K.C. Vasu Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1163048

Court : Kerala

Decided On : Aug-20-2014

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : K.C. Vasu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE WEDNESDAY, THE20H DAY OF AUGUST201429TH SRAVANA, 1936 WA.No. 1116 of 2014 () IN WP(C).33437/2009 --- AGAINST THE

ORDER
/

JUDGMENT
IN WP(C) 33437/2009 of HIGH COURT OF KERALA DATED2011-2009 APPELLANT(S): ------------- K.C.VASU, GRADE ASSISTANT SUB-INSPECTOR (HC950 KATTAPPANA POLICE STATION, KATTAPPANA IDUKKI. BY ADV. SRI.ELVIN PETER P.J.

RESPONDENT(S): -------------- STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, VIGILANCE, DEPARTMENT GOVERNMENT

SECRETARIAT, THIRUVANANTHAPURAM BY Sr.GOVERNMENT PLEADER SRI.P.I.DAVIS THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON2008-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J --- W.A.No. 1116 of 2014 --- Dated this the 20th August, 2014

JUDGMENT
Ashok Bhushan, Ag.CJ.

Heard learned counsel for the appellant and the learned Government Pleader.

2. This Writ Appeal has been filed against the judgment dated 20.11.2009 in W.P(C).No.33437 of 2009. The appellant was proceeded with the disciplinary proceedings. The charge against the appellant was that he abused his official position as public servant and committed criminal misconduct by demanding bribe of 2000/- from V.T.Saseendran and threatening him that his son Rajeev, an accused in Crime No.10/2002 of Nedumkandom Police station, would be tortured if he failed to give the bribe, accepted 200/- and it resulted in the suicide of Saseendran. After memo of charges, reply was submitted. Under order of the Government, the WA.1116/14 2 matter was referred to the Vigilance Tribunal for enquiry. Evidence was laid before the Tribunal including oral evidence. The Vigilance Tribunal submitted report recommending to impose penalty of withholding of two increments without cumulative effect. Show cause notice was issued asking the appellant to show cause and thereafter punishment was awarded by order dated 13.7.2009 imposing a penalty of withholding of two increments with cumulative effect. W.P(C).No. 33437 of 2009 was filed challenging the said order. The learned Single Judge, after hearing the appellant, has dismissed the Writ Petition, against which this Writ Appeal has been filed.

3. Learned counsel for the appellant, challenging the judgment of the learned Single Judge, raised the following submissions: The Vigilance Tribunal has recommended to impose a penalty of withholding of two increments without cumulative effect, whereas the disciplinary authority has WA.1116/14 3 awarded punishment of withholding of two increments with cumulative effect. No reasoning

has been given for enhancement of the punishment. He submitted that enquiry order was not served on him. He further submitted that the observation of the learned Single Judge that no prejudice was caused is also not correct. He submitted that prejudice is caused since in spite of there being recommendation of withholding of two increments without cumulative effect, punishment has been awarded withholding two increments with cumulative effect.

4. After enquiry was conducted by the Vigilance and Anti-Corruption Bureau, a show cause notice was given on 25.1.2008. The Government, in the show cause notice, has stated that the Tribunal has recommended a penalty of withholding of two increments without cumulative effect. In the show cause notice itself the appellant was asked to show cause as to why the punishment of withholding of two increments with cumulative effect WA.1116/14 4 should not be imposed. Relevant portion of the show cause notice is quoted as under: "Government examined the whole issue in detail with reference to relevant documents, statement of witnesses and the report of Vigilance Tribunal and considering the gravity of the offence committed by the accused which resulted in the suicide of Shri.Saseendran, Government have provisionally decided to impose the penalty of withholding of two increments of Shri.K.C.Vasu, HCK950 formerly Head Constable, Nedumkandam Police Station with cumulative effect." 5. The appellant submitted a reply and the Government thereafter passed an order imposing the punishment. The appellant was therefore clearly put to notice as to why the punishment of withholding of two increments without cumulative effect should be changed as punishment with cumulative effect. The appellant's reply, which is submitted to the said show cause notice WA.1116/14 5 dated 25.1.2008 was considered and the disciplinary authority awarded punishment of withholding of two increments with cumulative effect. In the disciplinary enquiry, the Tribunal has observed in its report that the accused officer had committed a grave irregularity and criminal misconduct in his duty and he is guilty of the charges framed against him. The enquiry authority having found the petitioner guilty and the disciplinary authority having awarded punishment of stoppage of two increments with notice to the petitioner, we do not see any illegality in the procedure, nor any principles of natural justice has been violated. The scope of disciplinary review on disciplinary proceedings is well settled. Reference is made in the decision reported in

B.C.Chaturvedi v. Union of India and others [(1996)6 SCC749. This Court in exercise of judicial review of a disciplinary proceedings shall interfere in the decision of the disciplinary authority only when the order is passed on WA.1116/14 6 no evidence or the decision is perverse. Here, the decision of the disciplinary authority is based on materials, which has been referred to by the Vigilance Tribunal and charges have been found proved. Imposition of punishment of withholding of two increments with cumulative effect is neither perverse nor can be said to be disproportionate to the charges.

6. In so far as serving of copy of the Vigilance Tribunal report is concerned, notice dated 25.1.2008 clearly mentioned in the last line that a copy of the Vigilance Tribunal report is appended. The said show cause notice was replied by the appellant by Exhibit P12. In Exhibit P12 it was not mentioned that the statement in the notice that enquiry report is appended is incorrect. No dispute was raised of not receiving the enquiry report by the appellant.

7. The learned Single Judge by the elaborate judgment has considered all submissions of the appellant WA.1116/14 7 and has rightly taken the view that there is no error in the order of the disciplinary authority imposing punishment of stopping of two increments with cumulative effect. We do not find any error in the judgment of the learned Single Judge. The Writ Appeal is dismissed. ASHOK BHUSHAN ACTING CHIEF JUSTICE A.M.SHAFFIQUE, JUDGE vgs20/8/14