

**Dinakaran Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Nov-30-2001

**Reported in :** [2002(93)FLR472]

**Judge :** Kurian Joseph, J.

**Acts :** Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 - Rule 10

**Appeal No. :** O.P. No. 22670 of 2001

**Appellant :** Dinakaran

**Respondent :** State of Kerala

**Advocate for Def. :** M. Ratna Singh, Adv. Gen. and; M. Ajay, Spl. Government Pleader

**Advocate for Pet/Ap. :** C.P. Sudhakara Prasad,; Elvin Peter P.J.,; S. Ramesh

**Judgement :**

**Kurian Joseph, J.**

1. Suspension is made in public interest. But should there be assessment of public interest while passing an order for revocation of suspension pending enquiry?

2. The challenge in the Original Petition is against Ext. P1 order passed by the Government placing the petitioner under suspension. It is seen from the impugned order itself that the suspension was in connection with the hooch tragedy at Kalluvathukkal and Kottarakkara in Kollam District. The tragedy took place while the petitioner was working as Deputy Commissioner of Excise, South Zone. Both Kalluvathukkal and Kottarakkara come under the jurisdiction of the Deputy Commissioner of Excise, South Zone. Though pursuant to Ext. P3 judgment of this Court, the representation for revocation of suspension was considered, the request was turned down as per Ext. P4. Petitioner contends that all the relevant aspects have not been considered either while suspending the petitioner or while passing Ext. P4 order rejecting the request for revocation of the suspension. It is further contended based on Ext. P5 statement filed by the Government before Justice V.P. Mohan Kumar Commission of Inquiry that there is no involvement of the petitioner in the matter.

3. It is brought to my notice that during the pendency of the Original Petition, memo of charges has been framed and issued to the petitioner and it is only a matter of time for the Government and that final decision can be taken in the disciplinary proceedings. Any observation at this stage might prejudice the enquiry now conducted in the matter and ultimately the disciplinary proceedings. Therefore, taking an overall assessment of the situation, I dispose of the Original Petition directing the respondent to see that the disciplinary proceedings now pending against the petitioner pursuant to Ext. P1 are concluded within four months from the date of receipt of a copy of this judgment.

4. The learned counsel for the petitioner submits that liberty may be reserved to the Government/Commissioner to review the suspension in the meanwhile. Needless to say, it will be open to the authorities to do so since the rules contemplate such review once in six months. It is made clear that the disposal of the Original Petition will not stand in the way of the Government/Commissioner reviewing the suspension order in accordance with law.

5. Before parting with the case, I shall deal with the legal question that has incidentally arisen in this case. During the pendency of the Original Petition, it

was brought to the notice of the Court that some police officers against whom there were very serious allegations of commissions of offences in connection with the liquor tragedy were reinstated pending enquiry and posted in the same districts. This Court in the order dated 17.10.2001 directed the Chief Secretary to file an affidavit on certain aspects. One specific issue read as follows:-

'Was the reinstatement of the Police Officers involved in the case done with the knowledge of the Government and was there an assessment of public interest at the time when orders for reinstatement and posting of those officers were passed'.

In the affidavit dated 3.11.2001, referring to the said issue it is stated at paragraph 8 as follows:-

'Regarding the second direction it is humbly submitted that the Police Officers suspended by the Director General of Police were reinstated by him without the knowledge of Government. As Head of Department, Director General of Police is competent to take disciplinary action against the police officers upto the rank of Inspector of Police. The Government is not usually consulted in such matters. I beg leave to submit to this Hon'ble Court that the question of public interest does not arise in this case as the reinstatement of the officers are done in the course of disciplinary proceedings.'

The stand of the Chief Secretary is not correct; it is against the statutory mandate also. Under Rule 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules, suspension is ordered in public interest. I need not elaborate what public interest is, since it involves so many aspects. As the chief executive officer of the State, the Chief Secretary has a duty to see that his subordinates act only in accordance with law. If the suspension is in public interest, necessarily at the time of reinstatement pending disciplinary action public interest has to be considered. True, disciplinary proceedings as far as a delinquent employee is concerned has to be governed by codified rules. But even under the codified rules, namely the Classification, Control and Appeal Rules, it is mandatory that an erring officer should be kept out of service by suspension pending disciplinary action if public interest so warrants. On a close analysis of the provision it can be seen that suspension is warranted only in public interest. If suspension is made in public

interest, at the time of revocation thereof also public interest has to be weighed. The contention that public interest need not weigh with the disciplinary authority is at the stage of passing final orders in the disciplinary proceedings and not at the time of revocation of suspension.

6. The learned Advocate General invited my attention to the decision of the Apex Court in *Rajnit Prasad v. Union of India* ((2000) 9 SCC 313), particularly to paragraph 9 which reads as follows:

'...In respect of departmental proceedings which are initiated or sought to be initiated by the Government against its employees, a person who is not even remotely connected with those proceedings cannot challenge any aspect of the departmental proceedings or action by filing a Writ Petition in the High Court or in this Court. Disciplinary action against an employee is taken by the Government for various reasons principally for 'misconduct' on the part of the employee. This action is taken after a 'domestic' inquiry in which the employee is provided an opportunity of hearing as required by the constitutional mandate. It is essentially a matter between the employer and the employee, and a stranger, much less a practising advocate, cannot be said to have any interest in those proceedings. Public interest of general importance is not involved in disciplinary proceedings. In fact, if such petitions are entertained at the instance of persons who are not connected with those proceedings, it would amount to an abuse of the process of court.'

7. It may be seen that in that case a public interest litigation was filed by a stranger challenging the interference by the High Court quashing the disciplinary proceedings against a police officer. Obviously, the context and connotation of the expression 'public interest' there is totally different and hence that decision has no application here particularly since this is a case of revocation pending disciplinary proceedings. It is for the Chief Secretary to ensure that the subordinates also act in accordance with law, particularly in the matter of suspension and revocation thereof, both being actuated and necessitated only in public interest. Any adverse impact on public interest results in disorder in society. Therefore, the moment the Chief Secretary comes across instances of

subordinates acting against the mandate in the rules and against public interest, he has a duty to put things in order, since public interest is protected and respected in a State only if there is law and order.

The petitioner will produce a copy of this judgment along with a copy of the Original Petition before the respondents.

8. Communicate a copy of this judgment to the Chief Secretary, Government of Kerala.

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