

Assistant Educational Officer Vs. Mohammed

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Court : Kerala

Decided On : Jul-14-1966

Reported in : (1969)ILLJ321Ker

Judge : M.S. Menon, C.J. and; P. Govindan Nair, J.

Appellant : Assistant Educational Officer

Respondent : Mohammed

Judgement :

P. Govindan Nair, J.

1. The appellant before us was served with a chargesheet and punished for the misconduct alleged by order Ex. P. 14 which has been produced along with the writ application which gave rise to the order under appeal. Another order Ex. P. 16 was passed afterwards, as we understand it, under Rule 56 of the Kerala Service Rules. These two orders were challenged in the writ application. This Court declined to go into the question of the validity or otherwise of the order Ex. P. 14 because an appeal from that order was pending but quashed the demand contained in Ex. P. 16.

2. The question that arises for determination depends on the interpretation of Rule 56 of the Kerala Service Rules which reads as follows:

56. (1) When an officer who has been dismissed, removed, compulsorily retired, or suspended is reinstated, or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the officer for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the officer has been fully exonerated or in the case of suspension, that it was wholly unjustified, the officer shall be given the full pay to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be, together with any allowances of which he was in receipt prior to his dismissal, removal or suspension.

(3) In other cases, the officer shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under Clause (2) or (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under Clause (2), the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under 01. (3), the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specific purpose.

Notwithstanding the provision contained in Clause (4), an officer who is reinstated under C1. (1) and who would have been eligible for promotion to a higher post during the period of suspension but for the suspension will be entitled to the pay and allowances of the higher post only from the date on which he assumes charge of that post.

Notes thereto, we consider, are not material and have therefore not been extracted. This rule is intended to serve a purpose, of making provision for payment during the period when a Government employee has been kept out of duty as the result of an order of suspension pending enquiry or has been kept out of duty because of the punishment of suspension or dismissal imposed on him but had been reinstated. The orders to be passed under Sub-rule (2) and/or (3) of Rule 56 are not orders imposing punishment. Rule 56 is only an enabling provision for giving specific directions for the disbursement of the pay and allowances due to a person during such period or part of such pay and allowances depending on the circumstances of the case. If it is found that the person has been fully exonerated or if it is found that his suspension was wholly unjustified, he will be entitled to his full pay and allowances as enjoined by Sub-rule (2). In other cases, Sub-rule (3) will be attracted and the competent authority can pass such orders as he deems fit. In either of the cases, it is impossible to understand the provision as in the nature of the power conferred on authorities to impose a punishment. We do not understand the order Ex. P. 16 as an order imposing punishment either.

3. However, an order under Rule 56 must be one passed after adverting to the facts and circumstances of the case. We consider that such an order should normally be passed only after affording an opportunity to the employee concerned to state his case. It was so held in *Vasant Raghunath Gokhale v. State of Maharashtra* and Anr. 1963-1 L.L.J. 449, the principle of which decision has been approved by this Court in Writ Appeal No. 146 of 1934. The order Ex. P. 6 in this case was passed without giving such an opportunity to respondent 1. That order therefore cannot stand and will stand quashed.

4. The only point remaining to be considered is about the direction in Ex. P, 16 order to the effect.

The excess amount paid to the teacher as subsistence allowance may be got refunded at the rate of Rs. 25 per month.

5. Subsistence allowance was paid to respondent 1 presumably in accordance with Rule 55 of the Kerala Service Rules. Rule 56 as such does not provide for the recovery of the subsistence allowance in any circumstances. No doubt there is a

note, note 5, to the rule which provides for recovery of subsistence allowance. But this note has not been relied on and we need not therefore advert to the note. Amendments have now been made to the rule and published on 17 December 1964, in the gazette, by which a second proviso reading as under.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Rule 55,

has been added to Sub-rule (3) of Rule 56. Hereafter, therefore, the question similar to the one raised in this case may not arise.

6. We feel, no doubt, that there can be no direction for recovery of the subsistence allowance validly admissible under Rule 55. We therefore make it clear that no such direction can be given.

7. It is however open to the competent authority after giving an opportunity to respondent 1 to pass fresh orders under Rule 56 in the light of what is stated above.

8. This writ application is disposed of on the above terms. There will be no order as to costs.

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