

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

THURSDAY, THE 5TH DAY OF JANUARY 2012/15TH POUSHA 1933

OP.No. 23100 of 2001 (Y)

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PETITIONER(S)

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K.BALACHANDRAN, (DIED),
KONGASSERI HOUSE, OTTAPPALAM-2,
PALAKKAD DISTRICT.

*ADDL.2ND PETITIONER IMPEADED.

2. K.BHAGYAVATHI, W/O.LATE K.BALACHANDRAN,
KONGASSERI HOUSE, THOTTUKAKRA, OTTAPALAM.

ADDL. 2ND PETITIONER IS IMPEADED AS PER ORDER DTD. 18.2.03 IN
CMP.6847/03 IN OP.23100/01.

BY ADVS.SRI.M.V.BOSE

SRI.CHERIAN VARGHESE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENT(S)

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1. THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.
2. THE EXECUTIVE DIRECTOR (VIGILANCE & STATISTICS),
OFFICE OF THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.
3. THE DEPUTY CHIEF TRAFFIC OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.

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OP NO.23100/2001

4. THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.
5. THE STATE OF KERALA,
REPRESENTATED BY ITS SECRETARY, TRANSPORT
(L) DEPARTMENT, THIRUVANANTHAPURAM.

R1 TO R4 BY ADV. SRI. SRI.BABU JOSEPH KURUVATHAZHA SC, KSRTC
R5 BY GOVERNMENT PLEADER SRI.EGY N.ALIAS

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON
05-01-2012 , THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

JUDGMENT

None appears.

Dismissed for default

TRUE COPY

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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O.P No.23100 of 2001

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Dated this the 27th day of October, 2015

JUDGMENT

The petitioner, who faced order of removal from service from the respondent corporation, has approached this Court seeking the following reliefs:

- i. To call for the entire records which led to Exts.P1, P2, P5, P7 and P9 and to quash them by the issuance of a writ, in the nature of certiorari or any other appropriate, writ, order or direction.
- ii. To declare that the suspension and subsequent removal of the petitioner from service is illegal and further issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to confer all service benefits to the petitioner with effect from 23.11.1993 onwards deeming that the petitioner was in service from 23.11.1993.
- iii. To issue a writ in the nature of mandamus or any other appropriate writ, direction or order commanding respondents to disburse the pensionary benefits, amounts outstanding the provident fund, welfare fund etc to the petitioner etc.

2. During the pendency of the original petition, the petitioner died and his widow got herself impleaded as additional second petitioner.

3. The deceased petitioner was appointed in the service of Kerala Road Transport Corporation (for short, the corporation) in the year 1962 as per the advise of Kerala Public Service Commission. He alleges that at that time, the corporation has not come into existence and subsequently when the corporation came into existence, he became the employee of the corporation. During 1993, he was working as Inspector-in-charge at Chittoor unit in Palakkad district. When the first petitioner reached the unit on 1.6.1993, the then District Transport Officer (DTO) informed him that Bus No.TR 125 while on service from Palakkad to Ooty fell into a deep ravine near Konoor estate with crew and 63 passengers in which, two passengers lost their lives. The first petitioner was asked to attend the recovery operation under the supervision of the Assistant Works Manager, one

Mr. Narayanan. He points out that the said area comes within the jurisdiction of Sulthan Bathery division of the Corporation.

4. The petitioners further allege that reaching Konoor, the first petitioner and the aforesaid Narayanan contacted the authorities of Cheeran Transport Corporation (CTC) of Tamil Nadu who asked Mr. Narayanan to carry out the operation of recovering the vehicle. An order was procured from the District Collector for blocking the traffic along the road. The recovery van has to be obtained from the Madras Regiment Centre (MRC), Willington which informed the petitioners and others that money has to be paid in advance. Mr. Narayanan left to his native place after directing the first petitioner to carry out the work by collecting a sum of ₹25,000/- from the office. The first petitioner petitioner after reaching Palakkad requested to send another inspector to the site. However, the DTO did not agree and the first petitioner was directed to go to Konoor. Therefore, he obtained ₹20,000/- as advance and went to Konoor along with two

other officers for carrying out recovery operations.

5. Mr. Narayanan was not present there and never gave any guidance at any point of time. The other two officers also left the place after reaching Konoor. The first petitioner sought assistance from the Cheeran Transport Corporation and with their assistance, the vehicle was recovered from 800 feet deep ravine by the strenuous efforts. As the MRC, Willington were specific in their stand that they would allot the recovery van with three operators only, the rest of man power and labour required had to be organised by the Corporation at its expense. This was mentioned in the terms of contract between the Corporation and the MRC.

6. The petitioners point out that the trees were to be cut and removed and the road has to be constructed at every stage of recovery and there was heavy rain fall also. Labourers had to work during night hours and about 40 labourers were engaged for their work. The work was entrusted after inviting tenders.

7. The petitioners further allege that on 6.6.1993, the first petitioner submitted the entire documents in connection with the recovery of the vehicle to the ATO, Palakkad and the same was certified by him. Accordingly, vouchers were passed and the amounts were paid. On 30.7.1993, the first petitioner was served with a memo seeking clarification of certain vouchers and he gave explanation on 20.8.1993, and the vouchers were re-submitted on 19.8.1993. Thereafter nothing was required from the deceased petitioner; it is alleged. Two months thereafter, i.e., on 14.10.1993, a report was forwarded by the DTO to the chief Officer without any suggestions or adverse remarks in the audit report. The DTO, Palakkad verified all the documents and passed the vouchers.

8. The petitioners further allege that months thereafter, at the behest of the new Superintendent of the Palakkad unit, who was in enimical terms with the first petitioner, an enquiry was conducted in respect of the report submitted by the first petitioner. The petitioners

allege that the enquiry was conducted by a Joint Inspector, behind his back and without notice to the first petitioner, he submitted Ext.P1 report. Thereafter, though there was no conclusive finding in Ext.P1 that the first petitioner has committed any offence, the he was kept under suspension from November 23, 1993 onwards. Thereafter Ext.P2 charge sheet was served on him for misconduct and attempt to embezzle the corporation money.

9. The first petitioner submitted Ext.P3 explanation. Thereafter Ext.P4 show cause notice was issued by which the second respondent provisionally proposed to remove the first petitioner from service and to recover a sum of ₹6,500/- from him. He submitted Ext.P6 explanation. Dis-satisfied with the same, the first petitioner was removed from the service as per Ext.P7 order dated 5.2.1994. The petitioners point out that the first petitioner had to retire from service in June, 1995. In Ext.P7, it was also directed to recover an amount of ₹6,500/- from the first petitioner. Against Ext.P7, the first petitioner

approached the Managing Director of the respondent corporation with Ext.P8 appeal which was disposed of as per Ext.P9 confirming the punishment imposed upon him. Against Ext.P9, the petitioner preferred Ext.P10 petition before the then Minister. It was forwarded for consideration of the fourth respondent. However, no action has been taken. Later, by letter dated 12.2.2.1998, the first petitioner was informed that his representation was forwarded to the concerned department for enquiry and report. As no action was forthcoming, he sent Exts.P13 and P14 reminders. Resultantly, the first petitioner, who had put in 33 years of service, retired from service without any pensionary benefits on account of the aforesaid punishment. It is with this background, the petitioners have approached this Court.

10. In the counter affidavit filed by the respondent corporation, it was contended as follows:-

The first petitioner was appointed by DTO, Thrissur vide order dated 20.7.66. Therefore, Ext.P1 is according to the Rules and the

contrary allegation that Kerala Public Service Commission should have been consulted before removal of the petitioner from service is not maintainable. The first petitioner had been awarded various punishments since his appointment. His history sheet reveals 44 punishments out of which, 14 punishments are increment bar. There had been increment bar for 1 year, 3 months, 6 months etc. His pay was reduced by two stages in the time scale for a period of two years with cumulative effect. He has committed misconduct throughout his service period and there was no violation of any of the procedure in conducting the enquiry.

It was further stated that Bus No.TR 125, while proceeding from Palghat to Ooty, met with an accident near Coonoor estate. The bus with crew and passengers fell into a deep ravine and two passengers had lost their lives. For recovery of the bus, assistance from MRC Wellington and CTC Coonoor was sought. The first petitioner, was deputed to supervise the recovery with an amount of ₹20,000/- in cash. The first petitioner after recovery, submitted vouchers for ₹23,000/- claiming that to be the expenses incurred for the work.

It was further contended that certain vouchers submitted by the deceased petitioner appeared to be bogus and, therefore, a preliminary enquiry was conducted by the then inspector of the respondent corporation. After the enquiry, it was found that the vouchers for ₹9,780/- were bogus. It is stated that the enquiry report was filed after obtaining the necessary statements and documents in evidence.

It was further contended that as a *prima facie* case of gross misconduct was made out in the enquiry report, the first petitioner was proceeded against Rule 15 of KCS (CC & A) Rules, 1960. The first petitioner submitted explanation and after considering the same, a detailed enquiry was conducted by the then Deputy Chief Traffic Officer. Ext.P5 is the enquiry report submitted by the enquiry officer who found that the first petitioner had defrauded the corporation to the tune of ₹6,500/-. As the charge of embezzlement had been proved which is very serious in nature, show cause was issued to the first petitioner removing him from service and order recovery of ₹6,500/-. The first petitioner furnished explanation to the show cause notice. However, it was found

that there was no fresh ground to consider the proposed punishment and he was removed from the service of the corporation vide Ext.P7 order. In Ext.P7, it was also directed that an amount of ₹6,500/- which the first petitioner obtained illegally from the corporation to be recovered from him. The first petitioner thereafter preferred an appeal to the Managing Director (Appellate Authority) who by Ext.P9 order dismissed the same confirming the punishment of removal of the first petitioner from service.

12. Arguments have been heard.

13. The learned counsel for the petitioners made a frontal attack against the removal of the first petitioner from service as the same was made without consultation with the KPSC. It was pointed out that the removal is against Rule 15(12)(ii)(b) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 read with Regulations 6(1)(a)(iv) of the KPSC (Consultation) Regulations, 1957. As rightly pointed out by the learned counsel for the petitioner, it is mandatory to consult PSC before the removal of first petitioner from service.

14. It is crucial to note that it was the second respondent, who passed the order removing the first petitioner from service. The petitioners have a definite case that the first petitioner was not provided opportunity to cross examine the witnesses cited by him in Ext.P3. The enquiry officer was duty bound to summon the witnesses who were in service. Therefore, the act of the third respondent is violative of Rules 15(7) and 15(8) of the Kerala Civil Services

(Classification, Control and Appeal) Act.

15. The third respondent was carried away by the statements of Witness No.1 who conducted the preliminary enquiry and submitted Ext.P1 report. None of the persons mentioned in Ext.P1 were examined from the side of the prosecution nor the first petitioner was afforded with an opportunity to cross examine those persons. It was only on the statement alleged have been obtained from these persons that the charge against the first petitioner was framed and the punishment was imposed.

16. The allegation in the charge sheet is that the first petitioner tried to embezzle the money of the respondent corporation. In the preliminary report, the amount of alleged misappropriation was ₹ 9,780/- whereas in the final show cause notice, it is seen reduced to ₹6,000/-. In Ext.P1 report, what is stated is that there is misappropriation for the reason that the enquiry officer failed to locate the persons who received the money. Moreover, what is stated

in Ext.P1 is that misappropriation was done together by the store keeper of Cheeran Transport Corporation and the first petitioner .

17. As rightly pointed out by the learned counsel for the petitioner that though Ext.P4 show cause notice states that a detailed enquiry was conducted by the Deputy Chief Traffic Officer, Ext.P5 report reveals that no such detailed enquiry was conducted. Even the persons, including the Government Officials who gave statement to the enquiry officer were not examined. As already stated, the petitioner in Ext.P3 explanation had sought for examining nine witnesses, who are Government servants, however, the enquiry authorities failed to secure the presence of those witnesses. Though against the punishment, the petitioner has filed an appeal, the appellate authority has also not applied its mind. However, the appellate authority has confirmed the punishment awarded.

18. On a consideration of the entire materials placed on board, this Court is of the view that the original petition calls for an

interference. As the first petitioner is no more, there is no scope of further enquiry in the matter.

In the result, the original petition is allowed. Exts.P1, P2, P5, P7 and P9 and quashed. It is declared that the suspension and removal of the first petitioner from service are illegal. The first petitioner shall be deemed to have been in service till the date on which he demitted his office. The respondent corporation is directed to quantify the monetary benefits due to the first petitioner, including salary and other retirement benefits and the same shall be released to the second petitioner, who is the widow of the deceased petitioner within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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OP.23100/01

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P.A to Judge