

(2018) 02 KL CK 0110

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 10746 Of 2017

P.Ranjith Kumar @APPELLANT@Hash District Panchayath And Ors

Date of Decision : 28-02-2018

Acts Referred:

Citation : (2018) 02 KL CK 0110

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : P.M. Pareeth, Mohammed Shameel, C. Paulose, John K. George, M.B. Shyni, Ron Bastian

Final Decision : Disposed Off

Judgement

1. Petitioner, who is a Driver working under the Hospital Management Committee- the second respondent, is challenging Ext.P4 order by which his services are terminated on the ground that he did not report for duty on 05.03.2017, even after the direction issued by the District Collector. It is stated that the petitioner, who was to report for night duty on 05.03.2017, did not report for duty and attempted to mislead the superior authorities and committed grave misconduct and dereliction of duty. Accordingly, the services of the petitioner were terminated from 22.03.2017 onwards.

2. Petitioner's case is that he has been continuing in the Hospital Development Committee for the last 13 years uninterruptedly. His first appointment was on 20.05.2004, which was made after conducting a regular process of selection which included interview.

3. According to the petitioner, he was on duty leave on 05.03.2017 and he was at his residence which is 30 kms away from the hospital. By about 7.45 p.m the respondents directed him over phone, to get ready with the vehicle for attending patients likely to be injured by the attack of leopard, which had descended in that area; leopard was trapped subsequently. Petitioner's case is that on receiving the phone call, he immediately returned to the hospital and seeing that the vehicle was short of fuel, he went to the fuel outlet and returned by about

8.45 pm along with vehicle. He says that he was assigned duty thereafter in ambulance; but not in connection with the attack of leopard. It is his further case that on receipt of phone call, he had alerted another driver who is residing close to the hospital and he had ensured his presence and assistance. It is pointed out that though some people got injured on account of attack by leopard and they were brought to the hospital in the evening, there was no casualty as expected.

4. According to the petitioner, the Superintendent of the Hospital, who was in inimical terms, preferred complaints against him, in this background as a result of which, the 4th respondent issued Ext.P2 memo, alleging that the petitioner did not turn up for duty, despite intimation given to him as to the emergent requirement. Petitioner submitted Ext.P3 reply stating that he had kept the vehicle ready, as directed and he did not commit any dereliction of duty. Ext.P4 order was issued thereafter terminating the services of the petitioner from 22.03.2017 onwards. The petitioner submits that the said dismissal from service without conducting any enquiry is illegal. It is also his case that Ext.P4 order is passed by the Superintendent on the basis of the direction issued by the President of the Panchayath/the Chairman of the Hospital Development Committee and that there is no decision by the Hospital Development Committee, which is the competent authority to terminate his services and hence Ext.P4 order is without authority.

5. The respondents have filed a counter affidavit stating that petitioner's appointment in the Hospital Development Committee was only on temporary basis and as per Ext.R1(c) order-G.O. (MS).No.566/2008/H&FWD dated 05.11.2008, the appointments in Hospital Development Committee can be made only for a period of 29 days a month. Petitioner was appointed only for a period of 29 days each; therefore, he being a temporary employee, it is not necessary to conduct any enquiry before termination.

6. However, it is admitted that petitioner has been continuing as driver based on his initial appointment on 20.05.2004. Respondents have produced Exts.R1 & R1(a) dated 29.05.2006 and 06.08.2007, appointing the petitioner for 29 days from 01.06.2006 and from 09.08.2007 onwards. But there is no other order of termination or re-appointment. Respondents have stated that memos were issued to the petitioner due to his inefficiency in discharging his duties. According to the respondents, the incidents leading to the termination are the following: On 05.03.2017, a leopard descended in Kannur town which attacked several people. The 5th respondent contacted the 3rd respondent, to arrange ambulance in order to meet the situation. The 3rd respondent, who received the message directed the petitioner, who was on weekly off on 04.03.2017, to report for duty at 07.00 p.m,. As petitioner was not seen in the hospital premises he was contacted over phone, when he informed them that he was on the way to hospital. It is stated that the respondents had to arrange another driver by calling him back after duty, due to the absence of petitioner. It is also stated that from the CCTV footages installed in the premises of the hospital, it was found that petitioner

reported at the hospital only at 08.53 p.m., and thus he misled the authorities. It is also stated that the claim of the petitioner that his weekly off was on 05.03.2017 after 6 days of continuous night duty is incorrect, as the petitioner was taken his last weekly off on 25.02.2017 and the the next off fell on 04.03.2017. The respondents have stated the circumstances which led to be termination of services of the petitioner.

7. The petitioner has filed a reply affidavit producing the extract of attendance register to show that he was on weekly off on the particular day. It is also stated that there was no further appointment orders after Exts.R1 and R1(a) and he continued without any break.

8. Learned counsel for the petitioner, relying on the judgments of the Apex Court in Jagdish Mitter v. Union of India (AIR 1964 SC 449), Radhey Shyam Gupta v. U.P. State Anglo Industries Corporation Ltd. and Another [1999 (2) SCC 21], Mohanan V. v. Kerala State Road Transport Corporation, Tvm and Others [2015 (3) KHC 426], argued that even though the petitioner is a temporary employee when the action is punitive, respondents ought to have conducted an enquiry, before terminating his services on such allegations.

9. According to the learned counsel for the respondents, the petitioner has committed grave misconduct. He is only a temporary employee appointed only for 29 days and therefore, it is not necessary to conduct any enquiry before termination of his services.

10. I find that the petitioner has been continuing in service though on temporary basis for the last 13 years. Even though, the respondents produced the orders Exts.R1 and R1(a), it would only indicate that he was allowed to continue since 2004 imposing break in between on completion of 29 days. The last appointment even according to those orders was on 06.08.2007. That would mean that at least for the last more than 10 years, petitioner has been continuing as a Driver under the respondent. His services are terminated on allegations of misconduct. But those allegations are not proved in a duly conducted enquiry after issuing a memo of charge and after giving full fledged opportunity to petitioner to defend the same. This Court has in the judgment in Arun kumar v. Information Kerala Mission [2015 (5) KHC 549], held that termination of services in such cases without conducting enquiry is liable to be set aside, even when there was admission by the employee who was engaged on contract basis. In the judgment in Mohanan v. KSRTC [2015 (3) KHC 426] this Court, relying on the judgment of the Apex Court in Jagdish Mitter's case (supra) set aside the removal of an empanelled conductor, who is on temporary appointment, as it was found that the same was ordered on allegations of misdemeanour, without conducting enquiry.

11. In the above circumstances, the services of the petitioner should not also have been terminated without conducting an inquiry when allegations were raised against him as to dereliction of duty and grave misconduct.

In the above circumstances, I quash Ext.P4. It will be open for the respondents to proceed against the petitioner after issuing a memo of charge and after conducting an enquiry giving him sufficient opportunity to defend.

The writ petition is disposed of accordingly.