

A.P. Augustine Vs. Supt. of Post Offices

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Court : Kerala

Decided On : Jan-04-1984

Reported in : (1984)ILLJ434Ker

Judge : Kochu Thommen, J.

Appellant : A.P. Augustine

Respondent : Supt. of Post Offices

Judgement :

Kochu Thommen, J.

1. The petitioner is an extra-departmental Branch Post Master at Meenkunnam. By Ext. P1 dated 20th May, 1981 of the Sub Divisional Inspector of Post Offices, Muvattupuzha, the petitioner was 'put off duty'. Ext. P1 reads:

Under Rule 9(1) of P. & T.E.D. Agents (Conduct & Service) Rules, 1964 Sri A.P. Augustine, B.P.M. Meenkunnam is hereby put off duty with immediate effect. Sri A.P. Augustine is not entitled for any allowance during the period of put off.

Ext.P1 was later ratified by the Superintendent of Post Offices, Alwaye by Ext.R1 dated 27th May, 1981. As an extra-departmental officer, the petitioner holds a civil post as contemplated under Art.311 of the Constitution Supdt. Post Offices v. P.K. Rajamma : [1977]3SCR678 .

2. Rule 9(1) is extracted by the petitioner in paragraph 4 of the Original Petition. It reads:

9. An employee shall be liable to be put off from duty by or under the orders of the appointing authority or any authority to which it is subordinate pending enquiry into any complaint or allegation of misconduct against him. During such period, he will not be entitled to any allowance.

As a result of Ext.P1 the petitioner has been kept out of his office since 20th May, 1981 and has not received either salary or subsistence allowance.

3. He has not been paid subsistence allowance for the reason that Rule 9(1) says that he is not entitled to it. He has not received salary because the effect of putting him off duty is to keep him under suspension pending enquiry. I am told that so far no enquiry has been conducted and no charges have been framed. No steps have been taken into that direction. That means ever since 20th May, 1981 the petitioner has been kept under suspension supposedly pending enquiry which has not yet commenced, and which apparently was not intended to commence in the near future. All these years the petitioner has not been told as to what is the matter into which an enquiry is proposed to be conducted against him or the reason for which he is put to all the loss and disgrace. Ext.P1 does not throw any light on this vital point.

4. It cannot be gainsaid that the object of Rule 9(1) is to enable the department to keep a delinquent employee out of office during the pendency of disciplinary action against him. An enquiry for this purpose should have actually commenced, or should have been intended to commence without delay before the employee is put off duty. The employer has no right to keep an employee out of office and deny him salary, so long as the vinculum juris between them of master and servant continues except for the purpose of conducting an enquiry of that nature or as a punishment imposed on him under the Rules on the basis of an enquiry. Exercise of the power of suspension for any other purpose would be an unauthorised act.

5. The fact that even after two and a half years the enquiry has not commenced shows that the respondents had no intention of taking any immediate steps in that

direction when the petitioner was ordered to be kept off duty. Ext.P1 was therefore not an order which was intended to operate in terms of Rule 9(1). To put an employee off duty without any enquiry and payment of salary or allowances for an unduly long period was a mala fide and unauthorised act. The subsequent conduct of the respondents has destroyed any semblance of validity in Ext.P1 as ratified by Ext.R1. In the circumstances, I declare that these two orders are invalid and of no effect in law.

6. The employee is accordingly deemed to have been in service at all material times and is thus entitled to whatever benefits, financially or otherwise, which he would have received had it not been for the invalid action taken against him as per Exts.P1 and R1.

7. While it may be still open to the respondents to conduct an enquiry against the petitioner in respect of the alleged misconduct, I should have thought that any such belated enquiry is unlikely to be fair, for at this distance of time it would be almost impossible for the employee to defend himself effectively by adducing evidence in regard to matters alleged to have occurred over two and a half years ago, and in respect of which he has not yet been informed of the charges and the nature of the evidence relied on against him. His own witnesses may have disappeared or their memory faded. Whatever evidence that he could have adduced in his favour, had the enquiry commenced promptly, would in all probability have by now vanished. No fair and effective enquiry can be conducted unless it commences within a reasonable time after the incident. To call upon an employee to defend himself at this distance of time is probably to put him at considerable disadvantage and thus deny him the benefits of natural justice. What will be the actual effect of such enquiry in law in the present case, should it be conducted in the future, is a matter on which I do not wish to express any final view at this stage.

8. Whatever be the ultimate fate of any such enquiry, the petitioner is in law deemed to have continued uninterruptedly in service and is thus entitled to all the benefits of his service, including the emoluments payable under the relevant rules, which have been unlawfully denied to him by invalid orders.

9. In the circumstances, I direct the respondents to pass appropriate orders on the basis of what is stated above as to the benefits to which the petitioner is in terms of the relevant rules entitled without regard to Ext.P1 or Ext.R1, i.e., on the basis that the petitioner continued to work during the period in question. The Original Petition is allowed in the above terms. No costs.

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