

Sailesh Vs. State of Kerala

Sailesh Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/726983

Court : Kerala

Decided On : Jun-23-2004

Reported in : 2004(3)KLT611

Judge : K.K. Denesan, J.

Acts : Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 - Rule 18

Appeal No. : W.P. (C) No. 8514 of 2004(L)

Appellant : Sailesh

Respondent : State of Kerala

Advocate for Def. : P.V. Lonachan, Government Pleader

Advocate for Pet/Ap. : M.P. Madhavankutty, Adv.

Disposition : Writ petition allowed

Judgement :

K.K. Denesan, J.

1. Heard learned counsel for the petitioner and the learned Government Pleader.

2. Petitioner who was working as Upper Division Clerk in the Kerala Police Department happened to be convicted for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C. 165/2001 on the file of the Chief Judicial Magistrate's Court, Kottayam. The Court which found him guilty imposed appropriate sentence also. Immediately on getting a copy of the judgment from the trial Court the third respondent passed Ext.P1 order dated 7.7.2003 removing the petitioner from service in the terms of Rule 18 of Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 on the ground that the removal from service is on account of the conduct of the petitioner which led to conviction by a criminal Court. Petitioner filed Criminal Appeal No. 557/2003 before the Court of Sessions, Kottayam. But the Court of Sessions confirmed the conviction, though modified the sentence into one of fine of Rs. 1 lakh. Petitioner filed a Criminal Revision Petition No. 190/2004 before this Court which was disposed of by judgment dated 30.3.2004 by which the petitioner was acquitted under Section 320(8) of the Code of Criminal Procedure taking into consideration a petition to compound the offence filed under Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure. Counsel for the petitioner submits that the very language of Section 320(8) of the Code of Criminal Procedure shows that when an offence is compounded it will have the effect of acquittal. On the basis of an order passed by this Court in the above Criminal Revision Petition, petitioner filed Ext.P3 representation before the Director General of Police for reinstating him in service after setting aside the order of removal.

3. When an employee has been dismissed or removed or compulsorily retired from service solely on the basis of the conduct of the employee which had led to conviction in a criminal case, the order of dismissal is liable to be cancelled and the employee becomes entitled to be reinstated in service. Though Ext. P3 representation was submitted as early as on 5.1.2004, the second respondent has not passed any order on that.

4. I have perused the judgment of this Court in Crl. R.P. 190/2004. In the light of the judgment of this Court in the Criminal Revision Petition, I do not think that matter should be delayed further awaiting the orders of the second respondent on Ext.P3. The terms of the provisions contained in the Kerala Civil Services

(Classification, Control and Appeal) Rules itself under which rule the petitioner was removed from service, he is entitled for reinstatement upon showing that he has been acquitted by the appellate or revisional Court. In this view of the matter, the order removing the petitioner from service i.e., Ext.P1 dated 7.7.2003 is quashed. There shall be a direction to the respondents to reinstate the petitioner in service forthwith, with all consequential benefits.

Writ Petition is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com