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High Court Of Kerala

Case No: O.P. No. 4785 of 1980

A.K. Balakrishnan Nair		APPELLANT
	Vs	
The Superintedent of Post Offices, Ernakulam Division		RESPONDENT

Date of Decision: Dec. 23, 1981

Acts Referred:

- Penal Code, 1860 (IPC) - Section 420, 468, 471, 511

Citation: (1982) KLJ 149

Hon'ble Judges: V. Khalid, J

Bench: Single Bench

Advocate: O.V. Radhakrishnan and K. Radhamani Amma, for the Appellant; P.V. Madhavan Nambiar, for the Respondent

Final Decision: Allowed

Judgement

V. Khalid, J.

The short question that falls for decision in this case is whether the order of deemed suspension of the petitioner in the circumstances of the case could be sustained or not. The facts are these : While the petitioner was working as Assistant Post Master at Cochin Post Office, he was placed under suspension with effect from 14-12-1973 in contemplation of disciplinary proceedings. The senior Superintendent of Post Offices, Ernakulam Division, the 1st respondent herein, sent a complaint dated 23-5-1974 to the police accusing the petitioner of having committed offences punishable under sections 468 , 471 and 420 with section 511 I.P.C. After investigation the petitioner was charge-sheeted by the Inspector of Police, City Crime, Ernakulam, for the above offences. Ext. P1 is the charge-sheet. The petitioner was tried before the Additional Judicial First Class Magistrate, Ernakulam, in C.C. No. 143 of 1977, who found him guilty and convicted him under the above sections and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/- u/s 468 , without awarding

separate sentences for the other offences by his judgment dated 30-3-1979. On the next day, the respondent issued Ext. P2 memo dismissing the petitioner from service with immediate effect, holding that his conviction rendered his further retention in service undesirable. The petitioner filed Crl. Appeal No. 27 of 1979 before the Sessions Court, Ernakulam. The learned First Additional Sessions Judge, Ernakulam who heard the appeal set aside the conviction and sentence passed against the petitioner by Ext. P3 judgment dated 31-7-1979 and acquitted the Petitioner. The State preferred Criminal Appeal No. 487 of 1979 before this court. This court confirmed Ext. P3 judgment by Ext. P4 judgment. Thereafter the petitioner moved the respondent by an application dated 1-8-1979 to reinstate him in service consequent upon his acquittal. This was followed by Ext. P5 representation dated 22-7-1980. He was then served with Ext. P6 letter dated 13-10-1980 informing him that (1) the order of dismissal had been set aside, (2) that a further enquiry would be held under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1975 and (3) that he would be deemed to have been placed under suspension with effect from 31-3-1979. Thereafter Ext. P7 was served on the petitioner on 29-11-1980 which is the charge-sheet under Rule 14 of the CCS (CCA) Rules. Hence this petition to quash Ext. P6 and P7. The learned counsel for the petitioner submits that the 3rd direction contained in Ext. P6 which in effect directs suspension of the petitioner with effect from 31-3-1979 is bad since on the facts of the case Rule 10(4) of the Rules is not attracted. According to him, for this rule to be attracted the subsequent enquiry should be "on the allegations on which the penalty of dismissal removal or compulsory retirement was originally Imposed." According to him, a mere look at the original charge in juxtaposition with the new charge would satisfy this court that the allegations are neither same nor even wholly related to one another. According to the Counsel for the Central Government, the accusations against the petitioner contained in Ext. P6 and P7 are wholly related to the earlier allegations and therefore section 10(4) is attracted. This takes me to the consideration of the original allegations and the new allegations.

2. Ext. P1 is the charge framed by the additional Judicial First Class Magistrate, Ernakulam in C.C. No. 143 of 1977 against the petitioner. It reads that the petitioner from 9-11-1973 to 14-11-1973 as the S.B. account Assistant Post Master of the Cochin Head Post Office, committed impersonation for appropriating money, used forged document as a genuine document and also committed cheating u/s 420 I.P.C. It was the case based on these distinct offences and distinct accusations that fell for scrutiny before the appellate court as well as this court in appeal against conviction and against acquittal. These Courts on a consideration of the evidence held that the prosecution failed to establish the guilt of the petitioner. In Ext. P3, the learned Additional Sessions Judge held, "The conviction of the accused under sections 468 and 471 of the I.P.C. by the learned Magistrate cannot be sustained on a proper scrutiny of the evidence." In Ext. P4 this court held : "On a careful re-appraisal of the evidence in the case, it cannot be said that the view and conclusions arrived at by the appellate Court are unreasonable or perverse. The acquittal of the accused, in the circumstances, was right." Now we come to

Ext. P7. The articles of Charges are in the Annexure, which read as follows:-

1. Sri A.K. Balakrishnan, Clerk, Cochin Under suspension while working as APM(SB) of Cochin HO from 12-11-1973 to 14-11-1973 failed to check-up whether entries of new pass books issued on 13-11-1973 and 14-11-1973 were correctly made in the stock register as prescribed under Rule 407(4) (a) and (b) of P & T. Manual Volume VI. He also failed to check up whether the balance of Pass Books in stock at the close of those days on 13-11-1973 and 14-11-1973 where correctly arrived at and entered in the stock register of pass books as required by rule 407(4) of P &T Manual Vol. VI. He failed to affix his initials in the stock register of pass hooks on 12-11-1973 to 14-11-1973 as required by rule 407(4) of P & T Manual Vol. VI and thereby failed to maintain absolute integrity and devotion to duty required of him under rule (1)(i) and (ii) of the COS (Conduct) Rules, 1964.

2. While working as APM (SB), Sri A.K. Balakrishnan failed to ensure safe custody of advice of transfer book (SB-9) of Cochin H.O. from 12-11-1973 to 14-11-1973, resulting in the issue of two advice of transfers on 13-11-1973, unauthorisedly and irregularly from the advice of transfer book, in respect of two SB accounts which did not stand open at Cochin HO on 13-11-1973, Sri A.K. Balakrishnan violated the provisions of rule 3(1)(i) and (ii) and 3(2)(i) of CCS (Condust) Rules, 1964.

A mere reading of these two charges would satisfy any Court that they have nothing to do with the ingredients of offence under sections 468 , 471 or 420 I.P.C. Section 468 deals with forgery for the purpose of cheating. Section 471 deals with the using as genuine of a forged document and section 420 deals with cheating. Charge No. 1 quoted above deals with the petitioner''s negligence to check-up balances in pass books in stock at the close of days, etc. are correctly arrived at and maintained. Charge No. 2 deals with his failure to ensure safe custody of advice of transfer book. Both these charges are in the realm of dereliction of duty having nothing in common with the ingredients of offences in Ext. P1. I am therefore in complete agreement with the petitioner''s counsel that the two charges are dissimilar.

3. That takes me to the consideration of Rule 10(4). It is not disputed that the proposed actions is under rule 10(4), which reads as follows:-

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

The first part of this rule is satisfied because the dismissal of the petitioner is set aside. The authorities have now decided to hold a further enquiry against him. He shall be

deemed to have been placed under suspension by the appointing authority if the proposed enquiry against him is on the same allegations on which the penalty was originally imposed on him. On my finding that the allegations are dissimilar it has to be straight - way held that rule 10(4) of the rules is not attracted to the case.

4. A more or less identical case fell to be considered before the Supreme Court in the decision in H.L. Mehra Vs. Union of India (UOI) and Others, . There, a wrong rule was quoted : instead of rule 10(4), rule 10(5) was quoted. Bhagwati, J., speaking for the Bench in an exhaustive discussion of the law on the law on the point held that a suspension order when it is succeeded by an order of dismissal gets merged in the order of, dismissal and when that dismissal order is set aside, the suspension order does not get revived. The relevant discussion is contained in paragraph 7 of the judgment. The learned Judge relied upon the decision in Om Prakash Gupta Vs. The State of Uttar Pradesh, , for this purpose. The following extract from the above judgment will make the principle enunciated by the Bench clear.

This decision leaves no room for doubt as to the correct legal position and the conclusion must, therefore, inevitably follow that when the order of dismissal was passed on 26th October, 1967 the order of suspension dated 11th April. 1963, ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of the dismissal by the first part of the impugned order. The appellant was accordingly not under suspension at the point of time when the third part of the impugned order could not be justified under sub-rule (5)(b) of rule 10.

Applying this principle in this case, when the order of dismissal was set aside, the petitioner should be deemed to have been restored to service. What is now attempted is that the petitioner should be deemed to continue to be under suspension invoking rule 10(4) with effect from 31-3-1979 the date of dismissal. For consideration of the propriety of this order, the same decision lends support. The invocation of rule 10(5) (b) in the Supreme Court case was held to be wrong but the Court held that an order passed by a competent authority cannot be faulted because a wrong provision was quoted. The proper rule to be quoted was rule 10(4), with which we are concerned. The Supreme Court in this context observed thus.

There are two conditions which must be satisfied in order to attract the operation of sub-rule (4). First, the order of dismissal must be set aside in consequence of a decision of a court of law..................................... and secondly, the disciplinary authority must decide to hold a fresh enquiry on the allegations on which the order of dismissal was originally passed. The first condition was admittedly satisfied in the present case because the order of dismissal was set aside by the President in consequence of the decision of this court acquitting the appellant. The question is whether the second condition was satisfied. Was the enquiry continued under the impugned order an inquiry against the appellant on the allegations on which the original order of dismissal was based?

After considering the facts of that case, the Supreme Court held that the new allegations were wholly unrelated to the charges in the criminal case and therefore the new enquiry was clearly not an enquiry on the allegations on which the penalty of dismissal was originally imposed on the appellant. Sub-rule (4) of Rule 10 had accordingly no application and it could not be invoked to justify the third part of the impugned order.

5. Exactly similar are the facts of this case. On my finding that the allegations in Ext. P7 are dissimilar and wholly different from those contained in Ext. P1, the proposed enquiry should be deemed to be not one on the same allegations for which reason rule 10(4) was not attracted.

6. The learned counsel for the petitioner invited my attention to the following observations in the decision in Anand Narain Shukla Vs. State of Madhya Pradesh, ;

We find no substance in either of these points urged on behalf of the appellant. The earlier order was quashed on a technical ground. On merits a second enquiry could be held. It was rightly held. The order of reinstatement does not bring about any distinction in that regard. The Government had to pass that order because the earlier order of reversion had been quashed by the High Court. Without reinstating the appellant, it would have been difficult, perhaps unlawful, to start a fresh enquiry against the appellant. The observations of this Court in the last paragraph of the Judgment in State of Assam and Another Vs. J.N. Roy Biswas, are not applicable to the fact of the present case and do not help the appellant at all.

This observation is brought to my notice to contend that if rule 10(4) is not applicable a fresh enquiry is permissible only after reinstating the petitioner in service. I hold that this submission is well founded, on the principles enunciated in the two Supreme Court decisions, which means that the deemed suspension in the peculiar circumstances of this case cannot be sustained in law.

7. The learned Central Government Pleader invited attention to the decision reported in Khem Chand Vs. Union of India (UOI), , rendered by a Bench of Five Judges, and added to say that this Judgment was not brought to the notice of the Bench which decided the case in 1974 S.C. 1281. According to him, the two charges if closely scrutinised could be said to be some what related to the charges in Ext. P1. The invocation of rule 10(4) can be defeated only if the charges are wholly unrelated. I am afraid, that the reliance on this decision is misplaced. In that cases, what fell for decision before the Supreme Court was the constitutional validity of rule 10(4). The ambit of the judgment in that case would be understood from paragraph 12 of the Judgment, which is extracted below:

It is clear that if 12(4) of the Central Civil Services (Classification, Control and appeal) Rules, 1957 is valid the appellant must be deemed to have been placed under suspension from December 17, 1951. For, it is not disputed that after the penalty of dismissal imposed on him had been rendered void by the decision of this court, the

disciplinary authority did in fact deckle to hold a further enquiry against him on the allegations on which this penalty of dismissal had originally been imposed. It is equally clear that if the appellant be deemed to have been placed under suspension from December, 17, 1951, the order made by the trial court staying the hearing of the suit and the order of the High Court rejecting the revisional application are not open to challenge. The sole question therefore is whether R. 12(4) is valid in law.

The sole question that fell to be decided before the Supreme Court in that case was the validity of rule 12(4), corresponding to rule 19(4) here : the challenge having been made for violation of Art. 14 of the Constitution. The contention raised was that a distinction was made without any rationale between a decision of a Court and decision of a disciplinary authority. The relevant discussion is contained in paragraph 18 of the judgment, the relevant portion is extracted below:

18. This brings us to the attack on the Rule on the basis of Art. 14. According to Mr. Sharma the result of the impugned Rule is that where a penalty of dismissal, removal or compulsory retirement from service imposed on a government servant is set aside, or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority decides to hold a further enquiry against him on the allegations on which the penalty was originally imposed, the consequence will follow that the Government servant shall be deemed to have been placed under suspension from the date of the original imposition of penalty, whereas no such consequence will follow where a similar penalty is set aside not by a court of law but by the departmental disciplinary authority. According to Mr. Sharma, therefore, there is a discrimination between a government servant, the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and another government servant a similar penalty on whom is set aside on appeal by the departmental disciplinary authority................................. where a penalty of dismissal, removal or compulsory retirement imposed upon a governmental authority on appeal, it may or may not order further enquiry; just as where a similar penalty is set aside by a decision of a court of law the disciplinary authority may or may not direct a further enquiry. Where the appellate authority after setting aside a penalty of dismissal, removal or compulsory retirement makes on order under R. 30(2) (ii) remitting the case to the authority which imposed the penalty, for further enquiry, Rule 12(3) will come into operation and so the order of suspension which in almost all cases is likely to be made where a disciplinary proceeding is contemplated or is pending shall be deemed to have continued in force on and from the date of the original order of dismissal and shall remain in force until further orders. There is therefore no defference worth the name between the effect of rule 12(4) on a government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon and the effect of rule 12(4) on another government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases the government servant will be deemed to be under suspension from

the date of the original order of dismissal, except that where in a departmental enquiry a government servant was not placed under suspension prior to the date whom the penalty was imposed, this result will not flow, as R. 12(3) would not then have any operation. It is entirely unlikely however that ordinarily no government servant will not be placed under suspension prior to the date of his dismissal............. Consequently, the effect of R. 12(3) will be the same on a government servant a penalty of dismissal, removal or compulsory retirement on whom is set aside in appeal by the departmental authority as the effect of R. 12(4) on a Government Servant a similar penalty on whom is set aside by a decision of a court of law. The contention that rule 12(4) contravenes Art. 14 of the Constitution must therefore be rejected.

For the foregoing reasons I hold that the petitioner is entitled to succeed in his prayer to quash Clause (3) of Ext. P6. The legal consequences regarding the benefits to which he is entitled will follow.

The writ petition is allowed as above. The parties are directed to bear their costs.