

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WA.No. 1329 of 2015 () IN OP.24939/2000

AGAINST THE JUDGMENT IN OP 24939/2000 of HIGH COURT OF KERALA DATED
06-08-2014

APPELLANTS/RESPONDENTS:

1. THE REGISTRAR, HIGH COURT OF KERALA
ERNAKULAM, COCHIN -31.

2. DISTRICT AND SESSIONS JUDGE, KALPETTA,
WAYANAD DISTRICT.

3. SUB JUDGE,
SULTHAN BATHERY, WAYANADU.

4. MUNSIFF - MAGISTRATE,
MANANTHAWADY, WAYANAD DISTRICT.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENT/PETITIONER:

C.P. MALLAN @ MADHAVAN
S/O. LATE PAKKAN, CHEROOR VEEDU, PERUVAKA
ARATTUTHARA P.O., MANANTHAWADI, WAYANADU.

R BY GOVERNMENT PLEADER SRI. P.P.PADMALAYAN.
R BY SRI.A.X.VARGHESE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

Writ Appeal No.1329 of 2015

Dated this the 29th day of October, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.
2. This appeal against the judgment of a learned single Judge rendered on a writ petition under Article 226 of the Constitution is filed by the High Court of Kerala and subordinate judicial officers in a matter relating to disciplinary proceedings initiated against the respondent who was a sweeper attached to Munsiff -Magistrate Court, Mananthavady. The learned single Judge struck down the enquiry report and the consequential penalty and ordered reinstatement of the delinquent with full back wages.
3. In support of the establishment's appeals, it is argued that even if it was held that copy of the enquiry report was not served on the delinquent, learned single Judge should have applied the ratio of the decision of the Hon'ble Supreme Court of India in **Managing Director, ECL Hyderabad and others V. Karunakar and**

Others [1993 (4) SCC 727] and the matter should have been left to the disciplinary authority to hear the delinquent on the contents of the enquiry report after serving copy of that report on him and then to decide as to whether the enquiry report is to be accepted by the disciplinary authority. The next contention is that reinstatement has been ordered with full back wages and this is contrary to the settled principles governing award of back wages and also against the totality of the facts and evidence on record in relation to the allegations, at least in so far as it is established against the delinquent.

4. Per contra, the learned counsel appearing for the delinquent respondent supported the judgment of the learned single Judge saying that the factual findings entered into by the learned single Judge essentially upturn the enquiry report and therefore, there is no question of any further proceedings being permitted. He further argued that the delinquent respondent belongs to a socially and economically marginalised sector of the society; that he is an adivasi; and therefore, he ought to have been given a benevolent consideration by the establishment.

5. We have looked into the enquiry report, the order of dismissal and the appellate decision vis-a-vis the findings rendered by the learned single Judge. The allegation against the delinquent was that at about 4.45 p.m. on 16.2.1995, though he was absent from duty, he reached

the office premises of the Munsiff-Magistrate Court, Mananthavady under the influence of alcohol and he verbally abused the Head Clerk, who is the supervisory officer. There is a medical certificate which showed that there was presence of alcohol in the person when the delinquent was presented for medical examination. Two persons, including the Head Clerk, tendered their version before the enquiry officer as regards the alleged incident. However, when the Doctor who is stated to have issued the medical certificate was examined, it appears that he spoke of having examined the delinquent some time in August of that year. The enquiry report does not contain any explanation as to how the conflict of dates between certificate and the oral version of the Doctor were to be reconciled. There is no suggestion put on record that an error was committed by the Doctor while testifying. Nor did the enquiry officer come to an independent conclusion that the contents of the certificate could be relied on independent of the oral version of the Doctor. But the consistent version of the other employees in the office were about the hurling of abusive words on the Head Clerk. They had also said that the delinquent behaved in an unruly manner. Therefore, one thing is certain. The events that had occurred inside the office could be taken as having been proved going by standards set for departmental proceedings. In so far as the content of alcohol in the body of the person is concerned, the effect of such material to aggravate the allegations against him would depend upon the certification by the

medical authority. The learned single Judge, on a fair application of mind to the facts and circumstances and also on the materials on record, concluded that the enquiry report cannot be accepted fundamentally for the reason that there was conflict in the version of the Doctor regarding the date of the examination of the delinquent and also because the delinquent was acquitted in the criminal case charged against him. Having bestowed our anxious consideration to the entire materials, we are of the view that the learned single Judge cannot be found fault with for having interfered with the finding on the issue as to whether the delinquent was under the influence of alcohol at the relevant point of time. At the same time, such a finding does not necessarily, as a corollary, lead to the further conclusion that there was no incident at all. Even assuming that the incident of hurling abusive words against the Head Clerk was without the influence of the alcohol, that would itself be sufficient to inculcate the delinquent. The learned single Judge was not therefore justified in taking the view that the enquiry report has to go as a whole. We are of the view that the findings of the enquiry officer as regards the events that occurred inside the office room ought not to have been disturbed, that too, in exercise of the jurisdiction under Article 226 of the Constitution. With this in mind, we have to consider as to whether we should remit the proceedings to the disciplinary authority from the stage of non-service of the enquiry report having regard to the ratio of **Karunakar** (supra). We think that ends of justice do not require

such a course being adopted in the case in hand. Weighing different materials, allegations, the rank in which the delinquent was working and such other relevant facts and factors, we are of the view that penalty by way of barring of one increment without cumulative effect would have rendered complete justice to the establishment and the delinquent. The disciplinary authority's penalty order and the appellate authority's order affirming the penalty were apparently guided by that part of the allegations which related to the alcohol content. We are of the view that the impugned judgment requires to be modified in the line of what we have stated above.

In the result, this writ appeal is allowed in part and it is held that Exts.P5, P7, P9 and P10 would stand to the extent of imposition of punishment of barring of one increment without cumulative effect and the punishment imposed by the second respondent will stand modified accordingly. The directions for service benefits and back wages etc., as ordered by the learned single Judge, will also be in terms of the modified penalty.

Sd/-

Thottathil B. Radhakrishnan, Judge

Sd/-

Anu Sivaraman, Judge

al/-

True copy

P.S to Judge