

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

W.P.(C).No. 3984 of 2009 (Y)

PETITIONER(S):

V. RAVEENDRANATHAN, LAKSHMI NIVAS,
NATTUKAL P.O., PALAKKAD.

BY ADV. SRI.K.M.KURIAN

RESPONDENT(S):

1. EXECUTIVE ENGINEER , ELECTRICAL DIVISION,
CHITTUR, PALAKKAD.
2. CHIEF ENGINEER (H.R.M) K.S.E.B, VYDYUTHI
BHAVAN, PATTOM, THIRUVANANTHAPURAM.
3. ASST, EXECUTIVE ENGINEER, ELEC.SECTION,
VELANTHAVALAM, PALAKKAD.
4. THE CHAIRMAN, KSEB, VYDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

R1 TO R4 BY ADV. SRI.K.S.ANIL, SC, KSEB

R1 TO R4 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015, THE
COURT ON 01.12.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C).No. 3984 of 2009 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: TRUE COPY OF REPLY DATED 12.04.2007.
- EXHIBIT P2: TRUE COPY OF ENQUIRY REPORT.
- EXHIBIT P3: TRUE COPY OF SHOW CAUSE NOTICE DATED 24.11.2007.
- EXHIBIT P4: TRUE COPY OF REPLY DATED 10.12.2007.
- EXHIBIT P5: TRUE COPY OF DISMISSAL ORDER DATED 04.03.2008.
- EXHIBIT P6: TRUE COPY OF APPEAL DATED 08.04.2008.
- EXHIBIT P7: TRUE COPY OF ORDER DATED 04.06.2008.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.3984 of 2009

Dated this the 1st day of December, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P5 order passed by the 2nd Respondent dismissing the petitioner from service and consequential reliefs thereto. Basic facts required for disposal of the writ petition are as follows:

2. Petitioner was working as a line man in the office of the 3rd Respondent and while so, 1st Respondent issued memo of charges to the petitioner through proceedings dated 29.03.2007. The same as extracted in the writ petition are as follows:

"(i) the Petitioner was unauthorizedly absented from duty from 02.11.2005 and

(ii) the Petitioner was convicted in S.T.No.3358/2000 in the file of J.F.C.J-II, Palakkad and served in prison for eight months from 06.01.2006 to 10.08.2006 for an offence under Sec.138 of the Negotiable Instruments Act."

3. On receipt of memo of charges, petitioner has offered his explanation dated 12.04.2007, evident from Ext.P1,

in which he has stated the circumstances under which he has sent the leave letter to the office through his wife.

4. The 1st Respondent was not satisfied with the explanation offered by the petitioner and thereupon, disciplinary proceedings were issued against the petitioner and after conduct of enquiry, the enquiry officer has filed Ext.P2 report holding that the petitioner was guilty of the charges levelled against him. But, without providing an opportunity to offer explanation on the enquiry report, the 1st Respondent accepted the findings of the enquiry officer and decided to remove the petitioner from the service of K.S.E.B with effect from 02.11.2005 and in that view, Ext.P3 show cause notice was issued to him. On receipt of Ext.P3, petitioner submitted his explanation dated 10.12.2007, evident from Ext.P4, by which petitioner has also requested for a personal hearing. Thereafter, petitioner has received Ext.P5 order dated 04.03.2008 from the 2nd Respondent, intimating that the petitioner is removed from service. Aggrieved by Ext.P5 order, petitioner has filed Ext.P6 appeal before the 4th Respondent. But the 4th Respondent has dismissed the appeal filed by the petitioner by Ext.P7 order dated 04.06.2008. It is thus

aggrieved by Ext.P5 order of dismissal, petitioner has preferred this writ petition.

5. 2nd Respondent has filed a counter affidavit and contended that the submissions and allegations made by the petitioner in the writ petition cannot be sustained in view of the true factual situations that led to the dismissal of the petitioner from service. The thrust of the contentions put forth by the 2nd Respondent is that petitioner was provided with sufficient opportunity to contest the proceedings initiated against him and therefore Ext.P5 order passed by the 2nd Respondent is absolutely in accordance with law and in that circumstances, requested that the order may not be interfered with.

6. It is also contended that the unauthorized absence of the petitioner from the service of the Board was not properly explained by the petitioner and further that merely because the punishment suffered under Sec.138 of the Negotiable Instruments Act does not involve moral turpitude, that by itself is not an explanation to the charge of unauthorized absence during the period specified in the charge sheet. It is also contended that even though the charge sheet

was sent to the residential address of the petitioner, same was returned with the endorsement "addressee left" and subsequently, in order to apprise the petitioner of the proceedings instituted against him, publications were carried out in two local dailies on 17.07.2006 and in spite of the same, petitioner has not responded to the same. It is in the meantime, petitioner submitted a request seeking reinstatement into the service of Board and in that request only, it was stated that the petitioner was convicted in S.T.No.3358/2000 under Sec.138 of the Negotiable Instruments Act, by the J.F.C.M Court-II, Palakkad and was under detention from 06.01.2006 to 08.01.2006 at the Special Jail, Palakkad and from 09.01.2006 to 10.08.2006 in the District Jail, Kozhikode. The charge was thereupon amended incorporating the conviction of the petitioner under Sec.138 of the Negotiable Instruments Act and the same was issued to the petitioner. The petitioner submitted his defence against the revised charge memo also and thereafter that a detailed enquiry was conducted by the Board and the enquiry officer has filed the report finding the petitioner guilty of the charges levelled against him. Therefore, the 2nd Respondent has

justified his stand of passing Ext.P5 order, whereby the petitioner was dismissed from service.

7. Heard learned counsel for the petitioner, Sri. V.M. Kurian and Sri. Pulikool Abubacker, learned Standing Counsel appearing for Respondents 1 to 4.

8. The prime contention put forth by the petitioner is that the charge memo was issued by the 1st Respondent, and the proceedings up to Ext.P4 has taken place before the 1st Respondent itself. But, finally when the order of dismissal was passed, the same was passed by the 2nd Respondent and therefore Ext.P5 order is bad in law, being arbitrary, illegal and irrational. Learned counsel submitted that the petitioner was under the impression that the 1st Respondent is the disciplinary authority and that the impression was based on the notices issued by the 1st Respondent. Therefore, the 1st Respondent alone had the advantage of taking into account the submissions put forth by the petitioner. In that circumstances, it is contended that the 2nd Respondent has passed Ext.P5 impugned order without properly appreciating and understanding the defence put forth by the petitioner in the proceedings. Therefore, the counsel contended that the order

impugned is bad for violative of the principles of natural justice and is hit by Article 14 of the Constitution of India. That apart, learned counsel contended that Ext.P3 is issued by the 1st Respondent even though styled as a show cause notice, the same by itself was an order intimating the action of dismissal of the petitioner from service. To substantiate the said contention, petitioner has taken this Court through the order passed by the 1st Respondent wherein it is stated that considering the gravity of the charges proved in the enquiry, it is decided to remove the petitioner from the service of the K.S.E.B with effect from 02.11.2005, viz., the date from which petitioner has absented from duty.

9. Petitioner was also directed in the said notice, to show cause why the decision so taken by the 1st Respondent to remove the petitioner from service with effect from 02.11.2005 should not be confirmed. It is true that under the said notice, 15 days time is granted to the petitioner to provide a reply to the said show cause notice. The contention advanced by the learned counsel is that even though explanation is sought for as per Ext.P3, the same was sought from the petitioner after taking the decision to remove the

petitioner from service and therefore the requirement of receiving explanation contemplated under Ext.P3 was only an empty formality. By taking cue from the said recitals in Ext.P3, learned counsel contended that the 1st Respondent was acting in a pre-dispose state of mind while issuing Ext.P3 and therefore there was no free and open mind available to the 1st Respondent to consider the explanation offered by the petitioner. It is also submitted that Ext.P3 order can never be sustained since the 1st Respondent was prejudiced and biased at the time of issuance of the said show cause notice itself and therefore the 1st Respondent had a closed mind to take a decision objectively taking into account the explanations offered by the petitioner. That apart, it is also contended that since the show cause notice was issued by 1st Respondent and the explanation was offered to the 1st Respondent, there was no power or authority for the 2nd Respondent to pass the order of dismissal by issuing Ext.P5.

10. On the other hand, learned Standing Counsel for the Respondents submitted that the entire action initiated by the Board and concluded by it was in accordance with law and fully complying with the principles of natural justice. It is further

contended by the learned counsel that petitioner has never offered any explanation for his unauthorized absence from duty. The charge was never served on the petitioner personally and thereupon it happened to be published in local newspapers so as to apprise the petitioner of the proceedings instituted against him. The petitioner has offered explanation to his unauthorized absence from duty after conviction suffered by him under Sec.138 of the Negotiable Instruments Act. The contention raised by the petitioner that he had applied for leave was strongly opposed by the Respondents stating that there was no such leave letter forwarded to any of the Respondents. It is also contended that even though in Ext.P3 show cause notice, the 1st Respondent has stated that it was decided to remove the petitioner from service, 1st Respondent has stated so in the notice only to apprise the petitioner of the seriousness of the action that was being contemplated by the 1st Respondent. Having provided with an opportunity in Ext.P3 show cause notice to the petitioner to offer his explanation, there is no room for making any complaint with regard to any pre-dispose state of mind of the 1st Respondent.

11. Having considered the rival submissions and perusal of the records, I am of the considered opinion that, while issuing Ext.P3 show cause notice itself, 1st Respondent has entered into a definite finding to remove the petitioner from service. The explanation was sought for from the petitioner only to show cause why the decision to remove him from service shall not be implemented and the show cause notice was never intended to show cause why action shall not be taken against him. Therefore, in my view, while issuing Ext.P3 notice itself, the 1st Respondent was in a pre-dispose state of mind to inflict punishment on the petitioner and therefore if at all he had to consider the explanation offered by the petitioner, same was only an explanation against the punishment imposed against the petitioner as per Ext.P3. Therefore, I find force in the contention of the learned counsel for the petitioner that Ext.P3 notice itself is unsustainable. That apart, till receipt of Ext.P4 explanation, the 1st Respondent was in seizin of the matter and there was no interference of the 2nd Respondent.

12. Therefore, the petitioner who is an employee working in an inferior post, can only normally think that the 1st Respondent is the disciplinary authority. But, all on a sudden,

Ext.P5 order was passed by the 2nd Respondent taking into account all the previous proceedings right from the beginning of the charge till Ext.P3 show cause notice. In my view, same is a strange proceeding initiated by the Board, which has no legal sustenance. The said aspect was not considered by the 4th Respondent also. Therefore, a mechanical order was passed by the 4th Respondent without taking into account the sustenance of Ext.P5 order passed by the 2nd Respondent. Moreover, I am of the considered opinion that Ext.P5 order is passed by the 2nd Respondent in absolute violation of the principles of natural justice and therefore the same is arbitrary.

13. Learned counsel for the petitioner has invited my attention to the Division Bench judgments of this Court in '**Saseendran Nair v. General Manager**' [1996 (2) KLT 482] and '**Ibrahim Kannu v. State of Kerala**' [2005 (4) KLT 1034], to canvass the proposition that only an offence involving moral turpitude will be a ground for dismissal of the petitioner from service and since as held in the judgment in '**Ibrahim Kannu**' (*supra*), an offence under Sec.138 of the Negotiable Instruments Act is not an offence involving moral turpitude, petitioner is not liable to be punished on that

account. Therefore, the learned counsel submitted that Ext.P5 order may be set aside and reinstatement of the petitioner to the service may be ordered. But, there the question is not whether the offence under Sec.138 of the N.I. Act involves any moral turpitude. But, consequent to the punishment imposed thereunder, without informing the Respondents, petitioner has absented from duty. In that view of the matter, the decision cited *supra* may not come to the rescue of the petitioner. But, I find force in the contention advanced by the learned counsel for the petitioner that Ext.P3 notice and Ext.P5 order suffers from the vice of arbitrariness and are liable to be set aside.

14. The casual approach made by Respondents 1 and 2 is very well reflected in Exts.P3 and P5. It is well settled that, when authorities acquire power under a statute and discharge administrative or quasi-judicial functions accordingly, they are bound to follow the principles of natural justice and provide the fullest opportunity to the person aggrieved. The duty and responsibility so cast, is more, while handling a situation involving fundamental rights guaranteed under the Constitution of India. The subject matter of this case is one involving such a situation. Respondents 1 and 2 also failed in

their duty to provide an opportunity of hearing to the petitioner.

15. Taking into account the entire legal and factual circumstances, I have no hesitation to arrive at a conclusion that Ext.P3 notice and Ext.P5 order can never be sustained under law, since they are suffering from the vice of arbitrariness and issued in violation of the principles of natural justice.

16. In such circumstances, I set aside Ext.P3 notice and Ext.P5 order passed by the 1st and 2nd Respondents respectively and direct the competent among 1st and 2nd Respondents to issue a proper show cause notice to the petitioner, seek his explanation and then proceed in accordance with law, and a decision shall be taken in accordance with the directions contained above, within a period of two months from the date of receipt of a copy of this judgment. Needless to say, in view of quashing Exts.P3 and P5, Ext.P7 order will have no bearing at all.

The writ petition is allowed accordingly.

SHAJI P. CHALY
JUDGE

St/-