
(1973) 09 KL CK 0004
In the High Court Of Kerala

R. Jayakumari Amma

APPELLANT

Vs

The Kerala Public Service Commission and Another

RESPONDENT

Date of Decision : 26-09-1973

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1973) KLJ 863 : (1974) 2 LLJ 37

Hon'ble Judges : P. Govindan Nair, C.J;K. Sadasivan, J

Bench : Division Bench

Judgement

P. Govindan Nair, C.J.—This appeal from the judgment of Isaac, J., dismissing Original Petition No. 3956 of 1970 raises a question of law, which in the abstract may be stated to be whether the termination of the services of a person appointed to the Government service under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958, will attract Article 311 of the Constitution. In the judgment under appeal, Isaac J., said that he had held in his own judgment in O.M. Mathew v. Special Tahsildar, Nedumkandorn, reported in (1973) KLT 272 that Article 311 will not be attracted in cases where the appointment was under Rule 9(a)(i) and the termination was of the service under such an appointment. On examination of the judgment in O.M. Mathew v. Special Tahsildar, Nedumkandorn reported in (1973) KLT 272 it is clear that the learned Judge has not so held. A passage from paragraph 9 of the judgment is illuminative. We shall extract the whole of that paragraph:

There is a real distinction between the motive for taking an action, and the foundation or the basis of that action. But when the action is provoked by the misconduct of the Government servant, it is very difficult to say whether the misconduct was the motive for taking the action or it was the foundation of the action. The distinction becomes too nice. If I may say so with respect, one has again to look to the form of the order and the attendant circumstances. I have examined the said aspect of the matter, and held that the misconduct of the petitioner was the motive or occasion to terminate his services.

Earlier, at the end of paragraph 7, the learned Judge held:

This is a case, wherein the appointing authority did not want to take any disciplinary action against the petitioner, but availed of its right to terminate his services without such an enquiry by virtue of the fact that he was only holding the post temporarily.

2. In view of the above finding, the contention that Article 311 had been violated could not be sustained because the termination of employment was not by way of punishment. So the decision in *O.M. Mathew v. Special Tahsildar, Nedumkandom* reported in (1973) KLT 272 is not an authority for the position that the termination of employment under Rule 9(a)(i) will not attract Article 311.

3. The decision of one of us in *T.C. Govindan v. Inspector of Post Offices, Thiruvalla* reported in (1967) KLT 373 was cited before the learned Judge and reference was made to this decision in the judgment in *O.M. Mathew v. Special Tahsildar, Nedumkandom*, reported in (1973) KLT 272 This is what the learned Judge said:

The learned Judge, on the facts and circumstances of the case, found that, though the order of termination was itself innocent, it attached a stigma to the petitioner when read in the light of the communication sent to the complainant, and the action taken against the petitioner was, therefore, a punishment. The question whether the said finding can be justified in the light of the principles laid down in the decision of the Supreme Court herein referred to does not arise before me.

This passage seems to imply that the decision in *T. C. Govindan v. Inspector of Post Offices, Thiruvalla*, reported in (1967) KLT 373 might require reconsideration. What has been held therein has been fairly correctly summarised in the head note of the decision which we may extract:

When a court is satisfied that the action against an employee is really by way of a punishment, not a mere termination of services according to service conditions, the provision in Article 311(2) will be attracted. It does not matter whether the employee is a permanent employee or a temporary employee. The fact that an enquiry was conducted which is in the nature of a preliminary enquiry, for the purpose of determining whether a formal enquiry should be undertaken or whether action should be taken pursuant to Rules similar to Rule 6 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1959 is not sufficient by itself to come to the conclusion that a punishment has been imposed. The form of the order by which the services were terminated or the words used in the order are not conclusive and the real substance must be ascertained. The action taken against the petitioner in this case was really an imposition of punishment and there is a stigma attached to him. The fact that no reason has been stated is also a defect which is sufficient to have the order set aside.

4. The decision in the case is based on the finding on the question whether in all the circumstances of the case, the action taken could be said to be by way of punishment. It was held that it was by way of punishment. So it was further held that the action is bad because Article 311 had not been complied with.

5. The view taken that Article 311 will apply to termination of temporary employment is well-established. Citation of authorities which we think are all one way is unnecessary. In fact the position was not even canvassed before us.

6. The finding that the action amounted to punishment cannot, as Isaac, J. correctly pointed out, arise for consideration in other cases.

7. The appellant had been appointed under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules and the order Ext. P3 directed that it is not proper to continue the appellant even temporarily in service. She was, therefore, relieved from the office of the District Recruitment Board, Trivandrum.

8. Paragraph 11 of the order Ext. P3, may be extracted:

11. In the result, the Commission have come to the conclusion that the candidate Smt. R. Jayakumari Amma (Reg. No. 3419) who appeared for the written test conducted by the K.P.S.C. for recruitment of L.D. Clerk/Cashier in the K.S.E. Board on 28-5-69 had illicit access to her answer book of Parts I & II (English) after submitting the same to the Assistant Superintendent at the Examination hall and has subsequently tampered with it making interpolations and corrections in the answer book and adding an additional answer book and her actions amount to grave misconduct and manipulation of false documents for the purpose of illegally securing of job. It is, therefore, ordered that the answer book of this candidate of Parts I & II (English) for the written test mentioned above be invalidated, that her name will not be included in the ranked list of clerks for recruitment to the K.S.E. Board in pursuance of the above test and that she be debarred from recruitment to public service for a period of two years from the date of this order.

Smt. Jayakumari Amma is working temporarily as Grade II Assistant in the office of the District Recruitment Board, Trivandrum she being appointed under Rule 9A (i) of the General Rules of the Kerala State and Subordinate Services. Since she has been debarred from recruitment to the public service for a period of two years in accordance with this order, the Commission feels that it is not proper to continue her even temporarily in service, She is, therefore, relieved forthwith from the office of the District Recruitment Board, Trivandrum.

9. Counsel for the appellant contended that Rule 13 of the Kerala Public Service Commission Rules of Procedure, the appellant's services could not be terminated. It was also further contended that even assuming that under Rule 13 the services of the appellant could be terminated, it could be so done only after complying with Article 311 of the Constitution.

10. We are unable to accept the contention that termination of service of an

employee who has been found guilty of making false statements or producing false documents before the Commission cannot be terminated under Rule 13. If it is possible to debar permanently a person for such misconduct from appointment to any service in the State, it must necessarily mean that if the person is already in service, that person's service could be terminated. So we reject this part of the contention. We must, however, accept the second part of the contention, for, the appellant is entitled to the protection of Article 311 of the Constitution. This protection guaranteed a second show cause notice regarding the punishment to be imposed. Admittedly no notice was issued to the appellant to show cause why the appellant's services under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958 should not be terminated. Such a notice should have been issued, and a reasonable opportunity offered to the appellant. Without adopting such a procedure the services of the appellant, though only pursuant to an appointment under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958, should not have been terminated. The order Ext. P3 must, however, stand in regard to the other findings and the other punishments imposed.

11. In the light of the above, we set aside that part of the direction in Ext. P3 order by which the service of the appellant had been terminated. We direct the Public Service Commission to comply with Article 311 of the Constitution by issuing a show cause notice to the appellant, if they deem it necessary to impose the punishment of termination of services of the appellant pursuant to her appointment under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, 1958, and after affording a reasonable opportunity to the appellant to make representations against such a notice, pass appropriate orders in accordance with law.

12. We dispose of this appeal on the above terms. We make no order as to costs.