Rubber Board was an isolated post, it should be filled on deputation basis. The post also needs to be revived as it has been vacant since 1999. The Department of Law had also advised the administrative department to revise the Recruitment Rules, as per the instructions of the DOP & T in which they suggested revision of Recruitment Rules in a period of five years. The process of amendment to the Recruitment Rules was intimated by the Central Government in keeping with these instructions.

5. The Secretary of the Rubber Board is the seniormost administrative officer of the Board below the Chairman and is required to have the ability to discharge his duties dispassionately with discipline and credibility. The candidature of Shri Mohanakumar was assessed by the Committee based on his (i) eligibility and (ii) fitness or suitability. In this regard, the Committee also considered the annual confidential dossiers of the appellant. The overall assessment of the Committee

was that the CRs do not inspire the confidence that the officer (Shri Mohanakumar) would be able to discharge the functions assigned to the post of Secretary successfully.

6. The career profile of the Appellant reveals that Shri Mohanakumar has, on various occasions, undermined the normal functioning of the Rubber Board, a statutory body. He has been charged with several counts of serious misdemeanour which reflect poorly on his overall performance. Among other things, he has engaged in unfounded allegations against the senior officials of the Rubber Board and the Union of India which have been very seriously commented upon by the Hon"ble High Court of Kerala in W.A. No.692 of 2000 and CCC No.490 of 2003. The Hon"ble Court observed in W.A. No.692 that his petition contained "no reason, but absolutely irrelevant statements.

Again, in CCC No.490, the Division Bench observed as follows:

Having gone through the record, we are satisfied that the petitioner has made irrelevant averments in the petition which do not make out any case for punishing the Chairman of the Board under the Contempt of Courts Act. We are satisfied that the petitioner has unnecessarily dragged the two respondents in this petition with a view to harass them.

7. Although Shri Mohanakumar may meet the eligibility criteria, his conduct and performance (as revealed in his CRs) do not inspire confidence that he would be able to discharge his duties with discipline and decorum as a senior administrative functionary. His conduct towards senior officials of the Board including a past Chairman (as reflected in the High Court's observations referred to in para 6) suggest a pattern of behaviour that the Committee does not consider to be in the best interest of the institution, namely, the Rubber Board. The Committee also noted that in the disciplinary proceedings taken up against the officer which resulted in the imposition of a penalty, officials (peers as well as his seniors), would have deposed. There is, therefore, the added consideration that his elevation to the post of the Secretary may bring friction and working difficulties to the institution. Sri.Mohanakumar has further, violated the provisions of the Central Civil Services Conduct Rules. In the result, it would not be prudent and in the best interest of the Rubber Board to entrust Shri Mohanakumar with the duties and responsibilities attached to the post of Secretary, Rubber Board.

8. In view of the above, the Central Government, therefore, do not find Sri.Mohanakumar suitable for appointment to the post of Secretary, Rubber Board.

Various contempt petitions were filed and those cases were also dismissed as can be seen from Exts.P7, P7(a) and P8(a) judgments passed by this Court. In Ext.P8 (a) order in C.C.C. No. 490 of 2003, a Division Bench of this Court held as follows:

3. We have heard the petitioner in person and the learned Counsel for the respondents and are of the view that the contempt petition is wholly misconceived and an abuse of the process of the Court. We have perused the proceedings of the 138th meeting of the Board held on 4th December, 1999 and do not find any misrepresentation on the part of the Chairman regarding the judgments delivered by this Court. It appears that while the Board meeting was fixed, the petitioner had served notices on the Chairman and other members of the Board seeking to restrain them from holding the meeting and the members of the Board felt that the petitioner had transgressed all the limits of decency and was not allowing the Board to function properly. It further appears that the Board decided to take disciplinary action against him and removing him from service. This removal does not in any way violate the order of the learned single Judge dated 18.3.1999 which was affirmed by the Division Bench in W.A. No. 852 of 1999. Having gone through the records, we are satisfied that the petitioner has made irrelevant averments in the petition which do not make out any case for punishing the Chairman of the Board under the Contempt of Court Act. We are satisfied that the petitioner has unnecessarily dragged the two respondents in this petition with a view to harass them. We have no hesitation in rejecting the contempt petition which we hereby do and same stands dismissed.

6. With regard to W.P.(C) No.21779 of 2003, Ext.P13 order is a speaking order. All the points raised by the petitioner are considered in Ext.P13 order. Ext.P14 enquiry proceedings shows that the petitioner was given full, fair and free opportunity to participate in the proceedings. Ext.P13 order of the disciplinary authority also shows that the entire evidence was considered by the disciplinary authority. Petitioner did not choose to file an appeal against Ext.P13 as provided in the statutory rules. In the above circumstances, we are of the view that no relief can be granted under Article 226 of the Constitution of India. Exercise of judicial review in the finding of the enquiry officer or in the orders of the disciplinary authority is possible only if the finding of the enquiry officer is violative of the principles of natural justice or the findings of the enquiry officer are perverse or the finding of the disciplinary authority is patently illegal or the punishment imposed is shockingly disproportionate. In fact, such defects were not there. Petitioner should have filed an appeal before the statutory authority. Interference by this Court in the matter of punishment is very limited. It cannot be stated that disciplinary order passed against the petitioner is so perverse, illegal or shockingly disproportionate that it warrants interference by exercising the extraordinary jurisdiction of this Court. In fact, the petitioner was not imposed the punishment of dismissal or discharge from service. The punishment imposed is not disproportionate considering the charges proved in the domestic enquiry. As regards W.P. (C) 25070 of 2005 and 6284 of 2007, the Hon'ble Supreme Court specifically made it clear that the appointment of the petitioner as Secretary to the Board will depend upon the disciplinary action that is challenged by the petitioner in the writ petition. The disciplinary action went against him. Why the petitioner was not reinstated is clearly mentioned in Ext.P6

order challenged in W.P. No.6284 of 2007. We fully agree with the said reasonings. We also note that the petitioner joined the Law College in the year 2002 and he submitted voluntary resignation on 18.1.2007. He resigned from the Rubber Board as Deputy Secretary. It is also submitted that he enrolled as an advocate and now, he is a practising advocate.

7. From the totality of circumstances and since we have already upheld Ext.P13 order challenged in W.P.(C) 21779 of 2003 considering the merits and the fact that no appeal was filed before the statutory appellate authority against Ext.P13 order of punishment, and considering the subsequent developments, we are of the view that no relief can be granted to the petitioner. All the writ petitions are dismissed.