

State of Kerala Vs. Sugathakumar

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Court : Kerala

Decided On : Dec-04-1998

Reported in : (1999)IIILLJ790Ker

Judge : Ar. Lakshmanan and; K. Narayana Kurup, JJ.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 2

Appeal No. : W.A. No. 505 of 1998

Appellant : State of Kerala

Respondent : Sugathakumar

Advocate for Def. : P. Kesavan Nair, Adv.

Advocate for Pet/Ap. : Alexander Thomas, G.P.

Disposition : Appeal allowed

Judgement :

Ar. Lakshmanan, J.

1. Heard Mr. Alexander Thomas, Government Pleader for appellants and Mr. P. Kesavan Nair for respondent.

2. This appeal is by the State of Kerala challenging the judgment in O.P. 10208/1997 of a learned single Judge of this Court. The Writ Appeal was argued by both counsel appearing on either side at length. The respondent/petitioner in the O.P. filed the writ petition to quash Exts. P10, P16 and P17. Ext. P10 is the proceedings of the Government of Kerala, Vigilance Department dated September 16, 1996 placing the respondent under suspension pending disciplinary action against him, when the respondent was acting as a Director of ANERT. Ext. P16 is the order passed by the Government of Kerala dated June 16, 1997 reinstating the respondent in service without prejudice to the disciplinary action pending against him and in public interest. The respondent was also reverted to his parent department viz., Technical Education Department in public interest and the Director of Technical Education Department was directed to arrange for suitable posting to the respondent herein. Ext. P17 is against an order passed by the Government of Kerala dated June 27, 1997 expressing its decision to initiate further disciplinary action against the respondent under K.C.S. (C.C. & A.) Rules. Considering the seriousness of the charges against the respondent the Government has placed him under suspension forthwith. These three proceedings were challenged by the respondent on the ground that only the disciplinary authorities can place the respondent under suspension and that the Government not being such an authority, Ext. P10 is without jurisdiction. It is further submitted that with the regularisation of the respondent as Director of the Agency, the Government has ceased to have any disciplinary control over the respondent and only the executive committee of the Agency can place him under suspension. It is submitted that the third respondent in the O.P. not being the disciplinary authority has no jurisdiction to issue the memo of charges to the respondent after conducting enquiry on those charges and that Exts. P10, P12 and P14 have been passed with the intention of keeping the respondent away from the Director's post by any means and therefore, it is submitted that they are vitiated by malafides. On the side of the State a counter affidavit was filed. It has been contended that since the Government had appointed the respondent as Director, the Government is the appointing authority and have got every power to take disciplinary action against the respondent. It was also submitted that the Technical Education Directorate /Higher Education Department has not terminated the respondent's lien in the

Department of Technical Education, and respondent continues as a deputationist in the ANERT and is still under the disciplinary control of the State of Kerala. It was further contended that since the respondent was nominated by the Government, the Government have full authority to take appropriate action against the respondent and have powers to suspend the Director when the Government finds prima facie irregularities established as against the respondent.

3. Learned Judge however did not agree with the contentions raised by the Government of Kerala. According to the learned Judge, the State of Kerala has no jurisdiction either to revert the respondent or to suspend him. When the respondent was working on deputation as Director, he applied for the post of Director, he was interviewed and selected and thereafter by passing Ext. P9 order the character of appointment of respondent as a deputationist has been changed into one of regular basis and thereafter the State of Kerala has ceased to have any control over the respondent and it is ANERT alone which has got disciplinary control over the respondent and therefore, the respondent cannot be reverted back to his parent department by the State. In so far as Ext. P17 is concerned learned Judge was of the view that the same is also without jurisdiction. Once the respondent became a regular employee of the ANERT, the State of Kerala cannot exercise power and place the respondent under suspension and only the Executive Committee of the ANERT which is vested with the power of disciplinary action against the respondent can suspend the respondent. Under these circumstances, the learned Judge quashed Exts. P16 and P17 and ordered reinstatement of the respondent in service forthwith. The Governing body of ANERT was directed to allow the respondent to resume his duty as Director. The Original Petition was thus allowed.

4. Being aggrieved by the correctness of the above judgment the State preferred the above appeal. Mr. Alexander Thomas, learned Government Pleader appearing for the State invited our attention to Exts. P10, 11, 12, 13 to 20. It is the contention of the learned Government Pleader that State of Kerala has got jurisdiction to pass the orders impugned in this writ petition and that the power to repatriate is still available with the Government so long as the Hen is not terminated. He cited the following decisions in support of his arguments:

P.S.V Menon v. Malabar Cements Ltd. 1997 (2) KLT 825 ; Velayudhan v. State of Kerala 1996 (2) KLT 502 ; Nithyanandan v. State of Kerala 1995 (2) KLT 250; Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KLT 766 (FB), and T.R. Sharma v. Prithvi Singh AIR 1976 SC 367.

5. In P.S.V. Menon's case (supra) learned single Judge of this Court held that the Government has got power to direct the Managing Director of a Government Company to place some of their officers under suspension for conducting a smooth investigation with regard to the crime case registered under the Prevention of Corruption Act. Learned Judge has taken the said view in view of the fact that the company is fully owned by the State Government. State has got power to keep their public servants under suspension. Learned Judge was of the view that dehors the service regulations Government have got power to direct the Managing Director to place petitioners under suspension for conducting a smooth investigation with regard to the crime case registered under the Prevention of Corruption Act.

6. 1996 (2) KLT 502 was rendered by K.A. ABDUL GAFOOR, J. Learned Judge held that to exercise power under Rule 10 of the Civil Services (Classification, Control and - Appeal) Rules, 1960 the appointing authority or higher authority need not have a specific empowerment which is contemplated only in respect of the authorities other than the appointing authority or higher authority. In the said case the order of suspension was issued in exercise of executive power vested in the Government in terms of Article 166 of the Constitution of India. Thus by Ext. P1 the executive power of the Government is expressed and that the said Ext. P1 is an order of the Government of Kerala and therefore, no empowerment is necessary for the Government to place the petitioner under suspension. It is also held that the rules of business provide the manner of issuing an order by the Government and its authentication by the Secretaries and as per the gazette notification dated April 23, 1994 notifying G.O.(MS)No. 169/94/GADdated April 23, 1994 published in SRO No. 482/1994 the rules of business of Government of Kerala have been amended and as per the said amendment orders sanctioning prosecution of a public servant under the Code of Criminal Procedure or Prevention of Corruption Act placing him under suspension and finalising the

disciplinary proceedings against him under the relevant rules and orders in pursuance of a vigilance enquiry contemplated or initiated can be issued by Government in Vigilance Department. It is based on that notification under Article 166(3) the Vigilance Secretary has authenticated Ext. P1 Government Order which is perfectly within his competence in terms of the said amendment to the rules of business of Government of Kerala.

7. Nithyanandan's case (supra) also deals with Rule 10 of the Civil Services (Classification, Control and Appeal) Rules, 1960 (Kerala) and the amendment to the Rules of Business of the Government of Kerala empowering the Secretary to Government, Vigilance (D) Department to suspend a Government servant. In this case the challenge against the order of suspension issued by the second respondent viz., Commissioner and Secretary to Vigilance (D) Department against the petitioners is mainly on the ground that the Commissioner and Secretary to Vigilance Department has no jurisdiction to issue the order. Learned Judge (USHA, J.) in paragraph 4 of the Judgment held that since the Government admittedly is the appointing authority in the case of the first petitioner and therefore Rule 4 of the Rules of Business of the Government of Kerala issued by the Governor of Kerala in exercise of his powers under Clauses (2) and (3) of Article 166 of the Constitution of India provides that the business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. By such amendment the business of the Government viz., issuance of orders sanctioning prosecution of a public servant under the Code of Criminal Procedure, 1973 and the [Prevention of Corruption Act, 1988](#) placing him under suspension and finalising the disciplinary proceedings against him under the relevant rules and orders in pursuance of a vigilance enquiry contemplated/initiated against the public servant has been allocated to the Vigilance Department. Such allocation empowers the second respondent viz., Commissioner and Secretary to Vigilance Department to issue the impugned order.

8. 1998 (1) KLT 776 was rendered by a Full Bench of our High Court comprising of K.K.. USHA, K.S. RADHAKRISHNAN and S. SANKARASUBBAN, JJ., held as

follows:

'When an officer is appointed substantively to a permanent post, he acquires a lien on that post and ceases to hold the lien which he acquired previously on any other post. If Rule 16 stood as such, the argument of the respondents could have been accepted that when the appellants were appointed substantively to a permanent vacancy in the Co-operative Department, they lost their lien in the Rural Development Department. But Rule 16 is not absolute. The lien has to be suspended by the Government under Rule 18 and before suspending the lien the Government has to consider the result of the suspension. The lien of an officer cannot be suspended or terminated without his consent. Note 1 of Rule 8 clearly states that when a member of a service gets an appointment in another Department on the invitation of the Government or on being sponsored or recommended by the Government, such appointment will be deemed to be exigencies of service.

The lien of a member of a service to a post in the parent Department is not lost automatically when he joins another Department. The lien can be terminated only after hearing the concerned person. By mere completion of probation it cannot be said that a person has been substantively appointed to a permanent post. Unless a person is confirmed under Rule 24 of K.S .R., it cannot be said that the person has been substantively appointed to a permanent post. In the present case, we find that the appellants have not been confirmed in the Co-operative Department. Hence they have no lien in the Co-operative Department. Their lien in the Rural Development Department has not been terminated. In that view of the matter, sending them back to the parent Department is legal.'

The above Full Bench decision was cited by the learned Government Pleader in support of his contention that the lien of a member viz., respondent herein to the post under parent Department is not lost automatically when he joins in ANERT and that the lien can be terminated only after hearing the concerned person. By mere completion of probation it cannot be said that a person has been substantively appointed to a permanent post. According to the Government Pleader lien of the respondent herein has not been terminated as per the records

available with the Director of Technical Education of the Government. Learned counsel appearing for the respondent cannot also controvert the above statement. According to him once his services are regularised under Ext. P9 there is an automatic cessation of the employer-employee relationship of the parent department. The above contention cannot be accepted in view of the Full Bench judgment of our High Court which in turn followed AIR 1976 SC 367 (supra) as follows :

'Under Rule 3.12 normally a Government Servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post Rule 3.14(a)(2) carves out an exception to the general rule contained in Rule 3.12. Under Rule 3.14(a)(2) a duty is cast upon the competent authority to suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The imperative nature of the rule is also clear from the use of the word 'shall' in Clause (a) as against the use of the word 'may' in Clause (b) of that Rule. The concerned Government servant cannot be penalised because of the omission of the competent authority to act in accordance with the mandatory provisions of Rule 3.14 (a)(2). Clause (b) of Rule 3.15 also makes it clear that in a case covered by Sub-clause (2) of Clause (a) of Rule 3.14, the suspended lien of the Government servant concerned may not, except on the written request of that Government servant, be terminated while he remains in Government service. The note to Rule 3.15 shows a way out in case any difficulty is experienced on account of the operation of Rule 3.14(a)(2)'.

From the argument of the learned Government Pleader following aspects are clear:

- i) The Government retains the power to repatriate the Government servant so long as the lien is not expressly terminated.
- ii) The power of the Government to initiate disciplinary action against the Government servant though on deputation to another department is not lost.

ii) Consequently the Government is empowered to suspend an employee pending departmental enquiry, inspite of the fact that he is on deputation to another department which comes directly under the control of the State Government, the said department being a creature or instrumentality of the State Government.

9. In our opinion, the respondent being a Government servant within the meaning of Section 2(c)(iii) of the Prevention of Corruption Act and the ANERT is a body controlled and aided by the Government as envisaged in the Act, the Government has got jurisdiction to initiate disciplinary action and also place the Government employee under suspension. We have already referred to 1997 (2) KLT 825 which deals with the similar situation. This Court held that the Government has the power and jurisdiction to suspend a person from service even outside the provisions of the service regulations so long as the incumbent is a public servant within the meaning of Prevention of Corruption Act. The vigilance enquiry had revealed serious irregularities and illegalities committed by the respondent. Thus the Vigilance Department has the competence to order suspension from the service in cases of misconducts and offences relatable to the Prevention of Corruption Act. This again in 1997 (2) KLT 825 (already referred to above) held that the Vigilance Department has the power to issue directions for the suspension from service of persons who come within the ambit of Section 2(c)(iii) of the Act. It is indisputable that the ANERT is a body controlled and aided by the Government as envisaged in the above Act and that the respondent as Director is a public servant within the meaning of the above provision. Thus the Government, in our opinion have the jurisdiction to issue impugned Ext. P10 suspension order in any view of the matter. In the instant case learned Judge though quashed Ext. P16 and P17 has not however quashed Ext. P10. So Ext. P10 order still stands. In the amended provisions of the Rules of Business of the Government of Kerala framed under Clauses (2) and (3) of Article 166 of the Constitution of India, it has been directed that issuance of orders sanctioning prosecution of public servant under the Code of Criminal Procedure or under the [Prevention of Corruption Act, 1988](#) placing him under suspension and finalising the disciplinary proceedings against him under the relevant rules and orders in pursuance of a vigilance enquiry contemplated/initiated against the public servant has been allocated to the Vigilance Department. This Court, as already referred to have taken the same

view in 1995 (2) KLT 250 and 1996 (2) KLT 502 and have held that the Vigilance Department has the power to issue suspension order in such cases.

10. Though the respondent/writ petitioner had prayed in relief (b) of the Original Petition for quashing Exts. P10, P16 and P17, learned single Judge had only quashed Exts. P16 and P17. Thus Ext. P10 suspension order has not been interfered with and remains unaffected. So long as Ext. P10 is not quashed it was not correct for the learned Judge to have directed to allow the respondent to resume as Director. Since Ext. P10 has not been interfered with as rightly submitted by the Government Pleader, the respondent legally continues to be under suspension from service and hence the direction to allow the respondent as Director is not proper and correct and the impugned direction to the said effect is not correct and warranted under the above circumstances. As is evident from Clause 2(3) of Ext. P2, the Director of ANERT will be nominated by the Government of Kerala. Thus the appointing/nominating authority in the case of Director is a Government and not the Executive Committee or Governing body of ANERT. The power of the Government to nominate or appoint the Director also includes the power to dismiss or terminate the nomination /appointment of the Director. Though Ext. P3 mentions that the Executive Committee is the disciplinary authority in the case of the respondent that does not in any way whittle down the power of the Government to take disciplinary action and suspend the Director from service. It may be noted that Clause 3.5(f) of Ext. P3 only mentions that Executive Committee is the disciplinary authority in the case of the respondent and it does not give the power of appointment of the Director to the Executive Committee. It may be noted that even service rules like the Kerala Civil Services (CC &A;) Rules make a distinction between appointing authority and disciplinary authority. Reference in this connection made to Rule 2(a), Rule 2(c) and Rule 9, Rule 13 etc. of the CCA Rules which makes a clear distinction between appointing authority and disciplinary authority. Even under the General Law the appointing authority has a power to suspend an incumbent from service. Thus the finding of the learned single Judge that the Government has no jurisdiction to order suspension of the respondent on the ground that the Executive Committee is the disciplinary authority in the case of Director is not tenable. As already noticed ANERT is a body controlled and financed by the Government and several crores of rupees are

being annually allotted by the Government as grant-in-aid to the ANERT for its proper functioning. Government is the appointing authority of the Director of ANERT and the contention of the respondent that the Executive Committee is the appointing authority is not correct. Therefore, the observation of the learned Judge that the Executive Committee had appointed the respondent is not correct. It is further submitted that the respondent's continuance as Director of ANERT is only on deputation basis as is evident from Exts. P4, P5, P6 and P8. After issuance of Ext. P9, respondent's lien was never terminated and there was no order issued by the Government appointing the respondent as Director of ANERT. We have already referred to the decision of the Apex Court reported in AIR 1976 SC 367, respondent's lien remained intact in the parent department and thus impugned Ext. P16 order ordering for the reversion to the parent department is correct and legal (sic.). At the same time since the respondent's lien continued to be in the Technical Education Department, Government thought it fit to reinstate the respondent in service and also to order his repatriation to the parent department so that the enquiry in the ANERT can be conducted fairly and impartially. Thus the impugned Ext. P16 is issued not only with the lawful authority but also in a bonafide manner. The direction of the learned single Judge quashing Ext. P16 is therefore not in order.

For the foregoing reasons we are of the opinion that the judgment of the learned single Judge is not correct and therefore, is liable to be set aside. Accordingly Writ Appeal is allowed and the State of Kerala is directed to commence and complete the disciplinary proceedings within three months from the date of receipt of copy of the judgment from this Court or on production of the same by either party whichever is earlier. After the completion of the enquiry the Government will have four weeks time to pass final orders since the order has to be passed by the Department concerned. The Government may depending upon the final outcome of the departmental enquiry consider retention of the respondent in the ANERT or to repatriate him to the parent department if they so desire.