IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 155/90 ~~199~~
~~XXXXXX~~.

DATE OF DECISION 3.10.1990.

I K Velayudhan
Applicant (s)

M Ramachandran
Advocate for the Applicant (s)

Versus

The Union of India rep. by the Director of Posts, New Delhi and two others
Respondent (s)

Mr TPM Ibrahim Khan
Advocate for the Respondent (s) (1 & 2)

Mrs Sumathi Dandapani for R-3

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, 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

Shri NV Krishnan, Administrative Member.

In this case, the applicant seeks to set aside the Annexure-III order dated 22.2.90 of the Superintendent of Post Offices, Trichur (the second respondent) appointing the third respondent provisionally as ED Messenger in the Vatanappally Post Office and prays for a declaration that by virtue of the Annexure-I order dated 28.4.89 of the same authority appointing him on a temporary capacity to the same post, he is entitled to continue in that post.

2 The applicant was appointed on a temporary basis by the Annexure-I order when the regular incumbent was promoted and transferred to another Post Office. He took over charge on 1.5.89. While continuing in that post he was informed by the second respondent's letter dated 12.1.90

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(Annexure-II) that the District Employment Officer, Trichur has furnished a list of candidates including him, for the purpose of selection to the post of ED Messenger, Vatanappally that he might submit an application in that behelf. Accordingly, the applicant submitted an application for being selected to the post of ED Messenger, Vatanappally.

2.2 He next learnt that the second respondent has issued the impugned order (Annexure-III) appointing the third respondent to the post. That order also directs the Postmaster, Vatanappally to relieve the applicant from 24.2.90 from that post and allow the third respondent to join on that post from that date. It is submitted that the applicant had gone on leave on 19.2.90 and his substitute who officiated in that post was relieved on 24.2.90 in pursuance of the impugned Annexure-III order.

2.3 In these circumstances, it is contended that Annexure-III order is violative of the principles of natural justice and is liable to be quashed. It is also alleged that the Annexure-III order is malafide as the respondents seek to punish the applicant who is an active trade union worker.

3 The first and second respondents (Department for short) have filed a reply affidavit wherein it is stated that on the transfer of Shri KG Unnikrishnan, the regular ED Messenger at Vatanappally on 28.4.89, the applicant was provisionally appointed as a stop gap arrangement vide the Annexure-I order till a regular selection was made. In accordance with the prescribed

procedure relating to regular selection, nominations were called from the Employment Exchange on 15.11.89 to fill up this post. The names of both the applicant and the third respondent were sponsored, alongwith those of others. These persons, including the applicant, were interviewed on 12.1.90 by the second respondent and the third respondent was found to be the most suitable for the post. Hence, he was selected and appointed from 24.2.90 by Annexure-III order. It is denied that the initial appointment of the applicant by Annexure-I letter was in the nature of a regular appointment. In the circumstances, it is contended that the applicant can have no grievance against the selection of the third respondent.

4 The third respondent has filed counter affidavit denying the allegations made in the application and contended that the applicant is not entitled to any relief.

5 We have heard the counsel for the applicant and the department and perused the records. The third respondent was not represented.

6 The learned counsel for the applicant was fair enough to concede that before the issue of the Annexure-I order appointing him, there was no interview so as to draw a conclusion that it was a regular selection. He also could not explain satisfactorily as to why he did not protest when the Annexure-II order was issued, calling for applications for that post regularly and also, why,

on the contrary, he himself submitted an application. We have, therefore, no difficulty in holding that the Annexure-I order of appointment was purely in the nature of a stop gap arrangement pending the selection of a regular candidate to fill up the vacant post created by the transfer of the regular incumbent.

7 We have also perused the record of the case and seen that the applicant has not impugned the selection of the third respondent on any other valid ground. The contention of the Department that the third respondent was selected on merits has also not been denied. We are, therefore, satisfied that the selection of the third respondent cannot be assailed and his induction to the post on a regular basis by the Annexure-III is quite regular.

8 The learned counsel for the applicant has submitted that even if the Annexure-III order is not liable to be quashed he is entitled to a declaration that the termination of his appointment by the Annexure-III order is a retrenchment in terms of the Industrial Disputes Act, 1947, Act for short, which is in violation of Section 25-F thereof. Though the application does not seek this relief in specific terms, the learned counsel has drawn our attention to para-4 of the grounds in support of the application which is as follows:

> " The applicant has been working at Vatanappally BO in various capacities for the past 4 years. He has more than 240 days service in the last calander year. His termination amounts to retrenchment. Section 25F of the I.D.Act is not complied with and it offends Chapter VA and VB the ID Act."

9 The prayer was opposed by the counsel for the department on the ground that no such relief has been sought by the applicant. He further contended that it cannot be held that the applicant was retrenched as the termination of the services of the applicant is covered by exception(bb) to Section 2 (OO) of the Act. That exception is to the effect that " termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein", will not be ' retrenchment'.

10 Before considering the question whether relief may be granted on this ground, we may consider whether the applicant has been retrenched without complying with the provisions of Section 25 F of the Act. We are of the view that the exception in clause (bb) referred to above is not attracted on the facts of this case. Annexure-I is not a contract of employment for a specified term, with some provision regarding its renewal/termination. The provision in Annexure-I that the employment is temporary and is liable to be terminated at any time without assigning any reason is not the type of stipulation that is referred in the exception. This stipulation is vague and indefinite. The stipulation that the exception requires should be definite and unambiguous

that the services of the applicant will be terminated on a particular date or on the expiry of a particular period.

11 Therefore, we are clear that the relief of the applicant in pursuance of Annexure-III order of 24.2.80 is retrenchment. The applicant is in service from 1.5.89 continuously and therefore, he has been in "continuous service" for not less than one year preceeding 24.2.90 under the first respondent and second respondent. Therefore, he should not have been retrenched without satisfying the conditions in Section 25F of the Act. Admittedly, those conditions have not been satisfied.

12 The question then is whether the applicant is entitled to any relief on this ground or the relief should be denied to him merely on the technical ground that he has not sought for such relief.

13 There are a number of decisions which state that in proceedings under Article 226 of the Constitution, the relief can be suitably moulded depending upon the circumstances of the case. The following decisions are relevant in this regard Viz; AIR 1980 SC-1037- Shiv Shankar Dal Mills Vs. State of Haryana, (ii) AIR 1981 (SC)-1653- BR Ramabadriah Vs. F&A Dept. A.P and (iii) 1976 (1) SLR 276- Harsukh Rai Vs. State of Himachal Pradesh. All these aforesaid decisions have been rendered in cases where at the time of final hearing and judgment, the circumstances of the case had changed and the relief as prayed for by

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the applicant could not be granted on the same term. It was held in those cases that Courts are competent to mould the relief taking note of the changes which have occurred since the petition was filed.

14 More appropriate to the facts of this case is the following observations of the Kerala High Court in 1960 KLT-85- Rajalekshmi Motor Service Vs. Govt. of Kerala.

> " 15. The last contention of the appellant relates to the nature of the remedy sought by the petitioner. According to the appellant when an order is totally void, certiorari is not the remedy and the petition should have been dismissed on that ground. The power under Article 226 of the Constitution is not tramelled by the procedural niceties of English law. As stated in AIR 1956 Madras 220:
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> "Article 226 of the Constitution empowers the High Courts to issue direction, orders or writs including writs in the nature of babeas corpus, mandamus, etc. It will not do to ignore the significance of the words underlined. The circumstance, therefore, that the petitioner has applied for a particular form of writ whereas he should have asked for a different kind of writ or order does not preclude the Court from moulding the remedy to the circumstances of the case".

15 The matter is, however, concluded by the well known judgment of the Supreme Court in Charanjit Lal Choudhury Vs. Union of India (AIR(38) 1951 SC-41. The petition filed in that case under Article 32 of the Constitution was dismissed by a majority judgment of the Court. Mukherjea (J) who dismissed the petition on merits has observed as follows:

> " As regards the other point, it would appear from the language of Art.32 of the Constitution that the sole object of the article is the enforcement of fundamental rights guaranteed by the Constitution. A proceeding under this Article cannot really have any affinity to what is known

> as a declaratory suit. The first prayer made in the petition seeks relief in the shape of a declaration that the Act is invalid and is apparently inappropriate to an application under Art.32; while the second purports be framed for a relief by way of injunction consequent upon the first. As regards the third prayer, it has been contended by Mr Joshi, the learned counsel for one of the respondents, that having regard to the nature of the case and the allegations made by the petitioner himself, the prayer for a writ of mandamus in the form in which it has been made, is not tenable. What is argued is that a writ of mandamus can be prayed for, for enforcement of statutory duties or to compel a person holding a public office to do or forbear from doing something which is incumbent upon him to do or forbear from doing under the provisions of any law. Assuming that the respondents in the present case are public servants, it is said that the statutory duties which it is incumbent upon them to discharge are precisely the duties which are laid down in the impugned Act itself. There is no legal obligation on their part to abstain from exercising the powers conferred upon them by the impeached enactment which the Court can be called upon to enforce. There is really not much substance in this argument, for according to the petitioner the impugned Act is not valid at all and consequently the respondents cannot take their stand on this very Act to defeat the application for writ in the nature of a mandamus. Any way, Art.32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application, of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for".

16 We are, therefore, of the view that the purpose of a direction under Article 226 is ultimately to render justice. It is not as if there is no mention whatsoever in the application of the relief being sought. The applicant has referred to this matter in para-4 of the grounds as stated above.. We are satisfied that in the circumstances of this case and in the interest of justice it is necessary to give relief to the applicant in this regard.

17 Therefore, while we uphold the validity of the impugned Annexure-III order to the extent of the induction of the third respondent on the post of ED Mail Carrier, Vatanappally Post Office, we declare that when the department relieved the

applicant in pursuance of that order, the applicant was 'retrenched' in terms of the Act. We also find that this retrenchment to which the provisions of Section-25-F will apply. As the conditions precedent to a valid retrenchment under Section 25-F of the Act have admittedly not been satisfied by the Department, we declare that the retrenchment is invalid. We do not, however, for that reason, find it necessary to reinstate the applicant on that post because, firstly, we have held that the induction of the third respondent to that post considered in isolation, is legal and proper and secondly, the applicant is only entitled to the compliance of the provisions of Section 25-F. This will be achieved by declaring that the applicant is to be deemed to be still in the service of the Department until Respondents 1 & 2 terminate his services in accordance with the provisions of law, keeping in view our observations in this case and such a declaration is given. The respondents are directed to grant the financial benefits flowing from this declaration within 2 months from the date of receipt of this order.

18. The application is disposed of with the aforesaid orders/directions. There will be no order as to costs.

(N. Dharmadan) 3.10.'90
Judicial Member

(N.V. Krishnan) 3.10.90
Administrative Member

3.10.1990.