**HIGH COURT OF KERALA**

**Bench : Dr. Justice A.K.Jayasankaran Nambiar & Mr. Justice Syam Kumar V.M.**

**Date of Decision: 4th April 2024**

OP(KAT) No. 518 of 2023

**K. KARUNANIDHI …PETITIONER**

**VERSUS**

**STATE OF KERALA and OTHERS …RESPONDENTS**

**Legislation:**

Kerala Civil Services (Classification, Control & Appeal) Rules, 1960

Articles 227 of the Constitution of India

**Subject:** The petition challenges the order of the Kerala Administrative Tribunal (KAT) dated 14.11.2022 in OA No. 160 of 2019, regarding the penalty imposed on the petitioner by barring three increments with cumulative effect due to alleged misconduct while serving in the Revenue Department.

**Headnotes:**

Misconduct and Disciplinary Action – Petitioner faced charges of unauthorized absence, misbehaviour, and irregularities, leading to suspension and disciplinary action including barring of increments – Original application to KAT challenging the penalty imposed was dismissed. [Paras 2, 3]

Judicial Review of Tribunal's Order – Petitioner sought High Court intervention under Article 227 of the Constitution – Argued that KAT and respondents ignored previous orders (Annexures A12, A14) absolving him of certain charges, and that the penalty was harsh and procedurally flawed. [Paras 5, 7]

Respondents' Stance – Respondents countered that petitioner did not adhere to stipulated conditions in previous orders and failed to contest

multiple other charges – Argued procedural correctness of enquiry and imposition of penalty. [Paras 3, 8]

High Court's Assessment – HC found no violation of natural justice as petitioner didn't participate in enquiry despite notices – Tribunal's decision viewed as just, and petitioner's charges uncontroverted – Penalty deemed proportionate considering the gravity of repeated misconduct. [Paras 12, 13]

Conclusion – HC refrained from interfering with Tribunal's order under Article 227 as it did not find any significant legal or procedural error justifying such intervention – OP (KAT) dismissed, no costs. [Para 13]

**Referred Cases:**

- Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Company Ltd. [(2014) 6 SCC 434]
- Kendriya Vidyalaya Sangathan v. Kendriya Vidyalaya Non-teaching Staff Association [2008 (1) KLT 34]
- Mohammad Swalleh v. Third Additional District Judge, Meerut [(1988) 1 SCC 40]
- Estralla Rubber v. Dass Estate (P) Ltd. [JT 2001 (7) 657]
- M/s.Garment Craft v. Prakash Chand Goel [JT 2022 (1) SC 146]
- Celena Coelho Pereira (Ms.) v. Ulhas Mahabaleshwar Kholkar [JT 2009 (13) SC 602]

**Representing Advocates:**

**For Petitioner: Smt. A. Lowsy**

**For Respondents: Govt. Pleader Smt. Sunil Kumar Kuriakose**

**J U D G M E N T**

**Syam Kumar.V.M., J.**

Petitioner challenges Order dated 14.11.2022 of Kerala Administrative Tribunal, Thiruvananthapuram (KAT) dismissing O.A.No.160 of 2019 filed by him. The said OA was filed by the petitioner

challenging Annexure A16 and A18 Orders issued by the 2nd and 1st respondents respectively whereby three increments of the petitioner were barred with cumulative effect.

2. The facts in brief:

Petitioner had joined the Revenue Department as a Village man on 07.04.1992. He was promoted to the post of a Village Assistant in the year 1998. Subsequently in 2000 he was promoted as Special Village Officer and thereafter in 2010 as a Village Officer. He retired from service on 31.05.2020 while working in the cadre of Deputy Tahsildar. While working at Pathanapuram Taluk office as UD Clerk, petitioner was suspended from service by the District Collector, Kollam vide Annexure A1 alleging *inter alia* unauthorised absence. Consequently he was issued with Annexure A2 Memo of Charges and Annexure A3 statement of allegations. Petitioner preferred Annexure A4 reply, refuting the allegations and also requested that he may be permitted to join duty. Since his requests were not favourably responded to by the Tahsildar, he approached this Court vide Writ Petition (C) No.25769 of 2008. Pursuant to the interim orders therein, petitioner was reinstated and permitted to work in RR Section C 2 seat of Re-survey Office, Karunagappally vide Annexure A5. In furtherance of the charges, a hearing was conducted by the District Collector, Kollam on 24.03.2010 in which Petitioner participated and submitted a hearing note. Pursuant to the hearing, petitioner was again served with a Memo of charges by the 2nd respondent to which petitioner submitted Annexure A6 explanation. However, his explanation was rejected and an enquiry officer was appointed to enquire into the charges against the petitioner. After an interregnum, during which there were some changes and substitutions of enquiry officers, the petitioner was served with Annexure A 10 show cause notice from the 2nd respondent wherein it was stated

that the alleged misconduct has been proved against him and that it has been proposed to withhold three of this annual increments with cumulative effect. Thereafter, Petitioner was served with Annexure A11 Order issued by the 2nd respondent which confirmed the above proposal. Aggrieved by the confirmation of the proposal to impose penalty, Petitioner preferred Annexure A13 appeal before the 1st respondent. He was called for a hearing pursuant to which Annexure A14 Order was issued by the 1st respondent setting aside Annexure A11 with a direction to the Land Revenue Commissioner to inquire into the matter afresh and pass Orders. The reasons stated by the 1st respondent for setting aside the Annexure A11 Order imposing penalty on the petitioner was that the inquiry report leading to the same lacked clarity in identifying sustainable and unsustainable charges and that as per the relevant norms contained in Kerala Civil Services & (CCA)Rules, 1960, the inquiry officer ought not to have made recommendations regarding penalty. Pending the fresh enquiry as directed in Annexure A14, Petitioner's increments were not disbursed and hence he moved the KAT filing O.A.No.629 of 2017. KAT vide an interim Order directed the respondents to sanction increments due to the petitioner to disburse the same. Petitioner alleges that the said interim Order of the KAT was not complied with and that while the said OA was pending, enquiry proceedings were further pursued allegedly behind his back leading to issuance of Annexure A15 enquiry report dated 18.03.2017. The said inquiry report was accepted by the 2nd respondent and a punishment barring three increments with cumulative effect was issued vide Annexure A16 order dated 12.10.2017. Petitioner preferred an appeal before the 1st respondent against the Annexure A16 Order and the pending O.A.No.629 of 2017 was disposed of by the KAT vide Annexure A 17 Order with a direction to the 1st respondent to consider the appeal filed by the petitioner

challenging Annexure A16 and to dispose of the same. Subsequent thereto, petitioner was served with Annexure A18 Order dated 05.12.2018 whereby his appeal was dismissed and the penalty to bar his three increments was confirmed. Petitioner then moved the KAT filing OA No. 160 of 2019 *inter alia* seeking to set aside Annexure A18 Order. The impugned Order was rendered by the KAT in the said OA No. 160 of 2019.

3. Respondents filed reply statements in the OA and the Reply statements filed by the 1st and 2nd respondents are more or less on similar lines. They controverted the averments of the petitioner in the OA and *inter alia* stated that the petitioner is a regular offender in terms of unauthorized absence from duty, misbehaviour and also for irregularities and serious lapses like loss of service book kept in office under his care and custody. Learned Government pleader referring to Annexures A11 and A15 pointed out repeated and recurring instances of violations perpetrated by the petitioner. Various actions initiated against the petitioner including a vigilance case have been referred to by the respondents in their reply. That three opportunities for hearing were intimated to the petitioner by the Enquiry officer before issuing Annexure A15 enquiry report and that the petitioner did not choose to participate inspite of such intimation has also been pointed out. The reply also stated that after giving the formal enquiry report to the petitioner, the 2nd respondent had heard the petitioner on 21.06.2017 and that he had preferred a defence statement. That the arguments of the petitioner were duly considered and that records relating to his disciplinary action were verified by the 2nd respondent prior to issuing the show cause notice dtd. 07.07.2017 was also averred in the reply statements. The respondents thus contended that Annexures A16 and A 18 are legal, sustainable and that considering the gravity of the offences committed by the petitioner

the punishment of imposing a penalty of barring 3 annual increments with cumulative effect is proper.

4. Petitioner filed a rejoinder to the reply statement filed by the 2nd respondent in the OA *inter alia* contending that the punishment of barring of one increment without cumulative effect was imposed on him solely on the recommendation of the Vigilance and Anti Corruption bureau and that Annexure A 21 Order had been issued by the KAT affording him the liberty to file an appeal under Rule 35 of the Kerala Civil Service (Classification, Control & Appeal) Rules, 1960. Regarding the vigilance case registered against him mentioned in the reply statements, petitioner contended that he had moved this Court seeking to quash the FIR by filing WP (C) No. 22684 of 2014 which had been disposed of and that aggrieved by the said judgment, he proposes to move the Hon'ble Supreme Court. In the separate rejoinder filed by the petitioner to the reply statement filed by the 4th respondent, he had *inter alia* contended that the 4th respondent had no authority to issue an order directing recovery of three times the increment amount regarding an increment due only on a future date and which is later than the date on which the Order for recovery is issued.

5. The KAT considered the rival contentions and vide Order dated 14.11.2022 dismissed the O.A. The said Order of the KAT is assailed before usby the petitioner by filing the above OP (KAT).

6. We have heard Smt. A. Lowsy, learned Advocate appearing for the petitioner and the learned Government pleader appearing for the respondents. We have also gone through the pleadings before us.

7. The contentions of the learned counsel for the petitioner can be summarized as follows:

# Based on Annexure A12 Order: The KAT erred in upholding Annexure A18 Order overlooking Annexure A12 Order dtd. 26.10.2010 which had already relieved the petitioner from charges of unauthorised absence. Annexure A12 which is earlier in point of time to Annexure A16 and Annexure A18 dated 12.10.2017 and 05.12.2018 respectively, ought to have weighed with the 1st and 2nd respondents. Failure to refer to and take note of Annexure A12 vitiates both Annexure A16 and Annexure A18 and Tribunal overlooked the same while rendering the impugned Order.

# Based on Annexure A14 Order : Annexure A14 Order had already set aside Annexure A11 imposing penalty on the petitioner. Annexure A14 had correctly taken note of the delay and procedural flaws in conducting the enquiry leading to Annexure A11 and that the gravity of the punishment imposed therein pointed towards malafide intention on the part of the respondents.

# Punishment imposed on the petitioner was harsh and the Kerala Public Service Commission was not consulted before imposing the major penalty of barring three increments with cumulative effect.

# Direction in Annexure A14 regarding existing and non existing charges has not been followed even in Annexure A15 which lead to Annexure A16 & A18 and hence the enquiry proceedings initiated without finalising the existing charges is void and liable to be set aside.

# Annexure A15 enquiry report suffers from the vice of Non application of mind and malafides. Hence Annexure A16 which had been accepted and penalty imposed and Annexure A 18 which confirmed the penalty are also bad in law.

# After the setting aside of the Annexure A11 enquiry report, it was imperative to issue to the petitioner a fresh memo of charges along with the statement of allegations.

# The anomalies with respect to Annexure A11, which led to its setting aside subsists with respect to Annexure A15 also since a revised memo of charges was not issued.

# Petitioner was not granted an opportunity to cross examine and point out the existence of Annexure A12 and hence Annexure P16 and P18 are

hit by non compliance of natural justice principles.

# Rule 15 of the Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 pertaining to procedure for imposing major penalties was not complied with in the matter concerning the petitioner.

8.Per contra, the Learned Government Pleader's contentions, put

succinctly, are as follows:

# The reliance placed on Annexure A12 Order is unsustainable since the petitioner has not chosen to comply with the specific requirement in Annexure A12 which mandated that he shall prefer an application for 14 days leave if he aspires to condone his unauthorised absence.

# After having failed to comply with the mandates in Annexure A12 Order, the petitioner cannot be heard to claim benefit under the self same Order.

# Of the 10 distinct and separate charges levelled against the petitioner in the inquiry proceedings, Annexure P12 concerns only one charge of unauthorised absence on specified dates and the rest of the charges remain uncontroverted.

# Contention that Annexure A11 Order had been cancelled vide Annexure A14 and hence the subsequent inquiry proceedings which culminated in Annexure A15 report is vitiated is unsustainable. #

Cancellation of Annexure A11 had no impact whatsoever on the subsequent proceedings initiated and that the cancellation was for the specific reasons stated in Annexure A15 which does not impact the inquiry that followed.

# Issuance of fresh memo was not necessitated since cancellation of Annexure A11 per Annexure 14 was only on technical grounds concerning the procedure followed by the enquiry officer and the merits of the charges were never touched upon or contradicted in Annexure A14 necessitating issuance of fresh memo of charges. # Petitioner had been intimated thrice and he had chosen not to appear substantiate his contentions or present Annexure 12 before the Enquiry officer.

# Annexure A15 report and Annexures A16 & 18 Orders issued in furtherance thereof are legally valid and sustainable to be is also pointed out by the Government Pleader.

# In **Chatrapal V. State of Uttar Pradesh** (reported in 2024 KHC Online 6078) the Hon'ble Supreme Court has reiterated the settled law that ordinarily the findings recorded by the inquiry officer should not be interfered by the appellate authority or by the writ court and that if the finding of guilt recorded by the inquiry officer is based on perverse finding, the same can be interfered with.

# Petitioner has not been able to point out any perversity with respect to Annexure A15 report and hence Annexures A16 and A18 consequential Orders do not merit any interference.

9. Based on the said pleadings and the contentions raised by the learned counsel, the points to be considered in OP (KAT) are whether the Annexure A16 and A18 Orders imposing penalty on the petitioner have been rendered without framing proper charges and

overlooking the setting aside of the earlier Order and whether while proceeding afresh against him with charges, the petitioner was afforded with an effective opportunity of being heard enabling him to refute the charges levelled. However at the threshold it is relevant to examine whether the Order of the Tribunal suffers from any vice that could subject itself to scrutiny and interference by this Court in exercise of its jurisdiction under Art. 227 of the Constitution of India, invoking which the above OP (KAT) has been preferred by the petitioner.

10. The scope and extent of the jurisdictional interference permitted under Art. 227 of the Constitution of India is settled in a catena of cases rendered by the Hon'ble Supreme Court and by this Court. In **Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Company Ltd. and another** [(2014) 6 SCC 434] the Hon'ble Supreme Court has held that it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate the evidence and record its findings on contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. It has been held therein that the High Court had no reason to interfere with the the Award of the Labour Court since was based on sound and cogent reasoning, which had served the ends of justice. Regarding the question of interference with the order of a Tribunal, a Division Bench of this Court has in **Kendriya Vidyalaya Sangathan v. Kendriya Vidyalaya Non teaching Staff Association** (2008 (1) KLT 34) held that even assuming the order of the Tribunal is without jurisdiction, the court need not interfere with the same if justice has been rendered by the Tribunal. This Court had in the said judgment followed the dictum laid down by the

Honourable Supreme Court in the case of **Mohammad Swalleh and others v. Third Additional District Judge, Meerut and another** [(1988) 1 SCC 40] wherein the same principle had been laid down. The scope and ambit of the power and jurisdiction by a High Court under Article 227 was again explained by the Hon'ble Supreme Court in **Estralla Rubber v. Dass Estate (P) Ltd.** [JT 2001 (7) 657]. It was held that the The High Court is not vested with any unlimited prerogative to correct all kinds of hardships or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. The power under Article 227 is to be exercised sparingly in appropriate cases like when there is no evidence at all to justify or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or Tribunal has come to and that it is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. The Hon'ble Supreme Court has again considered the scope of High Court jurisdiction under Article 227 in **M/s.Garment Craft v. Prakash Chand Goel** [JT 2022 (1) SC 146] wherein the apex court following its own judgment laid down in **Celena Coelho Pereira (Ms.) and others v. Ulhas Mahabaleshwar Kholkar and others** [JT 2009 (13)] SC 602]. It has been held that *"the High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, re-weigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported."*

11. Having thus reminded ourselves of our jurisdictional powers under article 227, we proceed to consider the rival contentions raised.

12. We note that the Tribunal has duly considered all the contentions of the petitioner in detail. We find that Annexure A15 enquiry

report has considered the ten different charges laid against the petitioner, each of which though serious and substantial remains uncontroverted. The petitioner, who admittedly did not turn up for the enquiry proceedings in spite of several notices from the enquiry officer, cannot allege violation of natural justice. The Tribunal has rightly concluded that the petitioner cannot contend that he was relieved of all charges levelled against him since Annexure A12 order only refers to certain instances of unauthorised absence in March 2010. The Tribunal's finding that no justification has been put forth by the petitioner regarding the other major charges levelled against him in the subsequent enquiry remains unassailed. The Tribunal's reasoning in the impugned Order, that it did not fall within its realm to reassess the evidence that was adduced

during the enquiry proceedings as it was within the domain of the disciplinary authority is valid and trite. The contentions raised by the petitioner purportedly under the provisions of Kerala Civil Service (Classification, Control & Appeal) Rules, 1960 have not been substantiated either before the Tribunal or before this Court. Taking note of the number and nature of charges levelled against the petitioner and consistent repetitive nature of the delinquencies from his part, the finding of the Tribunal that when compared to the charges raised against him, the punishment imposed on the petitioner cannot be held to be highly disproportionate is valid and proper. In the facts and circumstances of the case, the Tribunal has arrived at a just decision in exercise of the powers conferred on it. Even assuming that the Tribunal had erred in appreciation of facts as contended by the petitioner, in the light of the settled law as laid down by the Hon'ble Supreme Court and followed by this Court in the decisions mentioned above, the conclusion arrived at in the Order of the Tribunal being just, fair and legal, this court in exercise

of its powers under Article 227, ought not to interfere with the same.

For the reasons mentioned above, we find no scope to interfere with the Order dated 14.11.2022 in O.A.No.160 of 2019 of the Kerala Administrative Tribunal, Thiruvananthapuram. The OP (KAT) is accordingly dismissed. No costs.