
(1979) 08 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 703/78

K.N. Gopalan

APPELLANT

Vs

State Bank of Travancore

RESPONDENT

Date of Decision : 30-08-1979

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Kerala State and Subordinate Services Rules, 1958 — Rule 3

Citation : (1979) 08 KL CK 0019

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

Bench : Division Bench

Advocate : M.M. Cheriyan and Mathew Zachariah, for the Appellant; M.P.R. Nair, M.K. Chandramohan Das and T.G. Latha, for the Respondent

Final Decision : Dismissed

Judgement

George Vadakkal, J.—Misrepresenting that he was not previously employed anywhere and making a false declaration to that effect, the Petitioner joined the service of the State Bank of Travancore (1st Respondent) as Cashier. Actually he was previously employed in the Posts and Telegraphs Department, and while so employed he was under suspension during 30th July 1968 to 16th March 1969 in (sic) with Savings Bank fraud and temporary misappropriation of office Cash. His service in that Department was terminated on 18th March 1969 under the Central Civil Services (Temporary Service) Rules. Coming to know of his previous employment the 1st Respondent Bank asked the Petitioner about it; and about his failure to produce a discharge certificate from the previous employer as required by the conditions of appointment. He admitted his previous employment but did not offer any explanation regarding the non-disclosure of it nor any excuse for the false declaration that he was not previously employed anywhere. The Bank terminated his employment under Paragraph 522 (1) of the Sastri Award, also known as the Bank Award. This termination is challenged in this writ petition.

2. Paragraph 522(1) of the Bank Award marked here as Ext. P-7 so far as it is material for this case reads:

In cases not involving disciplinary action for misconduct and subject to Clause (6) below, the employment of a permanent employee may be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice.

3. The Supreme Court considered this provisions in *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, at 922 and said as follows:

There is no doubt that an employer cannot dispense with the services of a permanent employee by mere notice and claim that the industrial tribunal has no jurisdiction to inquire into the circumstances in which such termination of service simpliciter took place. Many standing orders have provisions similar to paragraph 522 (1) of the Bank Award, and the scope of the power of the employer to act under such provisions has come up for consideration before labour tribunals many a time. In *Buckingham and Carnatic Co. Ltd. v. Workers of Co.* 1952 A.C.C. 490, the Labour Appellate Tribunal had occasion to consider this matter relating to discharge by notice or in lieu thereof by payment of wages for a certain period without assigning any reason. It was of opinion that even in a case of this kind the requirement of bona fides is essential and if the termination of service is a colourable exercise of the power or as a result of victimisation or unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination. Further it held that where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer judged by normal standards of a reasonable man that may be cogent evidence of victimisation or unfair labour practice. We are of opinion that this correctly lays down the scope of the power of the tribunal to interfere where service is terminated simpliciter under the provisions of a contract or of standing orders or of some award like the Bank Award. In order to judge this, the tribunal will have to go into all the circumstances which led to the termination simpliciter and an employer cannot say that it is not bound to disclose the circumstances before the tribunal. The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is therefore always open to the tribunal to go behind the form and look at the substance and if it comes to the conclusion, for example, that though in form the order amounts to termination simpliciter it in reality cloaks a dismissal for misconduct it will open to it to set it aside as a colourable exercise of the power.

4. In his pleadings the Petitioner has no case that though in form a termination simpliciter, it is really a punishment for misconduct. Whether an apparently simple termination of service is really by way of punishment, is a question of fact to be pleaded and established. See *S.R. Tewari Vs. District Board Agra and Another*, . There was also no argument on that basis. The Petitioner has pleaded that his service was terminated on account of his trade union activities and the

termination amounts to victimisation but except for the assertion as aforesaid in the writ petition there is no material to support the same; nor was the case argued on that basis.

5. The case on hand is one falling within the rule stated by Mathew, J., (of this Court, as he then was) in *Varkey Varkey Vs. Augusthy Varkey*, . The learned Judge said:

So, as the appointing authority was not satisfied about the character and antecedents of the Petitioner, he was ineligible for being appointed to the service, which means that he had no qualification for being appointed to the service. Therefore Ext. P-4 order can only mean that the Government have finally decided that the Petitioner was ineligible for appointment. It cannot therefore be said that the Petitioner's service as Panchayat Executive Officer was terminated by Ext. P-4 as the appointment itself was void.

The learned judge reiterated the same principle in O.P. No. 973 of 1968 as follows:

When a person who is ineligible for appointment to a post is appointed in ignorance of the fact that he is ineligible, the appointment is invalid. It was so held in *Kunhikrishnan Nair v. State of Kerala* 1964 KLT 1066. There this Court followed the decision of the Court of Appeal in *Faramus v. Film Artistes' Association* 1963 All. E.R. 636 which was subsequently upheld by the House of Lords in *Faramus v. Film Artistes' Association* 1964 A.C.C. 925. Applying the reasoning in that case I think that since the Petitioner did not possess one of the necessary qualifications for the post, he was not validly appointed to it. The order of the Chairman in effect only declared that the Petitioner was not validly appointed to the post and that he should be reverted. It was not an order cancelling a valid or even a voidable order; it was merely a declaration that there has been no appointment of the Petitioner to the post. In the circumstances, I do not think that natural justice required that the Petitioner should have been given an opportunity of being heard by the 1st or the 2nd Respondent. I also do not think that in the circumstances there was any manifest injustice, so that interference under Article 226 is required.

We are in respectful agreement with these principles stated above.

6. Apply the above Rules to this case. Petitioner's appointment was a mistaken appointment in ignorance of his character and antecedents which he successfully kept away from the 1st Respondent not only by non-disclosure (despite requirement to disclose) but also by making a false declaration that he was not previously employed anywhere a case of not mere *Suppressio veri* but one of *Suggestio falsi*. Ext. P-6 communication informing the Petitioner that he has been discharged from service of the Bank as at close of business on 23rd February 1978 "is merely a declaration that there has been no appointment of the Petitioner" to the service of the Bank.

7. On coming to know of his previous employment in the Posts and Telegraphs Department the Petitioner was asked about it and as to why he did not produce a discharge certificate. He admitted his previous employment and had no explanation or excuse for the non disclosure of details concerning previous employment and for making the false declaration. In the circumstances of the case, we do not think that there has been any violation of the rules of natural justice. This in our view is a case where things speak for themselves, and the Petitioner has no explanation to offer for the same.

8. The learned single Judge in *Jayadev v. Kerala Public Service Commission* 1973 KLT 915 took the view that all mistakes would not warrant cancellation of an advice for appointment issued by the Public Service Commission, and Rule 3(c) in Part II of the Kerala State and Subordinate Services Rules, 1958 cannot be invoked to a case where the candidate has altered his position in such a way that it may not be possible for restoring him to the original position and to a case where the mistake is solely that of the Public Service Commission and has not been occasioned by the candidate. On appeal the Division Bench in *Public Service Commission v. Jayadev* 1973 KLT 915 pointed out that the Rule does not contain any such limitation. These cases have no relevance so far as the case on hand is concerned. The decision in *Prem Rajan v. General Manager K.S.R.T.* 1976 KLT 399, concerned a probationer whose service was terminated on the ground that he furnished false information in the attestation form regarding his previous employment in a private firm. This Court said that the probationer was entitled to an opportunity to explain before his service was terminated, and this having not been afforded termination is bad. In that case the probationer appears to have been not asked anything about the alleged false information. Not so here, where the Petitioner was afforded an opportunity to establish that he truly said that he was not previously employed anywhere. In Case No. 215 (W.A. 30 and 46 of 1978) reported in 1978 K.L.N. 276, the Petitioner therein was demoted on the basis of an attack made on his promotion by the 3rd Respondent therein; this Court held that in such circumstances the order of demotion cannot be characterised as one which "corrected or rectified an error", and that therefore, "it was not only fair and proper but very necessary, that the writ-Petitioner should have been given notice of the grievance-petition (of the 3rd Respondent) and afforded an opportunity for explanation in regard to the matters contained in the said petition". The said decision also recognised the Rule that as regards exercise of the inherent right of correcting a mistake, there can be no question of notice or affording opportunity for explanation, and pointed out the decision in *State of Punjab Vs. Jagdip Singh and Others*, = 1964, *Indian Chamber of Commerce v. C.I.T.*, W.B. AIR 1976 S.C. 353 and *Ranjit Singh v. President of India* 1971 (2) S.L.R. 561 in support of that proposition. We do not think that the decisions discussed above on which reliance was placed by the learned Counsel for the Petitioner lay down any principle incompatible with what is stated in *Kunhikrishnan Nair's Case* or in O P. 973 of 1978 with which we have already expressed our full agreement.

9. Before parting with this case it is necessary to caution that we have not in this case decided that the State Bank of India and the State Bank of Travancore, the two Respondents herein, are "other authorities" mentioned in Article 12 of the Constitution, as argued on behalf of the Petitioner, and have proceeded only on the assumption (without deciding) that it is so, and that they are statutory bodies and public authorities who by this Court can, in exercise of its Writ-jurisdiction, be kept within the limits of their statutory powers and compelled to follow the Rules of natural justice, as stated in *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, On this question which was raised at the bar by the learned Counsel for the Respondents in the form of a preliminary objection as regards the entertainability of this writ petition, elaborate arguments were advanced on both sides, but in view of what is stated earlier on the main question raised herein, we do not think that we are called upon to decide the same. That question is left open.

Dismissed. No orders as to costs.