

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 11594 of 2004 (E)

PETITIONER:

**A. RASHEED ALI, AYYALIL HOUSE,
P.O. AZHIKKODE JETTY, KODUNGALLUR.
(JUNIOR SUPERINTENDENT OF THE SUB COURT, THRISSUR).**

BY ADV. SRI.DINESH R.SHENOY

RESPONDENT:

**THE DISTRICT JUDGE
(DISCIPLINARY AUTHORITY), THRISSUR.**

BY GOVERNMENT PLEADER SRI. S. JAMA,

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-09-2015,
ALONG WITH WPC. 20029/2004 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- | | | |
|-----------------|---|--|
| EXHIBIT P1 | - | COPY OF THE PETITION DATED 12.12.2002 SUBMITTED BY ADVOCATE K. PAPPACHAN |
| EXHIBIT P2 | - | COPY OF THE EXPLANATION DATED 16.12.2002 SUBMITTED BY THE PETITIONER |
| EXHIBIT P3 | - | COPY OF THE ORDER DATED 06.01.2003 ISSUED BY THE RESPONDENT |
| EXHIBIT P4 | - | COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 28.01.2003 BEFORE THE RESPONDENT |
| EXHIBIT P5 | - | COPY OF THE MEMO OF CHARGES AND THE SHOW CAUSE NOTICE DATED 30.01.2003 SERVED ON THE PETITIONER. |
| EXHIBIT P6 | - | COPY OF THE OBJECTION DATED 24.02.2003 SUBMITTED BY THE PETITIONER. |
| EXHIBIT P7 | - | COPY OF THE NOTICE DATED 25.04.20303 ISSUED TO THE PETITIONER BY THE ENQUIRY OFFICER TOGETHER WITH THE ENDORSEMENT |
| EXHIBIT P8 | - | COPY OF THE REQUEST DATED 02.05.2003 SUBMITTED BY THE PETITIONER |
| EXHIBIT P9(A)- | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF PW1 DATED NIL |
| EXHIBIT P9(B) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF PW2 DATED NIL |
| EXHIBIT P9(C) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF PW3 DATED NIL |
| EXHIBIT P9(D) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF PW4 DATED NIL |
| EXHIBIT P9(E) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF DW1 DATED NIL |
| EXHIBIT P9(F) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF DW2 DATED NIL |
| EXHIBIT P9(G) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF DW3 DATED NIL |
| EXHIBIT P9(H) - | | COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF DW4 DATED NIL |

[CONTD....]

- EXHIBIT P9(I) - COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF DW5 DATED NIL
- EXHIBIT P9(J)- COPY OF THE HANDWRITTEN NOTES OF THE DEPOSITION OF DW6 DATED NIL
- EXHIBIT P10 - COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER DATED 25.06.2003
- EXHIBIT P11 - COPY OF THE ENQUIRY REPORT DATED 16.07.2003
- EXHIBIT P12 - COPY OF THE FINDINGS OF THE RESPONDENT, DISCIPLINARY AUTHORITY DATED 29.08.2003
- EXHIBIT P13 - COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DATED 07.10.2003
- EXHIBIT P14 - COPY OF THE ORDER NO.C1-11368/2002 DATED 07.01.2004 ISSUED BY THE RESPONDENT
- EXHIBIT P15 - COPY OF THE PETITIONERS CORONARY ANGIOGRAM CASE AND DISCHARGE SUMMARY DATED 17.02.2003

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). Nos.11594 & 20029 of 2004

Dated this the 14th of September, 2015.

JUDGMENT

The petitioner in both the above writ petitions are one and the same person, who had been voluntarily retired from the service of the State, while he was working as Junior Superintendent in the Sub Court, Thrissur. Though the misconduct alleged were in two different contexts, the punishment imposed was identical. The cases are disposed of by a common judgment, only since there is a common thread in both the matters, which points to the delinquent employee having financial dealings of a usurious nature with third parties. The misconduct alleged in one of the cases is misappropriation of amounts deposited by an Advocate and in the other, the allegation is of the delinquent employee having indulged in financial transaction of a usurious nature resulting in amassing

wealth in violation of the provisions of the Government Servants' Service Rules. The writ petitions are considered separately in the judgment.

2. WP(C) No.11594 relates to the misappropriation of amounts remitted before the Junior Superintendent, the petitioner herein, as stamp value required for engrossing a final decree. The allegation raised by an Advocate at Thrissur Bar was that, he had entrusted his Junior with an amount of Rs.15,950/- as stamp value for engrossing the final decree in O.S. No.634 of 1996 of the Sub Court, Thrissur. The Junior Advocate herself along with the client took the money to the Junior Superintendent, who accepted the same, but however instructed the Junior Advocate to come later or send her Clerk to receive the receipt.

3. Subsequently, on 12.12.2002 on persistent enquiries made by the client as to the receipt of the final decree, the Junior Advocate, along with the client, again approached the Office of the Sub Court, when they were informed that the deposit had not been made on 01.04.2002 as contended by the Junior Advocate.

The Receipt Books were verified and it was found that no such receipt was issued on 01.04.2002. Immediately, a complaint, Ext.P1, was filed before the District Judge, Thrissur to which a reply of total denial by Ext.P2 was made by the petitioner. The petitioner then was suspended by Ext.P3 and a charge sheet was issued as per Ext.P5. Detailed objections were raised by the petitioner as per Ext.P6. The disciplinary authority, the District Judge, hence issued Ext.P7 initiating an enquiry into the matter; the Enquiry Report of which is produced at Ext.P11.

4. The evidence at the enquiry established the guilt of the petitioner. It was categorically found by the Enquiry Officer that a sum of Rs.15,950/- was remitted by the Junior Advocate before the Junior Superintendent in the presence of the client and the Clerk. The contention that the Clerk took the money after the same was placed before the Junior Superintendent was found to be unbelievable and the same if at all true, could only be with the active connivance of the delinquent officer, was the finding.

5. The Enquiry Report was furnished to the delinquent employee by Ext.P12 dated 29.08.2003. After considering the

objections of the petitioner to the Enquiry Report, the disciplinary authority by communication [Ext.P12(3)] dated 30.01.2003, concurred with the Enquiry Officer. The further objection submitted by the petitioner dated 07.10.2003 was also considered and on 07.01.2004, Ext.P14 order was passed, punishing the petitioner with compulsory retirement with effect from 06.01.2003.

6. No procedural irregularity can be found, since the petitioner was issued with notice before the enquiry and his objections considered pursuant to which the enquiry was initiated. The petitioner was also granted every opportunity to defend his case in the enquiry initiated and was permitted to cross-examine the witnesses of the Department and allowed to examine his own witnesses. The Enquiry Report was furnished and so was his objections considered prior to the punishment imposed on the petitioner. The jurisdiction hence conferred on this Court is limited to examine as to whether the findings of the enquiry, as upheld by the disciplinary authority, was proper and reasonable, on the basis of the evidence adduced.

7. The Advocate, who filed the complaint, was examined as PW1 and his Junior examined as PW4. They concurred in the statement that the amounts were handed over by PW1 to PW4 for remittance before the Junior Superintendent and the client accompanied the Advocate to the Office of the Court. PW4 also deposed that the money was handed over to the Junior Superintendent in the presence of the client and the Junior Superintendent instructed the Advocate to come later or send the Clerk to get the receipt. The Clerk had specifically noted in the docket produced at enquiry, that a receipt was issued. However when delay occurred and enquiries were made, it was informed on 12.12.2002 that the receipt was not at all issued. The deposition of PW4 was that the petitioner had admitted that he had received the amount, but said that it was returned to the Clerk on his request.

8. The challenge to the finding of guilt and punishment imposed is mainly raised on the ground of the deposition of the Advocate Clerk, who was examined as PW3, that the amount was taken by him and he alone was responsible for the

misappropriation. The Advocate Clerk is said to have settled the matter by paying the amounts to the plaintiff. However, the Clerk, who was examined as the defense witness, had categorically stated that the Junior Advocate had counted the money and placed it in front of the Junior Superintendent and had left, on being instructed that the receipt would be handed over to the Clerk. His case is that, after that the money was taken away by him. If that be so, when the Junior Advocate had counted the money and placed it on the table of the Junior Superintendent, the Junior Superintendent ought to have definitely initiated a complaint on the same. Hence, it cannot at all be said that even if the money was taken by the Clerk, the Junior Superintendent was not involved in the matter. It can only be with his connivance that the money could be taken away by the Clerk, after having remittance made by the Advocate.

9. Further, it is to be noticed that the Clerk had different versions about the manner in which the money was used. In his statement, the Clerk had specifically submitted that, there was a money transaction with the Junior Superintendent and there was

a loan taken from the Junior Superintendent. The money remitted by the Junior Advocate was adjusted by the Junior Superintendent, towards that loan, without remitting it towards stamp value. The said version was differed from, before the Enquiry Officer. The money transactions were denied and the Advocate Clerk took it up on himself the entire blame for the misappropriation. The conduct of the Advocate Clerk, even according to him, was suspect in so far as he had financial debts, quite aware of which the Advocate had entrusted the money to the Junior Advocate to remit before the Office of the Court. The Advocate Clerk is said to have been removed from the Office immediately after the misappropriation was disclosed.

10. In that context the further version that he had refunded the money later, as a compromise, to the client cannot be believed. The evidence too points to a compromise talk having been initiated by a Court staff, to which the Advocate refused to be a party. The petitioner is also said to have actively participated in the same. It is not clear as to what motivated the Clerk to settle the matter by paying the amounts, when there

was absolutely no proceeding against him. The said version of the Advocate Clerk is clearly unbelievable. Even going by the specific deposition of the Advocate Clerk, the money was placed before the Junior Superintendent after which, it was taken away by him, which could only be with the connivance of the Junior Superintendent.

11. Further, the client, who is said to have accompanied the Junior Advocate was examined as a defense witness. She specifically stated that she had accompanied the Junior Advocate to the Office of the Court and had witnessed the Junior Advocate counting the money and placing it on the table of the Junior Superintendent. In fact, the categorical statement made by the client was that, the Clerk did not accompany either the Junior Advocate or the client to the Office and was not present when the money was counted and placed on the table of the Junior Superintendent.

12. The version of the aforesaid witnesses would definitely indicate that the Junior Advocate along with the client had gone to the Office of the Court and had placed the money on the table

of the Junior Superintendent. The emphasis placed by the delinquent employee on the fact that it was the obligation of the Junior Advocate, to get the receipt, from the Office on payment being made, cannot be fully countenanced since even the Sheristadar of the Court, who was examined by the petitioner as DW1, specifically stated that though the receipt is issued at the time of deposit itself, at times, when there is more work, the receipt is handed over subsequently. The other Court staff examined by the delinquent employee only deposed about the subsequent event, when the deposit having not been made was revealed and does not at all in any manner controvert the allegations of the Advocates, the client and even the statement of the Clerk.

13. In such circumstances, this Court finds that the order of the disciplinary authority concurring with the findings of the Enquiry Officer, is unassailable. Considering the gravity of the offence, it cannot at all be said that the punishment imposed is perverse or unreasonable in any manner.

14. WP(C) No.20029 of 2004 was a totally different

misconduct, but however with the common thread being the financial dealings of the petitioner. A complaint at Ext.P1 was received by the Registrar of the High Court of Kerala, which was forwarded to the District Judge, Thrissur. The complaint dealt with various financial transactions of the petitioner, specifically the usurious transactions, entered into by the petitioner with third parties and the various proceedings initiated by the petitioner in the Courts for recovery of such money. Herein it is to be noticed that at the first instance, when an explanation was called for, the petitioner by Ext.P3, made allegations against one C.K. Abdullakkutti, with whom admittedly the petitioner had financial transactions. Further, by Ext.P6, the petitioner replied *inter alia* in the following manner:

"I and late C.K. Abdullakkutty were the colleague. We were very close friends. I fully trusted him and liked him as if my brother. He was as if a member of my family. Our families were also very close to each other. In such a way, during the course of our life, from 1992 onwards he borrowed money from me for the businessmen in our locality."

This clearly points to indulging in lending money as a business.

15. The suits and other proceedings pending before various Courts were listed out in Ext.P6. A Memo of charge was issued at Ext.P7 alleging misconduct warranting disciplinary action. The reply at Ext.P8 found to be unsatisfactory, a domestic enquiry was initiated, the report of which is produced at Ext.P9. The complainant in Ext.P1 could not be traced out and hence could not be examined in the enquiry. The petitioner makes much of the fact that the complaint itself was an anonymous one. But the Charge Sheet issued and enquiry initiated, was not on the basis of the complaint alone. The petitioner was asked for an explanation regarding the allegations made in the complaint. The petitioner admitted that, he had financial transactions with one C.K. Abdullakkutty and also other persons. He himself divulged the various proceedings pending before various Courts. It was such admissions made and the preliminary enquiries conducted, that resulted in the Charge Sheet being issued.

16. The fact that the complainant could not be examined is not at all relevant, especially since notice was issued to the complainant and the same was returned with the endorsement

that "address is incomplete". The case files with respect to the proceedings were called for by the Enquiry Officer. There were no witnesses examined. However, in the nature of the charges levelled, the Enquiry Officer rightly looked into the case files, specifically 12 of them, as has been enumerated in page 3 of Ext.P9 Enquiry Report. The delinquent employee admitted the factum of the pendency of the above cases, but claimed that they were not loan transactions and were deposits made, the recovery of which were the subject matter of the above cases.

17. After examination of the files of two cases, O.S.No. 174 of 1998 and O.S.No. 219 of 1998, it was found that there could be no evidence found to substantiate the allegations from the said case files. O.S.No. 439 of 1998 was a suit for recovery of money with a claim for interest and the suit documents contained a cheque issued in discharge of the debt. The delinquent employee was the plaintiff in the suit. O.S.No.1139 of 1998 was a case in which a Promissory Note was obtained for an amount of Rs.30,000/-, the recovery of which was claimed in the suit. A.S. No.200 of 2000 and A.S. No.51 of 2001 were also similar suits

purportedly for recovery of deposits.

18. The Enquiry Officer rightly found that the aforesaid case files would indicate that the petitioner had been indulging in usurious transactions. The claim of deposits having been made was found to be a ruse in anticipation of any allegation of indulging in lending of money. A.S. No.51 of 2002 was an appeal filed from a decree, in which the Court clearly found that the transaction was not an instance of deposit, but was one of money lending. C.C. No.161 of 2001 and C.C. No.1136 of 2001 were complaints filed under Section 138 of the N.I. Act, alleging dishonour of cheques for Rupees One lakh each, filed by the delinquent employee. O.S. No.1272 of 1998 again was a suit filed for recovery of amounts, allegedly deposited with the defendant. The Enquiry Officer clearly found that the evidence unequivocally establishes the fact that the delinquent employee has indulged in money lending business, in violation of the Government Servants' Conduct Rules.

19. The procedure with respect to issuance of Enquiry Report and objections being called for, were scrupulously

followed and though a punishment of dismissal was proposed, eventually the disciplinary authority, the District Judge imposed a punishment of voluntary retirement. This Court does not find any infirmity in the disciplinary authority having concurred with the findings of the Enquiry Officer. The punishment imposed also is not in any manner disproportionate to the allegations levelled.

The writ petitions stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

sp

//True Copy//

P.A to Judge