
(1998) 11 KL CK 0072
In the High Court Of Kerala
Case No : W.A. No. 404 of 1995

Devassy

APPELLANT

Vs

KSEDC and Others

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Citation : (1999) 1 KLJ 103

Hon'ble Judges : K. Narayana Kurup, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : T.O. Xavier and Johny Sebastian, for the Appellant; T.P. Kelu Nambiar and Alexander Thomas, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan, J.—The unsuccessful petitioner is the appellant in this appeal. The appellant filed the original petition for a mandamus to declare that he is entitled to get benefit contained in Ext. P3 thereby leave without pay to be extended for 10 years and for a direction to the Managing Director, Kerala State Electronic Development Corporation Ltd., that the appellant is eligible to avail the benefits contained in Ext. P3. The appellant was working as Deputy Manager (Finance). He availed of an opportunity for employment abroad. He took leave for a period of five years from 5-2-1989. Thereafter, he wrote a letter on 8-10-1993 seeking extension of leave without pay upto 31-10-1995. The respondents issued a memorandum under Ext. P2 which reads thus:

Mr. P.C. Devassy Kutty, Dy. Manager (Fin.), Keltron Controls, Aroor, was sanctioned leave without pay for employment abroad for a total period of 5 years w.e.f. 5-2-1989 upto 4-2-1994. Mr. P.C. Devassy Kutty has vide his letter dt. 8-10-1993 requested for extension of leave without pay upto 31 dt. October 1995. Mr. Devassy Kutty is informed that in terms of clause 10 of the Circular No. DP/022/92 dated 30-4-1992 on grant of leave without pay for taking up employment abroad LWP can be sanctioned only upto a maximum period of five years during his entire service in the Corporation. Therefore Mr. P.C. Devassy

Kutty is informed that he will not be granted LWP under any circumstances after 4-2-1994. Accordingly, his request for further extension of LWP cannot be considered.

He is required to resume duty on 5-2-1994 at our Delhi Branch Office, failing which it will be presumed that he has abandoned employment with us and his lien in service will be lost without intimation to him. Consequently, his name will be struck off the rolls of the Corporation, if he fails to report for duty soon after the expiry of the leave without pay granted to him.

The appellant has not challenged the proceedings of the respondents under Ext. P2. However, he filed the original petition for a declaration that he is entitled to the benefit contained in Ext. P3". We have gone through Ext. P3 also. It is seen from Ext. P3 that the Government have received various representations from various associations of the employees of public sector undertakings under the Industries Department requesting to raise the maximum period of leave without allowance to take up employment abroad. The Government have examined the request in detail and have raised the maximum period of leave without allowance that may be sanctioned to an employee of public sector undertakings under the administrative control of the Industries Department for the purpose of taking up employment abroad during his entire service to 10 years subject to the conditions laid down in Circular No. 10523/J3 90/ID dated 26-8-1990. Ext. P3 circular was issued on 31-3-1992. The respondents by their office Memorandum dated 19-11-1993 declined to extend the leave without pay after 4-2-1994 and have directed the appellant to report for duty on 5-2-1994 at Delhi Branch. The appellant, in spite of the said proceedings, did not join duty as directed. Even today, the appellant is working in a foreign country. The conduct of the appellant in not rejoining duty at Delhi Branch of the respondent as per Ext. P2 order has to be taken note of very seriously. An employee in a Government controlled company who holds lien in the parent department cannot continue to work in a foreign country after his request for extension of leave without allowance has been rejected. He ought to have obeyed the order and joined the post. Instead, the appellant continue to work in a foreign country. In our opinion, the conduct of the appellant in not reporting duty has to be treated as abandonment of employment.

2. A reading of Ext. P3 would go to show that the maximum period of leave without allowance that can be sanctioned to the employees of public sector undertakings under the Industries Department during his entire service is five years. However the Government on a consideration of the representations received from various associations have decided to raise the maximum period of leave without allowance that may be sanctioned to an employee of Public Sector Undertakings under the administrative control of the Industries Department for the purpose of taking up employment abroad during his entire service to 10 years. The extension of period upto 10 years is also subject to the conditions laid down in Circular dt. 26-8-1990. We, therefore, of opinion that the appellant has

no vested right to get an order of extension of leave without allowance for 10 years. It is for the management to consider the representation of the appellant and to take a decision taking into account the exigencies of service and circumstances.

For all the foregoing reasons, we are of opinion that there is absolutely no merit in this Writ Appeal. The Writ Appeal fails and dismissed. No costs.