
(1968) 12 KL CK 0015
In the High Court Of Kerala

Joseph D. Kunnappalli

APPELLANT

Vs

Superintendent of Post Offices and Others

RESPONDENT

Date of Decision : 10-12-1968

Acts Referred:

Constitution of India, 1950 — Article 19, 311, 352, 358

Citation : (1970) 1 LLJ 457

Hon'ble Judges : T.S. Krishnamoorthi Ayyar, J;K. Sadasivan, J

Bench : Division Bench

Judgement

K. Sadasivan, J.—The appellant in this writ appeal was an extra-departmental messenger in the Posts and Telegraphs Department at the Kanjirappalli. He was a member of the All India Postal Employees Union, postmen, class IV, and the organizing secretary for Kottayam Postal Division. In his capacity as an office-bearer of the union, he used to make representations to the Government for securing Improved living conditions for himself and his fellow-workers by raising their pay-scales. His efforts did not product the desired result. So he thought of publishing an article in the newspaper in furtherance of his cause. Accordingly, he published a letter in the editor's column of Malaya in Manorama dated 11 February 1955 under the option [words in Malayalam] in which he draw a plot are of the extra-departmental staff attached to the Posts and Telegraphs offices as persons undergoing abject misery on account of the appallingly low pay drawn by them. It was also stated by him in the article that this principle "same pay for the same or identical job "underlying the Constitution of India, appears to have been ignored in the case of these ill-fated extra-departmental employees. Ha also stated that among them there are even graduates and it is a naked truth that the extra-departmental employees have been working on this low pay for 10 to 15 years now. Even though, under the Das Commission report, the dearnes allowance of the Central Government employees has been raised, the said benefit was not extended to the extra departmental employees of the Postal Department. Finally, he requested the Central Government to take immediate steps to alleviate their distress. The article came to the notice of the department

and they took disciplinary action against him under Rule 20 of the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964, and the appellant after an enquiry was dismissed from service. Against the order of dismissal, he appealed to the Superintendent of Post Offices, Kottayam, with no better result. Challenging the order, he filed before this Court Original Petition No. 2446 of 1965 on the ground that the order is ultra vires, invalid and unconstitutional. He also stated that the order is violative of natural justice in that he was not allowed a personal hearing before the impugned orders were passed. The order according to him is also violative of Article 311(2) of the Constitution in that he was not given an opportunity to show cause against dismissal before the punishment was imposed on him. The learned single Judge who heard the petition dismissed it making the following observation:

I am not prepared to say that the interpretation placed by the authorities concerned is so patently erroneous to justify interference by this Court.

2. From the impugned order passed by the departmental authority, it appears that the particular rule under which action was taken against the petitioner is Rule 20(1) of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. The rule runs:

20. Criticism of Government

No employee shall in any radio broadcast or in any document publish anonymously or in his own name or in the name of any other person or any communication to the press or in any public utterance, make any statement of fact or opinion-

(1) which has the effect of any adverse criticism of any current or recent policy of action of the Central Government or a State Government; or....

3. In Ex. P. 5, the order of the sub-post-master, dismissing the petitioner from service which was eventually confirmed by the appellate authority, it is observed:

By writing such a letter and causing it to be published in the newspaper and exhorting all other newspapers in the country to publish these criticisms and exert pressure on the Government to consider the issues raised, the official has indulged in public criticism of the policy and action of the Government, in regard to the service conditions of the extra-departmental agents of the Posts and Telegraphs Department, thus contravening Rule 20 of the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules. 1964.

4. We bestowed our anxious thought over the matter and we are not satisfied that the article Ex. P. 1 would offend the above rule [Rule 20(1)]. In order that the publication may come within the mischief of the rule, it must be an adverse criticism of any current or recent policy of action of the Central Government or a State Government. Mere ventilation of the grievances of the employees or a request for raising the pay-scale, cannot in our opinion, amount to adverse criticism of any current or recent policy of action. " Policy," according to the "

Oxford Dictionary," means political sagacity, statecraft, prudent conduct, sagacity, craftiness, "course of action adopted by Government." According to "Webster's New International Dictionary," "policy " means a settled or definite course or method adopted and followed by a government, institution, body, or individual, a wise scheme or device; a contrivance, especially a cunning contrivance; a stratagem; a civil or ecclesiastical policy; government; the science of government; also a Government or State. It is difficult to bring the pay-structure of low-paid employees like the extra departmental agents, under the " policy " of the Government in the light of the above definition or meaning of the word. We also fail to see any criticism in the article, of the Government. It only depicts the hard lot of the extra-departmental employees and requests the Government to grant them a higher pay, The interpretation put upon Rule 20(1) by the departmental authority and endorsed by the learned single Judge cannot, in our opinion, stand scrutiny and be accepted. The finding in Ex. P. 3 is only that the appellant has indulged in public criticism of the policy and actions of the Government. What is contemplated by the rule is criticism of policy of notion and not action. Learned single Judge has also pointed out that Article 19 of the Constitution is not available to the petitioner by virtue of Article 358, since the proclamation of emergency under Article 352 was in force at the time. We are told that the proclamation is no longer in force and according to the learned Counsel for the appellant, even if the proclamation is still in force, in the absence of a Presidential Order suspending the enforcement of the rights conferred by Part III of the Constitution, it was open to the learned Judge to have considered the vires of Rule 20 in the face of Articles 19(1)(a) and 19(2) of the Constitution, and for this position the counsel relied on two decisions of the Supreme Court in Kameshwar Prasad and Others Vs. The State of Bihar and Another, and O.K. Ghosh and Another Vs. E.X. Joseph, . But to the light of our finding that Ex, P. 1 is not hit by Rule 20(1), we do not propose to go into the larger question whether Rule 20 is violative of Article 19 of the Constitution. The original petition in the circumstances ought to have been allowed. We would, therefore, set aside the order of the single Judge and allow the original petition and quash Exs. P. 3 and P. 4 orders, being ultra vires and illegal. We, however, make no order as to costs.