Raj Kumar

Vs

Union of India and Others

Civil Appeal No. 1730 of 1972

(K. K. Mathew, A. lagiriswmi JJ)

07.10.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. The appellant was appointed as Airport Ticket Clerk in the Civil Aviation Department of the Government of India on August 14, 1967. On June 15, 1971 his services were terminated "forthwith" and it was directed that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing them immediately before the date on which the order was served on or, as the case may be, tendered to him. But the pay and allowances were not paid to him at the same time as the service of the order of termination of his services. His appeal against the termination as well as representations having failed he filed a writ petition out of which this appeal arises. The High Court dismissed the writ petition in limine and this appeal has been filed in pursuance of a certificate granted by the High Court because of the decision of this Court in R. M. S. v. K. V. Gopinath ((1972) 3 SCR 530 : (1973) 3 SCC 867, 869 : 1973 SCC (L&S) 277).

2. Before us the legality of the termination of the appellant's services was questioned only on the basis of the decision above referred to. It was held by this Court in that decision as follows :

Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under Rule 1(b) the period prescribed for such notice is one month. The proviso to the sub-rule (b) however gives the Government an option not to retain the employee in service till the expiry of the period of the notice; but to be effective, the termination of service has to be simultaneous with the payment to the employee of whatever is due to him. The operative words of the proviso are 'the services of any such Government servant may be terminated forthwith by payment' showing that the payment is a condition of the termination of service forthwith.

Since the words used are plain and unambiguous they must be construed in their ordinary sense without any considerations of policy.

There will always be some time during which the authority deliberates over the matter and makes up his mind, and within that time, directions can be given that the pay and allowances of the Government servant should be calculated so that they could be offered to the employee at the time when the order of termination is served on him. There is no difficulty in the calculation because the payment is to be made at the same rates at which he was drawing them immediately before the termination of his services. Therefore, there is no merit in the contention that it would be impossible for the authorities to give effect to the proviso if payment was to be made simultaneously with the

service on the employee of the order of termination.

This decision had not been rendered when the High Court dealt with this matter and it is obvious from the fact that the High Court has granted the certificate purely because of the subsequent decision of this Court. Admittedly the pay and allowances were not paid to the appellant at the same time as the notice of termination of his services was served on the appellant. The only point taken on behalf of the respondents at the time when the appellant applied for grant of the certificate was that before making the final payment it had to be ensured that no Government dues were outstanding against the appellant and he was, therefore, called upon by a letter dated June 26, 1971 to collect his dues after surrendering his identity card, identity batch, C.G.H.S. token card and all items of uniform. As the order of termination of services is dated June 3 and this letter is said to have been written on June 26 it is in no sense an explanation as to why appellant's salary etc. were not paid to him on the date of termination of his services. The matter squarely falls within the decision of this Court earlier referred to. The appeal will have, therefore, to be allowed and it is accordingly allowed and the order dated June 3, 1971 is quashed. The respondents will pay the appellant's costs.

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