
(1983) 02 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 4866 of 1982-G

K. Saradamma

APPELLANT

Vs

The Senior Superintendent of Post Office

RESPONDENT

Date of Decision : 09-02-1983

Acts Referred:

Kerala Service Rules, 1958 — Rule 56, 56A
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 9(3)

Citation : (1983) 02 KL CK 0002

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and K. Radhamony Amma, for the Appellant;
P.V. Madhavan Nambiar, for the Respondent

Judgement

M.P. Menon, J.—The Petitioner was an Extra Departmental Branch Post Master. She was suspended from duty ("put off from duty", to use the language of the rules) with effect from 31st December 1975, and was later removed from service on 31st July 1977 for alleged misconduct. An appeal to the Department did not succeed, and the Petitioner came to this Court with an Original Petition. That Original Petition was allowed and this Court held that the Petitioner's removal was wrongful and illegal. That decision has become final. The question of reinstatement "then arose. Ignoring other details, it is now common ground that she was reinstated in service on 23rd March 1982, to be followed by another order of suspension, dated 17th April 1982.

2. In this writ petition, the Petitioner claims that she full wages, (and allowances, if any) during the 31st December 1975 to 23rd March 1982. The postal authorities are disputing the claim.

3. "Putting off from duty" is in law not different suspension. Suspension means suspension of the contract as distinct from repudiation or termination. The pristine law of contracts is that one of the Contracting parties cannot unilaterally

terminate the contract or keep it in suspension, without the consent of the other. This principle has always been applied to the law of master and servant also, which to a considerable extent, is governed by the principles of the law of contract. When, A "Employs B, there is an obligation on the part of A to provide employment to B and a corresponding obligation on the part of B to perform the work for which he is Engaged. B also gets a right to wages in accordance with the terms of the contract. The employer cannot direct the employee to keep away from work and at the same time, deny him wages during the period, unless the contract expressly provides such a contingency. The law of master and servant recognises the right of the master to hire and fire, but not the right to suspend. The right to suspend is not an implied term; it can only be a matter of express agreement, or of some statutory prescription. In other words, in the absence of an expressed term in the contract of employment, or a statutory provision governing the contract, a master has no right to keep an employee out of employment and deny him wages at the same time. There may be cases where the contract of employment itself confers an express power to suspend an employee without wages, and in that case, the contract will operate. Similarly, there may be situations where though there is nothing in the contract, a law may intervene and empower to keep an employee under suspension without wages, either expressly or by necessary implication. For example, the Industrial Disputes Act originally provided that before dismissing an employee during the pendency of an Industrial dispute, written permission from the Tribunal before which such dispute was pending, had to be obtained. After completing the domestic enquiry and finding the employee guilty, the employer could ordinarily dismiss him. But no statute imposed a bar against such course; and the provision was interpreted to mean that the employer could then suspend him till written permission was obtained. The eligibility of the employee for wages then depend upon the grant or rejection of permission of the Tribunal. Again, when a Government servant is suspended, he normally gets only subsistence allowance as provided in the Service Rules. But as in the case of Rule 56 of the Kerala Service Rules (Part I), when he is reinstated after suspension, the question on his entitlement to full wages during the period of suspension, as distinct from the subsistence allowance which alone he was getting till that time, will have to be examined and decided by the competent authority in accordance with the rule. Rule 56A of the Kerala Service Rules provides for cases where a dismissed employee is reinstated as a result of a court's order declaring the termination to be wrongful or invalid. In such a case also, there are prescriptions in the Rules as to how the period of suspension should be treated and to what extent the employee can claim wages during that period. If there is no agreement between the parties as to how the period of suspension should be treated, and if there are also no statutory provisions modifying the contract between the parties, the normal rule was that even though an employer could keep an employee out of duty, he was bound to pay full wages to the employee for the concerned period.

4. In the present case, the Petitioner is only an Extra Departmental Branch Post

Master. The provisions of the fundamental rules which govern the suspension of regular Government service do not apply to her. She is governed only by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rule, 1964. The rule empowers the employer to keep an employee put of duty when an enquiry is being held against him in respect of alleged misconduct. Sub-rule (3) of Rule 9 provides that such an employee shall not be entitled to any allowance for the period during which he is kept out of duty. The scope of this provision has to be examined in the light of the corresponding provisions of the fundamental rules which apply to the regular employees. The latter set of rules provide for payment of subsistence allowance for the employees. The effect of Rule 9(3) noticed above is only that Extra Departmental employees cannot claim subsistence or other allowance as in the case of regular Government servants governed by the fundamental rules. Rule 9(3) cannot however control the right of an employee to get full wages during the period of suspension if the suspension is found to be unjustified as a consequence of the suspension order getting merged with the dismissal order, and that order itself being set aside by a court. The suspension order cannot revive after the dismissal itself is declared invalid. Where a dismissal and in a decree of nullity, the dismissed employee can claim restitution. He has a right to be put back in the position he would have occupied, but for the suspension and the dismissal. This leads to the result that the employee concerned can claim full wages for the period of suspension and also for the period he is kept out after the dismissal, unless such rights have been bartered away by agreement or are modified and restricted by statutes governing the contract.

5. In the present case, it is conceded on behalf of the Respondents that there is no contract between the Petitioner and the employer which authorises denial of wages to her during the period she is kept out of duty. All that the Respondents Could urge in support of their stand is, Rule 9(3) noticed earlier. That rule operates only during the period an employee is actually under suspension and only for the limited purpose of defeating her claim for payment during that period. That rule cannot defeat or control the effect of a court's declaration about the nullity of the termination. It is too much to think that the purpose of the rule is to deny remuneration to an employee even in cases where the suspension and the dismissal are declared to be void or of no legal effect, by a competent court.

6. The result is that the Petitioner should be held to be entitled to full wages (and allowances, if any) during the period from 31st December 1975 to 23rd March 1982. I declare that that is the position, and direct the Respondents to pay such wages to her, ignoring Ext. P-3. No costs.