

(1980) 02 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 3757 of 1977

Joseph D. Kattampally

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-02-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 —
Rule 2, 5(2), 5(3), 9, 9(1)

Citation : (1980) 02 KL CK 0024

Hon'ble Judges : George Vadakkal, J; Bhaskaran, J

Bench : Division Bench

Advocate : O.V. Radhakrishnan and K. Radhamoni Amma, for the Appellant; T.R. Govinda Warriar, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran, J.—The, Petitioner, an Extra Departmental Packer, falling within the ambit of Extra Departmental Agent as defined in Rule 2(b)(vi) of the rules relating to the Conduct and Service of the Posts and Telegraphs Extra Departmental Agents, hereinafter called the rules, has in this writ petition mainly prayed for a declaration that Rule 9 of the Rules "to the extent it denies subsistence allowance is unconstitutional, discriminatory, ultra vires and void". It is not in dispute that he had availed of sanctioned leave of 180 days during the period from 1st June 1976 to 21st December 1976. According to the Petitioner, he had obtained sanctioned leave thereafter also till 31st March 1977; this, however, it is not admitted by the Respondents. In paragraph 2 of the counter affidavit sworn to by the 4th Respondent it is stated that he was remaining continuously absent without leave for the period from 22nd December 1976 to 31st January 1977, and from 21st February 1977 onwards also. On 1st April 1977 the Petitioner is alleged to have applied for "extension of leave" in the prescribed form for the period from 1st April 1977 to 30th June 1977. The 4th Respondent's reply thereto dated 1st April 1977, a copy of which is marked as

Ext. P-1, in its material portion reads as follows:

You have applied for leave and had remained absent without the leave having been sanctioned. As you are not entitled to any leave at present the period of leave will be going to be treated as unauthorised absence and disciplinary action is going to be taken against you.

Subsequently the Petitioner received from the 4th Respondent another communication dated 7th April 1977, a copy of which is Exl. P-2, and that in its material portion reads as follows:

Under Rule 9(1) of the Post and Telegraph Extra Departmental Agents' Conduct and Service Rules, 1964, Sri Joseph D. Kattampilly, E.D. Packer, Kanjirappilly P.O., is hereby put off duty with immediate effect. He is not entitled to any allowance during the period.

Obviously it is the last sentence in Ext. P-2 communication that has provoked the filing of the writ petition.

2. Sri O.V. Radhakrishnan, the Counsel for the Petitioner, contended that the provisions contained in Rule 9 of the Rules which provide that an employee shall not be entitled to any allowance for the period during which he was put off duty pending enquiry into any complaint of allegation of misconduct against him is discriminatory and violative of Articles 14 and 16 of the Constitution. He also submitted that by the decision of the Supreme Court in *The Superintendent of Post Offices and Others Vs. P.K. Rajamma*, it has now been settled that the employment of an Extra Departmental Agent is in a post which exists apart from a person who happens to fill it at any particular time; though such a post is outside the regular civil services, there is no doubt that it is a post under the State. His argument is that once it is found that the Extra Departmental Agent is the holder of a civil post, it should automatically follow that he should be entitled to all the benefits to which any other person holding a civil post, is entitled to, and in that view it would be discriminatory to deny subsistence allowance for the period during which he is put off duty pending enquiry into the charges levelled against him, inasmuch as, as per Rule 53 of the Fundamental Rules, a government servant is entitled to subsistence allowance during the period of suspension.

3. It is the admitted fact that the Petitioner is a part-time employee whose service conditions are governed by the Rules, Eligibility for appointment to that post is different from that of a regular or full-time employee. The degree of control the employer is having over him is different from what the employer usually will have over a full-time regular employee. In paragraph 2 of letter No. 43-14/72-PEN, dated 2nd March 1972 issued by the Director General of Posts and Telegraphs under the authority of Rule 284 of P and T Manual, Volume IV, a copy of which was furnished to us by the Standing Counsel to the Central Government for our perusal, it is found that Extra Departmental Sub Postmasters and Branch Postmasters are appointed mainly from the following categories: (1)

P and T pensioners; (2) State and other government pensioners; (3) Local Board Teachers; (4) Quasi government and Railway officials; and (5) Outsiders. From the copy of letter No. 5-9/72-ED Cell., dated 18th August 1973 of the Director General of Posts and Telegraphs it is found that the maximum age limit upto which an Extra Departmental Agent may be retained in the agency work will be 65 years provided he continues to remain fit for the discharge of his duties. There are sufficient indications in the rules the Manual and the Circular letters issued by the competent authorities that there is vast difference in the terms and conditions of services of Extra Departmental part-time employee from those of full-time regular employees. Equal rights and equal treatment could be claimed where the rights and duties are comparable to each other, not otherwise. The classification between part-time employees on the one hand, and full-time employees on the other, not being arbitrary, but one based on rational grounds, having intelligible differentia and nexus to the object sought to be served, a part-time employee like the Petitioner is not entitled to claim parity of treatment with a full-time regular employee. When this position is accepted, the question of discrimination or consequent violation of the provisions of Articles 14 and 16 of the Constitution does not arise.

4. In the background mentioned above, let us now examine Rule 53 of the Fundamental Rules with reference to which the Petitioner seeks relief. That rule provides:

F.R. 53(1) A government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:

(i) * * * * (ii) in the case of any other government servant--

(a) a subsistence allowance at an amount equal to the leave salary which the government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary;

* * * *

Rule 5(2) of the Rules lays down that during leave, every Extra Departmental Agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him, and such approval shall be obtained in writing. Rule 5(3) of the rules provides that the allowances normally payable to an Extra Departmental Agent, shall, during leave, be paid to the approved substitute provided by him. The consolidated allowances payable to the various categories of Extra Departmental staff are stated in the Order 5-2/60 Committee, dated 24th December 1960 passed by the Director General, Posts and Telegraphs, with the approval of the President of India. It is also seen therein that after having considered the recommendations of the Committee of Enquiry on the allowances of extra Departmental employees, the President of India was pleased to decide that there would be no dearness

allowance for extra departmental employees, and a consolidated allowance would alone be paid to them. As a matter of fact what is being paid to the Extra Departmental Agent is not salary and allowances, but only a consolidated allowance. The rate of allowance payable to the various categories stated in Order No. 5-2/60-Committee dated, 24th December 1960 has undergone various changes from time to time; however, the basic factor remains that what is payable to them is only a consolidated allowance, not any salary and allowance as in the case of other full-time government servants.

5. The question of application of the provisions of Rule 53 of the Fundamental Rules or anything analogous to that cannot arise inasmuch as per Sub-rules (2) and (3) of Rule 5 of the rules; the Extra Departmental Agent is not entitled to any allowance during the period when he is allowed leave. It would even appear that the reference to allowance in Rule 9 and Rule 9(3) of the rules is not to subsistence allowance, but to the consolidated allowance which the Extra Departmental Agent would have been entitled to receive had he not been put off duty. There is no order placing the Petitioner under suspension. Even assuming that Ext. P-2 order, by which he is put off duty, amounts to suspension, in the sense that he is forbidden from discharging his duties during the pendency of an enquiry against him, as laid down by the V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, (paragraph 6 at page 1496), there is no justification for holding that a person placed in the position of the Petitioner is entitled to subsistence allowance inasmuch as F.R. 53 in terms could not apply to his case, and there is no other provision which enables him to claim subsistence allowance during the period he is put off duty pending enquiry initiated against him. The reference to allowance in Rule 9 of the Rules, obviously not being to subsistence allowance, in any event, there is no justification for striking down that on any of the grounds urged by the Petitioner in the writ petition and during the course of the argument by his Counsel.

The result, therefore, is that the writ petition fails and is dismissed; however, in the circumstances of the case, we do not make any order as to costs.

The Counsel for the Petitioner made a request that have to appeal to the Supreme Court may be granted. We do not find any substantial question of general importance which, in our opinion, requires to be decided by the Supreme Court. Hence the leave is denied.