
(1964) 02 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 338 of 1963

Velayudhan Pillai

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 04-02-1964

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f), 226, 309, 311

Citation : (1964) KLJ 792

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker and P.G. Parameswara Panicker, for the Appellant;

Final Decision : Dismissed

Judgement

Govindan Nair, J.—This case has given me considerable difficulty and it is not without hesitation that I have come to the conclusion that no case has been made out for interference under Article 226 of the Constitution. The question that arises for determination is a simple one, whether a minor penalty, as it is called under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, has been rightly and legally inflicted on the petitioner, the penalty being the withholding of his increments for three years by an order which has been produced and marked in these proceedings as Ext. P.7. Another followed Ext. P.7 after the writ application was moved by the petitioner and that order happened to be passed because it was realised that by the time Ext. P.7 order was issued, the petitioner had reached the maximum of his scale of Rs. 250-400, thus there being no scope for giving effect to Ext. P.7. The order that followed therefore directed that the equivalent of the money value of the penalty mentioned in Ext. P.7 should be realised from the petitioner. This was apparently done by virtue of rule 11(1) (iv) (b) of the Kerala Civil Services (Classification, Control and Appeal) Rules. Ext. P.7 order came to be passed in the following circumstances. The petitioner was the Assistant Surgeon attached to the Ayiroor Dispensary

somewhere near Parur. He remained there till August 1960. An anonymous petition was sent to the Director of Health Services which was apparently received by that authority by the end of January or early in February 1962 wherein a statement has been made that a large quantity of the Synthomycin capsules received in the dispensary on 12-12-1959 has been misused. It was also mentioned in the communication that a verification of the issue register in which is recorded the issue of stocks from the store to the dispensary would indicate that 220 capsules of the above medicine was issued on 15-4-1960 and a further quantity of 250 capsules on 15-5-1960 and another 500 capsules on the same day, 15-5-1960. Ext. P.1, therefore was issued to the petitioner and his explanation to the same is Ext. P.2. This was followed by another query which is evidenced by Ext. P.3, and a further explanation, Ext. P.4. Apparently not satisfied with Exts. P.2 and P.4, a charge Ext. P.5, was framed against the petitioner, and as I understand Ext. P.5, it charged the petitioner with misuse of costly medicines. His explanation to the charge is Ext. P.6 and the order, Ext. P.7, followed wherein it is said that the charge is made out and hence the penalty of withholding of three increments, as I said earlier, was imposed on the petitioner.

2. The arguments in" this case ranged over a very wide field, but I consider it unnecessary to refer to all those arguments since matters crystallised towards the concluding part of the discussion at the Bar. It is not contended that Art. 311 is attracted. Nor is it contended that there has been violation of the principles of natural justice as such or for that matter of any statutory rule framed under Art. 309 of the Constitution except it be that rule 16 of the Kerala Civil Services (Classification, Control and Appeal) Rules has not been fully followed in that the requirement of rule 16(1) (b) has not been complied with. Rule 16(1) (b) runs thus:

16. Procedure for imposing minor penalties: (1) No order imposing any of the penalties specified in items (i) to (iv) of rule 11 (1) shall be passed except after,

(a)....

(b) such representation, if any, is taken into consideration by the Disciplinary Authority;

3. It is not urged that there has been no compliance either with the earlier part of rule 16 or with the latter part. In order to understand the Contention that rule 16(1) (b) has not been complied with, a few more facts have to be stated. The main contention of the petitioner as seen from Exts. P.2, P.4 and P. 6 are:

(a) There has been an increase in the enteric group of diseases, as was usual, from the month of May.

(b) It has not been only enteric fever cases that were treated with the medicine, Synthomycin, but all diseases that can be said to fall under "enteric group" of diseases. This, according to the petitioner, may include cases of ordinary fever which may look harmless at the beginning but may end in bacillary dysentery or

colitis.

(c) The assumption that only inpatients have been treated is wrong. Inpatients as well as outpatients have been treated. Some of these outpatients were housed in rooms that were let by an owner of the property adjacent and opposite to the dispensary.

(d) The date 15-5-1960 in regard to the issue of the 500 capsules is a mistake for 15-6-1960. This is obvious from the fact that after the alleged issue on 15-5-1960 (as it is contended by the authorities) there has been no further issue till the petitioner left the hospital at about the end of August 1960.

(e) Considering the quantity of medicine required for treating one case and the fact that outpatients have also been treated, the quantity at least of 970 capsules is not excessive.

4. These matters are supposed to have been dealt with by Ext. P.7 order. The Government Pleader has also made available to me the notes of the Director of Health Services in submitting the charge, explanation and the relevant papers before the Government, the Disciplinary Authority. The Director of Health Services came to the conclusion that the explanation of the petitioner is not satisfactory and that there has been issue of the medicines far in excess of the requirements of the dispensary. In fact, in one of the notes put up, it is said that the contentions raised by the petitioner are technical and that is the reason why it appears that the Director expressed his views before submitting the papers before the Government. It appears to me that some of these contentions are technical. The petitioner had mentioned about the number of capsules required for the treatment of an enteric case. The materials available before me do not disclose what would be the normal requirements in such cases. The Director seems to take the view that the contentions urged by the petitioner are not well founded. I do not think that I am entitled to sit on Judgment on this conclusion. Nor am I able to say that the view that outpatients could not have been treated with this medicine is arbitrary or perverse. These points are mentioned in the order, Ext. P.7. Nothing, however, is said specifically regarding the plea of the petitioner that not only inpatients but outpatients have also been treated with Synthomycin excepting that patients suffering from enteric fever cannot be treated as outpatients. In fact, all the contentions raised by the petitioner have not been dealt with as such in the order. It was in view of this that I felt for a while that the order, Ext. P.7, is unsatisfactory.

5. But counsel on behalf of the State has referred me to two decisions of the Supreme Court dealing generally with the jurisdiction of the High Court in matters pertaining to the issue of a writ under Art. 226 of the Constitution. Though it is well accepted that a patent error of law is a ground for the issuance of a writ, it has not always been easy to say under what circumstances it can be said that there is a patent error of law. In cases pertaining to income tax dealing with the question as to whether there is a question of law arising which would

justify a reference u/s 66 of the Indian income tax Act, 1922, it has been held that an omission to consider material facts in coming to a conclusion can give rise to a question of law which can be said to arise from the order of the income tax Appellate Tribunal. But no decision has been brought to my notice where the same principle has been applied in the matter of an enquiry relating to disciplinary proceedings against a Government servant. On the other hand, it has been recently ruled by a Division Bench of this Court in *State of Kerala v Velayudhan* (1964 K.L.J. 49) interfering with an order of a learned Single Judge of this Court, that even when this court is satisfied that the conclusion reached by the authority could not have been reached if the materials had been viewed in their proper perspective and the conclusion is, therefore, wrong, interference under Art. 226 of the Constitution is not possible. The following passage from the decision makes this clear:

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.

6. The two cases of the Supreme Court referred to in paragraph 6 of this Judgment are: *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, and *State of Andhra Pradesh Vs. Sree Rama Rao*, . In the earlier of these cases, there is this observation:

This Court had occasion again to consider the question of the extent of the High Court's powers to interfere on a writ of certiorari in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . 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, errors 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.

And the decision referred to in the above passage, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, has laid down:

One of the grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior court, in exercise of its statutory powers as a court of appeal or revision. In this respect the law in India and the law in England are the same. The common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Here formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected and the appellate authority under the statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the appellate authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is no case for the exercise of the jurisdiction under Art. 226. The non-observance of the executive instructions cannot affect the power of the appellate authority and render its order invalid. It is not for the High Court or the Supreme Court to examine the order in any detail. Where an Act has created its own hierarchy of officers and appellate authorities to administer the law, the High Court has no concern with the manner in which those powers have been exercised so long as these authorities have functioned within the letter and spirit of the law.

In the decision in State of Andhra Pradesh Vs. Sree Rama Rao, the following observations occur:

The High Court then observed that ordinarily the conclusions on questions of fact by a body or tribunal in a proceedings under Art. 226 of the Constitution are accepted by the High Court but that general rule does not apply "whenever an important principle of jurisprudence is discarded in reaching such findings", and since the fundamental rule that a person should be punished only after the entire evidence in the case had been considered and he is found liable beyond reasonable doubt, had not been followed, the conclusions of the departmental authorities were vitiated. The High Court again observed that the orders passed

by the departmental authorities were vitiated because of two other matters : (i) that the Enquiry Officer declined to summon and examine two witnesses for the defence even though a request in that behalf was made; and (ii) that there was no charge against the respondent of "falsifying the record by omitting to write what he had done or what happened in the police station" and he had not been given an opportunity of meeting such a charge and therefore the respondent had no fair hearing consistent with the principles of natural justice.

There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution, a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rule prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution.

7. Judged in the light of the above, it does not seem to be possible to say, as I mentioned earlier that there is any ground to interfere under Art. 226 of the Constitution. Admittedly there has been no violation of any statutory rule, nor has the principles of natural justice been infringed. I am not prepared to say that the conclusion reached by the Disciplinary Authority, the State, is so arbitrary or perverse that no reasonable person could possibly have come to the conclusion reached.

8. The question, therefore, as I have observed earlier, is whether there has been an omission to follow rule 16 (1) (b). This depends on the question whether the word "consideration" occurring in the sub-clause of the rule means that the finding entered by the Disciplinary Authority should mention each of the contentions raised by the petitioner and must give a Judgment as it were, giving detailed reasons for its conclusions. I do not think this is necessary and my attention has not been invited to any authority where it has been so held. The ordinary meaning of the word "consider" is, "to look at attentively or carefully; to think or deliberate on; to take into account" etc. The main point is about the quantum of the medicine required, and this a person, who has special knowledge, at any rate, must be presumed to know, and such a person has said categorically that the quantum was far in excess of the requirements of the dispensary during the relevant period.

9. One more point was urged by counsel on behalf of the petitioner. He contended that the order passed subsequent to Ext. P.7 directing the petitioner to repay the salary that he had received in order to effectuate Ext. P.7 is in any way wrong. His contention is that earned salary is property and deprivation of that property would infringe Art. 19 (1) (f) of the Constitution. The guarantee under Art. 19(1)(f) is subject to reasonable restriction. And rule 11 (1)(iv)(b) of the Kerala Civil Services (Classification, Control and Appeal) Rules, under which apparently this direction is given, is a rule framed under Art. 309 of the Constitution, and I think has the force of law. It is this rule that enabled such a direction being given. I consider that the imposition of such a restriction on the fundamental right regarding property is reasonable. This, as I understand, is the ruling of the Supreme Court in *Khem Chand Vs. Union of India* (UOI), . In the result, I dismiss this writ application, but make no order as to costs.