

(2003) 12 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37893 of 2003 (J)

Francis A., Conductor, Kerala State Road Transport Corpn.

APPELLANT

Vs

Kerala State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 10(5)

Citation : (2004) 1 LLJ 789

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : H.B. Shenony and B. Ashok Shenoy, for the Appellant; James Koshy, for the Respondent

Judgement

M. Ramachandran, J.—The petitioner is an employee of the Kerala State Road Transport Corporation. He has been placed under suspension on April 25, 2002. Charge sheet has been issued, enquiry held and he was awarded the punishment of "removal from service" on November 29, 2002. This has been confirmed by the appellate authority.

2. The petitioner had thereafter approached the Kerala State Road Transport Appellate Tribunal by way of a revision and the revisional authority, by Exhibit P1 order, had set aside the punishment and remanded the case to the disciplinary authority with direction to dispose of the case in accordance with law, after affording full opportunity to adduce defence evidence and defence documents.

3. Consequent to this order, respondent Corporation is bound to hold a fresh proceedings against the petitioner and they are at liberty to take appropriate action in accordance with law. The contentions raised by the counsel for the petitioner is that the petitioner has to be deemed as placed under suspension because of the orders and therefore, he is entitled to get subsistence allowance at the admissible rates till such time further orders are passed as directed by the Tribunal.

4. The standing counsel Sri. James Koshy opposes the application. It is submitted that the effect of the order of the Tribunal is that he will be deemed as under suspension. But since service were already terminated, this is only a notional arrangement, and hence he may not be recognised as an employee and he will not be entitled to subsistence allowance as admissible to other employees, who are normally suspended. The standing counsel adverted to two decisions viz. Om Prakash Gupta Vs. The State of Uttar Pradesh, and P.M. Bayas Ors. Vs. Union of India and others, . But counsel for the petitioner submits that the above decisions have no relevance at all and the Corporation is to pay full subsistence allowance to the parties concerned normally from the date of removal, till such time further orders are passed.

5. I think this submission is acceptable and legally admissible. Of course the standing counsel referred to a circumstance that under Rule 10 (5) of the Kerala Civil Services (Classification and Control) Rules, only in a case where a Court of law set asides an order it may be possible to treat the person as an employee who is placed under suspension. I disagree. That might be one circumstance for treating an employee as a deemed servant but when a decision has been passed by the statutory appellate Tribunal, and when the corporation is able to take further steps for legally terminating the service of an employee, he has to be considered as placed under suspension. Consequently, it is declared that the petitioner has to be given subsistence allowance if otherwise eligible, after due enquiries within a period of one month from today. Arrears, if any, are also to be paid. It is in the interest of the corporation to resort to the disciplinary proceedings as it deems fit.

6. The writ petition is disposed of as above.