

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WA.No. 1284 of 2015

AGAINST THE JUDGMENT IN W.P.(C).NO.9267 OF 2013 (G), DATED 20.11.2014

APPELLANT(S)/2ND AND 3RD RESPONDENTS IN W.P :

- 1. THE RUBBER BOARD,
PB NO.1122, SUB JAIL ROAD, KOTTAYAM- 686 002,
REPRESENTED BY ITS CHAIRMAN.**
- 2. THE CHAIRMAN,
RUBBER BOARD, P.B.NO.1122, SUB JAIL ROAD,
KOTTAYAM- 686 002.**

**BY ADVS.SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS**

RESPONDENT(S)/PETITIONER AND 1ST RESPONDENT IN W. P :

- 1. P.A.VARGHESE,
ASST. DIRECTOR (EXCISE), RUBBER BOARD OFFICE, MUMBAI,
RESIDING AT PARUTHIKUNNEL,
RUBBER BOARD EMPLOYEES COLONY, RUBBER BOARD P.O.,
KOTTAYAM.**
- 2. UNION OF INDIA,
MINISTRY OF COMMERCE AND INDUSTRY, DEPT. OF COMMERCE,
UDYOG BHAVAN, NEW DELHI, REPRESENTED BY ITS SECRETARY.**

**R1 BY ADV. SRI.M.SREEKUMAR
R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
ADV. SMT.I.SHEELA DEVI, CGC**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1284 of 2015

Dated this the 11th day of December 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard the learned counsel for the appellants and the learned Central Government Counsel appearing for the 2nd respondent.

2. This writ appeal has been filed by the Rubber Board, who was the 2nd respondent in the writ petition, challenging the judgment dated 20.11.2014, by which, the learned Single Judge disposed of the writ petition with the following direction :-

“In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation, Exhibit P6 is set aside, directing the respondent Board to apply Exhibit P5 order of the appellate authority from the date of Exhibit P1. It is further made clear that the respondent Board shall pass all further consequential orders accordingly.”

3. The brief facts necessary for deciding the writ appeal are as follows :- the writ petitioner was punished by Ext.P1 order dated 7.10.2010, by which, he was imposed the punishment of reduction in rank, which he was holding when he was selected to

-: 2 :-

the post of Excise Duty Inspector on 28.1.1999, to the post of Farm Assistant. Against the said order, an appeal was filed by the petitioner, which was decided by the Appellate Authority vide order dated 28.10.2011, by which, the matter was remanded back to the Chairperson, Rubber Board with a direction to review/modify its order dated 7.10.2010. Subsequently, the Rubber Board passed another order, Ext.P4, by which, the penalty of reduction in rank imposed vide earlier order was sustained. The petitioner challenged the said order before the Government of India by filing an appeal. The Government of India, vide order dated 19.10.2012 modified the penalty imposed on the petitioner. It is useful to quote paragraphs 7 and 8 of the said order, which read as under :-

“7. After hearing Shri P.A. Varghese and perusing the record on the file I, find that the offence of bribe taking is to be taken seriously even though the amount involved may be small. The matter was inquired into and the Disciplinary Authority has imposed a severe punishment upon Shri. Varghese. Even after the case was remanded, the Disciplinary Authority has upheld the punishment. However, while concurring with the findings of the Disciplinary Authority holding the official guilty of the charges, I find that the penalty imposed is too harsh and disproportionate to the gravity of the offence. Accordingly, I order a modification in the

-: 3 :-

penalty whereby Shri Varghese is hereby reinstated to the post of Assistant Director (Excise) with immediate effect but reduced to a lower time scale of pay by 3 stages for 3 years without cumulative effect.

8. Rubber Board is directed to take further action and also send a copy of this Order to the Appellant, Shri.P.A.Varghese.”

Subsequent to the order passed by the Appellate Authority, the petitioner was reinstated with effect from 19.10.2012, but reduced to a lower time scale of pay by 3 stages for 3 years without cumulative effect. Challenging the aforesaid order, the petitioner submitted a representation before the Chairman, Rubber Board. The Rubber Board had passed an order dated 23.1.2013, Ext.P8, by which it was informed that the Board was not in a position to consider his request. Challenging Exts.P6 and P8 orders, the petitioner has approached this Court seeking for the following reliefs :-

- “(i) a writ of certiorari or any other writ or order quashing/setting aside Ext.P6 order to the extent, the petitioner is restored to the post of Assistant Director only from 19.10.2012 and Ext.P8 order;
- (ii) a writ of mandamus commanding the 3rd respondent to restore/ reinstate the petitioner as Assistant Director with effect from 8.10.2010 and to give effect to the penalty imposed by Ext.P5 order from the said date, and to grant all consequential benefits including arrears of salary for the period from 8.10.2010.”

4. The only issue, which has been raised in this appeal is that the order passed by the Appellate Authority is only prospective and the reduction in rank of the petitioner was to be maintained till the order was passed by the Appellate Authority on 19.10.2012.

5. It is submitted by the learned counsel for the appellant that the Rubber Board, treating the order in the said manner has passed the consequential order, Ext.P6. It is submitted that the learned Single Judge did not correctly appreciate the facts and circumstances of the present case and disposed of the writ petition with the direction as aforesaid.

6. Learned counsel appearing for the respondent/writ petitioner submits that the order passed by the Appellate Authority has to be given effect from the date of initial punishment order since the punishment itself was modified.

7. Earlier, the matter was heard by us and time was granted to the counsel appearing for the Union of India to file a statement regarding the order passed by the Appellate Authority. Now, a statement has been filed by the Union of India, wherein, the following was stated :-

“I am the Central Government Counsel appearing for the respondent in the above case. The above Writ Appeal was filed aggrieved by the judgment in W.P.(C) No.9267/2013. When the matter has come up for admission this Hon'ble Court directed me to file a statement with regard to paragraph 7 in Exhibit-P5. After considering the facts of the appeal filed by Shri.P.A.Varghese, the appellate authority of the respondent by its Order dated 19.10.2012 find that the penalty imposed by the Disciplinary Authority was too harsh and disproportionate to the gravity of the offence. Accordingly the penalty (imposed by the Disciplinary Authority) was modified by reducing to a lower time scale of pay by 3 stages for 3 years without cumulative effect and he was reinstated to the post of Assistant Director (Excise) with immediate effect. Though the order was issued on 19.10.2012, the intention was to modify the order of the Disciplinary Authority in this case. Therefore, the order dated 19.10.2012 for reinstating Shri.P.A.Varghese to the post of Assistant Director (Excise) has retrospective effect.”

Though the Appellate Authority, by Ext.P5 has allowed the appeal by modifying the punishment, the penalty stood modified from the date when the penalty was imposed and the learned Single Judge did not commit any error in reading the order to the effect that the order of the Appellate Authority as interpreted in paragraph 12 of the judgment.

8. Since in the statement filed by the learned counsel appearing for the 2nd respondent, it has been clearly stated that the order dated 19.10.2012 was issued with an intention to modify the order of the Disciplinary Authority and the said order reinstating Shri.P.A.Varghese has retrospective effect, we do not find any reason to interfere in the judgment of the learned Single Judge.

Accordingly, the writ appeal is dismissed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M. SHAFFIQUE
JUDGE**