
(2015) 07 KL CK 0069

In the High Court Of Kerala

Case No : Writ Petition (C). No. 35158 of 2007 (S)

Senior Superintendent of Post Offices and Others

APPELLANT

Vs

P.K. Vasumathy

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Citation : (2015) 07 KL CK 0069

Hon'ble Judges : P.R. Ramachandra Menon, J;Anu Sivaraman, J

Bench : Division Bench

Advocate : P. Parameswaran Nair, Asst. Solicitor, T.P.M. Ibrahim Khan, Asst. S.G of India and K. Shri Hari Rao, CGC, for the Appellant; O.V. Radhakrishnan, and Antony Mukkath, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anu Sivaraman, J.

1. This writ petition, is against the order of the Central Administrative Tribunal dated 13.9.2007, in O.A.234/2006. O.A.234/2006 was filed by the respondent herein, seeking directions, for reinstatement in service w.e.f. 3.4.2004 to the date of her removal from service on 17.3.2006 and for consequential reliefs. The facts necessary for an adjudicate in this case are as follows:

2. The respondent, who was the Sub Post Master in Prayar Sub Post Office under the Kollam Postal Division, was placed under suspension as per Annexure A-1 order dated 08.11.2002. She was issued with a memo or charges and disciplinary proceedings were initiated against her. While so, it is stated that Rule 10 of the Central Civil Service (Classification Control and Appeal) Rules were amended by notification dated 23.12.2003 which was published on 3.1.2004. The amendments were to take effect from 90 days after the date of publication. The amendments therefore, became effective on 3.4.2004. By the amendment in question, Sub Rules 6 and 7 were incorporated in Rule 10 of the CCS (CC&A) Rules which read as follows:

"6. An order suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

7. Notwithstanding anything contained in sub-rule 5, an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period ninety days unless it is extended after review, for a further period before the expiry of ninety days."

3. Going by the provision of Sub Rules 6 and 7, the applicant before the Tribunal, who was placed under suspension on 8.11.2002, was entitled to have her suspension reviewed by the competent authority within 90 days from the date of publication of the amended Rules. However, it was the contention of the appellant that such review was not conducted and no appropriate orders were passed extending the period of suspension. Claiming the benefit of Sub Rules 6 and 7, the applicant sought reinstatement with effect from 3.4.2004. She had initially filed O.A. No. 526/2004 on 12.7.2004 which was admitted by the Tribunal on 13.7.2004. It is stated by the petitioner that the statement was filed on behalf of the respondents to O.A. i.e., the petitioner herein on 10.9.2004 stating that, the Review Committee which met on 16.4.2004, has decided not to revoke the suspension of the respondent and therefore the suspension stood extended. Considering, the rival contentions, the Tribunal passed the order which is produced along with O.A as Annexure A9. Considering the rival contentions and the provisions of Sub Rules 6 and 7 of Rule 10 of the CCS (CC&A) Rules, the Tribunal held that the Annexure A7 order dated 6.9.2004, was not issued within the time prescribed in Sub Rules 6 and 7 and that it would not satisfy the requirements of the rules. The original application was allowed declaring that the suspension of the applicant made by Annexure A1 order had become inoperative in view of the failure on the part of the competent authority to issue an order as required in the Rules 10 of the CCS(CC&A) Rules. It was further held that necessary legal consequences will follow.

4. Thereafter, it is submitted that an order was passed by the 1st petitioner reinstating the respondent in service notionally from 4.7.2004 to 5.9.2004. The applicant filed O.A.234/2006 claiming reinstatement from 3.4.2004 to 17.3.2006, which is the date of the order of termination of her service pursuant to the disciplinary proceedings finalized by the petitioners. She also challenged Annexures A7, A8, A10, A12, A13 and A14 orders rejecting her claim for such reinstatement. The said O.A was sought to be defended by the petitioners herein stating that the review of the respondents suspension had been conducted in time and since her case was considered for further review within 30.6.2004,

Annexure A1 suspension order was considered valid and no fresh orders of suspension were required. The reinstatement from 4.7.2004 to 5.9.2004 was sought to be justified on the ground that the order of extension of her suspension had been communicated to her on 6.9.2004 and therefore she could be held entitled to reinstatement only till that date. It was also brought to the notice of the Tribunal that Annexure R1 order of termination of service was issued by the competent authority on 17.3.2006 to be effective from that date.

5. The Tribunal, after considering the pleadings, the materials on record and the rival contentions, came to the conclusion that Rule 10(6) of the CCS(CC&A) contemplate an order modifying or extending the suspension to be issued before expiry of the period of 90 days from the date of the order of suspension or the date of the amendment, whichever applies in a given case. It was held that, it was the responsibility of the authority competent to modify or revoke the suspension before the expiry of the said period and that the order dated 6.9.2004 does not conform to the time period provided in the aforesaid sub rules. It was further held that the applicant was prevented from carrying out her duties by the petitioners themselves and she would therefore be entitled to salary and other benefits consequent on her deemed reinstatement with effect from 3.4.2004 to 17.3.2006, the date of Annexure R1 order. The petitioners were directed to work out the pay and allowances of the respondent including increments, if due, for the aforesaid period and make the payment to the respondent after deducting the amount of subsistence allowance already paid. It is aggrieved by this direction that the petitioners preferred the instant Writ Petition.

6. We have heard Sri. Srihari Rao, the learned Central Government Counsel appearing for the petitioner and Sri. Antony Mukkath, learned counsel for the respondent. We notice that the amended provision of Rule 10 of the CCS(CC&A) provides not only for a review by the competent authority within a period of 90 days but also for passing of an order in that regard on the basis of the recommendations of the Review Committee within the self same period. It has been held by the Tribunal in Annexure 9 produced along with the original application that no order had, as a matter of fact, been issued within the time prescribed. That finding has also become final. Though the respondent had been seeking reinstatement with effect from 3.4.2004, even after the issuance of Annexure A9 order, the petitioners had reinstated her only with effect from 4.7.2004 and had confined the reinstatement till 5.9.2004. Going by the provisions of the rules, the Tribunal has found that, there is no material to hold that the reinstatement could have been limited to the period till the passing of the order on 6.9.2004. We are of the view that such a contention could not have been advanced by the petitioners in view of the attainment of finality of Ext.A9 order also. The petitioners also have no case that the respondent was removed from service with effect from any anterior date. The respondent, therefore, would be entitled to have continued in service till 17.3.2006, had she been reinstated in service in the absence of any other orders preventing her from carrying out her

duties since she was prevented from carrying out her duties due to the action of the petitioners themselves, the theory of no, no pay can have no application here. In the above circumstances, we find no merit in the contentions advanced by the petitioners. The writ petition fails and is accordingly dismissed. No costs.