
(1992) 01 RAJ CK 0073
In the Rajasthan High Court
Case No : Civil Writ Petition No. 145 of 1991

Ashok Kriplani

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1992) 1 WLN 272

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Judgement

Rajesh Balia, J.—The petitioner has raised a short question--whether the petitioner is entitled to current emoluments or not ?. The circumstances giving rise to the petition are as under:

2. The petitioner was appointed in the Public Works Department of the State of Rajasthan as result of selection through R.P.S.C. examination held in 1983 as an L.D.C; The petitioner left the office after taking two days" leave on 30th September, 1985 which the petitioner urges to have been extended from time to time. Ultimately, he reported for his duties in the month of April, 1990 but he was not allowed to join the duties. Vide order Ex. 2 dated 11.4.1 990, the petitioner was served with a charge-sheet for remaining wilfully absent from duties with effect from 30.9.1985. Vide order Ex. 3 dated 4.12.1990, an Inquiry Officer has been appointed by the Chief Engineer Public Works Department for submitting his report. It is common ground between the parties that the inquiry is still pending and no final order has been passed. In these state of affairs, the petitioner contends that neither any suspension order has been passed against him nor removal order from . service has been passed against him, yet he has not been paid his salary from April, 1990 since he joined-duties, nor it is made clear as to his status in service whether is of a suspended employee or a removed incumbent or a person continuing in service. His contention is that unless removal order is passed against him in accordance with law, he continues

to be in service and he is entitled to his pay and other emoluments with effect from the date he joined his duties in April, 1990. He further contends that in the absence of any order suspending him, he cannot even be treated as under suspension and the emoluments cannot even be reduced to subsistence allowance, in the absence of any order of suspension.

3. A reply has been filed on behalf of the State. It is contended by learned Counsel for the respondents that since the petitioner remained absconding from duty for years together, that is, from 30.9.1985 till his alleged attempt to join duties, he cannot be allowed to join his duties till the action under C.C.A. Rules which is in process is finalised by the competent authority, and, therefore, since he is not allowed to join duties, he is not also entitled to emoluments. Learned Dy. G.A. places reliance on Rule 23 of the Rajasthan Service Rules, 1951, Clause (b) of Sub-rule (1) of which reads as under:

(b). In case where a Government servant does not resume duty after remaining on leave for a continuous period of 5 years, he shall, unless the Governor in view of exceptional circumstances of the case, otherwise determines, be removed from service following the procedure laid down in the Rajasthan Civil Service (Classification, Control & Appeal) Rules.

4. Having carefully considered the contentions raised before me, I am of the opinion that the petition merits acceptance. Rule 23 on which reliance has been placed, is of no assistance to the respondents. Rule 23 only envisages that the Government Servant shall not be granted leave of any kind for a period exceeding 5 years and it further contemplates that after remaining absent continuously for 5 years, he may be removed, following the procedure laid down under the C.C.A. Rules, unless otherwise determined by the Governor. Thus, Rule 23 itself contemplates that even after continuous absence from duty, after 5 years, the termination of service is not automatic but the services can be brought to an end, rather the order of removal can be passed only after following the procedure laid down in CCA. Rules. Until then the incumbent will be continuous in service and, if he reported back on duty, he cannot be denied the status of being continued in service. If that status cannot be denied, after reporting back on duty, as a necessary consequence emoluments can also not be denied. In this connection, reference may be made to a decision of Supreme Court in *Jai Shanker Vs. State of Rajasthan*, . In somewhat similar circumstances where one Jaishankar has over-stayed his leave, the same was considered to have sacrificed his appointment under Jodhpur Service Regulations and he was not allowed to join his duties by treating his over- staying as automatic removal. Jaishankar has. challenged his removal from service by a civil suit. Jaishanker having failed in the High Court after being successful before the District Court, had approached to the Apex Court. Their Lordships of Hon"ble Supreme Court while allowing the appeal filed by said Jai Shankar, observed as under:

A discharge from service of an incumbent by way of punishment amounts to removal from service, and the constitutional protection of Article 311 cannot be

taken away from him by contending that under the Service Regulations the incumbent himself gives up the employment and all that the Government does not to allow the person to be reinstated. It is true that there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal and one circumstance deserving removal may be over- staying one's leave. But a person is entitled to continue in service if he wants until his service is terminated in accordance with law. It is true that the Regulation speaks of reinstatement but what is really amount to is that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. No doubt the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but it cannot order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his pleas succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed no matter how the Regulation described it.

5. Thus, it is apparent that even where Regulations provide for automatic cassation of employment, their lordships were of the view that after advent of Constitution, removal must conform to the conditions of Article 311 and in the absence of a proper order passed as a result of inquiry, the relationship of master and servant does not come to an end. It was specifically observed by the Apex Court that over-staying one's leave may be one circumstance deserving removal but a person is entitled to continue in service if he wants, until his service is terminated in accordance with law. Therefore, unless the petitioner's services are terminated in accordance with law, he is entitled to continue in service as long as he wishes to continue. The petitioner by joining the duty only expressed his intention to continue in service. The joining to the petitioner cannot be denied for want of an order from competent officer to permit him to join, because that would amount to refusing permission to join without passing an order of removal which will amount to removing petitioner from service, violating the provisions of Article 311 of the Constitution. Same is not permissible. In this view of the matter, the respondents are not entitled to refuse

the petitioner from joining duty when he present himself on duty. No doubt they can take recorded to all provisions of the rules under which inquiry against him can be conducted and pass necessary orders in aid of that inquiry from time to time but until that is done, the petitioner is entitled to continue in service and to all consequential benefits including the benefit to emoluments as a result of joining his duty.

6. The petition is, therefore, allowed. The respondents are directed to permit the petitioner to join duty and grant him all consequential emoluments with effect from the date of his joining duty until final outcome of the inquiry which is pending against him. However, there is no impediment to the respondents from passing appropriate orders under the C.C.A Rules while inquiry is pending against the petitioner. Since the fact about petitioner's actual date joining in the month of April is disputed, the petitioner will be entitled to relief relating to arrears of emoluments with effect from the date of filing of the writ petition.

7. The petition stands disposed off on merits, as indicated above.