

(2013) 02 KL CK 0043
In the High Court Of Kerala
Case No : C.R.P. No. 508 of 2009

Jageer

APPELLANT

Vs

Manager, S.N.M. College and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Kerala Service Rules, 2006 — Rule 64

Citation : (2013) 1 ILR (Ker) 1016

Hon'ble Judges : Thottathil B. Radhakrishnan, J; A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : N.N. Sugunapalan and Sri S. Sujin, for the Appellant; T.A. Shaji , Sri Varughese M. Easo, Sri Vivek Varghese, P.J. (S.C. for M. G. University), Sri K.B. Gangesh, Smt. Smitha Chathanarambath and Sri Sujith Mathew, (Government Pleader), for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—Under challenge in this revision is the judgment of the University Appellate Tribunal, Thiruvananthapuram, by which, it was found that the decision taken by the first respondent to remove the revision petitioner from service on the basis of an enquiry report, is just and reasonable and strictly in accordance with law. The revision petitioner submits that the impugned order is incorrect, erroneous and opposed to law and facts and the same is liable to be set aside. The history leading to the impugned order can be summed up as follows:

(a) The petitioner who was a Selection Grade Lecturer in the College managed by the first respondent applied for leave without allowances on 26-12-2005 for taking up employment abroad. Due to the inaction on the part of the respondents on the application, he filed W.P.C. No. 2006/2006 before this Court wherein, an interim direction was given to respondents 1 and 2 in the Writ Petition to forward the application to sixth respondent, Principal Secretary to the Government. Since they failed to comply with that direction, the petitioner filed

I.A. No. 2201/2006 in the Writ Petition wherein this Court directed the petitioner to submit a fresh application. There was a further direction to respondents 1 and 2 to forward the application to the sixth respondent through the Deputy Director and Director of Collegiate Education.

(b) On 4-3-2006, a fresh application was filed again applying for leave without allowances for four years. Consequent to the failure of the respondents to take action on the same, the sixth respondent, the Principal Secretary, was directed to pass orders on the application and the writ petition was disposed of accordingly.

(c) The Government rejected the request of the petitioner to incur any liability to pay the substitute if appointed by the management. The matter was again taken before this Court in W.P.C. No. 8788 of 2006 wherein, the petitioner undertook to execute an indemnity bond agreeing to the Government or management recovering the liability from him. The Writ Petition was disposed of directing the management to move the Government seeking for appointment of substitute so that, the issue could be considered at that stage. The petitioner was directed to execute the bond for giving concurrence.

(d) Though the management filed an appeal as W.A. No. 688 of 2006 against the said decision, it was dismissed.

(e) On 5-4-2006, the petitioner executed a bond with the Government. On 6-5-2006, the Government directed the Director of Collegiate Education to give concurrence and to see that the management executes a bond with the petitioner.

(f) On 28-10-2006, the Government considered the representation and permitted the petitioner to avail leave without allowances on condition that he executes an indemnity bond to repay the amount incurred by the management.

(g) The real problem started thereafter. Without executing the bond as directed, the petitioner went abroad on 1-11-2006 and the matter was reported to this Court on 7-11-2006. This Court closed the writ petition with notice to the respondents. On 15-11-2006, the management issued memo to the petitioner for unauthorised absence from 1-11-2006. On 6-12-2006, the petitioner gave a reply and the same was rejected by the management on 2-3-2007. On 21-3-2007, another representation was submitted by the petitioner. To the memo of charges issued to the petitioner, he gave reply on 17-8-2007. However, enquiry followed and on 10-4-2008 the report came holding that the charges were proved. On 16-4-2008, the petitioner received notice informing that he would be removed from service. He gave reply to the show cause notice on 25-5-2008. The petitioner was removed from service on 18-6-2008 with effect from 1-11-2006.

(h) The matter was carried before the University Appellate Tribunal which confirmed the action of the management by the impugned judgment. Thus, the petitioner is before us.

2. Arguments have been heard and the impugned judgment as well as the

connected records were perused.

3. The main argument advanced by Sri M.N. Sugunapalan, the learned Senior Counsel appearing for the petitioner is that no major punishment like removal from service can be imposed by the management in this case as the management has refused to accept the statement of the petitioner that he had executed a bond with the Government. It was argued that the net result of the provisions contained in the Kerala Service Rules is that the Government is the absolute authority for granting leave for more than four months. Even if, by virtue of any other provision of the statute, the educational agency is also given power, it is only a concurrent jurisdiction which will not in any way preclude the Government's power under Rule 64, Part I Kerala Service Rules 2006, it was argued.

4. Mr. K.B. Gangesh, the learned counsel appearing for the first respondent, per contra, would submit that the petitioner left the College on 1-11-2006 unauthorisedly without complying with the directions in the Government Order dated 28-10-2006. It was further submitted that during the period of absence of the petitioner five substitutes by name (1) Divya Dileep, (2) Ashida, C.B., (3) Bibina Bose, (4) Jubimol, K.G. and (5) Anu Priya, C.P. were appointed and the management had spent a sum of Rs. 99,828 on account of salary given to the substitutes. His argument was that the management unnecessarily drag him into the litigation.

5. Pursuant to the interim order in W.P.C. No. 8788 of 2006 directing the Government to issue appropriate orders giving concurrence to the petitioner to avail leave without allowances enabling him to accept foreign assignment on condition that he executes an indemnity bond in the prescribed form undertaking to repay the monetary liability, if any, incurred by the management or the Government, the Government passed an interim order on 6-5-2006 clarifying that the Government will not incur financial commitment on appointment of a substitute and the petitioner was directed to execute an indemnity bond with the management. Another Order was passed by the Government on 27-10-2006 instructing the management to grant leave to the petitioner after executing an indemnity bond with the petitioner.

6. On 28-10-2006 another Order was passed by the Deputy Secretary to the Government stating that the petitioner can avail leave without allowances and accept foreign assignment on executing an indemnity bond in the prescribed format. But, the petitioner did not comply with the order to execute the bond. The stand taken by the management is that disciplinary action was initiated against the petitioner as he left service of College claiming to be on leave without executing an indemnity bond with the management as directed. It is an admitted fact that the leave without allowance was sanctioned by the Government. However, a condition was imposed that the petitioner shall execute a bond with the management. The purpose of executing the bond was to pin down the petitioner to the terms of the bond so that the pecuniary liability if any, incurred

by the management or the Government could be realised from the petitioner. The petitioner left without executing a bond with the management though he had executed a bond with the Government

7. The crucial question is whether a major punishment like removal from service can be imposed by the management on the petitioner on such an irregularity. We answer that question in the negative for the reason that the Government which is the ultimate and absolute authority to grant leave without allowances for more than four months, had granted leave. True, it was subject to the condition of executing a bond. It is also true that it was not complied with by the petitioner. We hold that it was only an unauthorised mode of doing an authorised act. However, we are also of the view that the petitioner should be held responsible for the financial liability incurred by the management on account of the appointment of the substitutes during his absence. Obviously, that was the intention of the Government also, while imposing the conditions regarding execution of the bond.

8. From the records now placed on board, it can be seen that the first respondent had spent a sum of Rs. 99,828 on account of salary for the substitutes during the period of absence of the petitioner from service. The first respondent is entitled to get the same realised from the petitioner together with a reasonable interest from the date of the respective payments. We also notice that the entire trouble was geared by the petitioner himself as he has not complied with the direction in the Government Order regarding the execution of the bond. As a result, the management was unnecessarily driven to the task of contesting the case before the Tribunal as well as this Court. For that also, the first respondent has to be compensated by the petitioner.

9. On a consideration of the entire facts and circumstances of the case, we are of the definite view that the impugned order confirming the order of the first respondent removing the petitioner from service, shall not be allowed to stand. We also make it clear that the re-induction of the petitioner in service shall be subject to the conditions prescribed in G.O. (Ms.) 6/85/GAD dated 3rd January 1985 which envisages as follows:

Permanent Officers and Officers, who have completed probation in their entry cadre in the regular service of the College will be granted leave without allowances for taking up employment outside the country as well as inside. In such cases, during the currency of the leave period, the officers shall lose all service benefits including commutation leave benefits, half pay leave benefits etc. and also promotion chances as may arise with reference to their seniority in the posts from which they left on foreign service. They shall lose seniority also in the grade with reference to those who might get promoted before they rejoin duty.

In the result, we allow this revision.

The impugned order as well as the order dated 18-6-2008 issued by the first

respondent removing the petitioner from service with effect from 1-11-2006 is annulled. The revision petitioner shall be reinstated in service forthwith, subject to the following conditions:

(a) The service benefits of the revision petitioner shall be granted subject to the provisions of G.O. (Ms.) No. 6/85/GAD, dated 3rd January, 1985.

(b) The revision petitioner shall pay a sum of Rs. 99,828 together with simple interest at the rate of 10% per annum to the first respondent on or before 15-3-2013. The interest shall be calculated from the date of respective payments to the person appointed as substitute by the 1st respondent during the absence of the petitioner on account of his leave.

(c) The petitioner shall pay a sum of Rs. 10,000 to the first respondent towards costs through the counsel appearing before this Court on or before 15-3-2013.

(d) For facilitating the payment, the first respondent shall forward, within a week from today, a calculation statement to the petitioner showing the amount paid to the substitutes during the absence of the petitioner, the date of such payments and the interest calculated thereon.

(e) It is hereby made clear that the petitioner shall get the benefit of this Order only if he makes the payment as aforesaid.