
(1968) 12 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 4315 of 1967

N. Vittal Prabhu

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 13-12-1968

Acts Referred:

Citation : (1970) KLJ 52

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : K. Velayudhan Nair and K.J. Joseph, for the Appellant; V. Rama Shenoï and R. Raya Shenoï, for the Respondent

Judgement

K.K. Mathew, J.—The petitioner was appointed as a clerk in the school owned by Srimad Anantheshwar Temple. In March 1964, when the District Educational Officer was returning from the school, it was alleged that the petitioner way-laid him and behaved in an insulting manner towards him; for that reason a Memo of charges, Ex. P3, was served on him and he was suspended from service by Ex. P1 order dated 17-4-1964. The Manager conducted an enquiry into the charges. He took the evidence of the District Educational Officer and the Headmaster. The enquiry was completed in November 1964. Thereafter, a show cause notice was issued on 2-11-1964 but he could not pass final orders, as in the meantime Chapter XXIV (B) was added to the Kerala Education Rules on 23-2-1965. After the coming into force of the Rules in the chapter, he sought permission of the educational authority to continue in force the order of suspension. The District Educational Officer concerned, conducted an enquiry on the question whether the order of suspension was justified. He came to the conclusion that the order of suspension was justified and approved it by Ex. P4. Later on the District Educational Officer passed Ex. P6 order finding that the suspension of the petitioner for an indefinite period was unwarranted, and directing the reinstatement of the petitioner. The Manager filed a revision under Rule 92 of Chapter XIV--A against Ex.P6 order and obtained a stay of the implementation of

the order. The revision petition was disposed of by Government by Ex. P8 order on 22-8-1966 stating that the suspension of the petitioner will continue and that the Regional Deputy Director of Public Instruction will conduct the enquiry into the charges. The Regional Deputy Director of Public Instruction in pursuance to the direction, conducted an enquiry. The petitioner participated in the enquiry. A report was prepared by the Regional Deputy Director of Public Instruction (Ex. P9(a)). On the basis of Ex. P-9(a), notice was issued by the Manager (Ex. P9) to the petitioner to show cause why he should not be dismissed from service. The petitioner challenges Ex. P1 the order of suspension and Ex. P-9 notice. Mr. Velayudhan Nair appearing for the petitioner contends that the order of suspension (Ex. P1) passed by the Manager was illegal for the reason that there was no rule or provision in the contract of service which authorised suspension of the petitioner. He referred me to the rulings of the Supreme Court in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, , *T. Cajee Vs. U. Jormanik Siem and Another*, and *R.P. Kapur Vs. Union of India (UOI) and Another*, in support of the contention. I do not think that the contention is correct. Even if there is no rule or provision in the contract of service, I think master is entitled to suspend a servant when enquiring into the charges against him. The only consequence then is that the master would be liable to pay the remuneration of the servant for the period of suspension.

2. In *Balvantray Ratilal Patel Vs. The State of Maharashtra*, , the Supreme Court after referring to the rulings referred to above said:

Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well-established; See *Hanley v. Pease and Partners Ltd.*, (1915) 1 K.B. 698; *Wallwork v. Fielding*, 1921-2 K.B. 66 and the judgment of Cotton L.J., in *Boston Deep Sea Fishing and Ice Co. V. Ansell*, (1888) 39 Ch. D. 339. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of the office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey.

3. Quite apart from this aspect of the matter I do not think that the petitioner is entitled to challenge Ex. P1 at this distance of time. The order was passed in 1964. The writ petition was filed in 1967. The petition, so far as this relief is concerned is belated. Therefore, I decline the prayer for quashing Ex. P1. On the question whether the enquiry conducted by the Regional Deputy Director of Public Instruction was without authority as the Government has no power to direct an enquiry, I take the view that the petitioner is precluded from challenging the validity of the direction in Ex. P--8 for the reason that he did not challenge the, legality of that direction within a reasonable time of that order. On the other hand he could participated in the enquiry conducted by the Regional Deputy Director of Public Instruction, without demur. Besides, Government had power to interfere in revision against Ex. P-6 order as that order was passed by the District Education Officer under the Kerala Education Rules. Rule 92, in Chapter XI A would show that the Government is competent to interfere in revision whenever an order is passed by a subordinate authority under the provisions of the Kerala Education. Rules, and pass any consequential order. So, Ex. P--8 order and the direction therein were made with jurisdiction. I also think the petitioner should not be allowed to challenge the validity of Ex. P-8 order in this writ petition as it would be a belated attack on that order. Besides, the petitioner submitted to the order and participated in the enquiry conducted by the Regional Deputy Director of Public Instruction in pursuance of the direction in Ex. P 8

I see no grounds to interfere. The writ petition is dismissed but without any order as to costs.