

N.S. Subramaniam Vs. State by Union of India (Uoi), Represented by S.P.E.

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Court : Chennai

Decided On : Apr-29-1967

Reported in : 1969CriLJ1294

Judge : Venkataraman, J.

Appellant : N.S. Subramaniam

Respondent : State by Union of India (Uoi), Represented by S.P.E.

Advocate for Pet/Ap. : Mr. Y. Gopinathan

Judgement :

ORDER

Venkataraman, J.

1. This revision petition baa been filed by Sri N.S. Subramaniam, the accused in C. C. 18 of 1966 on the file of the Additional Special Judge, Madras against the order of the learned Special Judge overruling his preliminary objection that the Court bad no jurisdiction to take cognisance 'of the offence alleged against the accused without the requisite sanction prescribed under Section 6 of the Prevention of Corruption Act (Act II of 1947). The charge against him was that he had misappropriated a sum of Rs. 7,861.80 between December 1963 and October 1964 from out of the collections made by him as the manager of the Central Government Tourist Bungalow at Madurai, an offence tinder Section 5(2) read with

Section 5(1)(c) of the Act. He had been appointed as the Manager by order dated 8-4-1968, by the Director, Government of India Tourist office, Madras. He was relieved of the post on 30-9-1964.

Thereafter leave was granted to him upto 15-3-1965. The charge sheet was filed against him on 28-8-1966. He took the preliminary objection mentioned above on 24-10-1966. Section 6 states that no court shall take cognizance of the offence punishable under Sub-section (2) of Section 5 of the Act, alleged to have been committed by a public servant, except with the previous sanction of the authority competent to remove him from his office. Actually, an order was issued on 24.10.1966 that his services stood terminated. But, according to the order, they stood terminated with effect from 15.5-1965 under B. 5 of the Central Civil Services Temporary Service Rules, 1965, in consequence of his communication dated 14-4-1965.

The rule will be referred to presently and at this stage, it is sufficient to state that the said communication of 24/25-10-1966 proceeded on the assumption that the petitioner had been appointed only temporarily and that under the rules governing such temporary employees it was open to the petitioner to terminate his services under the Government by giving a month's notice, that his communication dated 14-4-1965 amounted to such notice, and that consequently his service became terminated on 15-5.1965. The above order was served on the petitioner only on 21-11-1966.

2. The petitioner's objection before the learned Judge proceeded on the assumption that till the above communication was served on him on 21.11.1966, he continued in the service of the Government, and that accordingly sanction was required under Section 6 to the Act. The reply of the prosecution to this objection is that the petitioner had ceased to be in Government service with effect from 15-5-1965 and that since the charge sheet was filed only on 28-8-1966 when he was not a public servant, sanction was not required. The decision in *Ram Dhyani Singh v. State* : AIR1953 All470 , shows that if on 28.8.1966, the petitioner was not in Government employ, sanction was not necessary. That proposition is not disputed by the petitioner; but his contention is that he continued to be in the employment of

Government till 21-11-1966.

3. The learned Judge overruled the objection of the petitioner accepting the contention of the prosecution on the ground mentioned above. Another ground was also relied on by the learned Special Judge and it was that even apart from the termination of the services brought about by the notice given by the petitioner on 14-4-1965, he must be deemed to have ceased to be a Government employee with effect from 16-3-1965 by virtue of Rule 14(c) of the revised Leave Rules 1933, of the Government of India, because he had not rejoined duty on the expiry of the extraordinary leave granted to him till 15-8-1965.

4. Before me, the main point taken by Mr. Y. Gopinathan, learned Counsel for the petitioner is that the petitioner ceased to be in Government service only on 21-11-1966. He denies that the petitioner was appointed only temporarily. Alternatively, he argues that even if the appointment was only temporary the petitioner's services stood terminated only with effect from 21.11-1966 because it was only then the petitioner's resignation of 14-4-1965 had been accepted and the acceptance was communicated to the petitioner. For the proposition that the date of communication of the acceptance of the resignation is material, learned Counsel relies on the decision of the Supreme Court in *Bachittar Sineh v. State of Punjab* : AIR 1963 SC395 . The learned Counsel also challenges the application of Rule 14(c) of the revised Leave Rules 1933.

5. The first question which is involved is whether the petitioner was only a temporary Government servant, because it was only then that R 5 of the Central Civil Services Temporary Services Rules 1949, or the corresponding Rules of 1965 would apply. If he was not a temporary servant, but was a permanent Government servant, it is not disputed by the learned Public Prosecutor that a different set of rules would apply. Those rules were found at pages 12 and 13 of the Compilation of the Fundamental rules and the Supplementary rules made by the Government of India, 3rd Edn., 1963. According to those rules, a permanent Government servant can resign his post, but 'a resignation becomes effective when it is accepted and the officer is relieved of his duties'. In other words, the resignation cannot become effective till it is accepted and the officer is relieved of

his duties. If the petitioner was a permanent Government servant, his resignation could, therefore, not commence at any date earlier than 24/25.10-1966 when the order on that date was issued. Hence, the crucial question at the outset is whether the appointment of the petitioner was temporary or permanent.

6. Though when this revision was first heard, the learned Public Prosecutor relied on some communications of the petitioner him-self, wherein he himself took the stand that his appointment was temporary and that he could terminate it by giving a month's notice as he had done, it was felt better to send for the original files of the Government by which the petitioner was appointed to ascertain whether he had been appointed temporarily or permanently. After the adjournment, the learned Public Prosecutor has produced the relevant files. They clearly show that the appointment of the petitioner in the first instance on 8-4-1963 was temporary and that the extension of his services was only on a temporary basis. In fact, the post of care-taker of the tourist bungalow at Madurai was created only for a temporary period from 1-8-1963 to 28-2-1964 in the first instance, and later it was continued from 1-8-1964 to 28-2-1965 and from 1-8-1965 to 28-2-1966, so far as the papers placed before me show.

The post itself being only temporary and being continued from time to time, it is obvious that the petitioner was appointed thereto only temporarily. In fact, that was also the stand taken by the petitioner himself in his communication of 28.5.1965 and 21-6-1965. By these communications, the petitioner wanted to make out; that he was free to take up employment elsewhere and that, in fact, he had taken up employment with the State Housing Board with effect from 15-4.1965 and that the tourist department of the Government of India could not stand in his way and could not take their own time to pass written orders accepting his resignation. I therefore find, agreeing with the learned Judge, that the petitioner was only a temporary Government servant. If 80, the Central Civil Services Temporary Services Rules, 1949 appended at page 250 of the above compilation will apply. Rule 5, so far as is material, of those rules ran thus:

5(a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing

given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

6. The period of such notice shall be one month, unless otherwise agreed to by the Government and by the Government servant.

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or as the case may be, for the period by which such notice falls short of one month or any agreed longer period.

7. The following is the communication dated 14-4-1965 of the petitioner to the Director of the Government of India Tourist office, Madras-2:

In continuation of the letter cited above, I would like to inform you that I have not received either any communication so far the acceptance of my resignation in October 1964 or posting to any place after the expiry of my leave. I therefore request you to treat this as my final resignation of my post and arrange to pay me at an early date my security deposit and other amounts due to me.

It is clear that the above communication may be taken as a notice under E. 5 given by the petitioner to the authorities and that his services became terminated on the expiry of one month of the notice, that is to say, with effect from 15-5-1965. Sri V. Gopinathan, however, would urge that this is not the meaning of Rule 5 of the rules and that the rule is subject to the instructions at Pages 12 and 18 of the compilation and that the resignation would become effective only when it was accepted and the order of acceptance was communicated to the petitioner, namely, 21-11-1966. learned Counsel submits that the words in B. 5 are merely 'shall be liable to termination' and cannot be interpreted as meaning that after the expiry of one month of the notice the services became automatically terminated.

8. I find it, however, difficult to accept this submission of the learned Counsel because, if that contention is accepted, nothing would remain at all of Rule 5 and it might as well not have been enacted. It seems to me that B. 5 is an exception to the rules at Pages 12 and 13 applicable in the case of a permanent Government

Service. Under those rules, no such period of one month is prescribed for the Government servant to resign his post and the only thing that is required is that a resignation, in order to become effective, must be accepted and the officer must be relieved of his duties. Further, till the resignation becomes effective, an opportunity is given to the Government servant to withdraw his resignation. But once a resignation becomes effective, the officer is no longer in Government service and acceptance of request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break.

As that would involve financial commitments the concurrence of the Ministry of Finance should be obtained before a request for withdrawing the resignation which has already become effective is accepted. No such instructions are laid down in the case of a temporary Government servant, In the case of a temporary Government servant, Rule 5 is complete and says that either the Government may terminate the service of the employee after the month's notice or the Government servant may terminate the employment after giving a month's notice. Nothing more is required. It may be noted that so far as a permanent Government servant is concerned, it is not open to the Government to terminate his service by giving him a month's notice. They could terminate his services only as a punishment after following the prescribed rules.

9. Different conclusions will ensue according to the answer to the question whether Rule 5 applies or the instructions at pages 12 and 13 apply. If the instructions at pages 18 and 18 apply, it will not be open to the Government servant to leave his post till his resignation is accepted and he is relieved of his duties, and if any loss occurs to the Government as a result of his leaving his post prematurely, he will have to make good the loss to the Government. But he is not under any such obligation if Rule 5 of the Central Civil Services Temporary Service Rules applies. It is therefore Clear that the two sets of rules cannot coexist and they are mutually exclusive. In this view of the matter, I am unable to accept the submission of the learned Counsel that Rule 5 is subject to the instructions at pages 12 and 13. The position therefore is that the petitioner ceased to be in Govern' meat employ on 15.5.1965, and if so, as al-ready stated, no sanction was required. The rules of 1965 came into force only on 25-5-1965 and therefore they

would not seem to apply. In any case the corresponding provisions are identical.

10. It is unnecessary to consider the other ground invoked by the prosecution, namely, Rule 14 of the revised leave Rules, 1988. That rule says that where a Government servant Who is not in permanent employ or quasi, permanent employ fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall, accordingly, cease to be in Government employ. Sri Gopinathan points out that no posting was given by the director making him to rejoin at Madurai on the expiry of the leave and hence there was no failure on the part of the petitioner to join duty on the expiry of the leave on 15-3-1965. This point seems to have substance. But it is unnecessary to decide it.

11. Though, according to the petitioner the decision in this case will work as a hardship to him, it cannot be helped. The petition is dismissed.