

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 16TH MARCH 2006 / 25TH PHALGUNA, 1927

WP(C).No. 4184 of 2006(W)

PETITIONER:

K.LAZAR,
DRIVER (RETIRED),
K.S.R.T.C., PALAKKAD,
RESIDING AT KALARIKKAL HOUSE, BHASURAM,
SHRANUR-679121.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

THE KERALA STATE ROAD TRANSPORT
CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR.

BY SSRI.P.PARAMESWARAN NAIR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16/03/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A.K. Basheer, J.

W.P(C) NO. 4184 of 2006-W

Dated this the 16th day of March, 2006.

J U D G M E N T

Petitioner is an erstwhile employee of the Kerala State Road Transport Corporation. He was working in the Corporation as a Driver. In the year 1983, petitioner and 4 others were charge sheeted by the CB CID, Palakkad for offences punishable under Sections 120-B, 475, 465, 467, 468, 471 and 403 read with Section 34 IPC. Petitioner along with the other accused was tried in CC.No.242/1985 before the Court of Additional Judicial Magistrate of First Class, Palakkad. The trial court found that the petitioner and accused No.5 were guilty of the offence punishable under Section 475 IPC and accordingly they were convicted and sentenced to undergo rigorous imprisonment for 3 years each. The other accused were acquitted.

2. Petitioner and accused No.5 challenged the above order of conviction and sentence before the Sessions Court, Palakkad. The learned Sessions Judge allowed the appeal preferred by accused No.5 and acquitted him. However in the appeal preferred by the petitioner, the learned Sessions Judge held that the order of conviction under Section 475 could not be sustained and that the petitioner was liable to be convicted under Sections 473 and 474 IPC. Accordingly he was convicted and sentenced to undergo rigorous imprisonment for 3 years each under the above sections. The sentences were ordered to run concurrently.

3. In CrI.R.P.7/1995 this Court took the view that the petitioner was not liable to be convicted for the offences alleged against him and

accordingly he was acquitted. A copy of the order in the above CrI.R.P is on record as Ext.P1. The above order was passed by this Court on March 14, 2001.

4. It appears that the Corporation had initiated disciplinary proceedings against the petitioner when he was implicated in the criminal case by the Police. After considering the report of the Enquiry Officer, the Corporation had removed the petitioner from service with effect from September 24, 1991 invoking the power under Rule 18 of the Kerala Civil Service (Classification, Control and Appeal) Rules 1960 (for short, the Rules).

5. In April 2005, more than 4 years after the order of acquittal passed by this Court in the Criminal Revision, the petitioner approached the Corporation with a request that in view of his acquittal, he may be granted pensionary benefits. By Ext.P3 order, the Corporation rejected the claim made by the petitioner. The said order has been challenged in this writ petition praying for issuance of a writ of certiorari to quash the same. There is a further prayer to issue a writ of mandamus or such other appropriate writ or order commanding the Corporation to disburse all benefits to the petitioner treating him as though he had been in service till his superannuation.

6. It is contended by the learned counsel that the Corporation was not justified in rejecting the claim of the petitioner on the ground of delay. Since the petitioner had been acquitted of the criminal charge by this Court, the order passed by the Corporation under Rule 18 had become void and inoperative. It is also contended that an order under Rule 18 could not have been passed at all in the facts and

circumstances of the case. While passing Ext.P3 order, the Corporation had not adverted to all these aspects of the matter. The appeal presented by the petitioner was rejected by the Managing Director of the Corporation in an arbitrary manner.

7. It is pertinent to note that the charge against the petitioner and the co-accused as revealed from Ext.P1 order was that they had entered into a criminal conspiracy to commit forgery of emergency tickets (Petitioner has not produced copy of the judgment of the trial court or that of the appellate court). It is seen from Ext.P1 order that there was evidence on record to show that the petitioner had gone to Coimbatore and arranged blocks for printing the tickets. It had also come out in evidence that the petitioner had approached block makers in Coimbatore with a fictitious name and address and obtained the blocks.

8. I have gone through Ext.P1 order carefully. It is evident that this Court had acquitted the petitioner giving him the benefit of doubt. The order of acquittal was for yet another technical reason. As mentioned earlier, the trial court had found the petitioner guilty of the offence punishable under Section 475. But this Court took the view that the appellate court had found the petitioner guilty under Sections 473 and 474, though there was no charge against the petitioner under Section 474 IPC. It is seen further observed by the learned Judge that the appellate court had imposed a sentence of 3 years on the petitioner for an offence under Section 475 IPC without finding him guilty under that section. As indicated earlier, the petitioner has not produced copy of the judgment passed by the Sessions Court. Anyhow, a perusal of

Ext.P1 order undoubtedly shows that this Court was persuaded to pass an order of acquittal in favour of the petitioner giving him the benefit of doubt.

9. It is not in dispute that petitioner was found guilty in the domestic enquiry conducted against him as provided under the relevant Rules. Petitioner has no case that he was not afforded sufficient opportunity to defend himself in the enquiry conducted against him. It is also not in dispute that the petitioner had not challenged the order of removal from service passed by his employer way back in the year 1991. Thus the petitioner had accepted the order of his removal from service without any demur. He had approached the Corporation after 14 years with a plea that in view of his acquittal by this Court, he was liable to be given the service benefits treating him as though he had been in service throughout despite his removal after conducting a domestic enquiry. It is trite that the employer can impose punishment on the erring employee after holding an appropriate enquiry as contemplated under law and adhering to the principles of natural justice. The employee will be liable to be prosecuted under criminal law as well simultaneously. Acquittal of the employee of the criminal charge will not automatically entitle him to get exonerated from the charge in the domestic or departmental enquiry. The contention raised by the petitioner that order passed against him in the departmental proceeding became ab initio void, the moment he was acquitted in the criminal case is totally misconceived and unsustainable.

10. In the above context it is also pertinent to note that the order

of acquittal was passed by this Court in March 2001. Petitioner had kept quiet for more than 4 years. He had approached the Corporation only in April 2005. The laches on the part of the petitioner cannot be condoned under any circumstances.

11. Having perused the materials on record, I have no hesitation to hold that the petitioner does not deserve any sympathy, particularly in view of the nature of allegations made against him in the criminal case. The trial court as well as the appellate court had found him guilty of the charges. It is true that this Court had acquitted him on a technical or procedural flaw. But that does not mean that the disciplinary proceedings initiated by the Corporation is of no significance. The employer has got every right to proceed against an erring employee, particularly when he was found guilty in the departmental enquiry. The order passed by the disciplinary authority having become final way back in the year 1991, it cannot be set at naught for the reason that the petitioner had been found not guilty of the charges levelled against him in the criminal case. An order under Rule 18 does not become inoperative for the sole reason that the delinquent employee had been acquitted of the criminal charges.

There is no merit in any of the contentions raised by the petitioner. The writ petition fails and it is accordingly dismissed in limine.

A.K. Basheer
Judge.

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