

(1967) 01 KL CK 0014
In the High Court Of Kerala

Govindan (T.C.)

APPELLANT

Vs

Inspector of Post Offices and Others

RESPONDENT

Date of Decision : 04-01-1967

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1967) 2 LLJ 514

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Nair, J.—The petitioner was appointed as an extra-departmental postal mall runner on 6 July 1960 In the Kulathur post office. He was functioning as such till 31 August 1960. On that day he was discharged from the post of mall runner. Subsequently he was appointed as an extra-departmental delivery agent when a vacancy arose and continued In that capacity till his services were terminated by an order dated 2 November 1963, Ex. P. 3. That order la In these terms:

Under Rule 6 of the Posts and Telegraphs Extra-departmental Agents (Conduct and Service) Rules, 1959, the services of T.C. Govindan, extra-departmental delivery agent, Kulathur, are nearby terminated with immediate effect.

2. In an appeal to respondent 2, the Superintendent of Post Offices, an order Ex. P. 5 was passed stating that there is no reason to cancel the order Ex P. 3. There was a further appeal to the Director of Posts and Telegraphs, Kerala Circle, Trivandrum. That appeal too was dismissed as seen from Ex. P. 9 order. The petitioner took a further appeal before the Postmaster-General, Kerala Circle, Trivandrum, and since no orders have been passed by the Postmaster-General, this Court has been approached by this writ application.

3. According to the petitioner, the action taken against him is punitive and is the imposition of punishment amounting to dismissal or removal from service within the meaning of Article 311(2) of the Constitution and in so far as no reasonable

opportunity was granted to the petitioner to state his case, the orders Exs. P. 3, P. 5 and P. 9 cannot be sustained and should be quashed.

4. Rule 6 of the Posts and Telegraphs Extra-departmental Agents (Conduct and Service) Rules, 1959, is In these terms:

The service 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.

5. This is the rule that is referred to in Ex. P. 3 and it is the case of the respondents that the appointing authority has power to terminate the services of an extra-departmental agent at any time and that Such termination is not Justiciable.

6. The question to be determined is what is the true nature of the action that has been taken against the petitioner. It is the substance and not the form that must be taken into account has been ruled by the Supreme Court In all the three decisions that have been referred to by counsel in this case. Those are Madan Gopal Vs. State of Punjab, ; Jagdish Mitter v. Union of India 1664 I LLJ 418; Champaklal, Chimanlal Sha v. Union of India 1964 I LLJ 762.

7. Certain principles are deducible from these pronouncements. When a Court is satisfied that the action taken against an employee la really by way of a punishment, not a mere termination of services according to service conditions, the provision in Article 311(2) will be attracted. It does not matter whether the employee is a permanent employee or a temporary employee. The fact that an enquiry was conducted which is in the nature of a preliminary enquiry, for the purpose of determining whether a formal enquiry should be undertaken or whether action should be taken pursuant to rules similar to Rule 6, that I have already read is not sufficient by itself to come to the conclusion that a punishment has been imposed. The form of the order by which the services were terminated or the words used In the order are not conclusive and the real substance must be ascertained.

8. In the light of these principles the facts of the case have to be scrutinized. There was a complaint against the petitioner which is evidenced by Ex. P. 1. It contains allegations of a very serious nature. Those allegations do not pertain to "generally unsatisfactory work" but with reference to a specific misconduct alleged against the petitioner. An investigation pursuant to this complaint was admittedly undertaken. After the Investigation, the following communication Ex. P. 2 was sent to the complainant:

No. CR. /F2/684/63, dated at Quilon, the 31 October 1963

Subject.?Allegation against postman T.C. Govindan. Reference,?Your letter dated 21 September 1963.

Sir.

Enquiries made Into the case by Inspector of Post Offices, Thiruvalla, show that there is no conclusive evidence to prove that you had enquired for letters on 19 September 1963.

Suitable action will be taken against the postman and the branch postmaster for the Incorrect remark noted on the registered letter to avoid a recurrence In future.

The inconvenience caused to you is regretted.

9. Though the order Ex. P. 3 by itself is innocent when it is read with Ex. P. 2, there is no gainsaying that there is a stigma attached to the petitioner. It is stated In Ex. P. 2 that suitable action will be taken against the postman and the "branch postmaster" for the Incorrect remark noted on the registered letter to avoid a recurrence In future. Though the order Ex. P. 3 refers only to Rule 6 and merely states that the services of the petitioner are terminated, It is clear that the action of termination was for the Incorrect remark said to be noted on the registered letter. I think that the action taken against the petitioner was really an imposition of punishment and that there is a stigma attached to the petitioner. It follows that the order Ex. P. 3 cannot stand.

10. The decision of this Court in P.J. Joseph Vs. Superintendent of Post Offices and Another, states that In cases of this nature It is necessary that reasons should be stated. This order Ex. P. 3 does not even state that the services of the petitioner have been terminated for "generally unsatisfactory work." The fact that no reason has been stated is also a defect and on the principle laid down in the decision In P.J. Joseph Vs. Superintendent of Post Offices and Another, would be sufficient to have the order set aside.

11. For the reasons stated above, I quash Exs. P. 3, P. 5 and P. 9 and allow this writ petition. The respondents will employ the petitioner in any vacancy that may arise In future in the post of extra-departmental delivery agent In any of the post offices in the State. There will be no order as to costs.