
(2008) 01 KL CK 0031

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37890 of 2007

Abdul Nazeer M.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2008) 1 ILR (Ker) 657 : (2008) 2 KLJ 296 : (2008) 1 KLT 757

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : T.R. Ravi and P.S. Murali, for the Appellant; Nandakumar (GP), for the Respondent

Final Decision : Allowed

Judgement

V. Giri, J.—A question of common occurrence relating to the competence of an authority in one department to order the suspension of a Subordinate Officer received on deputation from another department arises for consideration in this case. Resolution of the same centres around the interpretation of Rules 10 and 19 of the Kerala Civil Services (Classification, Control and Appeals) Rules. The question, in my view, seems to be res integra. I, therefore, heard the counsel on either side elaborately. Petitioner, who entered Government service as Second Grade Surveyor in the Department of Survey and Land Records, was posted on deputation in various departments. He was suspended by the Divisional Forest Officer, Thrissur Division, second respondent herein. Said order of suspension has been challenged by he petitioner essentially on the ground that he could be suspended either by the appointing authority or by the authority to which the appointing authority is subordinate or by an authority who is empowered in that behalf. Contention is that the Divisional Forest Officer lacks jurisdiction to suspend an officer who belongs to the Department of Survey and Land records and who is posted in Forest department only on deputation. The scope of Rule 10 of Kerala Civil Services (CC & A) Rules, 1960, hereinafter referred to as "Rules",

falls for consideration in this writ petition. Since the challenge is essentially on the ground of lack of jurisdiction, I have heard the counsel on either side only in relation to the said question.

2. Petitioner who entered service as Second Grade Surveyor, was later promoted as First Grade Surveyor with effect from 19-6-2007. Petitioner was deputed to the Divisional Forest Office, Thrissur, pursuant to an earlier deputation to various Departments. While so, by Ext. P7 order dated 22-11-2007, petitioner was suspended from service by the second respondent, Divisional Forest Officer, Thrissur. The relevant portion of Ext. P7 reads as follows:-

It is convinced that there is a prima facie evidence of dereliction of duty and disobedience of the orders of the superiors on the part of Sri. M. Abdul Nazeer, 1st Grade Surveyor.

In the circumstances explained above, Sri. M. Abdul Nazeer, 1st Grade Surveyor of this division is placed under suspension with immediate effect pending disciplinary action.

He is eligible for subsistence allowance as per rules.

3. I have heard the learned counsel for the petitioner Mr. T.R. Ravi and the learned senior Government Pleader Mr. Nandakumar. Learned counsel for the petitioner submits that the power to suspend a Government servant is contained in Rule 10 of the Rules. Relevant portion of Rule 10 reads as follows:-

The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may at any time place a Government servant under suspension.

4. At least three different authorities are contemplated by Rule 10(1) of the Rules, as possessed with the requisite jurisdiction to place a government servant under suspension. Appointing authority is obviously competent to do so. An authority to which the appointing authority is subordinate is also competent. Since normally the Head of the department and the authority to which Head of the department is subordinate, which in most of the cases would be the Government itself. Since the Government is either the appointing authority or if an authority other than the Government is an appointing authority then the former is subordinate to the Government, in all cases government would obviously have jurisdiction to place any Government servant under suspension. There is a third category which is contemplated by Rule 10. This would be "any other authority empowered by the Government". The empowerment of an officer to place any other subordinate under suspension will obviously have to be done by the Government itself. In consonance with the principle that succeeding words in a statute will normally take colour from the earlier part, "Other authority" who could be empowered by the Government would normally be either the appointing authority of the concerned Department or authority to which appointing authority could otherwise be subordinate. This principle obviously would be kept in mind

by the Government, if at all it decides to empower any officer to suspend a subordinate officer, over whom the former would not normally exercise disciplinary control as in the case of an officer received on deputation.

5. Going by the above principles, obviously two authorities would be competent to place the petitioner under suspension. One would be the appointing authority of the petitioner normally the Director of Survey and Land records and other would be Government itself. If any authority other than the aforementioned two, claims competence to suspend the petitioner, such authority must flow from a specific empowerment made by the Government.

6. It is fairly admitted that the second respondent, Divisional Forest Officer, has not been empowered by the Government to place an officer who is posted in the Forest Department on deputation, under suspension. Obviously the Divisional Forest Officer is not the appointing authority of the petitioner as well. In other words, second respondent, Divisional Forest Officer would not be comprehended by any one of the three categories contemplated by Rule 10 of the Rules.

7. Mr. Nandakumar, learned senior Government Pleader while accepting this position brought to my notice Rule 19 of the Rules, relevant portion of which reads as follows:-

Where the services of a Government servant are lent to another Government-Central or State or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority") the borrowing authority shall have the powers of the Appointing Authority for the purpose of placing him under suspension and of the Disciplinary Authority for the purpose of taking a disciplinary proceeding against him.

8. Contention is that even where the services of Government servant are lent to another Government or an authority subordinate thereto, the borrowing authority shall have the power to place a delinquent employee under suspension. A logical extension of this argument would be that one department of the Government would be considered as borrowing authority in relation to the service rendered by the Government servant who actually belongs to another department. Is such an inference warranted by a reading of Rule 19 of the Rules?

9. I do not think so. Firstly Rule 19 contemplates a situation where services of a Government servant are lent to another Government. It also comprehends a situation where services of a Government servant are lent to an authority which is subordinate to another Government. Third category comprehended by Rule 19 would be where the services of a Government servant are lent to a local authority. Fourth category would be where services are lent to "other authority". I would again apply the principles of *Noscitur-a-sociis*. to the collocation of the words contained in the 1st Part of Rule 19 to ascertain whether "other authority", even if one stretches the normal rule of interpretation beyond the literal meaning, extends to another department of the same Government. In my view, Rule 19, primarily, is applicable only when service of a Government servant is

lent to another Government. Logic obviously would apply where services are lent to an authority which is subordinate to another Government. That the provisions would comprehend local authority also seems to be logical. After all a local authority being a statutory entity is governed by the provisions of a municipal law and the rules subordinate thereto. "Local authority" could either be a municipal authority or in certain cases could be a statutory authority. For example, the authorities under the Town Planning Act. This leaves the last category namely, "other authority". In my view words "other authority" which occur in Rule 19 of the Rules should either refer to an authority which has a same trappings of a local authority or it could be an authority which would be comprehended by Article 12 of the Constitution, being an instrumentality of the State. But Rule 19 cannot be stretched to a case where it would comprehend the services of a Government servant who belongs to one department of being sent on deputation to another Department under the same Government. In my view Rule 19 essentially deals with the situation where service of a Government servant is lent to an authority where the ultimate power rests in an authority other than the Government which lends the services of the Government servant.

10. Mr. Nandakumar also refers to paragraph 56 of Manual of Disciplinary procedure. Paragraph 56 seems to be a verbatim re-production of Rule 19 of the Rules and in my view the provision would be susceptible to the same interpretation.

11. For all these reasons, I am of the view that the petitioner is entitled to succeed in so far as the challenge against Ext. P7 is concerned.

12. Writ petition is therefore, allowed. Ext. P7 order is quashed. But, I make it clear that I have interfered with Ext. P7 order only on the premise that the second respondent lacks jurisdiction to suspend a Government servant like the petitioner who has been posted in the Forest Department on deputation. I further make it clear that this judgment will not stand in the way of the Government or other appropriate authority taking action, against the petitioner if so warranted and if necessary. Obviously rights available to the petitioner in relation to any such action would also be unaffected by this clarification. Learned counsel for the petitioner submits that in the circumstances he has also moved his appointing authority namely Director of Survey and Land records, for cancellation of deputation and also for payment of salary, which he says he has been deprived of since July 2007. In the facts and circumstances, third respondent is directed to take appropriate action on Exts. P4 and P5 within a period of one month from the date of receipt of a copy of this judgment.