

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 17<sup>TH</sup> DAY OF NOVEMBER 2023 / 26TH KARTHIKA, 1945

OP(KAT) NO. 314 OF 2019

AGAINST THE ORDER DATED 14.11.2018 IN T.A.NO.4254/2012

OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

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PETITIONERS:

- 1 THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 2 THE INSPECTOR GENERAL OF POLICE, ERNAKULAM RANGE, ERNAKULAM, KOCHI, PIN-682031.
- 3 THE SUPERINTENDENT OF POLICE, IDUKKI, PIN-685601.
- 4 THE CIRCLE INSPECTOR OF POLICE, KATTAPANNA, PIN-685508.

BY SENIOR GOVERNMENT PLEADER, SRI.SAIGI JACOB PALATY

RESPONDENT:

P.V.KURYAN, AGED 64 YEARS,

BY ADVS.

SRI.RENJITH B.MARAR  
SMT.LAKSHMI.N.KAIMAL  
SRI.SADCHITH.P.KURUP  
SRI.C.P.ANIL RAJ  
SMT.SINDHU K.S.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 17.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'CR'

J U D G M E N TA.Muhamed Mustaque, J.

The State has come up in this original petition challenging an order of the Kerala Administrative Tribunal (for short, the 'Tribunal') in an application filed by the respondent herein. By the impugned order, the Tribunal *set aside* the disciplinary proceedings and penalty imposed on the respondent.

2. The brief facts of the case are as follows:

The respondent, a driver in the Police Department was suspended from service with effect from 21.12.2005 consequent upon the registration of a criminal case against him. He was convicted in the criminal case for offences under Sections 8(1) and (2) and 55(g) of the Abkari Act. He was found distilling arrack along with one lady, namely, Smt.Radha who was first accused in the crime. On an appeal, he was acquitted, granting the benefit of doubt. The disciplinary proceedings were initiated against him on two sets of allegations: firstly, with reference to the criminal offence, and secondly,

with reference to the illicit relationship with the first accused, Radha. In the disciplinary proceedings, he was found guilty and he was ordered to be removed from the service. Accordingly, he was removed from the service on 11.04.2008. On his acquittal, he moved the authorities to reinstate him in the service. That was considered pursuant to the direction of this Court and the Government rejected the request. The review petition filed by him was also rejected. Thus, he approached this Court in a writ petition and that was transferred to the KAT, on the constitution of the KAT. The Tribunal considered the matter and *set aside* the order of disciplinary proceedings and the penalty imposed. This was done taking note of the fact that the respondent has been acquitted in the criminal case by the Appellate Court. It is submitted at the Bar that the acquittal has become final and there is no further challenge on the order of acquittal.

Arguments:

3. The learned Senior Government Pleader submitted that the Tribunal committed a grave error in allowing the application. According to him, he

was not honourably acquitted and he was given the benefit of doubt. Therefore, there is no bar under law in proceeding with the departmental enquiry to find the guilt of the delinquent employee. It is further submitted that he was leading an adulterous life and that itself has brought a bad image to the Police Department. Therefore, independent of the criminal case the second charge as against him is legally sustainable. In that sense, the Tribunal could not have interfered with the departmental proceedings and the penalty imposed. The learned Senior Government Pleader placed reliance on the judgment of the Apex Court in the **State of Rajasthan and Others v. Phool Singh [2022 KHC 6884]**.

4. On the other hand, the learned counsel for the respondent, Smt. Lakshmi N. Kaimal, would argue that the departmental proceedings is on the same set of facts as alleged in the criminal case, and therefore, on acquittal the departmental enquiry would come to an end and no action could have been taken against the respondent. The learned counsel for the respondent relied on the judgment of the Apex Court in **G.M. Tank v. State of Gujarat and Others [(2006) 5 SCC 446]** and **S. Bhaskar Reddy and Another v.**

**Superintendent of Police and Another [(2005) 2 SCC 365]**. It is further submitted that under Section 101(8) of the Kerala Police Act, 2011 (for short, the 'Police Act'), it is specifically stipulated that a police officer shall not be subjected to the penalties on the basis of the same facts if he has been acquitted in the criminal case. The learned counsel further argued that no court or authority had found that the respondent had an illicit relationship with the lady, namely, Radha who was the first accused in the criminal case and without any proceedings culminating in such finding, it is not open for the Department to conduct an enquiry in the private affairs of the respondent. The learned counsel also placed reliance on the judgment of this Court in **State of Kerala v. Vijayakumar [2021 (4) KLT 35]**, wherein, in a matter related to Police Department enquiry, this Court held that once the criminal proceedings are dropped, no penalty can be imposed in departmental proceedings under Section 101(8)(1) of the Police Act.

Analysis and consideration of points involved in this matter.

5. There is no dispute to the fact that the respondent who is the driver is covered under the Police Act. The driver appears to be in the category of constable. We shall now refer to Section 101(8) of the Police Act, which reads thus:

*“(1) Department level enquiry proceedings may be initiated against any Police Officer for the same matter even though he was exonerated by a Criminal Court after trial, he shall not be subjected to penalties on the basis of the same facts in department level enquiry.*

*“(2) A Police Officer if convicted for an offence involving moral turpitude or serious misconduct the disciplinary authority concerned or the State Police Chief or the Government may, after considering the nature of the offence, make him compulsorily retire or remove or dismiss that officer from service.”*

6. If the departmental proceedings initiated against a delinquent police servant on the same or the identical facts in a criminal case, on his acquittal, no penalty can be imposed on the basis of the same facts as in the criminal case, that is the mandate of Section 101(8) of the Police Act. That means, further enquiry as to the misconduct is not possible on the same set of facts under the criminal proceedings. Under the general law, the criminal

proceedings and the departmental proceedings are distinct and different. Nothing prevents an employer from proceeding against an employee on the same set of facts and allegations levelled against him. The degree of proof in both proceedings are different as the objective of both proceedings are distinct and different. However, an exception has been craved out in the Police Act as mentioned above. When a police servant is involved in a criminal case, he cannot be proceeded on the same set of facts in the departmental proceedings once he is acquitted from the criminal case. But for this statutory provision, we would have been persuaded to accept the arguments of the learned Senior Government Pleader that the departmental proceedings stand on a different footing and the Department is entitled to proceed in accordance with law. The question of honourable acquittal and technical acquittal does not arise in such cases if he happens to be a police officer. After considering Section 101(8) of Police Act, in **Vijayakumar's** case (*supra*), it was held that the exception would be applicable when there are materials to hold that the facts proved against the delinquent in the departmental enquiry are different

from the facts proved in the criminal trial which exonerated him. That means, if there are facts, other than those referred to in the criminal investigation, related to the criminal offence, the Department would be justified in proceeding against the delinquent police servant. Here, in this case, as far as the first charge is concerned, it is based on the criminal offence and not based on any other materials. That be the case, we hold that on his acquittal, the departmental proceedings will come to an end as no further proceedings can be initiated for departmental action.

7. In regard to the second charge, it is more interesting for consideration in this matter. The employer is the Government. Can an employer remain as moral police in respect of the private affairs of the Government servant is the first question that comes before us to answer. Is it in the realm of the Government to enquire into the private affairs of the individual in regard to illicit relationship with another lady? In the first place, we assert that as an employer the Government is not supposed to enquire into the private affairs of a Government servant unless any manifest misconduct is expressed in such



activities, warranting action. However, this is the delicate question before us to answer. In the sense that if a person has publically conducted himself in such a manner not befitting to the status of a public servant, necessarily, the Government Servants (Conduct) Rules, 1960, will have to be applied to proceed against such Government Servant. Here the allegation itself is of an illicit relationship with another lady. This is presumed on the fact that he is found with Radha while distilling arrack. It is to be noted that the charge levelled against him is that although the respondent is married, he has a wife and he is leading an adulterous life with Radha. This aspect complicates the issue involved here. If Radha had raised a complaint resulting in certain legal proceedings and on the culmination of the proceedings, perhaps it might be open for the employer-disciplinary authority to take action against such an officer. If there is no explicit conduct disparaging the dignity of the public servant, it is not within the province of the Government to probe into the private affairs of any Government servant. In a country where privacy has been declared as part of fundamental right, it is not

open for the disciplinary authority-Government to probe into the private affairs of the individual unless that private affair itself becomes a subject matter of the proceedings concluding about his character lowering dignity as public servant. We are not discounting situations where such conduct itself becomes a subject matter of the proceedings at the instance of the aggrieved or affected persons. For example, in a case where such adulterous life is found out through any court proceedings or any other legal proceedings, that finding is rendered, it is open for the disciplinary authority and the Government to initiate action against such Government servant, holding that such conduct is not befitting with the standards to be maintained by the public servant. A public servant, especially, a police personal is expected to display or exhibit high moral standards in all such circumstances. We also note section 29 of the Police Act, which mandates all police officers on duty, in their dealings with the public, shall exhibit courtesy, propriety and compassion appropriate to the occasion and use polite and decent language. It is for the affected persons to initiate such action as against any moral conduct

of the person and not for the Government to conduct an enquiry into the private affairs of the Government servant.

8. The adultery cannot be *per se* the subject matter of disciplinary enquiry on the ground of misconduct. The employer or disciplinary authority cannot expect the parties to remain loyal to each other. It is not in the authority of the employer to command the parties in the marriage to remain loyal to each other. The Government servant has also an individual right to privacy. The Apex Court judgment in **Joseph Shine v. Union of India [(2019) 3 SCC 39]**, while decriminalizing the adultery, observed in paragraph 63 as follows:

*In case of adultery, the Law expects the parties to remain loyal and maintain fidelity throughout and also makes the adulterer the culprit. This expectation by law is a command which gets into the core of privacy. That apart, it is a discriminatory command and also a socio-moral one. Two individuals may part on the said ground but to attach criminality to the same is inapposite.*

9. The Apex Court in **Joseph Shine's** case (*supra*) further observed that social, cultural, moral economic and political values may undergo the change

from time to time and the constitutional courts will have to recognize freedom of choice in the matters of sexuality. It is further held that autonomy to fulfill sexual desires in pursuit of happiness is intrinsic to dignify human existence.

10. We make it clear that such private affairs sometimes qualify to be explicit in such a manner where public display of such conduct may become actionable under the law on the parameters of misconduct. Thus, we are of the view that the Tribunal was justified in setting aside the impugned order. We also affirm the order. However, the Tribunal ordered reinstatement and ordered monetary benefits from the date of suspension. It is to be noted that he was acquitted only on 28.9.2008. Therefore, he would be only entitled to reinstatement with effect from 29.9.2008. However, since he had not worked, it is not proper to order monetary benefits and the salary from the above date. He can only claim salary from the period, if any, from the date of the order of the Tribunal dated 14.11.2018 until the age of superannuation. We make it clear that if he has been superannuated by that time, he will not be entitled to the salary for the period

during which he was out of service. However, the entire period from 29.9.2008 would qualify for reckoning pensionary benefits and that period shall be regularized for pensionary benefits alone.

The original petition is dismissed.

Sd/-

**A.MUHAMED MUSTAQUE**

**JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN**

**JUDGE**

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APPENDIX OF OP(KAT) 314/2019

## PETITIONER'S EXHIBITS:

- EXHIBIT P1 (TA) TRUE COPY OF T.A NO.4254/2012 ALONG WITH EXHIBITS BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL.
- EXHIBIT P1 (TA) (1) A TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE SUPERINTENDENT OF POLICE, IDUKKI DATED 08.03.2008 TO THE RESPONDENT.
- EXHIBIT P1 (TA) (2) A TRUE COPY OF THE ORDER DATED 11.04.2018 BEARING NUMBER NO. D.O.P.NO.241/08/ID.
- EXHIBIT P1 (TA) (3) A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT, DATED 22.08.2008.
- EXHIBIT P1 (TA) (4) A TRUE COPY OF THE ORDER OF THE SECOND PETITIONER DATED 09.01.2009.
- EXHIBIT P1 (TA) (5) A TRUE COPY OF THE COMMUNICATION DATED 18.04.2009.
- EXHIBIT P1 (TA) (6) A TRUE COPY OF THE REVIEW PETITION PREFERRED BY THE RESPONDENT BEFORE THE FIRST PETITIONER.
- EXHIBIT P1 (TA) (7) A TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO.3588/2009/HOME DATED 2.12.2009.
- EXHIBIT P2 (TA) TRUE COPY OF THE COUNTER AFFIDAVIT FILED ON 30.03.2011 BY THE THIRD RESPONDENT IN THE AFORESAID TRANSFER APPLICATION.
- EXHIBIT P3 (TA) TRUE COPY OF THE ORDER OF THE KERALA ADMINISTRATIVE TRIBUNAL DATED 14.11.2018.