(1977) 06 KL CK 0011

High Court Of Kerala

Case No: W.A. 81 of 1977

Messiah Das		APPELLANT
	Vs	
The State of Kerala and Others		RESPONDENT

Date of Decision: June 8, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: V. Balakrishna Eradi, J; T. Kochu Thommen, J

Bench: Division Bench

Advocate: P.A. Cyrus, V. Shreedharan Nair and N. Achutha Kurup, for the Appellant; M. Mathai, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Balakrishna Eradi, J.

This is an appeal preferred against the Judgment of our learned brother, Justice Narendran, allowing in part a writ Petition filed by the Appellant herein challenging the legality of an order of punishment passed against him by the Manager of an Aided High School, wherein the Appellant was working as Headmaster, and also a consequential order passed by the Director of Public Instruction under Rule 56 of Part I of the Kerala Service Rules directing that the period during which the Petitioner had been kept under suspension shall be treated as eligible leave. The learned Single Judge set aside the order of punishment passed against the Appellant by the Manager of the school, but upheld the order, Ext. P-6, passed by the Director of Public Instruction under Rule 56 of Part I, of the Kerala Service Rules. The Petitioner contends that Ext. P-6 also ought to have been set aside by the learned Single Judge and that the Judgment under appeal in so far as it has upheld the validity of the order Ext. P-6 is based on a misconstruction of the provisions contained in Rule 56 aforementioned.

2. The Petitioner, while working as a Headmaster of the Panchayat High School, Poovachal, was placed under suspension as per the order Ext. P-1, dated 19th August 1969 passed by the Director of Public Instruction, Trivandrum, pending a contemplated enquiry into certain allegations levelled against the Petitioner. The disciplinary proceeding ultimately culminated in the order Ext. P-3, dated 14th March 1973 passed by the Manager of the school inflicting on the Petitioner the punishment of withholding of two increments without cumulative effect. Subsequently, the Director of Public Instruction passed orders as per Ext. P-4 revoking the suspension of the Petitioner and ordering the Petitioner''s reinstatement in service. It was expressly specified in Ext. P-4 that the question as to how the period of suspension was to be treated would be considered later. On 1st May 1973 the Petitioner was called upon by a notice Ext. P-5 issued to him by the Director of Public Instruction to show cause against the proposal to treat the period of suspension as eligible leave. In response thereto, the Petitioner filed a detailed representation. But, after considering the same, the Director passed orders as per Ext. P-6, dated 20th July 1973 that the Petitioner''s suspension was justified and that hence the period of suspension was to be treated as eligible leave. The revision Petition filed by the Petitioner before the State Government challenging Exts. P-3 and P-6 met with no success. O.P. No. 4744 of 1975, out of which this writ appeal has arisen, was thereupon filed by the Petitioner praying that Exts. P-3 and P-6 should be quashed by this Court in the exercise of the writ jurisdiction under Article 226 of the Constitution. As already mentioned, the learned Single Judge has set aside Ext. P-3, but held that the action taken by the Director as per Ext. P-6 was valid and legal and called for no interference from this Court.

3. The main point urged before us by the learned Advocate appearing for the Appellant is that inasmuch as the learned Single Judge has held that the charges that were actually framed against the Petitioner had been found even by the disciplinary authority not to have been established and that hence there was no justification for imposing any punishment on the Petitioner as was done under Ext. P-3, it must automatically follow that the suspension of the Petitioner effected under Ext. P-1 was wholly unjustified. Counsel for the Appellant strongly urged before us that the only proper way to interpret the provision contained in Rule 56 is to understand it as laying down that the justifiability or otherwise of the suspension order should be considered and determined by the competent authority acting under that rule with reference to the facts and circumstances as finally established by the results of the disciplinary enquiry; in other words, the contention is that whenever it is found that the charges levelled against the accused officer are not brought home to him, it must follow as a necessary consequence that the suspension of the officer was wholly unjustified. We are unable to accede to this contention. On a careful reading of Sub-rule (2) of Rule 56 it is seen that a clear distinction is maintained in this respect between the reinstatement of a person from suspension and the reinstatement of a person who was dismissed or removed from

service. While in the case of the latter it is specifically enjoined by the rule that what has to be considered by the competent authority is whether the accused officer has been fully exonerated or not, what is required by the rule to be considered in cases of reinstatement from suspension is whether the suspension "was wholly unjustified". In our opinion the relevant point of time with reference to which the question whether or not suspension of an officer was wholly unjustified has to be determined is the time when he was placed under suspension and the question will therefore be whether on the facts and circumstances available on record at that time the suspension was wholly unjustified. There may however be rare cases where an officer has been kept under suspension for an unduly long time ignoring relevant developments which had taken place in the meantime such as the receipt of a report from the enquiry authority finding him not guilty of the charges or some other material change in circumstances which rendered the further continuance of the suspension unnecessary. In such cases the period of suspension may have to be split up into different stages and the justification of the continuance of the suspension beyond the stage of the receipt of the enquiry report etc., will have to be examined by the competent authority functioning under Rule 56 (1) with reference to the relevant facts and circumstances that were obtaining at that point of time. It cannot therefore be said as an absolute rule that whenever an officer who was placed under suspension is subsequently found at the conclusion of the disciplinary enquiry to be not guilty of the charges levelled against him, he is automatically entitled to a declaration by the competent authority under Rule 56 that his suspension was wholly unjustified.

4. In the present case the learned Single Judge has found on a consideration of the materials on record that the suspension of the Petitioner was quite justified, even though the charges levelled against him have not been ultimately proved against him. We see no merit in the attack made by the Appellant against the said finding entered by the earned Single Judge - It must then follow that Ext. P-6 did not call for any interference and the dismissal of the Original Petition was perfectly proper.

5. The writ appeal therefore fails and is dismissed, but in the circumstances, without any order as to costs.