
(1983) 08 KL CK 0010
In the High Court Of Kerala

E. Kunhiraman Nair

APPELLANT

Vs

Superintendent of Post Offices and Others

RESPONDENT

Date of Decision : 16-08-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (1984) 1 ILR (Ker) 162 : (1984) 1 LLJ 135

Hon'ble Judges : P. Subramonian Poti, C.J.;Fathima Beevi, J

Bench : Division Bench

Judgement

P. Subramonian Poti, C.J.—The petitioner was provisionally appointed as Extra Departmental Branch Post Master at Kunnathur Branch Office within the Cannanore Division. The appointment originally was for a period of four months. But he was again appointed provisionally as Extra Departmental Post Master for another period of three months in continuation of the earlier appointment. There was yet and her appointment in continuation of the first two appointments for a period of three months. Such services started from 9th January, 1978. While the petitioner was so functioning as Extra Departmental Branch Post Master he was served with a memo dated 23rd September, 1978 informing him that under Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules, 1964 the services of the petitioner was being terminated with immediate effect. Ext. P2 is the copy of that order dated 23rd September, 1973. In the same order it was mentioned that the 3rd respondent was being selected and appointed as Extra Departmental Branch Post Master. Later another memo dated 30th September, 1978, was served on the petitioner intimating the petitioner that in the earlier order Ext. P2 after the words "with immediate effect" the words "on administrative grounds" is added. Ext. P3 is that order. Though the petitioner attempted to take up this matter before the Director of Postal Services, Cannanore Division he did not succeed. Ext. P5 is the order on Ext. P4 representation submitted by the petitioner dismissing the representation. Thereupon the petitioner has moved this Court.

2. The main challenge to the order is that it is not in accordance with Rule 6 of the Extra Departmental Agents (Conduct and Service) Rules, 1964. It is the complaint of the petitioner that Ext. P2 order is not a speaking order, that Ext. P3 cannot operate to amend Ext. P2 and even if it is assumed otherwise it is still not a speaking order. The grounds on which the petitioner's services have been terminated ought to have been indicated without merely referring to administrative ground. That is because it is open to the petitioner to take up the matter before higher authorities by way of effective representation and would be possible only if reason is indicated in Ext P2 to the knowledge of the petitioner.

3. A counter-affidavit has been filed in this case by respondents 1 and 2. The counter-affidavit, we may mention at the outset, is completely silent about the specific administrative ground which necessitated the termination of the service of the petitioner. In other words, even now what the reason for terminating the services of the petitioner was, has not been disclosed to the Court nor has the relevant files been placed before us. Perhaps it is in line with the stand taken by the Union Government in such matters in this Court in earlier cases where the stand taken was that it is not for the Government to disclose reasons for termination.

4. This court had occasion to consider the propriety of an order passed under Rule 6 of the Extra Departmental Agents (Conduct and Services) Rules, 1964, in the case in A.K. Sathi v. The Senior Superintendent of Post Offices 1973 KLJ 501 Rule 6 which is the rule invoked in this case was invoked in that case also. That rule reads:

Termination of services--the services of an employee shall be liable to termination by the appointing authority at any time without notice for generally unsatisfactory work within three years from the date of appointment or any administrative ground unconnected with his conduct.

In that case the order terminating the services of the appellant did not mention any ground for termination just as Ext. P2 in this case did not indicate any ground for termination. This Court took the view that an employee like the appellant therein could have been dismissed only on one of the two grounds mentioned in the rule namely either for generally unsatisfactory work or on any administrative ground. Since no ground was mentioned in the order of dismissal the court held that rule had not been complied with. Though it was attempted to be argued in that case that this was not necessary, the Court did not entertain the plea. The learned single Judge of this Court felt that the decision in Sathi v. The Senior Superintendent 1973 KLJ 501 required reconsideration and that is the reason why this case has been referred to a Division Bench.

5. We see no reason for reconsideration of the decision in 1973 KLJ 501 It is now well settled that it is open to the Court to judicially review orders even administrative in nature if such orders affect the rights of citizens. Such orders would be bad by reason of resort to process not contemplated by law or by

noncompliance with the process contemplated by law. When there is specific statutory requirement that an order of termination under the rules could only be for reasons it goes without saying that any order without indicating the reasons would be illegal and the termination would be bad. If the services of even a temporary employee" is dispensed with while his juniors are repaired it would certainly be arbitrary and would amount to unfair discrimination and that is the reason why that order would be challengeable in a court as violating Article 14 of the Constitution. It may be that there was nevertheless good reason to send out the senior retaining the junior and if such good reason is shown the order need not be taken to be vitiated. It may be that a statute provides for termination of service under certain circumstances and if termination be under such circumstances there will be no scope for challenging such termination unless the statutory rule itself is found to be illegal. There is no reason to doubt the correctness of the proposition stated in 1973 KLJ 501 that a termination under Rule 6 must be a termination which indicates the reason.

6. The question before us is whether such reasons have been indicated. Ext. P2 standing by itself is an order which does not indicate any reason for termination of the service of the petitioner. Therefore without anything more the order must be found to be not consistent with Rule 6. But it is said that the appointment of the petitioner being provisional and for specified periods from time to time, though he has been continuously in service, he cannot avail of the benefit of Rule 6, for, his termination without even a notice would be proper as it is contemplated even at the time of his appointment. We understand this plea to mean that the petitioner's services can be terminated even without compliance with Rule 6 and the termination here need not be taken to be in accordance with Rule 6. In fact perhaps anticipating this plea the petitioner had taken up the contention in the Original Petition that in terminating the services of the petitioner for certain reasons which might possibly have weighed with the first respondent there has been violation of Article 311 of the Constitution. If termination is as a punitive measure for reasons which could normally call for disciplinary action the termination without resorting to the provisions of Article 311 of the Constitution by giving an opportunity to the party to meet the case against him would be illegal termination. It is immaterial whether a person who claims the benefit of Article 311 is a temporary appointee or a permanent appointee. This has been settled as early as in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, Evidently it is to meet this plea that in the counter-affidavit itself respondents 1 and 2 have said in paragraph 6 thus:

Even otherwise, Article 311 is not attracted to cases where the services are terminated in bonafide exercise of a power given by a rule governing the conditions of services of the employee.

We are only indicating that the case of respondents 1 and 2 is that the termination was in accordance with Rule 6. Of course, that is the case as seen from Ext. A2 order also. Once it is that rule which has been invoked and once it

is the power under that rule that is relied on for the act of first respondent in terminating the services of the petitioner the only question we are called upon to consider is whether power has been exercised in accordance with the rule. Therefore the nature of appointment is not relevant.

7. Now we will come to the question whether Ext. P2 order is in the nature of Ext. P3. Any order passed and could be improved upon by any executive or administrative authority must be adjudged on the basis of the propriety of the reasons. Reasons may be apparent on the face of the order or it may be apparent from the concerned file. May be there are other valid reasons to support that order but reasons which did not come to the notice of the authority who passed the order. The order, if supported by irrelevant reasons at the time it was passed or based upon irrelevant material, cannot be supported by reference to a valid reason available when the order was passed or some other material available to the authority when the order was so passed if there was no advertance to such reason or material when the order was passed. In other words the propriety of an order which is subject to judicial review must be determined on the basis of materials and reasons which prompted that authority to pass that order and not materials and reasons which would support that order but which were not available to the authority at the time it passed the order. This is because in judicial review the court is not sitting in appeal to find whether the decision was right or wrong. That is not in the province of judicial review. The review concerns only the decision making process. If the approach to the decision making process was wrong or the decision making process resulted in placing reliance upon certain materials or grounds which would be irrelevant and would not support the order the process is vitiated and the judicial review would be concerned only with that and nothing more. This is succinctly stated by Krishna Iyer, J. in the decision in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . In paragraph 8 of the judgment the learned Judge states thus:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh (sic) in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, (sic) the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, .

Public orders publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Order are not like old wine becoming better as they grow older.

8. We have no material to show whether the addition of the words "on administrative grounds" made subsequent to the passing of an order is an addition based on materials available to the authority which passed Ext. P2 order when it passed the order or is an addition on account of the awareness of the reason subsequent to the passing of that order. If it be the latter that may not serve to support Ext. P2 order. Such material has not been placed before us nor has there been any appropriate pleading indicating what exactly was the situation when Ext. P2 order was passed.

9. We will assume that the reason as indicated in Ext. P3, namely, "on administrative ground" was also available when Ext. P2 order was passed and examine how far that order would stand even then. Rule 6 to which we have already adverted justifies termination of service either "for generally unsatisfactory work" or on "any administrative ground unconnected with his conduct". It is agreed that it is not any unsatisfactory work that prompted the first respondent to issue Ext. P2 order. It is not said to be because of "any administrative ground unconnected with his conduct". Whether the administrative ground had any connection with his conduct or not ought to be indicated and that is not indicated! That apart the more significant plea which appeals to us is that it is not sufficient to ritualistically state that the termination is on account of "administrative ground". What administrative ground weighed with the first respondent is to be stated. It is not as if the rule would be satisfied by simply stating that the services were terminated on administrative ground. There may be several reasons which may fall within administrative reason for termination and it is only the statement of reason which will make a person aware of the specific reason for termination of his service. Any person who is told that his services are dispensed with on administrative ground is not really told of the reason. It is as good as non-statement of any reason. It would be necessary to state what that administrative ground is for a person to understand why he is being sent out. Assuming that there has been omission to state ground or assuming that rule would be satisfied by reference to administrative ground even then respondents 1 and 2 are in default in not disclosing the reason for terminating when the matter came before this Court. There is a specific challenge in the Original Petition to the order of termination as arbitrary. That challenge calls for an answer, for, if any person is singled out for a treatment not generally meted out to all and that treatment is challenged as unfair it is the duty of the authority who effects such treatment to place before the Court the circumstances under which and the reasons for which termination is resorted to and if called upon to show the material which was available to enable the authority to infer so that this too must be placed before Court. Of course, if the reason is found to be relevant and if the Court finds that there was some material to support such reason the court may not sit in judgment over the ultimate decision. Reference may be made to a Full Bench decision of this Court in *Thankappan v. S.P Officer Telegraphs* 1977 KLT 362. The question there

concerns the propriety of an order passed under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The service of a servant governed by the said Rules was liable to termination at any time by notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government servant. The period of such notice was to be one month. Instead of giving notice of one month the service of the employee could be terminated immediately by offering the emoluments for a month. Unlike Rule 6 of the Extra Departmental Agents (Conduct and Services) Rules, 1964 with which we are concerned here, Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 enabled termination without showing any reason. Even so this Court took the view in the Full Bench decision adverted to that when there is a challenge to the order of termination on the ground that it was discriminatory, it was incumbent on the authority who terminated the service to show the reasons which justify such termination as otherwise the plea of discrimination would succeed. This decision was overruled by a Bench of five Judges of this Court in *Madhavankutty v. Post Master, Quilon* 1979 I LLJ 48 But the question came up before the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, and the view expressed by the earlier Full Bench of this Court has gained validity by reason of the decision of the Supreme Court. It will be profitable to advert to the following passage:

Where a charge of unfair discrimination is levelled with specificity, or improper motive are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting perhaps, in cases analogous to those covered by Article 311(2), proviso (C), the authority cannot withhold such information from the court on the lame excuse that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in *Breen v. Amalgamated Engineering Union* (1971) 1 ALLER 1148 "is one of the fundamentals of good administration" and, to recall the words of this Court in *Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others*, , in a *Government of Laws* "there is nothing like unfettered discretion immune from judicial reviewability". The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1).

10. It is in this background that we consider the counter affidavit in this case. Even though in the Original Petition the order Ext. P2 as modified by Ext. P3 is specifically challenged as arbitrary, inasmuch as the administrative ground which is said to have prompted the passing of that order is not disclosed, no attempt has been made in the counter affidavit to explain or indicate the administrative reason which weighed with the authority in passing the order of termination. There is only a reiteration that the termination was on administrative ground. That would not satisfy the requirement of R.6 and therefore the plea of

discrimination must succeed. In this view Ext. P2 as modified by Ext. P3 is quashed and the petitioner is found entitled to the benefit of service as if Ext. P2 modified by Ext. P3 had not been passed. This shall be worked out forthwith by respondents 1 and 2 and the resultant benefits made available to the petitioner. No costs.