

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No. 35370 of 2010 (U)

PETITIONER(S):

**B.K.RADHAKRISHNAN NAIR
RAJALAKSHMI HOUSE, VENGANOOR.P.O, THIRUVANANTHAPURAM.**

BY ADV. SRI.A.K.HARIDAS

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF DEVASWOM
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. TRAVANCORE DEVASWOM BOARD,NANDHANCOD, THIRUVANANTHAPURAM, RERPESENTED BY THE SECRETARY - 695 001.**
- 3. DEVASWOM COMMISSIONER,TRAVANCORE
DEVASWOM BOARD, NANDHANCOD, THIRUVANANTHAPURAM - 695 001**
- 4. SUB GROUP OFFICER,THIRUPURAM DEVASWOM,
TRAVANCORE DEVASWOM BOARD, NEYYATTINKARA
THIRUVANANTHAPURAM - 695 001**

R,R2 TO 4 BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)

R,R2 TO 4 BY ADV. SRI.P.GOPAL

R2-R4 BY ADV. SRI.G.BIJU

**R1 TO R3 BY ADV. SRI.A.N.RAJAN BABU, SC, TRAVANCORE DEVASWOM
RIP.GOPAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE SHOW CAUSE NOTICE DATED 26.03.1999 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- P2 : COPY OF THE EXPLANATION DATED 19.05.1999 SUBMITTED BY THE PETITIONER TO EXT.P1 SHOW CAUSE NOTICE
- P3 : COPY OF HTE ORDER DATED 29.07.1999 ISSUED BY THE 3RD RESPONDENT
- P4 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER IN THE MONTH OF SEPTEMBER 2009 BEFORE THE 3RD RESPONDENT
- P5 : COPY OF THE ORDER DATED 17.04.2009 PASSED BY THE 3RD RESPONDENT
- P6 : COPY OF THE ORDER DATED 01.08.2009 ISSUED BY THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS:

- R2(A) : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GROUP OFFICER, PUNNAPURAM DEVASWOM DATED 08.08.2007
- R2(B) : COPY OF THE COVERING LETTER OF THE ASSISTANT DEVASWOM COMMISSIONER
- R2(C) : COPY OF THE REMARKS FURNISHED BY THE DEPUTY DEVASWOM COMMISSIONER (INSPECTION)

//TRUE COPY//

P.A.TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.35370 of 2010

Dated this the 19th day of June, 2015

JUDGMENT

On 07.07.1998, the petitioner entered service of the 2nd respondent Board as Watcher in Muriankara Devaswom of Parassala Sub Group under Neyyattinkara Group. While working as such, he was on unauthorised absence with effect from 14.12.1998. The petitioner was issued with Ext.P1 show-cause notice dated 26.03.1999 of the 3rd respondent, to which he submitted Ext.P2 explanation stating that as he was not keeping well. He has submitted an application for leave for a period of two months from 14.12.1998 alongwith a medical certificate. The explanation submitted by the petitioner was considered and by Ext.P3 order dated 29.07.1999 of the 3rd respondent, he was imposed with a major penalty of barring one increment with cumulative effect and was permitted to rejoin duty on condition that the period during which he was kept out of service will be counted as extra ordinary leave. A reading of Ext.P3 order would show that though the charge leveled against the petitioner

was found proved, taking a lenient view he was imposed with such a punishment and permitted to rejoin duty.

2. In the year 2009, i.e., nearly ten years after imposition of major penalty by Ext.P3 order, the petitioner submitted Ext.P4 representation seeking an order to cancel the punishment imposed on him. The 3rd respondent, after considering the request made by the petitioner, by Ext.P5 order reduced the punishment as barring of one increment without cumulative effect. A reading of Ext.P5 order would show that the aforesaid decision of the 3rd respondent was on a finding that the procedure contemplated for imposing a major penalty was not followed while imposing a major penalty of barring of one increment with cumulative effect on the petitioner, vide Ext.P3 order. After Ext.P5, the petitioner submitted representations before the 3rd respondent, against the minor penalty imposed in Ext.P5, which was turned down by Ext.P6 communication. It is aggrieved by Exts.P3, P5 and P6 orders, the petitioner is before this Court in this writ petition seeking a writ of certiorari to quash the aforesaid orders and also seeking a writ of mandamus commanding the 3rd respondent to treat his absence from duty for the period from 14.12.1998 to 01.02.1999 as medical leave

and allow him all consequential service benefits.

3. A counter affidavit has been filed on behalf of the 2nd respondent contending that, in the disciplinary proceedings initiated against the petitioner for unauthorised absence an appropriate punishment was imposed by Ext.P3 proceedings of the 3rd respondent, after taking a lenient view. After elapse of 8 years, the petitioner submitted Ext.R1(a) representation before the 3rd respondent seeking cancellation of the punishment imposed in Ext.P3, which was forwarded vide Ext.R2(b) covering letter of the Assistant Devaswom Commissioner, addressed to the 3rd respondent. Based on the representations submitted by the petitioner, remarks were called for from the Deputy Devaswom Commissioner (Inspection), who submitted Ext.R2(c) remarks pointing out that, the procedural formalities contemplated for imposing a major penalty were not complied with while issuing Ext.P3 order. It was in such circumstances, the major penalty imposed on the petitioner by Ext.P3 was modified as a minor penalty of barring of one increment without cumulative effect, by Ext.P5 order of the 3rd respondent. The 2nd respondent would also contend that, the request made by the petitioner to treat his absence from duty from 14.01.1999 to

01.02.1999 as medical leave cannot be considered in the absence of a proper leave application submitted by him and it was in such circumstances, the aforesaid period was treated as extraordinary leave.

4. Heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the respondent Board.

5. The only issue that arises for consideration in this writ petition is as to the legality of Ext.P5 order passed by the 3rd respondent by which a major penalty imposed on the petitioner by Ext.P3 order was modified as a minor penalty of barring one increment without cumulative effect. By Ext.P3 order, a major penalty of barring one increment with cumulative effect was imposed on the petitioner. But, as can be seen from Ext.R2(c) remarks submitted by the Deputy Devaswom Commissioner (Inspection), the procedure contemplated for imposing a major penalty was not followed while imposing such a penalty on the petitioner. It was in such circumstances, though Ext.P3 order dated 29.07.1999 attained finality in the absence an appeal filed by the petitioner within the time limit prescribed under Rule 25 of the Kerala Civil Service (Classification, Control and Appeal)

Rules, 1960, the 3rd respondent entertained the request made by the petitioner in Ext.R2(a) representation and modified the penalty as one barring one increment without cumulative effect and issued Ext.P5 order. A reading of Ext.P5 order would show that, such a course was adopted by the 3rd respondent for the sole reason that there is procedural irregularity while imposing a major penalty on the petitioner.

6. It is well settled that, an employee can be imposed with a major penalty only after following the procedural requirements for that purpose, contemplated under the Kerala Civil Services (Classification, Control and Appeal) Rules. In the context of Rule 15 and 16 of the aforesaid Rules, a Division Bench of this Court in **Damodaran Pillai v. State of Kerala [2010 (4) KLT 769]** held that, in a disciplinary proceedings initiated for imposing major penalty, the disciplinary authority has two choice in the matter of imposition of penalty. It is open to the authority to follow the mandate of su-rule (12) of Rule 15 and in appropriate cases, impose a major penalty. It is also open to the authority to refrain from following the procedure provided under sub-rule (12) but to follow the procedure laid down in sub-rule (13) of Rule 15 and to impose only minor penalty. The procedure

prescribed in sub-rule (13) is analogous, so to say, to the procedure prescribed in Rule 16. Rule 16 as well as sub-rule (13) of Rule 15 contemplates only grant of one opportunity to the Government servant concerned. The right of the Government servant in such cases is to ensure that his representation is considered before the disciplinary authority imposes minor penalty. Paragraph 9 of the judgment reads thus:

9. Rule 15 of the Rules contains the procedure for imposing major penalties. Sub-r.(1) of R.15 provides that no order imposing any among the penalties specified in items (v) to (ix) of R.11(1) shall be passed except after an inquiry held as far as may be, in the manner provided in R.15. Those penalties are called the major penalties, items (i) to (iv) in R.11(1) are called the minor penalties. R.16(1) of the Rules provides that no order imposing any of the minor penalties shall be passed except after following the prescriptions therein. That does not include the requirement to hold an inquiry as provided for in R.15 or to furnish to the delinquent a copy of report of the inquiring authority. Adverting to R.15(12), it can be seen that where the disciplinary authority is the inquiring authority, the report of the inquiring authority; and where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority with brief reasons for disagreement, if any, with the findings of the inquiring authority; has to be served on the

delinquent, if the disciplinary authority, having regard to the findings on the charges, is of the opinion that any among the major penalties should be imposed. The delinquent is to be given notice stating the action proposed to be taken and calling upon him to submit such representation as he may wish to make against the proposed action. However, R.15(13) of the Rules provides that if the disciplinary authority, having regard to its findings, is of the opinion that any of the minor penalties should be imposed, it shall pass appropriate orders in the case subject of course, to the requirement to consult the Public Service Commission in every case in which it is necessary to do so. Sub-r.(13) of R.15 is, therefore, made visualizing the contingency where a disciplinary authority may, having regard to the findings following the inquiry, come to the opinion that it would suffice that a minor penalty is imposed instead of imposing any among the major penalties as originally contemplated without initiating proceedings on the basis of the allegations. Sub-rr.(12) and (13) of R.15 of the Rules being statutory, the clear expressions made therein regarding the respective procedures to be adopted by the disciplinary authority depending on the opinion that it formulates on the basis of the findings in the inquiry, categorically show that the maker of the Rules contemplated that there may be cases where proceedings would commence on the premise that a major penalty has to be imposed, having regard to the gravity of the allegations, however that, on conclusion of the inquiry, the disciplinary authority would come to the

opinion that the proved allegations would call for imposition of only a minor penalty. The clear words of sub-r.(12) and (13) of R.15, therefore, specifically provide that if the proposal is to impose a major penalty, however that, the copy of the enquiry report is to be furnished; there is no requirement to furnish the copy of the enquiry report, if the proposal is only to impose a minor penalty. This principle was discerned and applied in *Balakrishna Pillai v. State of Kerala* (1978 KLT 928) and in *Eacharan v. State of Kerala* (1983 KLT 22). It is apposite in this context to quote *Eacharan v. State of Kerala* (1983 KLT 22) as follows:

“5. The learned counsel for the petitioner would submit that where the ultimate penalty imposed is only minor penalty, if the proceedings had commenced under R.15 and not under R.16, it is incumbent on the disciplinary authority to supply copy of the inquiry report to the government servant and to give him an opportunity to make a representation and the disciplinary authority has to consider such representation as contemplated in sub-r.(12) of R.15 of the Rules. This argument does not stand legal scrutiny. There is a definite scheme and pattern behind Rules 15 and 16. Broadly speaking R.15 deals with procedure for the imposition of major penalty, while R.16 deals with procedure for imposing minor penalties. Reading the two rules together, there can be no doubt that in a proceeding

commencing under R. 16 only a minor penalty can be imposed and not a major penalty. But, in a proceeding commencing under R.15, disciplinary authority or the Government, as the case may be, has choice of two course in the matter of imposition of penalty. It is open to the authority to follow the mandate of sub-r.(12) and in appropriate cases, impose major penalty. It is also open to the authority to refrain from following the procedure provided under sub-r.(12) but to follow the procedure laid down in sub-r.(13) of R.15 of the Rules and to impose only a minor penalty. Difference between sub-rules (12) and (13) of R.15 indicate the difference between the procedures to be followed in the matter of imposition of major and minor penalties in a proceeding commencing under R.15 of the Rules. The procedure prescribed in sub-r.(13) is analogous, so to say, to the procedure prescribed in R.16. R.16 as well as sub-r.(13) of R.15 contemplate only grant of one opportunity to the government servant concerned and that opportunity is to make a representation in regard to the charges framed against him of the show-cause notice. The right of the government servant in such cases is to ensure that his representation is considered before the disciplinary authority imposes minor penalty. But, where ultimately major penalty is to be imposed, the government servant has the right to insist on two opportunities as the rules stand now. The rules have

not been amended even though Art.311(2) of the Constitution has been amended. As the rules stand now, before a major penalty can be actually imposed on a government servant, he has to receive two opportunities, one to submit a written statement of defence in answer to the charges and the other to submit representation in regard to the penalty proposed to be imposed on him in the light of the findings in the inquiry report and he can also insist on being furnished with a copy of the report.

- 5A. Understanding Rules 15 and 16 in the light of the broad scheme as explained above, it is clear that where a proceeding for imposition of major penalty is commenced against a government servant under R.15 of the Rules and an inquiry report is submitted, if the disciplinary authority or the government, as the case may be, is of the opinion that it is a fit case to impose only a minor penalty and not a major penalty, that authority is to follow the procedure prescribed in sub-r.(13) of R.15 and not the procedure prescribed under sub-r.(12). Consequently, it must follow that in such a case the government servant has no right to insist on being furnished with a copy of the inquiry report or being given an opportunity to make representation against the proposed action on the basis of the findings in the inquiry report and the evidence adduced during the inquiry. The present is the case, where the

proceedings were initiated under R.15 as if it was proposed to impose a major penalty and after considering the inquiry report and the other circumstances in the case, the Government thought it fit to impose only a minor penalty. That being so, there is no illegality in the Government not furnishing a copy of the inquiry report to the petitioner or in not giving him an opportunity once again to make a representation regarding the proposed action."

7. Therefore, it is now well-settled that merely for the reason that procedure contemplated for imposing a major penalty has not been followed, the delinquent employee cannot contend that he is entitled for a total exoneration from the charges leveled against him. If only a minor penalty is imposed, the procedural irregularity as far as imposition of a major penalty is concerned, will not vitiate the punishment imposed by the disciplinary authority. If that be so, there is absolutely no illegality or irregularity in Ext.P6 order passed by the respondents.

8. It is pertinent to note that, even in the writ petition, the petitioner has no specific case that he has made an appropriate application before his employer seeking leave without allowance

on medical grounds. In this writ petition not even a scrap of paper has been produced to show that the petitioner was undergoing treatment or was advised to take rest during the relevant period. He has not chosen to produce any medical certificate in order to substantiate his case that he required leave on medical grounds during the aforesaid period. In such circumstances, the contentions now raised in this writ petition is devoid of merit and the same can only be rejected.

In the result, I find absolutely no grounds to interfere with Exts.P3, P5 and P6 orders passed by the 3rd respondent. The writ petition fails and the same is dismissed. No order as to costs.

SD/-
ANIL K. NARENDRA,
JUDGE

JV