

V. Sridharan Nair

Vs

State of Kerala and Others

Writ Petition No. 3832 of 1978

(V. Khalid, G. L. Oza JJ)

19.09.1986

JUDGMENT

KHALID, J. -

1. The petitioner was a Laboratory Attendant in the University Intermediate College (now called Arts College), Trivandrum in the Collegiate Education Department. He was deputed to the City Improvement Trust as per Government Order dated October 24, 1961. The period of deputation was two years from the date of the order or from the date of his relief from the college. He was relieved of his duties with effect from October 30, 1961, by the Department of Collegiate Education. His deputation period was extended for a further period of one year from November 1, 1963 and for a further period of two years with effect from November 1, 1964. The extended period expired on October 31, 1966. In the last order extending the period of deputation, it was made clear that no further extension would be allowed.
2. During the deputation period he was promoted as Upper Division Clerk in the City Improvement Trust. The petitioner made a representation on September 3, 1966, requesting the State Government to allow him to continue in the City Improvement Trust, terminating his lien in the Collegiate Education Department. No orders were passed by the Directorate of Collegiate Education or by the government on this representation.
3. The petitioner continued in the City Improvement Trust, on deputation. Meanwhile the City Improvement Trust was merged with the Kerala State Housing Board, respondent 3 herein. While so, on March 29, 1972, orders were passed terminating the lien of the petitioner in the Department of Collegiate Education in purported exercise of the powers contained in Rule 24 of the Kerala Service Rules. A show cause notice was issued by the Director of Collegiate Education on March 21, 1973, asking the petitioner to submit his explanation against the proposed removal of his lien in that department. The petitioner submitted a representation dated March 26, 1973, stating that he was not at fault in not joining duty in the parent department and that he was retained in foreign service anticipating government's orders. In view of the merger of the City Improvement Trust with the Kerala Housing Board, he was not interested in continuing on deputation. He further requested that the period after November 1, 1966, may be treated as an extension of the deputation period. The explanation was not accepted and orders were finally passed terminating the lien of the petitioner. Hence this writ petition.
4. It is necessary to state a few facts to understand what happened after the petitioner's deputation. The petitioner thought that he was secure in the deputed service and that he would stand to gain therein if he continued there when compared to his parent department. He had challenged the order

passed by the Director of Collegiate Education terminating his lien by filling Original Petition No. 3779 of 1973 in the Kerala High Court. Earlier he had filed an Original Petition No. 31 of 1973 in the same High Court against the State of Kerala and the Kerala State Housing Board when he was reverted from the post of Upper Division Clerk to that of Lower Division Clerk in the Housing Board, for not passing the Accounts Test. He succeeded in this writ petition. He succeeded to have been unduly elated over this success and allowed the Original Petition No. 3779 of 1973 to be dismissed as not pressed. The main ground why he did not press the Original Petition No. 3779 of 1973 was that he had obtained a favourable order in the other original petition. As ill luck would have it, the matter was taken in appeal by the State Housing Board and the Division Bench of the Kerala High Court reversed that judgment. Thus, the petitioner was victim of unfavourable circumstances and fluctuations in fortunes.

5. Normally we would have dismissed this writ petition on the short ground that the petitioner had invoked the jurisdiction of the High Court under Article 226 of the Constitution to get the order under challenge in this writ petition, to be quashed, and after invoking this jurisdiction had allowed the original petition, wherein the said challenge was made, to be dismissed as not pressed. But, as indicated above, the petitioner at that time did not anticipate what was in store for him in future.

6. It was as per a government order that he was deputed on foreign service. It is true that when the deputation was extended, it was made clear that the deputation would terminate on October 31, 1966, finally. The petitioner was put on notice that there would not be any further extension. There was some indifference on his part. But, there was greater inaction on the part of the respondent also. The petitioner had made a representation on September 3, 1966 to the respondents on which orders were passed till March 29, 1972. When the petitioner realised that his prospects were not bright in the Kerala State Housing Board as he anticipated earlier, he was left with no option but to press his case that the order terminating his lien was bad in law. We do not think that the petitioner should be faulted for this inaction, when we find that the respondents also contributed in a large measure to the unhappy state of affairs.

7. Rule 19(a) in Part I, Chapter III of the Kerala Service Rules reads as follows :

An officer's lien on a post may in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or suspended lien upon a permanent post.

This rule mandates that an officer's lien on a post shall not be terminated even with his consent if the consequence is to leave him without a lien or a suspended lien upon a permanent post. The State of Kerala, the Director of Collegiate Education and the Kerala State Housing Board are parties to this writ petition. None of these parties have filed counter-affidavits. We do not know the service conditions of the petitioner in the Housing Boards. We do not know whether he occupies a permanent post there or not. Nor do we know whether he has a lien or a suspended line in the Housing Board. Without being apprised of these details, the order of termination of lien cannot be allowed to stand as it would work great injustice against the petitioner. Rule 24 of the Kerala Service Rules is the next rule which is attracted in this case, which reads as follows :

Unless the government, in view of the special circumstances of the case, otherwise determine, after five years' continuous absence from duty, an officer shall be removed from service after following the procedure laid down in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

This rule speaks of removal from service when an officer has been continuously absent from duty for five years. This rule speaks of the existence of special circumstances which will enable the department concerned to save an officer from its vice. This rule also speaks of the necessity to follow the procedure laid down in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, for removal of an officer from service. The assumption on the part of the department in this case is that the petitioner's continuance in the service of the Housing Board constituted absence from duty. We cannot subscribe to this view in the absence of compelling materials. It was not a case of his absents from duty after he was asked by the parent department to join it. At no time was he asked to join duty in the parent department. Without specific orders, the petitioner could not abandon the deputed foreign service and join the parent department. There should be a clear finding of continuous absence from duty by the department to attract Rule 24. The department also has to satisfy the court whether the special circumstances of this case would not rescue the petitioner from the rigour of Rule 24. It is also necessary for this Court to be satisfied that the procedure laid down in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, is complied with. The order terminating his lien is passed on the specious plea that his explanation is not satisfactory. The order should have been more articulate in its content. To sustain the order would virtually mean to deny the petitioner his service in the parent department and throwing him to the mercies of the Housing Board.

8. In this case, we are concerned more with consideration of justice than with mere technicalities of law. The petitioner has filed this writ petition as early as in 1978. It would be unfair and unjust to treat the period after October 31, 1966, to be one of continuous absence from duty. For an effective adjudication of the claim of the petitioner, his position in the deputed foreign service, the service conditions there, his position there, etc., will have to be considered in detail. That has not been done. Under these circumstances, we hold that the petitioner is entitled to succeed. Accordingly, we quash the order No. B.5-38127/66 dated May 29, 1973, issued by the Director of Collegiate Education, Trivandrum, terminating the lien of the petitioner herein and direct the second respondent to issue a fresh show cause notice, give the petitioner an opportunity to make his explanation and also an opportunity of being heard and pass orders strictly in compliance with Rule 19(a) and Rule 24 of the Kerala Service Rules and in accordance with law, if the second respondent still feels that his lien should be terminated.

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