

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 31931 of 2013 (R)

PETITIONER:

**GIRESH KUMAR R.V.
JUNIOR SUPERINTENDENT
JUDICIAL FIRST CLASS MAGISTRATE COURT I
THAMARASSERY, KOZHIKODE, PIN-673573.**

**BY ADVS.SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.AMMU PILLAI**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM
PIN-695001.**
- 2. HIGH COURT OF KERALA
REPRESENTED BY REGISTRAR (SUBORDINATE JUDICIARY)
ERNAKULAM, KOCHI-682031.**
- 3. CHIEF JUDICIAL MAGISTRATE
KOZHIKODE, PIN-673001.**

**R2 & R3 BY ADV. SRI.B.UNNIKRISHNA KAIMAL
R1 BY ADV. GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE ORDER NO.VI-3539/10 DT.31-5-2010 OF CJM, KOZHIKODE.
- EXHIBIT P2 : TRUE COPY OF THE MEMO OF CHARGES NO.B1-3539/10 DT.4-6-2010 OF CJM, KOZHIKODE ALONG WITH THE APPENDED STATEMENT OF ALLEGATIONS.
- EXHIBIT P3 : TRUE COPY OF THE DETAILED EXPLANATION DT.22-6-2010 FILED BY THE PETITIONER TO EXT.P2 MEMO OF CHARGES.
- EXHIBIT P4 : TRUE COPY OF THE ARGUMENT NOTE DT.29-11-2010 FILED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER.
- EXHIBIT P5 : TRUE COPY OF THE ORDER NO.B1-3539/10 DT.14-12-2010 OF R3.
- EXHIBIT P6 : TRUE COPY OF THE NOTICE NO.B1-3539/10 DT.14-12-2010 OF R3.
- EXHIBIT P7 : TRUE COPY OF THE ENQUIRY REPORT.
- EXHIBIT P8 : TRUE COPY OF THE ORDER NO.B1-3539/10 DT.28-12-2010 OF R3.
- EXHIBIT P9 : TRUE COPY OF THE ORDER NO.B1-3539/10 DT.13-6-2011 OF R3.
- EXHIBIT P10 : TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE R2.
- EXHIBIT P11 : TRUE COPY OF THE ORDER NO.1-I-71655/11 AND APPEAL NO.9/11 DT.18-5-2012 OF R2.
- EXHIBIT P12 : TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE R1.
- EXHIBIT P13 : TRUE COPY OF THE G.O.(RT) NO.3168/2013 HOME DT.22-11-2013.
- EXHIBIT P14 : TRUE COPY OF THE CERTIFICATE DT.16-10-2009 ISSUED BY THE GOLDSMITH.
- EXHIBIT P15 : TRUE COPY OF THE CERTIFICATE DT.16-10-2009 ISSUED BY THE GOLDSMITH.
- EXHIBIT P16 : TRUE COPY OF THE CERTIFICATE DT.16-10-2009 ISSUED BY THE GOLDSMITH.

RESPONDENTS' EXHIBITS

- EXHIBITS R2(A) TRUE COPY OF THE REPRESENTATION DATED 24.5.2010 SUBMITTED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE VADAKARA

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 31931 of 2013 (R)

Dated this the 17th day of November, 2015

J U D G M E N T

The petitioner while working as Junior Superintendent in the Judicial First Class Magistrate Court, Vatakara, was placed under suspension by Ext.P1 order. Subsequently, a memo of charges was issued, produced as Ext.P2. The charges were that the petitioner, while holding the post of Junior Superintendent in the Judicial First Class Magistrate (JFCM) Court, Nadapuram, committed dereliction of duty insofar as having failed to obtain proper certificates from the goldsmith as to the genuineness of gold ingots, produced as Material Objects, along with the property list in certain crimes, his failure to make proper verification of the valuables and the failure to

attach labels on such items as required under Rule 184 (2) of the Criminal Rules of Practice. The dereliction of duty was alleged also with respect to the failure to keep such valuables in the boxes available with the treasury and the failure to comply with the direction of the Head of Office dated 16.10.2009, to inform the Investigating Officer of the discrepancies noticed. There was also a second charge alleged with respect to refusing to submit explanation to an Official Memorandum originated from the Chief Judicial Magistrate, Kozhikode, and making insolent and impertinent statements in a letter to the J.F.C.M., Vatakara.

2. The issue arose by reason of a media report, wherein the gold ornaments seized and produced by the Police before the J.F.C.M.Court, Nadapuram, were found to be spurious. An enquiry initiated on the said complaint indicated that the certificates obtained from

the goldsmith were not proper and that the valuables were not kept in the proper form, as required by the Criminal Rules of Practice, and not even labelled properly. The Junior Superintendent, who had the responsibility to comply with the office procedure, was the petitioner, who contrary to the accepted practices and in violation of the orders of his superior; kept the valuables in his own custody, without getting orders from the Presiding Officer, for treating them as 'non valuable' items. After considering the explanations, an enquiry was ordered and the Enquiry Officer filed Ext.P4 report.

3. At the outset it is to be noticed that the jurisdiction conferred on this Court, under Article 226 of the Constitution of India, to look into the disciplinary proceedings and the punishment imposed pursuant to such proceedings, in the nature of a judicial review, is

confined insofar as the Court not being one of appeal. The facts need not be looked into nor a re-examination of the evidence adduced, attempted. Unless this Court finds extraneous matters having been relied upon or the finding on facts being entered into being supported with absolutely no evidence, no interference can be caused, unless there is a procedural irregularity.. As to the punishment, the disciplinary authority has considerable leeway in deciding upon the same and an interference could be made, only if the punishment imposed is found to be grossly excessive, as compared with the gravity of the offence. However, the procedural irregularities have to be scrupulously taken into account by this Court and any defect occurred in the same or any violation of principles of natural justice having been occasioned, would have to be immediately corrected by this Court and the proceedings directed to

be re-commenced from the stage at which the defect occurred.

4. The memo of charges was issued at Ext.P2. An explanation was submitted by the petitioner at Ext.P3. It is incumbent that, prior to issuance of memo of charges, a show cause need be issued, which has been done in the present case with respect to the discrepancies noticed in the safe keeping of valuables produced before Court in crimes, along with property list. It was after considering such explanation that Ext.P2 charge memo was issued. While issuing Ext.P2 charge memo, one another charge, which could not have found its place in the show cause notice, was levelled; regarding disobedience, indiscipline and insubordination, on the aspect of failing to respond to the show cause notice and issuing a letter to the J.F.C.M making irresponsible statements.

5. It is to be noticed that the Hon'ble Supreme Court has in **Union of India v. Mohd. Ramzan Khan - (1991) 1 SCC 588**. considered the question of issuance of show cause notice in disciplinary proceedings and the effect of the Forty Second amendment to the Constitution of India. The said declaration is with respect to Article 311 of the Constitution of India, but has been adopted by the Courts as guidelines to ensure compliance of principles of natural justice, providing a delinquent employee with every opportunity, to understand the charges levelled against him, defend his case and controvert the allegations laid against him.

6. The issuance of show cause notice is a necessary concomitant of principles of natural justice, and as noticed by the Hon'ble Supreme Court in the

aforesaid judgment, there are three such instances contemplated: one, at the time of initiation of proceedings, prior to issuance of charge sheet, the delinquent employee has to be informed of the allegations levelled against him and only after considering his objections, could charges be framed against the employee. Two, if the disciplinary authority is not satisfied with the objections/explanations offered, then, the disciplinary authority has to constitute an enquiry, either by himself or by any other person authorised by him, in which enquiry, the delinquent employee has to be given all opportunity to defend his case. After the enquiry report, in the case of the enquiry being held by an authorised person, has been received by the disciplinary authority; if the finding is one of guilt, then, there is a requirement of a further show cause notice to the delinquent employee, so as to

enable him to submit his objections with respect to the findings in the enquiry report. Then would come the third stage where the delinquent employee is called upon to make his objections with respect to the punishment sought to be imposed.

7. It was held by the Hon'ble Supreme Court that after the 42nd amendment, the opportunity to object against the punishment stood removed. The Hon'ble Supreme Court noticed that even before the amendment, the last two opportunities were often fused into one. But, the fact remains that before a charge is framed against a person he should be given an opportunity to show cause.

8. In **Mohd. Ramzan Khan** (supra) it was held so:

“The effect of this provision came to be considered by a Constitution Bench of this Court in **Khem Chand v. Union of India - AIR 1958 SC 300**. The learned Chief Justice traced the history of the growth of the service jurisprudence relating to security of the civil service in the country beginning from the Government of India Act of 1915 followed by Section 240 of the Government of India Act of 1935. This Court on that occasion also noticed the judgments of the Privy Council in the cases of **R. Venkata Rao v. Secretary of State for India - AIR 1937 PC 31**, **High Commissioner for India v. I.M. Lall - AIR 1948 PC 121** and the judgment of the **Federal Court in Secretary of State for India v. I.M. Lall - AIR 1945 FC 47** and summed up the meaning of ‘reasonable opportunity’ thus: (SCR pp. 1096-97)

“The reasonable opportunity envisaged by the provision under consideration includes-

- (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the

government servant tentatively proposed to inflict one of the three punishments and communicates the same to the government servant.”

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6. A Constitution Bench in **Union of India v. H.C. Goel - AIR 1964 SC 364** proceeded to say: (SCR pp. 723-25)

“Article 311 consists of two sub-articles and their effect is no longer in doubt. The question about the safeguards provided to the public servants in the matter of their dismissal, removal or reduction in rank by the constitutional provision contained in Article 311, has been examined by this Court on several occasions. It is now well settled that a public servant who is entitled to the protection of Article 311 must get two opportunities to defend himself. He must have a clear notice of the charge which he is called upon to meet

before the departmental enquiry commences, and after he gets such notice and is given the opportunity to offer his explanation, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the enquiry, the enquiry officer appreciates the evidence, records his conclusions and submits his report to the government concerned. That is the first stage of the enquiry, and this stage can validly begin only after charge has been served on the delinquent public servant.

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9. Here, it is to be noticed that the show cause notice, issued at the stage before the suspension was made, did not contain the allegations of disobedience, indiscipline and insubordination. The said charge was framed only on account of the refusal of the petitioner

to give a proper explanation to the show cause notice. That was also stated in the suspension order produced at Ext.P1 and charges framed without calling for an explanation from the delinquent employee.

10. Coming back to the enquiry itself, the enquiry was conducted by the officer authorised by the disciplinary authority and a detailed report was submitted, which is produced at Ext.P7. There is no procedural irregularity alleged since the petitioner was permitted to peruse the documents relied on by the department and also was offered opportunity to examine the witnesses, which he confined to an examination of himself.

11. PWs 1 to 7 were examined on the side of the department. PW1 was the Sheristadar of the C.J.M. Court, Kozhikode, who, along with the C.J.M., conducted the inspection of J.F.C.M. Court, Nadapuram,

on the basis of the media report referred to earlier. The report containing the details of the irregularities detected on inspection was marked as Ext.P2 and the property list and the relevant pages of the property register of J.F.C.M. Court, Nadapuram, were marked as Exts.P3 to P5 and Ext.P6 series. PW4 was the goldsmith who apprised the relevant gold ingots, produced along with the property list, initially as directed by the delinquent employee. The certificates issued by the goldsmith were marked as Ext.P8 series and he deposed that the quantity of gold in the items he examined were very low.

12. The relevant properties involved in the subject crimes, were three items of gold ingots seized by the Police and produced before the J.F.C.M. Thalassery. The J.F.C.M., Thalassery, returned the properties for

producing in before the J.F.C.M.,Nadapuram, since they were involved in the crime pending before that Court. On production of the said items before the Junior Superintendent,the delinquent employee placed the certificates before the Magistrate, with a submission to allow him to treat the properties as 'non valuable'. The Magistrate did not allow that application and clearly directed the delinquent employee to inform the fact to the Investigating Officer. The above direction was not complied with and the items were received as non valuables and it was entrusted to the property clerk (PW3). On return of the items by the property clerk, after making necessary entries in the property register, the delinquent employee kept it in his office chest under his custody. Though the delinquent employee contended that he had treated the properties as 'non valuables' as per the direction of the Magistrate, no such direction

was available in the files. On an examination of the certificates produced by PW4 goldsmith and the description in the property list, the enquiry officer found that it did not tally. The delinquent employee was found to be responsible for not having followed the directions of the Magistrate and having treated them as non valuables, without sanction on that count.

13. Pausing here for a moment, it is to be noticed that the media report was with respect to the valuable gold ornaments, entrusted with the Court, when returned were found to be made of spurious gold. This created suspicion against the officers/employees in the Court, since, the general purport was that, though gold ornaments were entrusted, there was some manipulation which resulted in valuable items having been tampered with when in the custody of the Court.

The Junior Superintendent, delinquent employee, was found to be entirely responsible for the incident which led to suspicion being raised against the Court and its officials. The Junior Superintendent was found to be responsible for the certification of the valuables and its safe keeping, which should be done as per the procedure delineated in the Criminal Rules of Practice; which the delinquent employee completely gave a go-by to. This Court does not find any reason to interfere with the findings so entered.

14. The enquiry report also dealt with the charges of disobedience, indiscipline and insubordination which were also found against the petitioner. As noticed above, since the petitioner was not issued a show cause notice, before the charge itself was levelled against the petitioner, this Court is of the opinion that no reliance can be placed on the said charge.

15. The disciplinary authority, by Ext.P8 order, concurred with the findings of the enquiry officer and also proposed a punishment of withholding of two increments with cumulative effect and directed the delinquent employee to make objections to the action proposed. The delinquent employee having made his objections, the disciplinary authority passed Ext.P9 order. The disciplinary authority has considered the objections of the petitioner; both with regard to the findings in the enquiry and also the procedural aspects. The disciplinary authority, having found both the charges to be proved against the employee, imposed him with the punishment of penalty of withholding of two increments with cumulative effect. This Court has already found that the charge, with respect to disobedience, indiscipline and insubordination, cannot be sustained. In such circumstance, the punishment

granted would be reduced to penalty of withholding of two increments without cumulative effect.

The writ petition stands partly allowed, with the said modification in the punishment. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE