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Pathrose T. Vs. the Kerala Water Authority and anr.

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Court : Kerala

Decided On : Jun-30-2008

Reported in : 2008(2)KLJ893

Judge : V. Giri, J.

Acts : Indian Penal Code (IPC) - Sections 302; Kerala Service Rules - Rules 55, 56, 56A, 56B, 57 and 57(1)

Appeal No. : W.P.(C) No. 25565 of 2007

Appellant : Pathrose T.

Respondent : The Kerala Water Authority and anr.

Advocate for Def. : C. Unnikrishnan, SC

Advocate for Pet/Ap. : V. Chitambaresh, Sr. Adv.,; T.C. Suresh Menon,; Jibu P.

Disposition : Petition allowed

Judgement :
ORDER

V. Giri, J.

1. While serving as a Head Operator in the Water Authority, the petitioner was placed under suspension as per Ext.P1 order, consequent upon what was noted

as 'unauthorised absence from 7-7-1999'. This, it turned out, was on account of the fact that the petitioner was an accused in Crime No. 126/99 of the Mankara Police Station for the offence under Section 302 of the Indian Penal Code. He was later reinstated on 23-12-1999 as per Ext.P2 order, wherein it was made clear that the suspension period can be regularised only after finalisation of the criminal case. The petitioner was tried in S.C. No. 183/2000, which ultimately resulted in his acquittal as per Ext.P3 judgment. The petitioner then sought for regularisation of the period from 7-7-1999 to 23-12-1999. By Ext.P4 order, the competent authority decided under Rule 56 Part I of the Kerala Service Rules (for short 'the Rules') held that the petitioner is not entitled to full pay and allowances for the said period of suspension and the said period cannot be treated as period spent on duty'. The petitioner then filed W.P.(C) No. 33583/03 challenging the order. This Court directed reconsideration of his case. It ultimately led to Ext.P7 order whereby the water Authority has rejected his case. The Managing Director of the Water Authority found that a person is entitled to pay and allowances for the period of his suspension in terms of Rule 57 Part 1 of the Rules provided, he is acquitted. But, in the present case, according to the water authority, the petitioner was given the benefit of doubt and therefore, it is not a case where the petitioner can be given full pay and allowances for the entire period of suspension as such. This stand taken by the Water Authority in Ext.P7 has been challenged in this writ petition.

2. A statement has been filed by the standing counsel for the Water Authority supporting Ext.P7.

3. I heard learned Counsel for the petitioner Sri. Suresh Menon and the learned standing counsel for the Water Authority Sri. C. Unnikrishnan.

4. Rule 57 Part I of the Rules, which is admittedly applicable to the Employees of the Water Authority, reads as follows:

[An officer, who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, or is undergoing imprisonment shall be deemed to be under suspension which effect from the date of commencement of the detention or imprisonment, as the case may be, and shall not be allowed to

draw any pay and allowances during such period of suspension other than any subsistence allowance and other allowance that may be granted in accordance with Rule 55 until he is reinstated in service]. An adjustment of his pay and allowances for such periods should thereafter be made according to the circumstances of the case the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt) of its being provided that the officer's liability arose from circumstances beyond his control.

5. A perusal of Rule 57 shows that full pay and allowance could be granted only in the event of the officer being acquitted of blame as such. The words 'acquitted of blame' occurring in Rule 57 of Part 1 Rules, has been considered in Mohammed Rasa Sahib v. D.I.G. of Police 1990(2) KLT 462. Justice T.L. Viswanatha Iyer, considered the scope of those words in paragraphs 18, 19 and 20 as follows:

If the same meaning was intended to be conveyed by both the expressions- 'acquitted of blame' and 'acquitted' the use of the phraseology 'acquitted of blame' is inexplicable, especially when such an expression is foreign to be code of Criminal Procedure, which only used the word 'acquitted' all along.

One cannot impute tamtology to the rule makers. The presumption is that the legislature (in this case the rule making authority) does nothing in vain. The court must therefore endeavour to give significance to every word of an enactment. If a word or phrase appears in an enactment or rule, it is presumed that it was put there for a purpose and must not be disregarded (Statutory Construction (1984) by Francis Bennion - page 375).

It must be noted here that the scheme of Rule 56, 56A and 56B is not to grant full pay and allowances unless the officer was fully exonerated of the charge or unless the suspension was wholly unjustified. In all other cases, the officer is paid only such amount (not being the whole) of the pay and allowances as may be determined by the competent authority in his discretion. Rule 57 follows in the wake of these rules and must bear a construction which is in accord with the scheme of these rules. Rule 57 automatically deems an officer to be under suspension when he is detained in custody for over forty-eight hours. I do not think

it was intended to place such an officer in a higher pedestal than those dealt with under the earlier rules. That apparently is the reason why something more than a bare acquittal is insisted on, namely an acquittal of blame. There are cases where, though morally convinced of the guilt, the criminal court is unable to convict the accused for want of evidence beyond reasonable doubt or for some procedural irregularity. To attract Rule 57, the verdict which resulted in the acquittal should have been of such a nature as to exculpate the officer of all blame in relation to the charge. Cases can be conceived, where a person is detained, based on wrong identify; or where a case has been wrongly foisted on him; or where he is acquitted on establishing a clean alibi; and others. In the circumstances, I am at one with the Rajasthan High Court that in cases of acquittal on the basis of benefit of doubt and the like, it is for the authority to consider whether the officer has been acquitted of blame and appropriately to make adjustment of the pay and allowances for the period of suspension. I respectfully express my dissent from the contrary view taken by the Bombay and Karnataka High Courts in the decisions referred to.

6. After having observed so, the learned Judge went on to find that in the case which was under consideration, the Sessions Judge had observed in Ext.R1 that there was a faction fight in which weapons were freely used and both sides suffered injuries. It was not clear as to which of the factions was the aggressor or the victim. The Sessions Judge was not able to find as to who was the culprit, in the circumstances. It was, therefore, that he gave the benefits of doubt to the accused and acquitted all those responsible for the faction. The learned Judge held that it is not as if the petitioner was exculpated of all guilt. On the said premise, it was concluded by this Court that the acquittal which was put for the in the said case, was not an acquittal of blame, but was more a case of acquittal on account of the inability of the court to really pinpoint who is responsible for the event in question.

7. Yet another case which considered the case of acquittal of blame in the context of full pay and allowances for the period of suspension is Reserve Bank of India v. Bhopal Singh Panchal : (1994)ILLJ642SC . The court in the said case found that the acquittal was really not an acquittal of blame. Reference in this regard was

made to the decisions in Union of India and Ors. v. T.P. Gopinath and Anr. 2003(2) KLT 593, Ponnamma v. State of Kerala 1997(1) KLT 720 (SC) and Vikraman Pillai v. State of Kerala : 2003(2)KLT397 .

8. A regarding of Rule 57 Part I of the Rules, brings into focus the crucial word 'acquitted of blame' as a sine qua non for the officer to claim full pay and allowances, as a matter of right, for the period under suspension. Apart from being acquitted of blame as such, the accused could possibly be acquitted from the charges not because the learned Judge finds that the evidence against the accused as such is unacceptable, but because the conviction in a criminal case will have to be based on proof beyond reasonable doubt. Therefore, in certain cases, the court would probably accept the prosecution case in part, but nevertheless find that the prosecution evidence is not sufficient to clearly pinpoint the blame of the accused as such. There could be other cases where the benefit of certain clauses of exception is given in favour of the accused even after the court finds that the accused has otherwise committed the act in question; e.g. Exception 2 to Section 302 Indian Penal Code. In such cases, it would not be possible to find that the accused has been acquitted of all blame as such. Similar is the instance which was considered by this Court in Mohammed Easa Sahib v. D.I.G of Police 1990(2) KLT 462, where a plurality of persons were involved in a transaction in which both sides has attacked each other. This Court found that the Sessions Judge was not able to decide which faction was the aggressor and which was the victim. Obviously, both sides cast the 'blame' on each other, going by the words of the learned Sessions Judge and if that be so, in the absence of a finding that the petitioner in the writ petition which led to the judgment, though an accused, was not really responsible for the transaction in question, the competent authority exercising the power under Rule 57 of Pan I of the Rules, could not be faulted for coming to the conclusion that the accused was not acquitted of blame as contemplated by Rule 57 of the Rules.

9. What is the scope of an enquiry, that will have to be conducted by the competent authority, who is called upon to exercise the power under Rule 57 of the Rules? There could be cases, which fall at either end of the spectrum. There could be cases where the accused is exonerated of guilt as such and the court in

categoric terms, finds that the accused is not guilty of any of the charges for which he was been prosecuted. Where there is such a categoric declaration, the job of the competent authority becomes easier and it could, therefore, be a case where the accused is accused of all blame without there being any equivocation. There could be cases where the court finds that the accused has committed an offence, but nevertheless proceeds to acquit him giving the benefit of an exception that is provided in the statute itself. There could also be cases where the court finds that all the accused were involved in a transaction but the court is not in a position to find who exactly is responsible for the offence in question in the sense that the court is unable to pinpoint who is the aggressor where a plurality of persons are involved similar to the transaction in Mohammed Easa Sahib v. D.I.G. of Police 1990(2) KLT 462.

10. In my view, an exercise of discretion for the purpose of Rule 57 of the Rules will arise in cases where the court acquits the accused, but the judgment might not contain a finding that the crime was committed by a person other than the accused or that the accused has been prosecuted without any basis whatsoever. Obviously, the court may express itself, in such a manner as it deems fit, in cases of conviction, acquittal or cases which fall in between. The safest method to be adopted by the competent officer exercising power under Rule 57 of the Rules is to read the judgment carefully and find out whether the court has categorically held that the accused is acquitted of all charges which have been levelled against him. It is appropriate that the competent authority scans the judgment to find out whether the court has entered a finding that the accused is responsible for the transaction forming the subject matter of the crime as such.

11. In my view, if this be the scope of enquiry that is contemplated under Rule 57 of Part I Rules, then the judgment of acquittal, insofar as the petitioner is concerned, Ext.P3, will have to be treated as an acquittal of blame as such. S.C. No. 183/00 was a case in which the petitioner was accused of having murdered his son. The cause of death is shown as acute coronary insufficiency following the injury to the testes. After referred to the evidence given by the prosecution, the court observed as follows:

Practically no trustworthy evidence has been adduced by the prosecution has been adduced by the prosecution to prove the case against the accused. The medical evidence also is not helpful to the prosecution as the same has not revealed anything to consider that the accused murdered the deceased. The evidence of other witnesses including the investigating officer will not further improve the prosecution case. After considering all these aspects, Points 1 and 2 are found against the prosecution. Accused is entitled to the benefit of doubt.

12. The court has obviously come tot he conclusion that the evidence is not trustworthy that the accused had murdered the deceased and the evidence of the investigating officer will not further improve the case of the prosecution. The court then finds that points 1 and 2 viz., (1) whether the accused has murdered his son, Jose on 6-7-99 and (2) the offence, if any, committed by the accused and the sentence or order; are found against the prosecution. What follows is an order of acquittal. In my view, these constitute an 'acquittal of blame' for the purpose of Rule 57(1) of the Rules.

13. Learned Counsel for the Water Authority refers to the following sentence in para 7 of the judgment, which states that 'accused is entitled to the benefit of doubt'. Learned Counsel is right when he says that there words would normally indicate that the court has taken a view that the accused is entitled to be acquitted but not necessarily on the basis of the finding that the charges levelled against the accused have not been proved at all. It normally indicates that it is a case where the court finds that there is some evidence, but not sufficient to convict the accused.

14. But, in the present case, the said sentence in para 7 of the judgment ought not to be taken in isolation. It is the culmination of a finding by the court to the effect that no trustworthy evidence has been produced by the prosecution to prove the case against the accused and the evidence is scanty to find that the accused has murdered the deceased. Sans the last sentence in paragraph 7, the finding by the court 'that the accused is not guilty' remains in tact.

15. In such circumstances, the stand taken by the Water Authority in Exts.P4 and P7 is not sustainable as such.

16. For all these reasons, the writ petition is allowed. Ext.P7 is quashed. The respondents are directed to treat the entire period of suspension of the petitioner from 7-7-1999 to 23-12-1999 as 'period spent on duty'. The petitioner is entitled to full pay and allowances for the period. The amounts due to the petitioner as a consequence thereto shall be disbursed to the petitioner within two months from the date of receipt of a copy of this judgment.

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