

KERALA HIGH COURT

S. Govinda Menon

Vs.

State of Kerala

W.A. No. 47 of 1963 and O.P. 485 of 1963

(T.K. Joseph and T.C. Raghavan, JJ.)

17.10.1963

JUDGMENT

T.K. Joseph, J.

1. This is an appeal from the order of Vaidialingam J., dismissing O.P. No. 485 of 1963 filed by the appellant for quashing an order, Ext. P. 11, dated 8-3-1963 placing him under suspension. The appellant, a member of the Indian Administrative Service, was the First Member of the Board of Revenue at the time he was suspended. The validity of the order of suspension was challenged on a question of jurisdiction, viz., that under the All India Services (Discipline and Appeal) Rules, 1955, an order of suspension could not be passed by the Government under Rule 7 before charges were framed against the officer in disciplinary proceedings against him. It was held that the word 'charges' in Rule 7 meant, not the charges framed against the officer in respect of which he had to answer in an inquiry in respect of the same but the allegations of misconduct against him. It was further held that disciplinary proceedings commenced when allegations of misconduct were received by the Government and investigation of the same started. The petition was accordingly dismissed.

2. Before considering the points raised in appeal it is necessary to state that on the submission made by petitioner's counsel, the learned Judge passed an order on C.M.P. No. 1685 of 1963 that arguments on the original petition would be restricted to the question of jurisdiction and that the State need not answer questions of fact raised in the petitioner's affidavit.

3. The impugned order, Ext. P. 11, reads as follows:

"The Government have received several petitions containing serious allegations of official misconduct against Shri S. Govinda Menon, I.A.S., First Member Board of Revenue, and formerly Commissioner, Hindu Religious & Charitable Endowments (Administration).

Preliminary enquiries caused to be conducted into the allegations have shown, prima facie, that the officer is guilty of corruption, nepotism and other irregularities of a grave nature. The Kerala High Court had also occasion to comment on the conduct the officer in their Judgment O.P. No. 2306 of 1962 delivered on 12th February 1963. The judgment begins with the observation that 'this case, if it has served little else, has served to expose a disquieting state of affairs regarding the disposal of valuable forest lands belonging to a religious institution known as the Sree Pulpully Devaswom of which I trust due notice will be taken by the competent authority in the interests of the public administration and the preservation of our forest wealth no less than in the interests of this particular institution.'

The judgment in the above case and the preliminary report of X Branch Police have disclosed the following grave charges of serious irregularity and official misconducts on the part of the accused officer.

(1) Notwithstanding the provisions in the Madras Hindu Religious and Charitable Endowments Act and the Rules issued thereunder the accused officer had in several cases initiated proposals for the disposal of Valuable properties belonging to several Devaswoms and then sanctioned these proposals under Section 29 of the Act. Regarding this the High Court has observed as follows:

"We find from the documents filed in the case and from his- own counter affidavit that the Commissioner (accused officer) was directing the petitioner in his capacity as 'fit person' discharging the functions of the trustee to grant 99 year leases of extensive forest lands with the right to the valuable timber standing thereon to particular persons on stated terms, without any public auction and that he was forwarding applications from these persons to the petitioner for disposal and that on applications by the petitioner for granting leases accordingly he was according permission under Section 29 of the Act holding that the leases were beneficial to the institution. It was quite improper for the Commissioner to have initiated proposals for lease and then acted in judgment over his own proposals."

(2) One of the persons to whom the accused officer had sanctioned the lease of 200 acres of land belonging to the Pulpally Devaswom was his own direct nephew. The action of the officer was contrary to the provision in Rule 3 of the All India Services (Conduct) Rules 1954 which enjoins every member to maintain absolute integrity in all official matters.

(3) The accused officer after obtaining application from persons, in whose favour he had sanctioned the grant of leases made out applications in their name in forms cyclostyled in his office (even making corrections in the applications in his own handwriting) and forwarded them to the 'fit person' for signature and transmission to the Collector for sanction to fell the trees on the land. The accused officer also made his Personal Assistant to write a D.O. letter to the Personal Assistant to the Collector to see that the applications were granted. The accused officer thereby interfered with the District Collector who was his subordinate Officer, in the discharge of his statutory responsibilities. The accused officer also permitted persons leases to whom were pending sanction by him to enter upon

the lands, construct sheds and post watchmen. He had also interested himself in the actual allocation of the lands between the several nominees and demarcated on a sketch prepared for the purpose the particular portions to be given to each.

The officer contended before the High Court that there were compelling reasons for acting in the manner he did. The High Court observed with reference to this contention that the decisions however compelling could not alter the law or the fact that the accused officer who was by law charged with the duty of seeing that Endowments coming within the scope of the Act were properly administered and that the trustees did their duties faithfully and properly, had been taking undue interest in the disposal of very valuable properties belonging to the Devaswoms in favour of particular persons leading, literally, to the charge of nepotism and that he had been directing disposal otherwise than in accordance with the law.

The detailed enquiry into the charges by the X-Branch is in progress. The evidence in the case has to be collected from a large number of officers who are subordinate to the accused officer in his capacity as First Member of the Board of Revenue. In the interest of the proper conduct of the enquiry it is necessary that the officer should not be allowed to continue in that post.

Having regard to the nature, of the charges against the officer and the circumstances the proper course would be to place him under suspension. Shri S. Govinda Menon, I.A.S., First Member, Board of Revenue, is therefore placed under suspension under Rule 7 of the All India Services (Discipline & Appeal) Rules, 1955 till the disciplinary proceedings initiated against him are completed.

The above order will take immediate effect. The Second Member, Board of Revenue, will assume charge from the accused officer and attend to the current duties of office of First Member Board of Revenue, until further orders."

Rule 5(1), (2) and (3) as well as Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955, may also be extracted:

"1. (1) Without prejudice to the provisions of the Public Servants Inquiry Act, 1850, no order shall be passed imposing any of the penalties specified in Rule 3 on a member of the Service, unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself.

(2) The ground on which it is proposed to take action shall be reduced to the form a definite charge or charges, which shall be communicated to the member of the Service charged, together with a statement of the allegations in which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case.

(3) The member of the Service shall be required, within such time as may be considered by the Government reasonably adequate in the circumstances of the case, to put in a written statement of his defence and to state whether he desires to be heard in person.

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7. (1) If having regard to the nature of the charges and circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started, the Government may-

(a) if the member of the Service is serving under it pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government, request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case:

Provided that in cases where there is a difference of opinion between two State Governments the matter shall be referred to the Central Government whose decision thereon shall be final.

(2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the Service against whom a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of the proceedings if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude."

It was urged on behalf of the appellant that all matters relating to disciplinary proceedings of officers in the Indian Administrative Service are to be governed by these rules which were framed under the All India Services Act, LXI of 1951. Certain decisions were referred to in this connection, but it is unnecessary to refer to the same as the position was not controverted by the learned Advocate-General. Counsel for the appellant referred us to the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the Kerala Civil Services (Classification, Control and Appeal) Rules, under which an officer can be placed under suspension when disciplinary proceedings are contemplated against him. The fact that there was no similar provision in the All India Services Rules was stressed. It was argued that in the absence of such a provision, the State Government had no power to place a member of the Indian Administrative Service under suspension when disciplinary proceedings are contemplated against him and that such a step can be taken only after the commencement of disciplinary proceedings. This position is also not contested, and we are therefore not referring to the decisions relied on by counsel for the appellant.

4. The real controversy is as to when disciplinary proceedings commenced. Both sides have taken rather extreme positions. While the case for the appellant is that disciplinary proceedings commence only after the framing of the charges and service of the same on the officer concerned, the respondent would contend that disciplinary proceedings commence when

complaints of misconduct are received by the Government and the same are being enquired into by the Police or other machinery to which the same may be entrusted for investigation. The argument on behalf of the appellant is based on the provisions of Rule 7 (1) which provides that having regard to the "nature of the charges and the circumstances in any case" if the Government is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started. Government may place him under suspension. The word "charges" occurs in rule 5 (2) which provides that definite charge or charges should be framed against the member of the Service against whom disciplinary proceedings are taken. Rule 5 is the provision which prescribes the procedure for imposing penalties. As the word "charges" occurs in Rule 7 also it is contended that disciplinary proceedings commence only after charges are framed and served on the member of the Service.

5. The reply of the State is that there are three stages in disciplinary proceedings, namely, (1) the preliminary enquiry on receipt of complaint, (2) the departmental enquiry and (3) the stage for imposing punishment. It is therefore urged that disciplinary proceedings commence as soon as a preliminary enquiry is ordered by the Government.

6. We are unable to accept either of these positions. The Preliminary inquiry under Rule 5 is one for ascertaining the truth of the complaint in order to arrive at a decision whether an enquiry with notice to the member of the Service should be conducted. The preliminary enquiry is one conducted behind the back of the member of the Service and he has no opportunity at that stage for establishing his innocence. In short, the principles of natural justice, which should be observed in disciplinary proceedings, have not to be observed at the stage of the preliminary inquiry which may or may not result in a decision to take further proceedings. The contention that charges should be framed before the commencement of the inquiry is equally unsustainable. This is clear from the provisions of Rule 5 which prescribes the Procedure for imposing penalties. Rule 5 (2) prescribes that the grounds on which it is proposed to take action should be reduced to the form of definite charge or charges, and under rule 5 (3) the member of the Service is to put in a written statement of his defense to the charge or charges. The framing of the charge or charges is necessary to enable the member of the Service to meet the case against him. Rule 7 is of a wider nature. It is significant to note that in rule 7 (1) the reference is only to the nature of the charges and the circumstances but not to the definite charge or charges framed under rule 5 (2). The word 'charges' in rule 7 (1) should be given a wider meaning as denoting the accusations or imputations against the member of the Service. As pointed out by Vaidialingam J., it would lead to an anomalous result if the same meaning is given to the word 'charges' in rules 5 and 7, as there may be cases in which a proper preliminary inquiry cannot be conducted with the member in Service.

7. We are inclined to think that disciplinary proceedings are initiated when the Government decides to take action under Rule 5. This may be as a result of the report of the Preliminary inquiry. There was no allegation in the affidavit of the appellant that such a decision was not

taken by the Government, and it is unnecessary to investigate that question. We may however observe that even if there is not a separate order in that behalf, the order Ext. P. 11, incorporates the decision of the Government to initiate disciplinary proceedings. After referring to the receipt of several petitions containing serious allegations of misconduct on the part of the appellant it is stated:

"Preliminary inquiries caused to be conducted into the allegations have shown, prima facie, that the officer is guilty of corruption, nepotism and other irregularities of a grave nature.

Reference is then made to certain observations made in the judgment in O.P. No. 2306 of 1962. Ext. P. 11 further states:

"The judgment in the above case and the preliminary report of the X-Branch Police have disclosed the following grave charges of serious irregularity and official misconduct on the part of the accused officer."

Three charges are then enumerated. Ext. P.11 then states :

"A. detailed enquiry into the charges by the X-Branch is in progress. The evidence in the case has to be collected from a large number of officers who are subordinate to the accused officer in his capacity as First Member of the Board of Revenue. In the interests of the proper conduct of the enquiry it is necessary that the officer should not be allowed to continue in that post."

The order concludes:

"Having regard to the nature of the charges against the officer and the circumstances, the proper course would be to place him under suspension. Shri S. Govinda Menon, I.A.S., First Member, Board of Revenue, is therefore placed under suspension under Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955, till the disciplinary proceedings initiated against him are completed."

8. It is clear from what has been stated above that even if there was no decision to initiate disciplinary proceedings before the date of Ext. P. 11, a decision was taken on that date. Counsel for the appellant urged that the decision of the Government was only to institute a further detailed enquiry and not disciplinary proceedings. This is incorrect. Ext. P. 11 states that the enquiry conducted till then has disclosed certain charges of nepotism and corruption on which the Government proposed to take action.

9. It follows that the order of suspension was passed with jurisdiction and in conformity with Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955. As this is the only point

arising for decision the appeal has to be dismissed.

10. We may add that it was stated before us that definite charges have since been framed against the appellant and that he has been asked to file the written statement regarding the same.

11. In the result, we confirm the order dismissing the original petition and dismiss the appeal. As the point involved is one of construction of statutory rules, we make no order as to costs.

Dismissed.