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Court : Kerala

Decided On : Jan-30-2006

Reported in : 2006(3)KLT301

Judge : K.A. Abdul Gafoor and; K. Thankappan, JJ.

Acts : Kerala Police Department Inquiries, Punishment and Appeal Rules, 1958 - Rules 15(1), 36A and 36C; Constitution of India - Article 226

Appeal No. : W.A. Nos. 1537 and 2587 of 2005

Appellant : Mohanan

Respondent : Joshwa

Advocate for Def. : John Varghese, Asst. Solicitor General,; M.A. Vaheeda Babu, Government Pleader,;

Advocate for Pet/Ap. : M.R. Rajendran Nair, Sr. Adv.,; G. Sasidharan Chempazhanthyil and;

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. The third respondent in the Writ Petition is the appellant in first of these two appeals. The other is by the State of Kerala.

2. Ext. P7 order dated 26.2.2003 was passed, by the Government, stated to be pursuant to the direction contained in the judgment in W.A. No. 4031/01, exonerating the appellant from all the charges found against him and vacating the penalty imposed on him by the disciplinary authority. The writ petitioners challenged that order, in the Writ Petition. The challenge was upheld finding that the direction contained in Ext. P6 judgment in W.A. No. 4031/01 did not enable the Government to pass an order like Ext. P7 exonerating the appellant from the charges. On the other hand, the Government could, in the light of the directions contained in paragraph 3 of the said judgment, have only chosen between two of the alternatives made mention of therein. The learned single Judge found that Ext. P7 was passed beyond the powers of the Government, and not as directed in Ext.P6 judgment in W.A. No. 4031/01. Therefore this appeal.

3. It is contended by the appellant, who is affected by the quashing of Ext. P7, that the learned single Judge misread Ext. P6 judgment. In effect, what the Division Bench did in Ext. P6 was to give a free hand to the Government to take an independent decision. The power of the Government to pass appropriate orders on the review petition filed by the appellant had never been curtailed. The Government was free even to go beyond the earlier proposal and to pass orders, appreciating the evidence on record, as the circumstances justify. Therefore, the exoneration of the appellant from the charges levelled against him, as per Ext. P7 order was, in any way, in conformity with the direction in Ext-P6 judgment. It is further submitted that the writ petitioners did not have any locus standi to challenge Ext. P7 order, as it was one passed by the Government, the appellate authority in a disciplinary proceedings. The disciplinary action is a matter between the delinquent and disciplinary authority, and a third party like the writ petitioners did not have a say in it. The Government could, appreciating the evidence revealed during the enquiry, pass appropriate orders as the circumstances justify and even exonerating the delinquent. In such circumstances, the petitioner did not have any locus standi. It is further submitted that Ext. P7 order in no manner affects any of the vested rights of the writ petitioners to impugn the same in

proceedings under Article 226 of the Constitution of India.

4. Finalising the disciplinary action, a penalty was imposed on the appellant reducing his rank in the seniority by 20 places. Appeal preferred before the Government was dismissed. Later, a Review Petition was filed. In that Review Petition, the Government had taken a sympathetic view towards the appellant by proposing a lesser penalty. The Public Service Commission was consulted twice. The Public Service Commission did not agree for reducing the penalty. Faced with such a situation, the Government, according to them, did not have a choice other than to dismiss the Review Petition. Accordingly, an order dated 23.10.1996 was passed, dismissing the Review Petition. That was reiterated in another letter dated 25.9.1998 stated to be in disposal of another Review Petition. These were challenged by the appellant in O.P. No. 6916/99, but did not succeed. A Writ Appeal was taken as W.A. No. 4031/01. It resulted in Ext. P6 judgment, which reads as follows:

It is true that in view of Regulation 6 of the Public Service Commission Consultation Regulation, before passing the above order the P.S.C. should have been consulted, but in fact it was twice consulted as stated in Ext. P9. The obligation is only consultation. Here it was twice consulted, but Government can take independent decision in this matter.

In the above circumstances, we direct the Government to pass fresh orders in the place of Ext. P9 applying its mind whether proposed reduction of three increments with cumulative effect should be given or earlier of reduction in seniority list is to be confirmed. The order will be passed within two months from the date of production of copy of this judgment. The Writ Appeal is allowed.

5. Reminding the Government of its obligation to take an independent decision, it was directed in Ext. P6 by the Division Bench that the Government shall consider the matter afresh and pass orders in place of Ext. P9 issued on 23.10.1996 as to 'whether proposed reduction of three increments with cumulative effect should be given or earlier order of reduction in seniority list is to be confirmed'. Necessarily, it is contended by the writ petitioners that the choice of the Government was in between the two. The Government could not have, in the light of Ext.P6 judgment,

gone beyond either of these two. In spite of that, the Government had, in Ext. P7, as if it had been given power 'to pass fresh orders in the matter applying mind', reverted from the said two proposals and exonerated the appellant. Government did not have the freedom to exonerate the appellant, the writ petitioners assert. But, this exoneration, it is contended by the appellant, cannot affect the writ petitioners; because, by reason of this exoneration, the appellant is given his original place of seniority and this being a final order passed in a disciplinary action, no one else can challenge it.

6. It is contended by the Writ Petitioners that subsequent to the disciplinary action initiated against the appellant and imposition of penalty of reduction in seniority, Ext. P4 seniority list was published It is a seniority list as on 1.1.2002, wherein the writ petitioners were given ranks 87 and 91 with assigned dates 12.6.1993 and 11.10.1993 in the cadre of Deputy Superintendent of Police, whereas the appellant was given rank No. 121 with assigned date 26.2.1996. On. the basis of this settled seniority, select lists were drawn up by the Departmental Promotion Committee for further promotion. The petitioners were promoted as Deputy Superintendent of Police. The appellant was not considered at that time, because his seniority had been reduced, consequent on imposition of the said penalty. The result of the impugned order Ext. P7 is Ext. P8 review of select list by the Departmental Promotion Committee, placing the appellant far above the petitioners in the cadre of Deputy Superintendent of Police as also in the cadre of Superintendent of Police. Therefore, they are the affected parties and can validly challenge the impugned order, Ext. P7.

7. The learned Counsel for the appellant had invited our attention to the decision in Rajnit Prasad v. Union of India : AIR 2000 SC3469 , Devki Nandan Verma v. State of Haryana 1995 (Suppl.) [3] SCC 431, Chandra Guptam I.F.S. v. Secretary, Government of India : AIR 1995 SC44 , Sayed Ashraf Hussain v. State of U.P. : AIR 1998 SC3112 and Union of India v. S. Krishna Murthy : (1989)4SCC689 . These decisions were highlighted to show that the writ petitioners did not have any locus standi to assail Ext. P7, an order passed by the disciplinary authority.

8. The first among these decisions was a case of challenge against an order of the disciplinary authority, at the instance of a lawyer as a public interest litigation. It was held that he had no locus standi to invoke the jurisdiction of the court he being 'a mere busybody'. It was in such circumstances, the Apex Court held that the disciplinary action is a matter between the employer and the employee in which a third party like an advocate did not have any remote chance or voice.

9. Such is not the case here. There was a disciplinary action against the appellant, which culminated in the reduction of his rank in the seniority list. An appeal from such an order was later dismissed by Government, the appellate authority as per Rules. Still later a review was also dismissed, as already mentioned above, of course, based on disagreement by the Public Service Commission against reduction of the penalty. It was, in that situation, a Division Bench of this Court that too, at the instance of the appellant, in Ext. P6 directed that the Government can take any independent decision, de hors the view of the Public Service Commission. But, when it came at the decretal portion, the Division Bench directed the Government to pass fresh orders as to 'whether proposed reduction of three increments with cumulative effect should be given or earlier order of reduction in seniority list is to be confirmed'. The independent decision directed, is the view to be taken by Government, independent of the opinion of the Public Service Commission. But with regard to the action to be pursued, the Government was indicated two of the options. Within that two, the Government did have an independent role to take any decision of its choice. On the other hand, what the Government had done in Ext. P7 was to neglect the directions contained in Ext. P6 and to take the decision, as contained in Ext. P7, completely exonerating the appellant from the charges. It was, thus, violating the directions contained in Ext.P6 judgment that Ext. P7 order was passed exonerating the appellant. It really affected the settled seniority position and the chances of promotions of other incumbents like the writ petitioners. Therefore, this cannot be equated with the one discussed in Rajnit Prasad's case (2000) 9 SCC 313.

10. Correction of date of birth considered in Devki Nandan Verma 's case 1995 (3) Suppl. SCC 431 is only, as opined by the Supreme Court, something done as required under law rectifying a mistake. Therefore, a person, who may be aspiring

for an appointment on retirement of the one, whose date of birth was corrected, did not have an opportunity of being heard before the correction was made. That is not the fact situation here. Here, Ext. P7 is not an order as required by law. Moreover, it is not a rectification of a mistake.

11. An appeal at the instance of the appellant against the order imposing penalty was entertained by the Government, as statutorily enjoined, and it was dismissed. In such circumstances, no review will lie under the Rules viz., the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958. Even according to the appellant, the review power to be invoked is that contained in Rule 36. It reads as follows:

The authority to which an appeal against an order imposing any of the penalties specified in Rule 15(1) lie may of its own notion or otherwise, call for the records of the case in a disciplinary proceedings, review any order passed in such a case and, after consultation with the Public Service Commission where such consultation is necessary, pass such orders as deemed fit, as if the member of the service has preferred an appeal against such order.

This is a power to be exercised by the appellate authority, when an appeal has not been duly filed. The review either taken suo motu or at the instance of an incumbent, shall have to be disposed of, going by the said rule, 'as if the member of service has preferred an appeal against such order'. When the member of a service had preferred an appeal and was dismissed already, there arises no question of a review under Rule 36. It is an enabling provision empowering the appellate authority to exercise the power of review, where an injustice has been caused either to the delinquent or in hushing up a disciplinary action mala fide by the disciplinary authority, thereby jeopardising public interest. Therefore, Rule 36 did not, in any way, have any relevance in this case when a regularly constituted appeal preferred by the appellant had already been dismissed. The review under Rule 36-A is review of an order passed by a subordinate authority. The appellate authority in this case was the Government. What the Government had reviewed in Ext. P7 is not an order passed by a subordinate authority to attract Rule 36-A, but was reviewing its own appellate order dismissing an appeal. The review under

Rule 36-C is only a review of the original order. What was undertaken by Government is the review of an appellate order. Therefore, the review powers conferred on the Government, in no way, enabled them to exercise the power under Rule 36, after having dismissed an appeal or under Rule 36-A or 36-C. So, it was not an order as required by law, considered in Devki Nandan Verma's case.

12. But, the Government got the power to pass orders only, when this Court directed it to pass fresh orders, in Ext. P6 judgment. When the Government is thus exercising a power conferred by this Court, the Government cannot go beyond the limits of Ext. P6 judgment, in which it was directed to pass fresh orders in the place of Ext.P9, applying its mind 'whether the proposed reduction of three increments with cumulative effect should be given or earlier order of reduction in seniority list is to be confirmed'. An order that could be passed, consequent to the said direction, is that the Government shall either impose a punishment of withholding three increments or to confirm the order already imposed by the disciplinary authority. On the other hand, what the Government has done was to exonerate the appellant from the charges, for which the Government did not have any power either statutorily or as conferred by this Court in Ext. P6 judgment.

13. The other decisions relied on by the appellant, do not have any relevance when the problem is viewed in the aforesaid factual and legal situations.

Necessarily, the view taken by the learned single Judge is perfectly justified. Appeals fail and are accordingly dismissed.

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