Nandakumar Vs Chief Conservator of Forests

Court: High Court Of Kerala

Date of Decision: June 10, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226
Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 â€" Rule 15

Citation: (2003) 3 ILR (Ker) 379 : (2003) 3 KLT 1155 : (2004) 2 LLJ 109

Hon'ble Judges: J.B. Koshy, J; A. Lekshmikutty, J

Bench: Division Bench

Advocate: S.A. Nagendran, K.B. Subhagamani and Premjit Nagendran, for the Appellant; C. Vathsalan, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

J.B. Koshy, J.
The petitioner while working as Range Officer was placed under suspension. After getting Ext.P5 explanation, Ext.P6 order

was passed by the first respondent imposing punishment of bar of one increment with cumulative effect. Even though the petitioner was issued with

show cause notice and explanation was called for, no detailed enquiry was conducted regarding the matter. Ext.P5 is the explanation given by the

petitioner in this regard. The appeal as well as the Revision Petition filed by him were also dismissed. The contention of the petitioner before this

Court is that before imposing major penalty of barring of one increment with cumulative effect, enquiry should have been conducted. It is the

contention of the Government that barring of one increment with cumulative effect is a minor punishment for which no enquiry is required. The

explanation of the petitioner was considered in detail and a speaking order was passed and it was confirmed in appeal and Revision Petition.

2. Learned Counsel for the petitioner relied on the decision reported in Kulwant Singh Gill Vs. State of Punjab, wherein it was held that

punishment of barring of increment with cumulative effect is a major penalty under the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

When the case came up before the learned Single Judge of this Court, the learned Single Judge noticed a conflicting decision of this Court in

Devaki v. State of Kerala ILR 1995 KER 817 wherein it was held by Justice K.T. Thomas as he then was that the decision in Kulwant Singh Gill

Vs. State of Punjab, is based on the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and the wordings in Kerala Civil Services

(Classification, Control and Appeal) Rules, 1960 are different. Under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960

withholding of increment with cumulative effect is only a minor punishment and therefore, no detailed enquiry will be required. But in Sahadevan v.

State of Kerala 1997 (2) KLT 150 a contrary decision was passed following the decision in 1991 Supp. (1) SCC 504 (supra) and held that for

withholding of increments of pay with cumulative effect, formal enquiry is necessary.

3. The difference between the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 and Punjab Civil Services (Punishment and

Appeal) Rules, 1970 are clearly pointed out in Devaki v. State of Kerala ILR 1995 (1) KER 817. We are quoting paragraph 4 of the said

decision.

4. Under Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 a formal enquiry is made compulsory before an

order is passed imposing any of the penalties specified in items (v) to (ix) of Rule 11(1). The penalty of withholding of increments falls within item

(iii) of Rule 11(1). A note added thereunder states thus:

Withholding of increments may either be permanent or temporary for a specified period. But withholding of promotion shall be only temporary for

a specified period.

In paragraph 7 of the said decision it was again held as follows:

7. The second line of approach of the Government Pleader is that the Supreme Court decision is not applicable as the Supreme Court decision

considered the Rule framed by the Punjab Government [Punjab Civil Services (Punishment and Appeal) Rules, 1970]. There is a seeming

distinction between the Rules framed by the Punjab Government and the relevant Rules of the Kerala Government. The note added by G.O. (Ms.)

70/P.D. as amended by S.R.O. No. 378/80 is obviously absent in the Punjab Rules. By that note it is made clear that withholding of increments

even on a permanent basis would fall within the category described in item No. (iii) of Rule 11 (1); The premise on which the Supreme Court

decision was rendered was that the need to conduct regular enquiry can be dispensed with if the penalty is a minor one. Rule 5 of the Punjab Rules

vivisected the penalties into two segments, one under the heading "minor penalties" and the other under "major penalties". Under the Kerala Rules,

formal enquiry is contemplated only in regard to the penalties prescribed under item (v) onwards. When the penalty imposed on the petitioner

would clearly fall under item (Hi) there is no scope for contending that a formal enquiry was sine qua non before the penalty was imposed.

Devaki''s decision ILR 1995 (1) KER 817 was not cited when Sahadevan''s case 1997 (2) KLT 150 was decided in 1997 by this Court. It is

further submitted that that Rules were amended with effect from 27th May, 2032. Now withholding of increments for a specified period was

classified as a major penalty. During the relevant time, as per the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 which is

applicable to the petitioner withholding of increments was only a minor punishment for which no formal enquiry was necessary. Therefore, we

affirm the decision in Devaki v. State of Kerala ILR 1995 (1) KER 817 and hold that penalty of barring one increment with cumulative effect was

a minor punishment under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 before it was amended with effect from 27th

May, 2002. With regard to the correctness of the above punishment, we are not sitting over the appeal in a petition under Article 226 of the

Constitution of India. Disciplinary authority had passed a speaking order considering the explanation of the petitioner and nature of the charges

proved against him. The appellate authority and revisional authority have confirmed it and it cannot be stated that the above orders are perverse or

illegal or patently wrong. There is no procedural infirmity also. In the above circumstances, we are not inclined to interfere with the matter and the

O.P. is dismissed.