Joseph Vs State of Kerala and Another

Court: High Court Of Kerala

Date of Decision: Feb. 18, 1994

Acts Referred: Constitution of India, 1950 â€" Article 314
Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960 â€" Rule 1, 3, 59, 6

Hon'ble Judges: T.V. Ramakrishnan, J

Bench: Single Bench

Advocate: K.A. Abdul Gafoor, for the Appellant; A.A. Mohammed Nazir, Government Pleader, for the Respondent

Judgement

T.V. Ramakrishnan, J.
The Petitioner, a retired Headmaster, is challenging Ext. P-1 order by which an amount of Rs. 25 per month has

been ordered to be withheld from his pension and Ext. P-5 order whereby the Government has confirmed it in a review petition filed by him. The

main prayer in the O.P. is to quash Exts. P-1 and P-5 orders.

2. The relevant facts are not in dispute and are thus: while in service Petitioner was suspended from service with effect from 23rd January 1986

pending disciplinary proceedings. However, he was reinstated in service on 24th March 1986 and was allowed to retire on superannuation from

service on 31st March 1986. Thereafter as per order dated 18th April 1986 the disciplinary proceedings initiated against the Petitioner was

referred to the Tribunal for disciplinary proceedings constituted under the Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960

(for short ""the Tribunal Rules""). The Tribunal concluded enquiry in August, 1987 and submitted Ext. P-6 report dated 25th August 1987. Based

upon Ext. P-6 report, Ext. P-1 order was passed by the first Respondent-State dated 2nd November 1988. Paragraph 3 of Ext. P-1 order would

show that the Vigilance Tribunal found the Petitioner guilty of allegation Nos. 1, 3 and 4 and has recommended a punishment of withholding of a

sum of Rs. 25 from the monthly pension of the Petitioner permanently. Charges 2 and 5 were found to be not established. Paragraph 4 of Ext. P-1

would further show that the Government after a careful consideration of the report of the Tribunal with reference to the connected records of the

case has come to a conclusion that the service of the Petitioner has not been thoroughly satisfactory. On the basis of the conclusion so reached a

provisional decision was taken to withhold a sum of Rs. 25 per month from the Pension of the Petitioner permanently under Rule 59, art III of the

Kerala Service Ruls (for short ""the KSR"") and a show cause notice was accordingly served on the Petitioner. After considering the explanation

submitted by the Petitioner, the Government has confirmed the provisional decision while issuing Ext. P-L order. Against Ext. P-1 order the

Petitioner filed Ext. P-2 review petition as provided in note (1) added to Rule 59, Part III K.S.R. under which Rule Ext. P-1 order is purported to

have been issued. As per Ext. P-5 order first Respondent has rejected Ext. P-2 review petition as without any merit. Regarding the period during

which the Petitioner was suspended no order regularising the said period was passed at the time of filing the O.P. inspite of the fact that this Court

has directed the Government to pass final orders regularising the period of suspension of the Petitioner within a period not exceeding three months

from the date of Ext. P-4 judgment dated 30th May 1989. The O.P. was filed on 22nd December 1989 and Ext. P-3 representation submitted by

the Petitioner for passing orders regularising his suspension period was pending. even at the time of filing of the O.P. Petitioner has in the

circumstances prayed for quashing of Exts. P-1 and P-5 orders and for a further direction to be issued to the first Respondent to regularise the

period of suspension during which the Petitioner was suspended pending disciplinary proceedings.

3. A counter affidavit has been filed justifying Exts. P-1 and P-5 orders and stating that order regularising the suspension period of the Petitioner

has already been passed on 17th December 1990. Though in the counter affidavit it was stated that a copy of the order dated 17th December

1990 is being produced along with the counteraffidavit marked as Ext. P-1 no such copy was actually produced along with the counter. However,

a copy has been produced in the course of arguments.

4. Learned Counsel for the Petitioner, Shri Abdul Gafoor, has challenged Exts. P-1 and P-5 orders on several grounds. It was contended that at

the relevant time when the disciplinary proceedings against the Petitioner was referred to the Tribunal, the Petitioner was not an ''Officer under the

rule-making control of the State Government'' and as such the Tribunal Rules were not applicable to the Petitioner. In the circumstances the

reference made was irregular and illegal. The Tribunal had no jurisdiction to entertain and enquire into the disciplinary proceedings against the

Petitioner. The entire proceedings before the Tribunal and Ext. P-6 report submitted by the Tribunal are without jurisdiction. Learned Counsel in

support of his contention has relied upon Rule 1(c) of the Tribunal Rules which reads thus:

They (Rules) shall apply to all officers under the rule-making control of the State Government other than those referred to in Article 314 of the

Constitution of India.

5. If the above Rule alone is the Rule to be applied and hone else, there would have been sufficient justification for advancing and accepting the

above contention. But it has to be remembered that in spite of retirement of officers or employees in certain cases Government is legally

empowered to continue certain proceedings against such retired employees or officers as in the case of proceedings under Rule 3, Part III, K.S.R.

Under Rule 3, Part III, K.S.R., the Government is entitled to continue the disciplinary proceedings against a retired employee for the limited

purpose of that Rule as if the employee had continued in service. There is a statutory fiction created by the deeming provisions in Clause(a) to the

proviso to that Rule enabling the Government to treat a retired employee as continuing in service for the purpose of continuing the departmental

proceedings initiated against the employee before his retirement for the limited purpose of the said Rule. In such circumstances where the

Government is empowered to deem the retired employee as continuing in service for certain purposes, the retired employee must be deemed to be

actually in service for such purposes even though he has actually retired from service. When a legal fiction is created for achieving a certain object it

is obligatory that full effect is given to that statutory fiction and it should be carried to its logical conclusion. One has to assume all the facts and

consequences which are incidental and inevitable corollaries to give effect to the fiction. When the deeming provision requires certain state of affairs

to be imagined one cannot permit one''s imagination to boggle when it comes to the inevitable corollaries of the state of affairs (See S. Appukuttan

Vs. Thundiyil Janaki Amma and Another, at 592. Applying the above principle it has to be held that the Tribunal Rules may have application even

to a retired employee if the retired employee can legally be deemed to be in service. The Tribunal Rules may thus apply not only to officers who

are factually under the rule making control of the State Government but also to retired employees who can legally be deemed to be continuing in

service and as such deemed to be under the rule making control of the State Government. As such the contention of the learned Counsel for the

Petitioner advanced in an unqualified manner that the Tribunal Rules may not have any application to a retired employee from the date of his

retirement cannot be accepted as sustainable.

6. Learned Counsel then submitted that the disciplinary proceedings initiated against the Petitioner under the Kerala Civil Services (Classification,

Control and Appeal) Rules, 1950 (for short ""the C.C.A. Rules"") could not have been legally continued under Rule 3, Part III, K.S.R. after his

retirement and as such the entire enquiry conducted and report submitted were without jurisdiction and totally illegal. It was submitted that there

was no allegation that as a result of any act or omission on the part of the Petitioner, Government has suffered any loss. Even if the entire

allegations against the Petitioner are accepted as true and correct, those allegations cannot form the basis for a finding that loss has been caused to

the Government as a result of any act or omission complained of "" against the Petitioner. Unless the charges levelled against the Petitioner can lead

to a finding that loss has been occasioned as a result of the action or omission, complained of against the Petitioner, the proceedings could not have

been legally continued and concluded under Rule 3, Part III, K.S.R. A specific prayer to drop the entire proceedings was made by the Petitioner

immediately after the matter was referred to the Tribunal as per C.M.P. No. 50 of 1986. The Tribunal illegally rejected the prayer taking the view

that the proceedings can be continued under Rule 3, Part III, K.S.R. as per the order passed in C.M.P. No. 50 of 1986, annexed to Ext P-6. It

was after rejecting the objection so raised by the Petitioner that the Tribunal has proceeded with the enquiry. It was submitted that the view taken

by the Tribunal is totally illegal.

7. It cannot be disputed that originally the disciplinary proceedings were initiated against the Petitioner under the C.C.A. Rules while the Petitioner

was in service. Further it cannot also be disputed that there was no charge framed against the Petitioner to the effect that the Petitioner has caused

any loss to the Government. The charges framed aginst the Petitioner cannot lead to a finding that loss has been caused to the Government as a

result of the actions and omissions complained of against the Petitioner. It is also clear from Ext. P-6 report and the order passed in C.M.P. No.

50 of 1986 that the Tribunal has treated the proceedings as one continued under Rule 3, Part III, K.S.R. and not under any other provision of law.

From Ext. P-6 report it is also clear beyond any doubt that there is no finding that any loss has been caused to the Government as a result of any of

the actions or omissions complained of against the Petitioner. Ext. P-1 order further makes it clear that it is an order passed specifically under Rule

59, Part III, K.S.R. and not under Rule 3, Part III, K.S.R.

8. It is now well settled that the disciplinary proceedings initiated prior to the retirement of an emyloyee can be continued after his retirement only

for the limited purpose of Rule 3, Part III, K.S.R. and not for any other purpose. A Full Bench of this Court in Xavier v. K.S.E. Board 1979 KLT

80 (F.B.) has held thus:

The Rule does not authorise the continuance of disciplinary proceedings as such, against a Government Servant after his retirement. Both on

principle and on authority, such position cannot be easily contenanced. It allows only a limited type of enquiry to be proceeded with, namely an

enquiry in regard to withholding or with-drawing pension, or of ordering recovery from pension by reason of any misconduct or negligence during

the period in service of the employee. Under Clause (a) of the proviso to Rule, the departmental proceeding, if instituted during the service of the

employee is to be deemed to be a proceeding under the Rule and may be continued and completed even after his rstirement. To this limited extent

alone is provision made under the rule for continuance of a disciplinary enquiry beyond retirement. That too is by transmuting it by fiction to be an

enquiry under the Rule. Beyond this, we cannot understand the rules as in any way permitting the authorities either to launch or to continue

disciplinary proceedings after the retirement of the employee. That would be destructive of the concept of relationship of employer and employee

which has come to an end by reason of the retirement of the employee, beyond which, disciplinary control cannot extend.

This Court has again in Kolappa Pillai v. State of Kerala 1982 KLT 551 further indicated the class or category of proceedings which alone can be

continued against a retired employee by laying down the follow''ng principles.

The object of Rule 3 is not to inflict a punishment upon a retired Government servant, but to recover from him amounts to recompense the

Government for the loss caused by him. This recovery may be made either by withholding or withdrawing a pension or by specifically ordering

recovery from the pension payable to him. In all these cases recovery is made by resort to denying the Petitioner so much pension as will make up

for the loss caused to the Government. This is the object of Rule 3. Although such recovery may cause hardship to the persons affected, it is not by

way of punishment that recovery is made, but only to adjust against specific loss found to have been caused by the person. The contention that,

even where no loss is found to have been caused, amounts can be withheld, withdrawn or recovered from pension merely because a proceeding

initiated under the C.C. and A. Rules is transmuted as a proceeding under the K.S.R. cannot be accepted. The object of the law in allowing such

transmutation is not to inflict a punishment upon the retired Government servant, but to make him pay for the pecuniary loss which he has caused.

This rule cannot be of any avail to the Government unless loss has been caused and found to have been caused.

The principles laid down in the above decisions have been followed in a number subsequent decisions of this Court. One of the last decisions on

the point is George v. Tahsildar, Cochin 1992 (2) KLT 919. On the basis of the above decisions it has to be examined whether the departmental

proceedings initiated against the Petitioner under the C.C.A. Rules could have been legally and validly continued under Rule 3, Part III, K.S.R.

9. The facts of the case in Kolappa Pillai"s case 1982 KLT 551 are exactly similar to the facts of the case on hand. As such on the basis of the

principles laid down by Dr. Kochu Thommen, J. (as he then was) in the above decision, I am inclined to take the view that in this case the

proceedings initiated against the Petitioner could not have been continued under Rule 3, Part III, K.S.R., for the following reasons.

10. The five charges levelled against the Petitioner were thus:

1. THAT you, Sri M. A. Joseph, while functioning as Assistant Educational Officer, North Parur, Ernakulam District 1984, by abusing your official

position as a public servant, deliberately delayed approval of the appointment of Smt. K.G. Mariam as the Headmistress of St. Aloysious L.P.

School, North Parur, with effect from 30th April 1984 A.N. and finally approved her appointment as only Teacher-in-charge of the School from

2nd May 1984, with malicious motive, and thereby failed to maintain absolute integrity and devotion to duty.

2. THAT you, Sri M.A. Joseph, while functioning as above, during 1984, by abusing your official position as a public servant, suspended Smt.

K.G. Mariam, Teacher-in-charge of St. Aloysious L.P. School, North Parur, for 30 days from 11th. September 1984 without proper grounds and

without following the rules, and issued proceedings with a view to wreaking personal vengeance against her, and thereby failed. to maintain

absolute integrity and devotion to duty.

3. THAT you, Sri M.A. Joseph, while functioning as above, during 1984, by abusing your official position as a public servant, and on account of ill

feelings towards a subordinate officer and with a view to harming his interests, cancelled an important entry in the Service Book of Sri K.V. Joy,

Teacher, St. Peters U.P. School, Vadakkekkara relating to his service period which you had yourself made earlier in the Service Book, resulting,

in a loss of 2 years, 8 months and 15 days of service and thereby failed to maintain absolute integrity and devotion to duty.

4. THAT you, Sri M.A. Joseph, while functioning as above, during 1984, by abusing your official position as above, intentionally and deliberately

delayed the return after countersignature of the salary bill of the staff of St. Thomas U.P. School, Thuruthur for the month of October, 1984, with a

view to harassing them on account of their participation in a "Dharna" staged before your office on 22nd September 1984 to protest against your

irregular actions and thereby failed to maintain absolute integrity and devotion to duty.

5. THAT you, Sri M.A. Joseph, while functioning as above, during. 1984, deliberately evaded and refused to give statements before the Officer of

the Vigilance Department, Ernakulam, who was enquiring into certain allegations against you and thereby failed to maintain absolute integrity and

devotion to duty.

Out of the above five charges only charge Nos. 1, 3 and 4 were found proved in the enquiry. None of the acts or omissions complained of against

the Petitioner as revealed from the charges framed could have resulted in a finding that the Petitioner has caused any loss to the Government. There

was no specific charge that the Government has suffered any loss on account of any of the acts or omissions attributed to the Petitioner as per the

charges framed. No finding has also been entered in Ext. P-6 report that loss has been caused as a result of any of the acts or omissions

complained of against the Petitioner. In the absence of sufficient allegations at least in the charges levelled against the Petitioner that as a result of

actions or omissions on the part of the Petitioner loss has been occasioned to the Government there was absolutely no justification for continuing

the enquiry under Rule 3, Part III, K.S.R. In the circumstances, the objections raised by the Petitioner before the Tribunal ought te have been

sustained and the entire proceedings should have been dropped as requested by the Petitioner in C.M.P. No. 50 of 1986. In the light of the above

finding, it has to be further held that the entire proceedings continued before the Tribunal and Ext. P-6 report filed by the Tribunal are without

jurisdiction and totally illegal.

11. The further question to be considered is whether Ext. P-1 order stated to have been issued under Rule 59., Part III, K.S.R. is sustainable in

law. Evidently it is an order wholly and solely based upon Ext. P-6 report. Ext. P-6 report submitted in an enquiry illegally conducted could not

have been relied upon legally for the purpose of issuing Ext. P-1 order. If the Government cannot legally pass an order specifically under Rule 3,

Part III, K.S.R. based upon Ext. P-6 report, such report could not have been relied upon by the Government for issuing an order under Rule 59,

Part III, K.S.R. If that is allowed it will amount to allowing the Government to do indirectly what they cannot do directly under Rule 3, Part III,

K.S.R. Though in Ext. P-1, it has been stated that the Government on considering the report has found the service of the Petitioner not thoroughly

satisfactory and as such is passing the order under Rule 59, the facts and circumstances would clearly show that what has been done is to accept

Ext. P-6 report as such and order withholding of pension as recommended by the tribunal. The question whether the service of the Petitioner was

thoroughly satisfactory or not was not a matter referred to the Tribunal for its findings. The Petitioner was never called upon to meet a case that his

service was not thoroughly satisfactory. He was never informed that he was being proceeded against under Rule 59, Part III, K.S.R. The order

passed in C.M.P. No. 50 of 1986 would show that he was in fact told that the proceedings is being continued under Rule 3, Part III, K.S.R. He

was never given an opportunity to defend himself against any action specifically stated to have been initiated under Rule 59 stating the reason for

initiation of such action.

12. The contention of the learned Government Pleader in this connection was that every departmental proceeding can be continued under Rule 3,

Part III, K.S.R. as it is only on the basis of the ultimate finding that one can say whether any loss has been occasioned as a result of any acts or

omissions on the part of the delinquent employee. Whether certain charges will lead to a finding that the delinquent employee has occasioned loss

to the Government cannot be decided till the enquiry is completed and as such there is no scope for dropping any disciplinary proceedings before it

is fully terminated, was the submission. It is difficult to accept the above contention of the learned Government Pleader in the light of the principles

laid down in Xavier''s case 1979 KLT 80 (F.B.) as well as in Kolappa Pillai''s case 1982 KLT 551. It is only in cases where charges can

reasonably lead to a finding of loss there will be justification to continue the disciplinary proceedings initiated prior to the retirement of the Petitioner

under Rule 3, Part III, K.S.R.

13. Learned Government Pleader has however, strongly supported Ext. P-1 order relying upon Rule 59, Part III, K.S.R. which reads thus:

Award of Full Pension. (a) The Full Pension admissible under this rule is not to be given as a matter of course or unless the service rendered has

been really approved.

(b) If the service his rot been thoroughly satisfactory, the Government may make such reduction in the amounts as they think proper.

Counsel submitted that the Government is free to form an opinion as to whether the service of an emplyee is thoroughly satisfactory or not on the

basis of any relevant material and the rule does not require the Government specifically to conduct any enquiry before the issuance of an order

reducing the pension due to an employee. So long as one of the purposes for which the disciplinary proceedings can be continued under Rule 3,

Part III, K.S.R. is to reduce or withhold pension, the Government is entitled to continue the disciplinary proceedings even for the purpose of duly

exercising the power of withholding of pension under Rule 59, and as such the reliance placed by the authorities on Ext. P-6 report in this case

cannot be considered as in any way irregular or illegal.

14. Of course, under Rule 59 the Government is empowered to make such reductions in the amount of pension as they think proper in case the

service of the employee has not been thoroughly satisfactory. The Rule also declares that full pension admissible under this Rule is not to be given

as a matter of course. The power conferred under 59 is a power to be exercised normally , at the end of the carrier of an employee. As such the

question whether service of a Government servant has or has not been thoroughly satisfactory has to be normally decided taking note of the service

records for the entire period of service to put in by the employee concerned. It is only reasonable to assume that an action under Rule 59 normally

would be initiated only on the basis of proposals made by subordinate authorities under whose direct control the employee might have rendered

service and to whom all the service records of the employee concerned may be readily available. Of course, as pointed out by the learned

Government Pleader, the Government may suo motu, even without a proposal from the subordinate authority pass orders in exercise of the power

conferred on it under Rule 59. In this case there is no contention that any of the subordinate authority has mJide any proposal to reduce the

pension. To initiate action under Rule 59 agiainst the Petitioner, Government has to form a bona fide opinion that the service of the employee has

not been thoroughly satisfactory after giving the employee concerned an opportunity to explain and vindicate himself against the proposal to form

such an opinion as the basis for issuing an order under that Rule. There cannot be much dispute about these aspects of the Rule.

15. To understand the scope and ambit of the Rule further, it will be useful to refer to the following Government decisions rendered under Rule 59.

1. In the case of an employee who is compulsorily retired as a measure of penalty and sanctioned a reduced pension in accordance with the

provisions of Rule 6 a further reduction under this rule may hot be made.

2. (a) This rule cannot be used directly to effect a penal recovery, but Government are justified in making proof of a specific instance of fraud or

negligence by an employee the ground a finding that his service has not been thoroughly satisfactory within the meaning of this rule for the purpose

of reducing his pension.

(b) The measure of the reduction in the amount of pension made under this rule should be the extent by which employee''s service as a whole has

failed to reach thoroughly satisfactory standard, and any attempt to equate the amount of reduction with the amount of loss caused to Government

is incorrect.

The above Government decisions, especially decision No. 2(b) would clearly show that the employee''s service as a whole should be taken note of

to form an opinion that his service as a whole failed to reach thoroughly satisfactory standard as a condition precedent for the exercise of power

under the Rule. If that be so, the enquiry or consideration which should precede the formation of the necessary opinion under Rule 59 should

involve an assessment of merits and demerits or plus and minus points of the entire period of service. Further even after forming the required

opinion the authority passing the order should decide the measure of reduction to be effected by considering the extent by which employee''s

service as a whole has failed to reach thoroughly satisfactory standard. Normally the failure of standard of service on a particular instance cannot

safely be relied upon as the basis for forming an opinion that employee''s service as a whole has failed to reach thoroughly satisfactory standard. Of

course, as indicated in Government decision 2(a) even a specific instance may be sufficient to reach a conclusion that the service of an-employee

has failed to reach thoroughly satisfactory standard. In such cases even if during the entire period one might have performed satisfactorily the fraiud

and negligence established on one occasion may be sufficient to hold that his service as a whole has failed to reach thoroughly satisfactory

standard.

16. The above illustrative decisions would, in my view, clearly bring out the precise scope and ambit of the power and the limitations subject to

which the power is expected to be exercised. Keeping in mind the above salient features of the power conferred on the Government under Rule 59

and the serious consequence which may follow on exercise of that power, I have no hesitation in holding that Ext. P-1 was issued in an irregular

and illegal manner without taking into consideration all relevant materials. The cricumstances in which the order was passed in this case would also

show that itjs an order passed in colourable exercise of power. Ext. P-1 original order and Ext. P-5 review order would clearly indicate that it is

solely based upon Ext. P-6 report that the Government has formed an opinion that the service of the Petitioner was not thoroughly satisfactory. In

Ext. P-5 it has been so stated expressly. The stand taken in Ext. P-5 is that no other service records need be looked into fqr forming such an

opinion. There is total absence of any material in Exts. P-1 and P-5 to show that at the time of passing the above orders the concerned authorities

have considered the extent by the which the Petitioner''s service as a whole has failed to reach thoroughly satisfactory standard. In the charges

framed against the Petitioner there is no allegation of fraud or negligence and also there is no finding to that effect in Ext. P-6 report. There is also

no case that the service of the Petitioner has failed to reach thoroughly satisfactory standard at any time prior to the framing of the charges in

question. It is evident from Exts. P-1 arid P-5 that there was no due determination of the extent to which the pension is to be reduced as indicated

in the Government decisions. The extent by which the Petitioner''s service as a whole has failed to reach thoroughly satisfactory standard ought to

have been duly considered before determining the quantum of reduction. In this connection, it is important to note that all the charges levelled

against the Petitioner relate to decisions taken by the Petitioner in exercise of his powers as A.E.O. and Teacher-in-charge. Even if such decisions

are in any way erroneous or delayed ones, that by itself may not be sufficient to hold that the whole of the service of the Petitioner has failed to

reach thoroughly satisfactory standard. It may not be legal and proper to exercise the power conferred under Rule 59 taking note of such errors or

delays alone when what was required to be looked into is whether the whole of the service of Petitioner has failed to reach thoroughly satisfactory

standard. It is relevant to note in this connection that charge No. 1 related to the alleged delay in the approval of appointment of Smt. K.G.

Mariam as Headmaster with effect from 30th April 1984 and finally approved it from 2nd May 1984. The explanation of"" the Petitioner regarding

the delay was that the appointment was in a retirement vacancy which arose on the A.N. of 30th April 1984. So the vacancy occurred on 1st May

1984. That was a public holiday. So appointment could not have been with effect from 30 th April 1984. So it was necessary to address the

manager to submit a revised appointment order and the approved seniority list. The second charge said to be proved is with respect to an entry in

the service book of a teacher regarding his pass in T.T.C. The Petitioner made the entry at the first instance. But doubting the conduct and

behaviour of the teacher and suspecting the veracity of the certificate the entry was cancelled immediately after it was made for which the Petitioner

was competent. Here again it was a decision which the Petitioner was entitled to take. The third charge said to be proved is that the Petitioner

delayed the salary bill of October, 1984 in respect of U.P. School, Thuruthy. It has come out in evidence that the salary bill was passed on 29th

October 1984, after getting clarification well before the date for disbursement of the salary. It is the above three charges which were found to have

been proved during the enquiry. There is no finding that the Petitioner has taken such decisions in bad faith or deliberately with a view to achieve

certain ulterior objects. In the circumstances, I am clear in mind that the opinion stated to have been formed by the Government solely based upon

Ext. P-6 report cannot form the foundation for issuing Ext. P-1 order under Rule 59. As the Petitioner''s service as a whole has not been assessed

I would hold that the opinion formed is an opinion reached without taking note of all the relevant materials and such a decision cannot form the

basis for passing an order, under Rule 59.

17. In this case it is of great significance that Ext. P-1 order was passed solely on the basis of Ext. P-6 report submitted in a disciplinary

proceedings initiated prior to the retirement of the Petitioner and continued after his retirement under Rule 3, Part III, K.S.R. Under Rule 3, Part

III, K.S.R. no order could have been passed based upon Ext. P-6 report. Except the adverse finding contained in Ext. P-6 report, there was no

material or circumstance to arrive at a conclusion that the service of the Petitioner as a whole has failed to reach thoroughly statisfactory standard

and there was no report proposing any reduction from the pension submitted by the subordinate authority for the consideration of the Government.

Moreover, to crown all these, the reduction ordered was as recommended in Ext. P-6 report. There is every reason to think that the power under

Rule 59 was exercised only for the purpose of doing what the Government was not able to do under Rule 3, part III, K.S.R. and as such I find

sufficient justification to hold that Ext. P-1 is an order passed in colourable exercise of power conferred on the Government without satisfying any

of the requirements to be satisfied before exercising the power conferred on the Government under that rule. It may even amount to an absence of

power.

18. In the light of the above discussion, I would quash Exts. P-1 and P-5 orders. The fact that Exts. P-1 and P-5 orders are quashed may not

preclude the Government from passing orders under Rule 59 against the Petitioner in a proper proceedings under that rule if the Government find

sufficient justification for proceeding under that rule.

O.P. is accordingly allowed. No order as to costs.