
(2014) 07 KL CK 0002

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 29125 of 2011

Vijeesh C.V.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Citation : (2015) 1 ILR 490 : (2014) 4 KHC 716 : (2015) 1 KLJ 176 : (2014) 4 KLT 899

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : V.A. Muhammed and M. Sajjad, Advocate for the Appellant; Liju V. Stephen, Government Pleader, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The issue in this writ petition, facile as it may appear, is whether an incumbent officer can be made liable and answerable to the misdeeds of his predecessor-in-office on the premise that the misdeeds were committed by the delinquent while answering a particular description as an officer rather than as an individual. In other words, does the offence or misdeed run with the office, rather than with the delinquent, the individual? On the factual front, the petitioner is the Manager of Ackiparamba U.P. School, which is an aided school situated at Taliparamba North in Kannur District. Prior to him, one Mr. T.K. Balakumar was the Manager till 12/01/2011. On his death, one Mr. Chandran succeeded him in office, where after the petitioner was made the Manager on 16/05/2011. The petitioner is said to be continuing in the said post.

2. It is brought on record that while Mr. T.K. Bala Kumar was the Manager of the school, he had initiated disciplinary action against one Smt. K.V. Vasantha Prabha, the HM of School. As part of the said disciplinary proceedings, he suspended her from service from 29/10/2009 to 16/03/2010 and from 18/03/2010 to 21/03/2010. The authorities, however, conducted a detailed enquiry and came to a conclusion that there was no justification and valid ground for the suspension of Smt. K.V. Vasantha Prabha, the HM. Accordingly, the then

Manager, Mr. T.K. Balakumar, was directed by the respondent No. 3 to reinstate the HM retroactively from the date of initial suspension in accordance with Rule 67(B), Chapter XIV, Kerala Education Rules. As the suspension was based on "frivolous and cooked up charges", the pay and allowances required to be paid to the teacher for the period she had been kept out of service were ordered to be recovered from the Manager as per provisions of KER.

3. The record further reveals that, Mr. T.K. Balakumar, against whom the recovery proceedings were sought to be initiated, died on 12/01/2011. Consequently, the Society appointed one Mr. K. Chandran as Manager and correspondent of the school from 16/01/2011 to 15/05/2011, when his services too were terminated. Upon such termination of the services of Mr. K. Chandran, the Petitioner was appointed the President of the Society and Manager of the School from 16/05/2011 onwards as per the Executive Committee Meeting of Sree Puthiyedath Kavu Temple Cultural Educational Society held on 12/05/2011.

4. Notwithstanding these changes, the respondent authorities decided to recover from the Manager the pay and allowances paid to the Headmistress, who, it was found, had been kept out of service without any justification by Mr. T.K. Balakumar, the then Manager. Accordingly, revenue recovery proceedings were initiated by the 2nd respondent. Based on the letter No. B5/24016/09, dt. 01/09/2011, received from the Director of Public Instruction, Thiruvananthapuram, the 2nd respondent requested the 4th respondent, under intimation to the 3rd respondent, to take steps to recover the amount from the Manager by invoking the Revenue Recovery Act. In fact, the 3rd respondent, on his part, issued Ext. P3, a letter dt. 01/09/2011, directing the petitioner to take steps to remit the amount of Rs. 1,02,985/- to the Government.

5. Assailing Ext. P3, the petitioner filed the present writ petition.

6. The learned counsel for the petitioner has contended that, at the time when the then Headmistress was placed under suspension in 2010, the petitioner had not been at the helm of the affairs. Referring to the sequence of events, the learned counsel has submitted that the petitioner assumed charge only on 16/05/2011, and that, prior to that period, if there were to be any statutory violations causing financial loss to the Government, the petitioner could not be penalised for it. Accordingly, the learned counsel has urged this Court to quash Ext. P3 as being illegal and arbitrary.

7. Per contra, the learned Government Pleader has strenuously contended that in terms of Rules 7(3) and 9 of Chapter III of KER, if any proceedings are initiated against the Manager of a school, and once the said manager is found guilty of any malpractices, including the dereliction of duty, as enumerated in Rule 7 thereof, notwithstanding the change of guard, the incumbent alone is to be held responsible.

8. Expatiating on his submission, the learned Government Pleader has stated that a person who occupies the position of the Manager is responsible for all the

acts of omission and commission done by a person answering the description of Manager. According to the learned Government Pleader, even if the perpetrator of the misconduct has left the position for whatever reason, including resignation, retirement, or even death, the person, who holds the post by the time the charges bore their fruit in the form of appropriate punishment after due enquiry, shall be answerable. It hardly matters, contends the learned Government Pleader, whether the incumbent himself is guilty of misconduct or not. According to him, the proceedings are initiated against the Manager not in personem, but against the very position of Managership, which is perpetual.

9. The learned Government Pleader has strenuously contended that the position of Manager is perpetual in nature and the change in person does not have any impact on the responsibility being discharged by the said Manager. In support of the said submission, the learned Government Pleader has placed reliance on a decision of this Court in Eipe Vs. Koshi and Another, .

10. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing records.

11. Since the facts are not in controversy, the sole issue to be determined is whether the petitioner, being the incumbent Manager, can be held liable for the omissions and commissions of his predecessor even before the petitioner could be borne in the rank of Manager.

12. As heavy reliance has been placed by the learned Government Pleader on Rules 7(3) and 9, Chapter III of KER, it is profitable to extract the same. They are, to the extent relevant, as follows:

"7. Action against Manager or Educational Agency in the event of mismanagement etc.--(1) In the event of mismanagement, malpractice, corruption or maladministration, gross negligence of duty, or disobedience of Departmental instruction on the part of the Manager [or denial of appointment to a qualified thrown out teacher who has a rightful claim for reappointment by virtue of his/her holding the post earlier or denial of promotion to a teacher who is rightful claimant for promotion by the manager or conviction of the Manager for an offence involving moral turpitude it shall be open to the Director, after giving the Manager a reasonable opportunity to show-cause against the action proposed to be taken and after due enquiry, to declare him unfit to hold the office of Manager in the school or in any other aided school and to require the educational Agency to appoint a suitable person as Manager.

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(3) In the case of Managers who have failed to provide their Schools with minimum essential facilities as specified under rules 9 and 10 of Chapter IV. It shall be lawful for Government to provide minimum essential facilities in such schools, after giving due notice to the Managers concerned and to recover the expenditure incurred therefore by Government from the Managers either by

invoking the provisions of the Revenue Recovery Act for the time being in force as an arrear of land revenue or by deduction from the maintenance grant sanctioned to the Managers under Rule 5 of Chapter XXVIII.

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9. Duties and powers of the managers of Aided Schools.--(1) The Manager shall be responsible for the conduct of the school strictly in accordance with the provisions of the Kerala Education Act and the Rules issued thereunder. He shall also abide by the orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the rules issued thereunder."

(emphasis supplied)

13. A perusal of the above provisions does reveal that, as far as Rule 7 is concerned, in the event of mismanagement, malpractice, corruption or maladministration, gross negligence of duty or disobedience of Departmental instruction on the part of the Manager, he shall be subjected to disciplinary proceedings in a manner indicated therein. In sub-Rule 3 thereof, it is further provided that on such enquiry, the Government can recover the expenditure thereafter from the Manager either by invoking the provisions of the Revenue Recovery Act, or as an arrear or from the maintenance grant sanctioned to the Manager under Rule 5 of Chapter XXVIII. Further, Rule 9 enumerates the duties and powers of the Managers of aided schools.

14. Confining the discussion to Rule 7, on further analysis, I find that in terms of sub-rule (1) of Rule 7, if there is any mismanagement, malpractice, etc., it shall be open to the Director to conduct an enquiry and to declare the Manager unfit to hold the post in the school or in any other aided school. The Director can further require the educational Agency to appoint a suitable person as Manager. Evidently, no such situation is obtaining in the instant case.

15. Insofar as sub-rule (3) of Rule 7 is concerned, if the Manager has failed to provide his School with minimum essential facilities as specified under Rules 9 and 10 of Chapter IV, it is open for Government to provide minimum essential facilities in the said school, albeit after giving due notice to the Manager concerned, and recover the expenditure incurred therefore by Government from the Manager, either by invoking the provisions of the Revenue Recovery Act for the time being in force as an arrear of land revenue, or by deduction from the maintenance grant sanctioned to the Managers under Rule 5 of Chapter XXVIII.

16. It can be stated without fear of contradiction that it is not a case of the Manager failing to provide his School with minimum essential facilities as specified under Rules 9 and 10 of Chapter IV.

17. Despite the careful scrutiny of those provisions cited by the learned Government Pleader, I do not find any material in support of the submission made by him that notwithstanding the fact that the incumbent Manager had not

been at the helm of affairs when the alleged misconduct was committed, he could still be made liable on the principle of perpetual succession to the position of the Manager.

18. Even in *Eipe Vs. Koshi and Another*, which has been pressed into service by the learned Government Pleader, I do not see any such proposition of law emanating there from. On appreciation of the facts of the said judgment, it can be seen that the singular question that fell for consideration was whether the Manager was competent to effect transfer in the school under his management. In that context, a learned Single Judge of this Court, having examined Rule 3 in Chapter III of the Kerala Education Rules, has held as follows:

"10. [I]t follows therefore that on the appointment of a manager by the Educational Agency, the power of the latter become vested in the former. The manager may therefore be characterised as the legally authorised delegate of the Educational Agency. It is not disputed in this case that the Manager chosen by the Corporate Management is the 1st respondent. He is therefore competent to transfer the appellant from the SCS High School, Thiruvallah, to any school maintained by the Corporate Management under Ext. R1. The order of transfer, Ext. P7, issued by the 1st respondent is therefore perfectly valid and well within his power under the Kerala Education Rules."

19. Despite my best efforts, I failed to persuade myself to accept the contention of the learned Government Pleader that the above precedent lays down a proposition that in any manner accords with the issue in the present case. Ipso facto, I could not find either any statutory support or presidential support coming to the rescue of the respondents to sustain Ext. P3, which, in my considered opinion, is without any justification. It is so not only for the above reasons, but also for the further reasons stated herein below.

20. We may, at this juncture, examine the third respondent's counter-affidavit, which is quite revealing. At the end of para four thereof, the respondents do admit that Mr. T.K. Bala Kumar, since deceased, was the Manager who passed the illegal orders of suspension against the then HM of the school on 29/10/2009.

21. The third respondent further pleads in para 5 of the counter-affidavit to the effect:

"[B] asked on the letter received from the Director of Public Instruction, Thiruvananthapuram as per his letter No. B5/24016/09 dated 01/09/2011 has requested to the 4th respondent with extending a copy to respondent No. 3 to take steps to recover the amount from Sri. T.K. Bala Kumar through Revenue Recovery Act. The respondent No. 3 in obedience of the directions of the Deputy Director, Edn. Kannur issued a letter directing the present Manager to take steps to remit the amount of Rs. 1,02,985/- to Government.

(emphasis supplied)

22. Eventually, in para 6 of the counter-affidavit, the respondents justify their

impugned action in the following manner:

"[A]s the post of Manager is of a continuous nature and change of personals to the post does not entail to get rid of any assets or liability of the Manager, this office directed the petitioner to remit the pay & allowances paid to the HM for the period from 29/10/2009 to 16/03/2010 and from 18/03/2010 to 23/03/2010 the period she was placed under suspension without valid grounds. The direction had been issued to the petitioner as he is now holding the post of Manager of Ackiparamba AUPS not in his personal capacity, but in his stature as Manager of the Educational Agency.

7. It is submitted that although the person holding the post of Manager Sri. T.K. Bala Kumar by whom the suspension of the HM was ordered expired on 12/01/2011, the loss sustained by Government by way of payment of salary to Smt. Vasantha Prabha, HM, when she was out of service by the mere fact that the suspension was on frivolous grounds cooked up by the Manager has to be made good. The plea of Sri. C.V. Vijeesh the petitioner, who is the elected Manager of Ackiparamba AUPS that he has not caused any loss, may be true on his person. But in the post of Manager he is holding, he is responsible for the loss sustained by Government when a person holding the post of Manager vacates the post to get rid of a financial sanction against him and his successor disowns the liability, the departmental authorities will be at a loss to impose the rule of law. Hence the petitioner is bound to remit the amount."

(emphasis supplied)

23. Not only in the post of Manager, but also in any position in an organisation, especially in a Governmental one, notwithstanding the change of the person at the helm of the affairs, the post continues in terms of the statutory scheme governing the said position. At the same time, it cannot be lost sight of that for all omissions and commissions of a particular person occupying the post, his successors cannot be made liable on the plea that it being a continuous position every person who is at the helm of affairs at the time of the detection of the misconduct, rather than its actual commission, would be liable. Plainly put, such a conclusion would cause manifest injustice to the innocent, apart from putting a premium on the dishonesty of the delinquent.

24. It may be pertinent to further appreciate another plea of the learned Government Pleader that, in the face of the death of the Manager, who had actually committed the misconduct, if the present Manager were not to be made liable, the Government, which actually parted with public money for the fault of the said delinquent Manager, would be remedyless. In this regard, it can be stated that once any misconduct has been detected on the part of the delinquent employee, he could have been subjected to disciplinary proceedings. Primarily before the misconduct is detected, or before any action can be taken thereof, if the said employee happens to get superannuated or leaves his office, that person, and that person alone, can be proceeded against subject to the statutory

limitations imposed concerning the issue. Under such circumstances, that even the successor to the delinquent in the post can be made liable is totally unconscionable. By no stretch of imagination, can it be said that an incumbent Manager can be made liable for the misconduct of his predecessor on the premise that otherwise the Government will be remediless.

25. Obvious as it appears to be a non-issue, yet it should be stated to the credit of the learned Government Pleader that he has urged the issue with a lot of conviction. Hence, it calls for some elaboration.

26. An offence or a misconduct does not run with office, but it does with the person who fills that office - the perpetrator, for an office, with all its perpetuity as a legal entity, as has been sought to be canvassed by the learned Government Pleader, is incapable of doing anything on its own. It needs a human agency, and it is that human agency which is to be commended for performance and condemned for malfeasance. If the submission of the learned Government Pleader is stretched further, it means that if the misconduct is not detected during the period of the perpetrator, he goes scot free, and his successor, innocent though, would be found holding the smoking gun, so to say.

27. Elucidating on the aspect of misconduct, Samaraditya Pal, the learned author, in his treatise "The Law Relating to Public Employment" [3rd Edn., 2011], comments thus:

"The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, been acknowledged by the Supreme Court that the word "misconduct" is not capable of precise definition. But at the same time the Court pointed out that though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. For example, it might involve moral turpitude or improper or wrong or unlawful behavior which is wilful in character; or forbidden act, a transgression of established and definite role of action or code of conduct but not mere error of judgment or callousness or negligence in performance of the duty. The act complained of must bear a forbidden quality character in its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the Statute and the public purpose it seeks to serve. Subsequently, the Supreme Court has said that this is not a helpful guide since it begs the question viz. what permissible acts and behavior? It may be generally stated that the conduct rules of the Government and public sector corporations constitute a coder permissible accent behavior of their servants."

28. In service law parlance, an officer who fails to perform his duty is called a

delinquent, and this delinquent that is subjected to disciplinary proceedings. Charges are framed and explanation is sought from the delinquent for the acts of commission and omission done by him alone. Illustratively, if we examine Rule 11 of Central Civil Services (CCA) Rules, 1965 - most of the civil service rules of various states being in pari materia - it enumerates the penalties, both minor and major, that can be imposed on the delinquent employee, whose misconduct is proved. Under minor penalties enumerated is the recovery of amounts. It is profitable to extract the same:

"(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders."

(emphasis added)

29. Adverting to the contention of the learned Government Pleader that the Government otherwise would be remediless, this Court, assuming it to be so, is of the opinion that even in such an eventuality, the authorities are not clothed with power to take recourse to a remedy which is statutorily impermissible. Keeping the assumptions aside, this Court, however, leaves it open for the authorities to explore statutorily permissible ways and means to make good the loss the Government is said to have suffered. This Court confines its adjudication to the issues raised by the petitioner, and not beyond.

30. As an adjunct to the issue, I may add another aspect of the matter. Ext. P3, which was impugned is in Malayalam, the language which regrettably I am not familiar with. Though, both the learned counsel have brought out the salient aspects of it while making their submissions, after having the matter reserved, not to leave any room for mistake, I got it translated and had the matter listed for "Chamber hearing" on 07/08/2014. To my specific query how the penalty is proposed to be recovered under Revenue Recovery Act, the learned Government Pleader has submitted that by the process of distraint and other means against the personal property of the petitioner. It is trite to hold, under these circumstances, that realising the penalty imposed on a malefactor from the personal assets of an innocent person on the premise that the latter incidentally occupies the post vacated by the former is unconscionable and offensive of all canons of fair play. Under these circumstances, it is well nigh impossible to countenance the contention of the learned Government Pleader that the petitioner, being the incumbent Manager, shall pay for the misdeeds of his predecessor.

For the reasons stated above, the writ petition is allowed quashing Ext. P3 thereof. No order as to costs.