

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 459
XXXXXX

1991

DATE OF DECISION 21. 4. 92

Ms. C.S. Usha Kumari

Applicant

Shri P.S. Biju

Advocate for the Applicant

Versus

The Sr Suptt of Post Offices, Respondent (s)

Pathanamthitta Divn & 2 others

Shri V.V. Sidharthan, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

&

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the ~~fair~~ copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant was selected and posted as a Postal Assistant in the year 1981. While working as Postal Assistant purported to be under sub rule 1 of rule 5 of Central Civil Services (Temporary Services) Rules, 1965, her services were terminated with effect from 8.9.1982. This was challenged by the applicant before the Hon'ble High Court of Kerala in O.P. No.6857/1982-N. By judgement dated 17.8.1984, the Hon'ble High Court quashed the order of termination and directed

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reinstatement of the applicant in service. Though the order of termination of services was made without assigning any reason, in the reply affidavit filed before the Hon'ble High Court, the order impugned in that case was supported on the ground that it was necessary because the applicant had given a false statement and made a false declaration that she belonged to SC in order to secure appointment in the SC quota. His Lordship U.L. Bhat, ^{as he then was}, observed that without any investigation as to whether the statement and declaration made by the applicant were true or false giving her an opportunity, it was unjust for the Department to have issued an order of termination. It was on that account that the order of termination was quashed as vitiated reserving liberty to the Department to initiate proceedings ^{and} to take appropriate decision after giving the applicant reasonable opportunity to establish her contention.

Pursuant to the above order of the Hon'ble High Court, by order dated 3.1.1985 at Annexure A2 issued by the first respondent the applicant was reinstated in service. As nothing had been stated regarding the period during which she was out of employment, the applicant on 28.10.1986 made a representation to the first respondent requesting that the period between the termination of her services and reinstatement may be regularised as services for all purposes including pay and allowances. This representation was rejected by order dated 19.9.1989 at Annexure A4 on the ground that there was no direction in the order of the Hon'ble High Court to pay backwages to the applicant

● In an appeal filed against this order by the applicant before the 3rd respondent, the 3rd respondent directed the first respondent to issue necessary orders regarding regularisation of the period of the applicant's absence consistent with sub rule 2(b) of rule 5 of the CCS(TS) Rules. It had also been observed that while doing so, the 1st respondent should weigh the circumstances of the case, the gravity of the misconduct etc. Pursuant to this order of the 3rd respondent, the 1st respondent has issued the Annexure A7 order dated 6.2.1991 treating the period between 8.9.82 to 3.1.1985 (the period during which the applicant was kept out of service) as duty only for the purpose of qualifying service for pension and holding that the above period would not be counted for pay and allowances, increment, leave, promotion on length of service etc. It is aggrieved by this order that the applicant has filed this application under Section 19 of the Administrative Tribunals Act. It is averred in the application that as the termination of the services of the applicant has been held to be illegal and as the order of termination was quashed by the Hon'ble High Court in O.P.No.6857/1982-N, the respondents are bound to pay to the applicant pay and allowances for the period during which she was unjustifiably kept out of employment and also to regularise the above said period as duty for all purposes. The decision of the 1st respondent contained in the impugned order at Annexure A7, according to the applicant, is arbitrary and devoid of application of mind.

2. The respondents contend that the applicant has no right to claim backwages for the period between termination of her

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services and reinstatement because there was no such direction in the judgement of the Hon'ble High Court of Kerala in O.P. No.6857/1982-N. They have further contended that in the disciplinary proceedings initiated against the applicant for furnishing false information to secure employment under the Government, the applicant was found guilty and was awarded a penalty of reduction of pay by from Rs.1075/- to Rs.975/- for 5 years from 1.9.88 and that this fact also was taken into account by the 1st respondent in deciding as to how the period between the date of termination of her services and the date of reinstatement was to be regularised and that, therefore, the applicant has no legitimate grievance.

3. The services of the applicant were terminated on 8.9.82 and she was reinstated in service on 3.1.85. In between these two dates, the applicant was kept out of employment. Sub rule 2(b) of rule 5 of CCS(TS) Rules makes it incumbent on the authority ordering reinstatement on its own motion or otherwise to specify the amount or portion of pay and allowances, if any, to be paid to the employee for the period between the dates of termination and reinstatement and to stipulate whether the period would be treated as periods spent on duty for any purpose or for all purposes, taking into account the circumstances of the case. In this case, the reinstatement of the applicant was not on the basis of a review of the case by the competent authority. It became necessary to reinstate the applicant as the Hon'ble High Court has quashed the order of termination and directed that the applicant should be reinstated in service. The learned

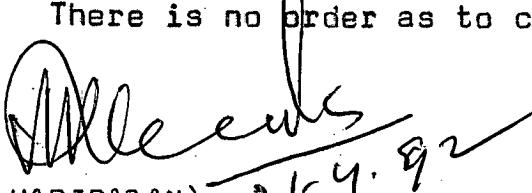
counsel for the applicant argued that in such a case, as the order of termination has been declared unsustainable, null and void, the legal and natural consequence is that the employee continued in service and that in such circumstances there is no other alternative for the respondents but to pay the applicant pay and allowances for the period and also to treat this period as duty for all purposes since the absence was for no fault of the employee. The learned counsel for the respondents on the other hand argued that as the Hon'ble High Court, while directing reinstatement of the applicant, had not given any specific direction to pay backwages or to treat the period of absence as duty for all purposes, the claim of the applicant has no basis. We are inclined to accept the argument of the learned counsel for the applicant. To say that in the absence of specific direction in the order of Hon'ble High Court quashing the termination of the applicant's services and ordering the applicant's reinstatement to pay backwages or to treat that period as duty for all purposes, the applicant cannot put forth a claim for this benefit, to our mind, appears to be absolutely unjustified. The services of the applicant was terminated on the ground that she had secured employment by furnishing false information. This conclusion was reached by the respondents without giving the applicant any opportunity to defend her case. It was in these circumstances that the Hon'ble High Court held that the termination of the services of the applicant being in violation of the principles of natural justice, was invalid, and it was on that ground that the order was quashed. Between 8.9.82 to 3.1.85, the applicant was kept out of service. It is not the

case that the applicant was not willing to work. She was not responsible for not working during this period as she was prevented from working by the respondents. Then, what justification is there to deny her the wages and other service benefits during this period while termination of her services has been held to be invalid by the Hon'ble High Court? When the action has been quashed as unjustified and illegal, it is necessary that the party affected by the impugned action should be restituted to the extent possible. Restitution possible in the case of the applicant is to treat the period during which she was kept out of duty as duty for all purposes including pay and allowances. The Courts while quashing orders of termination and ordering reinstatement may also state that the employee concerned would be entitled to full backwages or for any portion thereof depending on the facts and circumstances in individual cases. Even if such an observation or direction is not there in an order quashing the order of termination, the legal consequence of setting aside of an order of termination on the ground of it being vitiated, is that it should be deemed that the order of termination did not take effect. In such circumstances, unless there is a case for the Department that the employee was otherwise gainfully engaged during this period, the Department is bound to pay backwages to the employee. In this case, the respondents have no case that the applicant was otherwise gainfully engaged during this period. The fact that in a disciplinary proceedings initiated subsequently, the applicant was found guilty and that a penalty of reduction in pay was

awarded to the applicant is also no ground to deny the applicant the wages for the period during which she was kept out of employment and to treat the said period as not duty for any purpose. We are of the view that the applicant should succeed in this application.

4. In the result, the application is allowed in part, the impugned order at Annexure A7 dated 6.2.1991 is set aside and the respondents are directed to treat the period between 8.9.82 and 3.1.85 in the case of the applicant as duty for all purposes including pay and allowances and to pay her the arrears of salary for the above said period within a period of two months from the date of communication of this order.

5. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

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5. There is no order as to costs.

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(A.V.HARIDASAN)

21.4.92

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(S.P. MUKERJI)
VICE CHAIRMAN

21.4.92
CERTIFIED TRUE COPY
Date / /
Deputy Registrar



True COPY

Advocate
V.V. Sidhu