

(1968) 08 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 2173 of 1967

Krishna Madiwala (N.)

APPELLANT

Vs

Inspector of Post Offices, Mangalore South Sub-division and
Others

RESPONDENT

Date of Decision : 02-08-1968

Acts Referred:

Constitution of India, 1950 — Article 311
Fundamental Rules, 1950 — Rule 14C

Citation : (1968) ILR (Kar) 877 : (1969) 1 LLJ 660 : (1968) 2 MysLJ 426

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—The petitioner who was a postman in the Karkala unit in the district of South Kanara was transferred to Mangalore on 2 September, 1966 when he applied for leave of more than one category to which he was entitled. The leave granted to him expired on 8 March, 1967, but he reported himself to duty only on 10 March, 1967 when he was not permitted to join duty and was informed by a communication sent to him on 11 March, 1967 that he should be deemed to have resigned his appointment and therefore, ceased to be in Government employment with effect from the forenoon of 9 March, 1967. It is this order and the order made in the unsuccessful appeals preferred by the petitioner which we are asked to quash in this writ petition.

2. In defence of the impugned order dependence was placed by the Central Government Pleader on rule 14(c) of the Fundamental Rules which reads :

"Where a Government servant who is not in permanent employ or quasi-permanent employ fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him, or where such a Government servant, who is granted a lesser amount of extraordinary leave than the maximum amount admissible, remains absent from duty for any period which together with the extraordinary leave granted exceeds the limit up to which he could have been

granted such leave under sub-rule (b), he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall, accordingly, cease to be in Government employ."

3. There is controversy with respect to the applicability of this rule by reason of the claim by the petitioner to quasi-permanent employment. But we shall assume for the purpose of this writ petition that this rule did apply to the petitioners, although we do not express any opinion on it. But even on that assumption it becomes clear that the impugned order amounts to the petitioner's removal in contravention of Art. 311 of the Constitution. The intimation given to the petitioner that he had ceased to be in Government employ with effect from the forenoon of 9 March, 1967 amounts to an intimation that he had been removed from service, and it is clear from that communication that that removal was a punishment for absence after the expiry of the leave.

4. A service condition like that which rule 14(c) incorporates can have no validity since it violates the provisions of Art. 311, and, that was the view taken by the Supreme Court in *Jai Shanker Vs. State of Rajasthan*, . The relevant rule in that case, was in substance similar to the rule with which we are concerned in the present case. While the rule in *Jaishankar* case (vide supra) stated that a person who absents himself without permission or overstays after the expiry of his leave shall be considered to have sacrificed his employment and could be reinstated only with the sanction of the competent authority, Clause (c) of rule 14 of the Fundamental Rules says that such employee shall be deemed to have resigned his appointment unless the President in view of the exceptional circumstances determines otherwise.

5. In a sense, the rule which was applied against the petitioner displays more clearly than the rule in *Jai Shanker Vs. State of Rajasthan*, that it imposes a punishment by way of removal. It declares, unlike the rule in *Jaishankar* case (vide supra), that an employee, who overstays and so must be deemed to have resigned his appointment, shall thereupon cease to be in Government employ. That part of the rule and the other part of it which invests the President with the power to determine otherwise, are some of the features of that rule which make it impossible for any one to dispute that the rule imposes a punishment in the form of removal.

6. We do not find it possible to accede to the contention placed before us by Sri Keshava Ayyangar, the learned Central Government Pleader, that the enunciation made in *Jai Shanker Vs. State of Rajasthan*, is inapplicable. In our opinion, the decision in that case is indistinguishable.

7. So we set aside all the impugned orders. In the result the petitioner is entitled to reinstatement with effect from 9 March, 1967 and to all the benefits flowing from such reinstatement.

8. But it is submitted by the Central Government Pleader that the petitioner's

services had been terminated on 27 July, 1966, and that the petitioner continued to be in his post under an order of stay made by this Court in Writ Petition No. 1539 of 1966. He submits that if that writ petition in which the order of termination is challenged does not succeed, the petitioner's service stands terminated with effect from 27 July, 1966, and that our direction in this writ petition should be subject to the decision which we have to render in Writ Petition No. 1539 of 1966. We agree and make an order that our direction in this writ petition subject to the decision which has to be rendered in Writ Petition No. 1539 of 1966. No costs.