



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

WA NO. 828 OF 2023

AGAINST THE JUDGMENT DATED 10.1.2023 IN WP(C) NO.19573 OF 2021 OF
HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 KERALA TOURISM DEVELOPMENT CORPORATION LIMITED
REPRESENTED BY ITS CHAIRMAN, CORPORATE OFFICE, MASCOT
SQUARE, P.B.NO 5424. THIRUVANANTHAPURAM, PIN - 695033
- 2 THE MANAGING DIRECTOR
KERALA TOURISM DEVELOPMENT CORPORATION LIMITED, CORPORATE
OFFICE, MASCOT SQUARE, P.B.NO 5424,THIRUVANANTHAPURAM, PIN
- 695033

BY ADVS.
THOUFEEK AHAMED
SHRI.P.A.AHAMED, SC, KTDC LTD.

RESPONDENT/PETITIONER:

BENNY MATHEW
AGED 62 YEARS
S/O MATHAI MATHEW, THONAKKARA HOUSE,NO 70-A,MOSQUE LANE,
KESAVADASAPURAM,PATTOM PALACE P.O THIRUVANANTHAPURAM, PIN -
695004

DR. K. B. SOUNDER RAJAN

THIS WRIT APPEAL WAS FINALLY HEARD ON 18.02.2025 ALONG WITH WA 1129
OF 2023, THE COURT ON 6.3.2025 PASSED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

WA NO. 1129 OF 2023

AGAINST THE JUDGMENT DATED 10.1.2025 IN WP(C) NO.19573 OF 2021
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

BENNY MATHEW,AGED 62 YEARS,S/O MATHAI MATHEW, THONAKKARA
HOUSE, NO:70-A, MOSQUE LANE, KESHAVADASAPURAM, PATTOM
PALACE P O, THIRUVANANTHAPURAM, PIN - 695004

BY ADVS.

PREEJA V.P.,K.B.SOUNDER RAJAN,V.P.PRASANTH

RESPONDENTS/RESPONDENTS:

- 1 THE KERALA TOURISM DEVELOPMENT CORPORATION LTD
REPRESENTED B ITS CHAIRMAN, CORPORATE OFFICE, MASCOT
SQUARE, P B NO: 5424, THIRUVANANTHAPURAM, PIN - 695033
- 2 THE MANAGING DIRECTOR
THE KERALA TOURISM DEVELOPMENT CORPORATION LTD, CORPORATE
OFFICE, MASCOT SQUARE, PB NO: 5424, THIRUVANANTHAPURAM, PIN
- 695033

BY ADVS.

THOUFEEK AHAMED

SHRI.P.A.AHAMED, SC, KTDC LTD.

THIS WRIT APPEAL WAS FINALLY HEARD ON 18.02.2025 ALONG WITH WA 828
OF 2023 , THE COURT ON 6.3.2025 PASSED THE FOLLOWING:

**COMMON JUDGMENT**

Muralee Krishna, J.

W.A. No.828 of 2023 is filed by the respondents and W.A. No.1129 of 2023 is filed by the petitioner in W.P.(C)No.19573 of 2021 challenging the judgment dated 10.01.2023 passed by the learned Single Judge whereby Ext.P3 order dated 07.06.2021 passed by the 1st appellant the Kerala Tourism Development Corporation Ltd. ('KTDC', in short) in W.A. No.828 of 2023, dismissing the appeal filed by the respondent in that writ appeal against the disciplinary action was set aside and the matter was sent back to the 1st appellant for reconsideration of the appeal specifically taking note of the findings in Ext.P1 judgment dated 19.03.2020 passed by another learned Single Judge in W.P.(C) No.16227 of 2017. For convenience, the parties are hereinafter referred to in this judgment as they were in the writ petition.

2. The petitioner was appointed as a Company Secretary in Financial Controller in the 1st respondent KTDC in the year 2012 and was on probation for a year. He was placed under suspension on 24.04.2013, pending disciplinary proceedings. By Ext.P5



proceedings dated 19.01.2015 of the 2nd respondent Managing Director, his service was terminated with immediate effect. The petitioner submitted Ext.P6 appeal dated 08.02.2016 before the Board of Directors of the 1st respondent under Clause 79 read with Rule 80 of the Service Rules of the KTDC against Ext.P5 order of termination. The said appeal was dismissed by the order dated 07.01.2017. Thereafter, the petitioner filed W.P.(C)No.16227 of 2017 before this Court challenging the order of termination as well as the order passed in his appeal by the KTDC. As per Ext.P1 judgment dated 19.03.2020, the learned Single Judge set aside the Appellate order and directed the 1st respondent to consider the appeal on merits afresh in the light of the observations contained in that judgment. In pursuance to the said direction, the KTDC considered the appeal afresh and rejected the same by virtue of Ext.P3 order dated 07.06.2021. Challenging Ext.P3 order, the petitioner filed W.P.(C)No.19573 of 2021 under Article 226 of the Constitution of India seeking the following reliefs:

“(i) call for the relevant records pertains to Exts.P3, P5, P13 and P50, issue a writ of certiorari and quash the same as same are unjustified, illegal in the eye of law.



(ii) Call for the records pertaining to order of the appellate authority as also the Disciplinary Authority as the same are vitiated due to malice in law and personal feuds which have fouled the air.

(iii) It be held that the Domestic Enquiry Report is illegal, and hence the same be set aside as it did not consider/analysed the statement given by the defendant witness and the vital documents produced by the petitioner.

(iv) It be held that the penalty orders viz., suspension and subsequent Termination passed against the petitioner are illegal consequent to which the same be quashed and it be held that the petitioner is entitled to –

(a) have the period of suspension be treated as duty with full pay and allowance including increments from time to time, Provident Fund contribution, medical allowance and Gratuity contribution and such other benefits as may be applicable, in view of the fact that there is no provision for suspension and treat the petitioner as if in service from the date of suspension till the date of Termination.

(b) As the appeal against the order of Termination being set-aside by this Hon'ble Court in W.P.(C) No.16227 of 2017 the periods between date of termination and the attainment of the age of 58 (i.e., the age of superannuation applicable generally to all employees of the Respondent Corporation) be treated as duty with a direction that the petitioner be paid full pay and allowances including increments from time to time, Provident Fund contribution, medical allowance and Gratuity contribution and such other allowance as may be



applicable for the entire period the petitioner has been kept out of office.

(c) Award such exemplary damages on account of the stigma cast on the service career of petitioner as rightly commented by this Hon'ble Court in W.P.(C) No.16227 of 2017 and

(d) The amount due on these accounts be incremented with an element of interest at the rate applicable to interest on Fixed Deposits in banks

(v) pass such other orders as this Hon'ble Court deem fit and proper in the facts and circumstances of the case, and

vi) award costs of the proceedings to the petitioner.”

3. A detailed counter affidavit was filed by the respondents opposing the pleadings in the writ petition. After considering the pleadings and materials on record and the rival contentions raised by the parties, by the impugned judgment dated 10.01.2023, the learned Single Judge disposed of the writ petition as said above. Being aggrieved, the parties have filed the above writ appeals.

4. Heard the learned counsel for the appellants in W.A. No.828 of 2023, who are the respondents in W.A. No.1129 of 2023 and also the learned senior counsel for the respondent in W.A. No.828 of 2023 who is the appellant in W.A. No.1129 of 2023.



5. The learned Senior Counsel appearing for the petitioner argued that in Ext.P1 judgment, the learned Single Judge found that the disciplinary proceedings is suffering from official bias, and the approach of the respondents would indicate a vindictive approach of the respondents toward the petitioner. The learned single judge found that the punishment of dismissal cast a stigma on him and directed the Appellate Authority to consider the appeal on merits afresh. However, the Appellate Authority did not consider the matter in the light of the observations made in paragraphs 21 to 25 of the Ext.P1 judgment. The learned senior counsel vehemently argued that the learned single Judge ought not to have once again remanded back the matter for fresh consideration to the Appellate Authority, since the petitioner was dismissed from service on 07.01.2017 and has been facing intolerable hardships. The option available before the learned Single Judge was to set aside Ext.P3 order of the Appellate Authority and direct the employer to compensate the petitioner. The learned Senior Counsel further argued that there is no provision for suspension of an employee as per Service Rules of KTDC, since Rule 77(1)(g) which specified suspension as a penalty



was deleted by resolution dated 26.06.2012. The judgment of the Apex Court in **L.K.Verma v. HMT Ltd. [(2006) 2 SCC 269]** is relied by the learned Senior Counsel in support of his argument that in the absence of provision for suspension, the petitioner is entitled for full salary. Similarly, the learned Senior Counsel relied on the judgments of the Apex Court in **Manoj Kumar v. Union of India [(2024) 3 SCC 563]**, **Pradeep v. Manganese Ore (India) Ltd. [(2022) 3 SCC 683]**, **Dr.L.P Agarwal v. Union of India [(1992) 3 SCC 526]** and **P.Venugopal v. Union of India [(2008) 5 SCC 1]** in support of his argument that the petitioner is entitled for full back wages as compensation till the date of superannuation.

6. On the other hand, the learned counsel for the respondents argued that in Ext.P1 judgment the learned single judge did not set aside the finding of misconduct in the domestic enquiry. The matter was sent back to the appellate authority to consider modification of the punishment as discharge from service rather than dismissal. In pursuance to the direction in Ext.P1 judgment the Appellate Authority considered the matter on merits



and passed Ext.P3 order. Hence the learned Single Judge ought to have accepted Ext.P3 order and dismissed the writ petition.

7. The petitioner was dismissed from service while he was working as a probationer in the post of Company Secretary in Financial Controller (S&FC) in KTDC, on the allegation that he undertook private work without prior permission from KTDC Ltd., utilized materials and human resources of KTDC for private works and affixed fraudulent signature of the Managing Director in a communication to the Government. Consequently, a disciplinary proceedings was initiated against him, and on the basis of finding him guilty in the domestic enquiry, he was terminated from service as per Ext.P5 order of the 2nd respondent Managing Director with immediate effect from 19.01.2015. The appeal filed by the petitioner was dismissed by the 1st respondent. In Ext.P1 judgment, the learned Single Judge found that the petitioner does not have any case that there was any violation of principles of natural justice and violation of procedural formalities in conducting the inquiry pursuant to which the disciplinary action was taken against him. However, finding that the Appellate Authority has not considered the stigma that would be caused on the service career



of the petitioner due to the punishment of dismissal and also considering the overall circumstances of the case, the matter was once again directed to be considered by the Appellate Authority. Paragraphs 21 to 25 and the operative portion of that judgment read thus:

"21. I have considered the contentions on both sides. It is seen that several memos were issued to the petitioner on some or other reasons. The show cause notices and memo of charges are issued to petitioner when the petitioner is on probation. These memos relate to certain incidents alleged to have occurred during the course of employment of petitioner under the respondents. There cannot be any doubt over the authority of respondent to initiate and conduct departmental action against an employee under them. But it is seen that the respondents preferred Ext P13 complaint before the Institute of Chartered Accountants as well as before the Institute of Company Secretaries on 09.09.2013 based on which Ext P16 order was issued on 20.11.2014 by the disciplinary committee of Institute of Company Secretaries finding the petitioner guilty of professional misconduct and thereafter in Ext P19 order imposing a penalty of removal of his name from register of company secretaries for one month with a penalty of Rs.20000. However that was reversed by the appellate authority in Ext P21 order dated 01.08.2016, with cost to petitioner.

22. It is relevant to note that the respondents filed the



complaint before these forums like Institute of the Chartered Accountants and Institute of Company Secretaries even before the enquiry against him was concluded. It is seen that Ext P14 enquiry report was submitted only on 26.06.2014. This approach would indicate the vindictive approach of the respondents towards the petitioner. Though the respondents are free to take action against an employee under it in accordance with the rules/standing orders under it, in the event of any irregularities being found, reporting the matter to these Institutes, that too even before respondents found him guilty of the charges relating to the use of official computer would show that there was a calculated move against him not only to send him away from the KTDC but also to see that he is not allowed to carry on any avocation based on his membership in those institutes. Therefore I find force in the contention of the petitioner that there is malice behind the entire action.

23. The main charge against the petitioner is that he sent a letter to the Government without pre-fix of 'For" to Managing Director. The enquiry officer has not stated anything about the contents of the letter. At the same time even according to the respondents there was a resolution for conversion of the post of Overseer Civil to Overseer Electrical and a letter was also sent to Government on 17.11.2012 regarding that. The letter dated 10.12.2012 is stated to be another letter relating to the very same issue. Yet another charge is that he used his official computer for the purpose of other companies. Though the time of access to their files are not



found it is found that there had been access to the files/documents of other companies from his computer. The further allegation is as against the note issued by petitioner to the Accounts Officer on the ground that it supervenes the order issued by 2nd respondent in 2007. Discarding the contention of the petitioner that he was not aware of the orders issued by 2nd respondent or that he is an officer superior to the Accounts Officer the enquiry officer has found the petitioner guilty of all the charges stating that documents prove the same.

24. In this case it is seen that the petitioner has participated in the enquiry without any demur. The only allegation of the petitioner is that the enquiry officer acted in tune with the requirement of the respondents; findings arrived at in the enquiry report are to favour the respondents. Petitioner does not also have any case that there was any violation of principles of natural justice or violation of procedural formalities in conducting the enquiry. As far as the charges alleged and found against the petitioner are concerned this court would not be justified in interfering with the proceedings initiated against him unless there is any procedural violation in the enquiry; unless it is a case of no evidence; unless the order is passed without authority or else if the punishment is shocking the conscience of the court. Before coming to a conclusion on the question of evidence and the disproportionality of punishment it is necessary to consider whether the appellate authority has considered these aspects. It is also relevant to note that



though petitioner was a probationer the termination is by way of dismissal and was on the ground that he committed misconduct. A stigma is cast on him, which could have been avoided if he was simply discharged from service. The appellate authority has not considered whether a punishment of dismissal from service was necessary in the case and if at all he was found not worthy to be retained or if at all found guilty of the charges, was it necessary to award such extreme punishment to him. Therefore I am of the view that at this stage this court need not go consider whether the dismissal from service is one shocking the conscience of the court in the light of the dicta laid down by the apex court in **B.C.Chaduvadi v. Union of India**.

25. At any rate the overall circumstances of the case which started from an anonymous complaint against the petitioner, the complaint preferred by the respondents before the Institutes of Company Secretaries and that of Chartered Accountants, the allegations raised against the petitioner would show that the punishment of dismissal has cast a stigma on the service career of petitioner. The appellate authority has not considered any of these aspects. It should have considered whether a discharge from service was not sufficient in the circumstances of the case.

In the circumstances of the case the order Ext P27 passed in the appeal is set aside. The appellate authority shall reconsider Ext P23 appeal of the petitioner and pass orders on it after affording an opportunity of hearing to the petitioner in the light of the aforesaid observations, within a



period of two months from the date of receipt of a copy of the judgment.”

8. After Ext.P1 judgment, the Appellate Authority again considered the appeal filed by the petitioner and passed Ext.P3 order dated 07.06.2021. Though the learned counsel for the petitioner as well as the learned counsel for the respondents addressed extensive arguments before the learned Single Judge basing on various judgments of the Apex Court, the learned Single Judge found that the matter needs reconsideration on merits by the Appellate authority. Paragraphs 7 to 9 and operative portion of that judgment read thus:

“7. The Appellate Authority considered the appeal and passed Ext.P3 order. The finding in Ext.P3 is simply that the petitioner had been given an opportunity to participate in the disciplinary proceedings and that the findings in the enquiry were proper. The specific matters which were directed to be considered by this Court do not find any mention in Ext.P3 order. Moreover, since this Court had specifically directed the consideration of the issue whether the ultimate penalty of removal need have been enforced against the petitioner in the light of the findings in the enquiry also is not addressed in Ext.P3. The respondents seem to have labored under the impression that this Court



had upheld the entire disciplinary proceedings because there was no challenge to the procedure adopted in the enquiry. This is evidently not so. This Court found that there were no sufficient grounds raised by the petitioner against the procedure adopted in the conduct of the enquiry. In the absence of allegations of procedural violation, this Court found that it would be impermissible for this Court, exercising the power of judicial review, to interfere with the proceedings initiated against the petitioner. This Court therefore had directed the Appellate Authority to consider the contentions of the petitioner on merits with regard to the findings in the enquiry. The finding of this Court was that though this Court may not be justified in considering those contentions in a writ petition, the Appellate Authority which is specifically empowered to consider those issues had not, as a matter of fact, considered them and therefore the appellate order was bad in law. It was on this finding that this Court had set aside the appellate order and directed a reconsideration of the matter by the Appellate Authority on merits.

8. On a reading of Ext.P3 order, I find that the said exercise as directed by this Court in the light of the findings of this Court has not even been attempted by the Appellate Authority. The Appellate Authority appears to have proceeded on the absolute misconception that what is required to be done by the Appellate Authority is a judicial review of the proceedings which is not the function of the Appellate Authority. The fact that this Court did not enter



into the realm of facts and evidence does not mean that the Appellate Authority can proceed on the very same parameters while considering an appeal. An appeal being a continuation of the original proceedings, the Appellate Authority is duty bound to look into the contentions raised by the petitioner, specifically with regard to the findings of this Court in Ext.P1 judgment. Ext.P3 order, which does not disclose any such application of mind to the facts of the case or the aspects which have been directed to be considered by this Court in Ext.P1 judgment, is an affront to the orders in authority of this Court. The exercise is absolutely vitiated and is liable to be set aside.

9. Ext.P3 order is therefore set aside. There will be a direction to the respondents to reconsider the appeal specifically taking note of the findings of this Court in Ext.P1 judgment as contained in paragraph Nos.21 to 25 thereof. The Appellate Authority shall not labor under any impression that it is conducting any judicial review of the orders of the disciplinary authority. The Appellate Authority has to consider each and every contention of the petitioner on the merits and specifically in accordance with the findings of this Court in Ext.P1 judgment. The Appellate Authority shall also consider whether, in the facts and circumstances of the case, all that was required was a termination of the probation of the petitioner simpliciter without casting any stigma on the petitioner. Appropriate orders shall be passed after considering the contentions of the petitioner, taking specific note of Ext.P10 order and after hearing the



contentions of the petitioner as against the enquiry report and the order imposing penalty on its merits. Orders shall be passed within a period of two months from the date of receipt of a copy of this judgment.”

9. A perusal of Ext.P1 judgment of the learned Single Judge in W.P.(C)No.16227 of 2017 and Ext.P3 order of the Appellate Authority, it is evident that the observations made in paragraphs 21 to 25 of Ext.P1 judgment was not properly considered by the Appellate Authority as held by the learned Single Judge in the impugned judgment dated 10.01.2023 in W.P.(C)No.19573 of 2021. With the risk of repetition, we may note that in Ext.P1, the learned Single Judge found that the petitioner has no case that there is any violation of principles of natural justice and violation of procedural formalities in conducting the domestic enquiry. The reconsideration of the appeal filed by the petitioner was ordered by the learned Single Judge to consider whether a punishment of discharge from service was not sufficient in the circumstances of the case in the light of the observations made in that judgment. EXt.P1 judgment would show that the arguments regarding the non-existence of provision for suspension of an employee as per Service Rules of KTDC and the applicability of the judgment of the



Apex Court in **L.K.Verma v. HMT Ltd. [(2006) 2 SCC 269]** were raised before the learned Single Judge and it was not accepted on facts. But the findings in Ext.P1 were not challenged either by the petitioner or by the respondents.

10. Similarly, the facts of the judgments of the Apex Court relied on by the learned Senior Counsel for the petitioner are not similar to that of the instant case. In **Manoj Kumar [(2024) 3 SCC 563]** the issue was pertaining to the appointment of Primary School Teachers. The challenge in that case was the deviation in the selection process from the procedure prescribed in the original advertisement. In **Pradeep [(2022) 3 SCC 683]** the termination of the employee was found as unjust and in that circumstance the Apex Court held that he is entitled for full back wages. In **Dr.L.P Agarwal [(1992) 3 SCC 526]**, the challenge was pertaining to termination of appointment made to a tenure post stating that the person appointed has attained the age of 62 years. It was in that circumstance, the Apex Court held that once a person is appointed to a tenure post, his appointment to the said office begins when he joins and comes to an end on the completion of the tenure, unless curtailed on justifiable grounds. Such a person does not



superannuate, he only goes out of the office on completion of his tenure. In **P.Venugopal [(2008) 5 SCC 1]** the Apex Court relied on the judgment in **Dr.L.P Agarwal [(1992) 3 SCC 526]** wherein also the challenge was the period of service of an employee appointed to a tenure post. But in the instant case, the facts are entirely different and hence the judgments relied by the learned Senior Counsel are not applicable to the facts of the case in our hand.

11. It is evident that while passing Ext.P3 order, the Appellate Authority did not consider the observations made in Ext.P1 judgment in its proper perspective. Therefore, there is no meaning in saying that the learned single judge ought not have again ordered reconsideration of the matter by the Appellate Authority in the light of the observations made in Ext.P1 judgment. The duty cast upon the Appellate Authority was not properly discharged even after a specific direction by this Court in Ext.P1 judgment. Merely for the reason that a long period has elapsed after the termination of the petitioner from service, it cannot be possible to direct the respondents to pay him compensation without a proper culmination of the departmental proceedings. In



such circumstances, the impugned judgment passed by the learned Single Judge cannot be said as illegal.

Having considered the pleadings and materials on record and the submissions made at the Bar, we find no sufficient ground to interfere with the impugned judgment passed by the learned Single Judge and accordingly the appeals stand dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

sks