

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 16011 of 2013 (B)

PETITIONER(S) :

R.G. VILAS KUMAR,
AGED 50 YEARS, S/O.RAGHAVAN PILLAI,
MANAKAD P.O, THIRUVANANTHAPURAM,
NOW WORKING AS ASSISTANT GRADE 111 (GENERAL),
FOOD CORPORATION OF INDIA, REGIONAL OFFICE,
KESAVADASAPURAM.

BY ADV. SRI.T.A.UNNIKRISHNAN.

RESPONDENT(S) :

1. THE FOOD CORPORATION OF INDIA,
REPRESENTED BY ITS MANAGING DIRECTOR,
FOOD CORPORATION OF INDIA, HEAD QUARTERS,
NEW DELHI, PIN 110 001.
2. THE EXECUTIVE DIRECTOR,
SOUTH, FOOD CORPORATION OF INDIA, ZONAL OFFICE,
CHENNAI, PIN - 600 006.
3. THE GENERAL MANAGER,
FOOD CORPORATION OF INDIA, REGIONAL OFFICE,
THIRUVANANTHAPURAM, PIN - 695 004.

BY SRI.JOSE KURIAKOSE, SC, FCI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1. COPY OF THE JUDGMENT IN CC NO.253/2001 OF CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.

EXHIBIT P2. COPY OF THE ORDER DATED 8.9.09 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3. COPY OF THE ORDER DATED 23.2.2010 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P4. COPY OF THE JUDGMENT DATED 1.10.10 IN WPC NO.29198/2010 OF THIS HONOURABLE COURT.

EXHIBIT P5. COPY OF THE ORDER DATED 26.2.2013 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.16011 of 2013

Dated this the 3rd day of March, 2015

JUDGMENT

The petitioner is an employee with the Food Corporation of India. He was convicted for an offence under Section 138 of the Negotiable Instruments Act. He undergone imprisonment for the offence from 18.5.2009 to 17.8.2009 and he was also ordered to pay a fine of Rs.2 lakhs. In the order, out of the fine amount Rs.1,95,000/- was directed to be paid as compensation to the complainant in the proceedings under Section 138 of the Negotiable Instruments Act. The petitioner approached this Court challenging imposition of major penalty to the reversion to the post of Assistant Grade-III in the minimum scale of pay consequent upon the disciplinary proceedings initiated against the petitioner.

2. Ext.P2 is the order passed by the disciplinary authority ordering compulsory retirement of the petitioner. The memo of charges against the petitioner is that he has been convicted for an offence under Section 138 of the Negotiable Instruments Act. The petitioner was served with show cause notice while he was undergoing sentence. In the absence of any rebuttal, the petitioner was found guilty and ordered to be compulsorily retired from the service. The Appellate Authority also affirmed the order. Thereafter, the petitioner approached this Court in W.P.(C) No.29198/2010. The petitioner pursuant to the directions of this Court approached the Managing Director to review as contemplated under the relevant provisions. The order passed in the review is also produced as Ext.P5.

3. In Ext.P5, the penalty imposed on the petitioner has been modified as reversion to the post of Assistant

Grade-III(G) with minimum scale of pay. It is challenging the above order, this writ petition is filed.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents. It is to be noted that the disciplinary proceedings were initiated against the petitioner while he was undergoing sentence. Therefore, the petitioner did not put up any defence before any authority raising the charge levelled against him. However, fact remains that the petitioner has been convicted for an offence under Section 138 of the Negotiable Instruments Act. The question is conviction under Section 138 of the Negotiable Instruments Act would result in automatic imposition of major penalty under the service.

5. Once an accused is convicted for any other criminal offences and is undergoing imprisonment for such offences, the Department is free to take an appropriate action under

the disciplinary proceedings. The reference is made in the FCI Staff Regulations, 1971 (for short, 'Regulations, 1971) and for taking disciplinary action in accordance with the Central Civil Supplies (Classification, Control and Appeal) Rules, 1965 (for short, C.C.S. & C.C.A. Rules, 1965). It is stated in Rule 14.3 of the Regulations, 1971 that if the disciplinary authority comes to the conclusion that the offence for which the public servant has been convicted was such as to render his retention in the public service *prima facie* undesirable, it can impose upon him under Rule 19(i) of the C.C.S. & C.C.A. Rules, 1965, the penalty of dismissal or removal or compulsory retirement from service, with reference to the gravity of the offence. It is also stated that in Rule 14.4 that in a case in which the offence for which a Government Servant has been convicted is not considered such as to render his retention in public service *prima facie* undesirable, the appropriate

disciplinary authority may impose any of the penalty, other than those of dismissal, removal or compulsory retirement from the service, specified in Rule 11 of the C.C.S. & C.C.A. Rules, 1965.

6. The learned counsel for the petitioner argued that the imposition of major penalty on the petitioner is illegal and unsustainable. The reversion to lower cadre is a major penalty. According to the learned counsel for the petitioner that the offence under Section 138 of the Negotiable Instruments Act, in fact, cannot be treated as an offence as understood under other penal legislation. It is further submitted that it is only a technical offence and therefore, it does not involve any moral turpitude. He relied on the Division Bench judgment of this Court in **Saseendran Nair v. General Manager [1996(2) KLT 482]**.

7. However, the learned Standing Counsel vehemently opposed the prayer of the petitioner and submits that the petitioner has been imposed with a fine of Rs.2 lakhs and the petitioner has been convicted for an offence which is an offence against public morals.

8. The conviction for the offence under Section 138 of the Negotiable Instruments Act, has to be differentiated from the offences. The offence under Section 138 of the Negotiable Instruments Act is, in fact, a technical offence in the sense on account of certain contingency if the cheque has to be dishonoured, the drawer of the cheque is liable to be punished under law. If the conviction is for the sole reason that the cheque happened to be dishonoured for want of sufficient fund, it does not involve any moral turpitude, one may become poorer after issuance of the cheque. The offence under Section 138 of the Negotiable Instruments Act cannot

be classified one coming under Annexure to Rule 14 as above.

Annexure to Rule 14 in C.C.S.(C.C.A) Rules classify types of cases which may meant action for imposing major penalty.

9. Considering the facts and circumstances, it cannot be said that such a breach to honour cheque would entail in an offence of moral turpitude. The technical offence in law is understood on account of qualifying certain technical parameters as contemplated in law to attract the offence. Therefore, such offences are more of quasi penal offence and not in offences as understood in general law. The petitioner has been imposed with major penalty of reversion taking note of the conviction under Section 138 of the Negotiable Instruments Act as the retention of the petitioner in the public service found undesirable. In **Kaushalya Devi Massand v. Roopkishore Khore [(2011) 4 SCC 593]**, the Hon'ble Supreme Court held that offence under Section 138 of

the “Negotiable Instruments Act cannot be equated with offence under Indian Penal Code. It is almost in nature of civil wrong having criminal overtones.”

10. I am of the view, such finding is unsustainable, unless, it is found that the petitioner's conviction as a result of the prosecution against him for any offence of moral turpitude. The retention in public service, necessarily, presuppose that public servant's personal credibility among general public is not lowered due to involvement in any offence of moral turpitude. It refers to thought, action and mind of the public servant to result in lower the image. The disciplinary proceedings without adverting to the findings of the criminal court to hold that retention of the petitioner in the public service is undesirable, is therefore, illegal.

11. The judgment of the Criminal Court has been produced before this Court. It shows that the petitioner has

been proceeded only for the reason that the cheque has been bounced. No doubt, the petitioner is liable to be proceeded for his absence without informing the authority. As indicated above, the authorities without adverting to the findings of the Criminal Court entered into a decision for imposing major penalty, which is *per se* illegal. Considering that the petitioner has been only convicted for the offence under Section 138 of the Negotiable Instruments Act. I am of the view, the major penalty as now imposed on the petitioner has to be set aside. It is open for the authorities to impose any minor penalty on the petitioner.

Accordingly, this writ petition is allowed quashing Ext.P5 with liberty to the Managing Director to impose any minor penalty on the petitioner. It is made clear that the imposition of any minor penalty would come into effect from the date on which Ext.P5 order is passed. Needful shall be

done within four weeks from the date of receipt of a copy of this judgment.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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