
(1995) 08 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 16793/94

M.V. Mathai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-08-1995

Acts Referred:

Citation : (1995) 08 KL CK 0035

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.R. Rajendran Nair, for the Appellant; P.K. Behanan), for the Respondent

Judgement

K. Sreedharan, J.—Petitioner was appointed as Additional Government Pleader and Additional Public Prosecutor at Ernakulam for a period of 3 years as per G.O. (MS) No. 158/92/Law dated 1.6.1992. While he was working as such, as per the provisions contained in the Kerala Government Law Officers (Appointment and conditions of Service) and conduct of Cases Rules, 1978 (hereinafter referred to as "the Rules"), Government issued Ext. P2, G.O. (MS) No. 148/94/Law dated 27.5.1994 terminating his services invoking Rule 17 of the Rules. Petitioner questions the validity of that order. For a proper understanding of the effect of order dated 27.5.1994, I read its relevant portion:. Now the Government are pleased to terminate the service of Sri. M.V. Mathai, Additional Govt. Pleader & Additional Public Prosecutor, Ernakulam with immediate effect under Rule 17 of the Kerala Govt. Law Officers (Appointment and conditions of service) and Conduct of Cases Rule, 1978. Sri. M.V. Mathai shall be paid Rs. 270/- (Rupees two hundred and seventy only) towards salary in lieu of one months notice.

The District Collector, Ernakulam will take necessary steps to draw and disburse the amount of Rs. 270/- (Rupees two hundred and seventy only) to Sri. M.V. Mathai. The expenditure on this account shall be met from the concerned head of account.

Rule 17 of the Rules authorises Government to terminate appointment of any Government Law Officer other than Special Government Pleader or Special Public Prosecutor at any time before the expiry of the term of his appointment without assigning any reason therefor. But this Rule has got a proviso. It reads:

Provided that before such termination he shall be given one month's notice or shall be paid one month's salary in lieu of such notice.

From this proviso, it is clear that before terminating the service of a Government Law Officer, Government should give one month's notice to the said Law Officer or he should be paid one month's salary in lieu of such notice. This means that one month's prior notice before termination or payment of one month's salary before termination of the service is mandatory. Either the notice or payment of salary for one month should precede the actual termination of the appointment of any Government Law Officer. If the Government Law Officer is not having a settled monthly salary, such Government Law officer's appointment can be terminated only after giving one month's notice.

2. Rule 32 of the Rules deals with remuneration of Government Law Officers at District Court, Additional District Court and Sub Court Centres. They are being paid fees in accordance with the work turned out by them. They are not being paid any fixed salary. Only restriction on the payment is that contained in rule 36 of the Rules. As per that Rule, the total amount of fees payable to a Government Law Officer at a District Court, Additional District or Sub Court Centre for a period of one year shall not exceed Rs. 22,500/-. Thus, it is seen that a Government Law Officer at a District Court, Additional District Court or Sub Court Centre is getting fee depending on the work turned out by him. They are not being paid monthly salary.

3. Rule 35 of the Rules provides for payment of retainer fee; As per this Rule, a sum of Rs. 270/- per mensem is paid to the District Government Pleader and Public Prosecutors for conducting cases. An Additional District Government Pleader and Additional Public Prosecutor at District Court Centres and Sub Court centres is not entitled to this retainer fee either, So, it can be taken that an Additional District Government Pleader and Additional Public Prosecutor is to get remuneration in terms with Rule 32 of the Rules. In the instant case, while issuing order terminating the service of the petitioner, who was Additional Government Pleader and Additional Public Prosecutor, Government directed payment of Rs. 270/- towards salary in lieu of one month's notice. This direction, made in the order, can be taken only as a wrong understanding of the provisions contained in the Rules. In effect, it has added insult to injury. By no stretch of imagination can it be taken that monthly salary of an Additional Government Pleader and Additional Public Prosecutor at the District Court Centre to be Rs. 270/-.

4. The direction given to the District Collector in Ext. P2 order is to take necessary steps to draw and disburse the amount of Rs. 270/- after the service

of the petitioner as Additional Government Pleader and Additional Public Prosecutor has been terminated. This direction is in violation of the proviso to Rule 17 of the Rules. If any salary was due to a Government Law Officer its payment should precede termination of service. Payment cannot be effected after the service is terminated. In this view of the matter also, Ext. P2 cannot be sustained. Learned Government Pleader appearing in the case advanced an argument that if a Government Law Officer is not entitled to a fixed amount as monthly salary, his services can be terminated forthwith without payment of any salary in lieu of notice. This argument, I am afraid, is against the proviso to Rule 17 of the Rules. If a Government Pleader is not entitled to monthly salary, he should be given one month's notice before terminating his appointment. Government cannot terminate the service of such a Law Officer at their will and pleasure. Such an officer must get at least one month's notice.

5. In view of what has been stated above, I hold that Ext. P2 order by which petitioner's service as Additional Government Pleader and Additional Public Prosecutor has been terminated, is illegal and against the Rules. So, it is quashed. Petitioner has tendered his resignation from the post of Additional Government Pleader and Additional Public Prosecutor by sending Ext. P5 communication dated 27.5.1994 to the Law Secretary. Copy of that communication was sent to the District Collector, Ernakulam as well. Since Ext. P2 has been quashed, I direct the Law Secretary to accept Ext. P5 as a valid resignation tendered by the petitioner from the post of Additional Government Pleader and Additional Public Prosecutor.

Original Petition is disposed of with the above observations.

Issue photo copy of this judgment to the parties on usual terms.