# George Vs State

**Court:** High Court Of Kerala

**Date of Decision:** Sept. 29, 1958

**Citation:** (1959) KLJ 30

**Hon'ble Judges:** N. Varadaraja Iyengar, J; K. Sankaran, J

**Bench:** Division Bench

**Advocate:** T.K. Kurien, for the Appellant;

**Final Decision:** Dismissed

## Judgement

N.V. Iyengar, J.
This appeal is by the plaintiff Government servant, whose suit to set aside an alleged wrongful order of suspension passed

by the Government and for consequential damages, has been dismissed by the court below. The plaintiff M.G. George was a special Proverthicar

appointed by the Travancore Government for the purchase and distribution of paddy under Government orders. While thus he was attached to the

granary at Elathur at Shencotta, orders were issued to him for the release for purpose of transport to Adoor, of 70 bags of paddy in a lorry. There

was another Proverthicar Kochukunju by name, who had been deputed to take the paddy from Elathur. On the lorry being checked by a Police

party after its start and within about two furlongs from the granary, it was found to contain an excess of seven bags. This was on 13-12-1118. The

Tahsildar of the area examined in this case as D.W.1, sealed the granary soon after and conducted a stock check and so detected a large deficit in

the store. The plaintiff and other Government servants who were connected with the transport were suspended on 26-12-1118 and enquiry was

ordered against the plaintiff and Kochukunju as to illicit transport of Government paddy. The Excise Commissioner who was deputed to conduct

the enquiry sent detailed report finding them both guilty. The Government thereon passed orders on I-7-1944 dispensing with the services of the

plaintiff and Kochukunju, vide Ext. 17 order dated 1-7-1944. However on their complaint that they had not been given opportunity to cross-

examine witnesses examined against them in the enquiry the Division Peishkar Quilon was authorised to conduct fresh enquiry. On his report dated

25-7-1947 and filed in case as Ext. 19, Government passed Ext. A order on 27-4-1949 modifying their prior order and suspending plaintiff and

Kochukunju for two years from when they were first relieved from service, the rest of the period they were out of duty being treated as

extraordinary leave without pay. Indeed the plaintiff had by this time on 24-11-1948 attained year of superannuation. He filed this suit on 2-6-

1952 with prayer to set aside the order of suspension and for consequential reliefs based on the averment mainly that Ext. A order was wanting in

jurisdiction and his suspension was in consequence wrongful.

2. The suit was resisted by the defendant State on the pleas that the plaintiff was found guilty after appropriate departmental enquiry and he was

only properly punished and there was therefore no cause for him to complain and further that the suit was barred by limitation.

3. The court below has after elaborate trial now found that there was nothing illegal or improper in the enquiry conducted by the Division Peiskhar

and in the punishment meted out by the State as against the plaintiff and the suit was accordingly misconceived. It also found that the suit was hit by

Article 14 of the Limitation Act.

4. The first question for consideration is whether Ext. A order is to any extent illegal. Learned counsel referred to the portion of Ext. A order as

follows:

Government have carefully considered the charges against the two Proverthicars and the evidence cited in support of the charges. There is no

direct evidence to connect either of the Proverthicars with the paddy in question. The facts of the case, however, warrant a reasonable suspicion

against both of them and justify an inference of their guilt in the matter.

and urged that Rule 20 of the Rules of enquiry governing the matter prohibited any action being taken on mere suspicion. The consequence

according to learned counsel was that the finding of guilt entered against the plaintiff must on this sole account be deemed to be vitiated.

5. Now these Rules regulating enquiries into the conduct of public servants and applied in the plaintiff''s case are published as Appendix C in Vol.

VI of the Regulations and Proclamation of Travancore. Rule 20-A of these Rules states:

A. As a general rule no Public Servant should be dismissed on mere suspicion or on grounds which are not capable of being stated. A

compromising suspicion is, in some cases, sufficient reason for removing a Public Servant from the service of Government. In such cases, the

public servant should not be dismissed with disgrace, but allowed to resign, or simply relieved of his office - the exact case against him being

carefully recorded, so that he may, if possible, satisfy any other employer who has the means of livelihood in this gift"".

Sub-Rules B to G are omitted as not relevant to our purpose. Rule 21 then says:

21. These rules do not apply to punishments other than dismissal - such as degradation, suspension, fine & c. But the general principles above

indicated should, as far as possible, be followed. Suspension from office should always be for a definite period.

6. In this case there has been only a suspension under Rule 21 as contrasted with dismissal under R. 20-A. Reasonable suspicion on which

Government proceeded, was therefore a perfectly justifiable basis.

7. Learned counsel then said that the materials before the Government did not justify the entertainment of even reasonable suspicion against the

plaintiff, as they purported to say in Ext. A and he prayed for permission to canvass Ext. 19 report of the Division Peishkar, for this purpose. But

the limits to which the court can go in this connection is only to scrutinise whether the procedure adopted by the Government in the whole matter

conformed to the principles of natural justice, and no more. That is to say, the State must not fail to grant to the servant concerned a reasonable

opportunity to show cause before taking action against him. And to the extent it has not been alleged that improper or wrong procedure was

adopted by the State in the enquiry concerned therein, can, in our opinion, be no ground for going into the merits of the matter.

8. Even otherwise there is hardly any material in plaintiff''s support. Three responsible officials have come to the same conclusion against the

plaintiff, the Tahasildar, the Excise Commissioner and finally the Division Peishkar. Ext. II is the stock register which was in the custody of the

plaintiff. That shows that the Tahsildar sealed the granary on 14-12-1118 and checked the stock then on 15-12-1118 and that only 44 bags of

paddy amounting to 308 paras had been found, while the balance of the stock as on 14-12-1118 as per Ext. II should be 1477 paras 5

edangazies. There was also evidence before the enquiry officers, that on the night of 14-12-1118 the plaintiff attempted to transport paddy to the

granary at Elathur but the Excise Authority prevented him from doing so. The finding of the Division Peishkar against the plaintiff, which the

Government accepted for passing their final orders under Ext. A was therefore perfectly justified.

9. There is also no complaint before us that the punishment of two years'' suspension meted out to the plaintiff was in any way vindicative or

undeserved. In the circumstances we find along with the court below that Ext. A is unquestionable at the instance of the plaintiff.

10. The only other question in the case relates to limitation. It may be really unnecessary to decide this question in the light of our finding on the

validity of Ext. A proceedings. But the question having been discussed at the Bar, we will deal with that also. Now Art. 14 of the Limitation Act

which the State argued and the court below held was applicable to the case, concerns a suit ""to set aside any act or order of an officer of

Government in his official capacity, not herein otherwise expressly provided for"" and provides for ""one year"" from ""the date of the act or order"".

For this Article to apply at all, the act or order in question must have been binding on the plaintiff so that it is necessary for him to set it aside as

preliminary to getting relief. If therefore the setting aside is not called for either because it does not affect his rights or it is a nullity as made without

jurisdiction, the article cannot apply. The mere fact that in a case the plaintiff prays for setting aside the act or order will not make the article

applicable; then the suit will be regarded as one for a declaration that the order or act does not affect the plaintiff''s rights. See Motilal v.

Karrabuldin, ILR 25 Cal. 179 P.C.

11. Applying these principles to the facts of this case we find that the plaintiff''s position in the plaint was that Ext. A official order of suspension

was for the reasons detailed void and ineffective though no doubt he prayed for its being set aside. The suit has therefore to be held to be governed

by Art. 120, providing for 6 years period when the right to sue accrues and not Art. 14. Reference may in this connection be made to Patdaya

Muppaya Hiremath Vs. The Secretary of State for India, . The suit there was not to set aside the Collector''s order but for a declaration on the

footing that the order was ultra vires. The learned Judges appreciated the recognised distinction so far as the application of Art. 14 was concerned

and held the suit not barred. See also AIR 1943 368 (Oudh) . It follows that there is no substance in this appeal. It is therefore dismissed with

costs.