

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
~~XXXXXX~~

201 of 1990

DATE OF DECISION 10.2.1992

C.B.Mohandas Applicant (s)

Mr.MR Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India represented  
by Secretary, Deptt. of Telecom. Respondent (s)  
and another

Mr.NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

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

and

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

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

JUDGEMENT

(Hon'ble Mr. S.P.Mukerji, Vice Chairman)

In this application dated 12.3.90 and amended on 12.9.90 the applicant who has been working as a casual mazdoor under the Officer Engineering, Telegraphs, Kanjirapally has challenged the impugned orders dated 27.2.90 and 10.4.90 at Annexures I and II by which he was respectively suspended from the departmental work and his representation for wages during the period of suspension was rejected.

2. The brief facts of the case are as follows. The applicant has been working as a casual labour in the P&T Department since 1983 with 1946 days of service. He was granted temporary status with effect from 1.10.89 on the basis of his continuous service. Vide the impugned order dated 27.2.90 on the basis of a complaint received from his

wife that the applicant had married again while his wife is living, he was suspended from service. Preliminary enquiries revealed that he had violated Rule 21 of the CCS (Conduct) Rules and in contemplation of the detailed enquiry, the order of suspension was passed. The applicant thereafter submitted a representation for payment of subsistence allowance while denying that he had committed any misconduct. His representation was rejected by the impugned order at Annexure-II on the ground that a casual mazdoor is not eligible to get wages when he is not engaged for departmental work. The applicant has challenged the order of suspension at Annexure-I as being vague and arbitrary as it is based on a mere complaint. His contention is that he has acquired temporary status under the scheme of temporary status and regularisation and this scheme does not provide for suspension of a casual mazdoor. By the order of suspension he has been denied livelihood and he is entitled to get subsistence allowance.

3. In the counter affidavit the respondents have stated that the wife of the applicant submitted complaints on 5.2.90 and 27.2.90 that the applicant has married again while she is alive. Preliminary enquiries revealed that he has violated Rule 21 of the CCS (Conduct) Rules by his contracting second marriage while his first wife is living. Hence in contemplation of detailed enquiry the impugned order of suspension was passed. The word 'suspended' only meant that he was being kept out of work for the time being until further orders. He cannot claim wages when he is not engaged.

Being a casual labour he is not entitled to any subsistence allowance and his representation was rejected at Annexure-II. They have further stated that the first wife of the applicant has filed a Criminal case against the applicant in the Court of Chief Judicial Magistrate, Kottayam under Sections 494/495/34 of the I.P.C. The applicant well knew the background in which the impugned order of suspension at Annexure-I was passed.

4. In the rejoinder the applicant has alleged that the impugned order at Annexure-I was passed on an unverified complaint and he was not given any notice or opportunity for hearing and accordingly Annexure-I order is violative of the principles of natural justice. He has also alleged that the CCS(Conduct) Rules are not applicable to casual mazdoors. He has denied having contracted the second marriage. Keeping him out of work while his juniors are engaged entitles him to claim wages. He has argued that there is no provision in the CCS(CCA) Rules to suspend a casual mazdoor. He has stated that when the impugned order of suspension dated 27.2.90 was passed, no criminal proceedings were pending against him. The criminal complaint by his wife is dated 4.6.90. He has averred that after issue of Annexure-I order, he was given a show cause notice dated 22.3.90 with the allegation of second marriage and not making arrangements for the maintenance of his first wife. He has produced a copy of the reply to the show cause notice at Annexure-III.

5. We have heard the arguments of the learned

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counsel for both the parties and gone through the documents carefully. The only point at issue in this case is whether the applicant as a casual mazdoor is entitled to wages during the period his casual service is kept under suspension. The general question about entitlement to any payment during the period of suspension was considered by the Full Bench of the Hon'ble Supreme Court in R.P.Kapoor Vs. Union of India and another, AIR 1964 SC 787. The following observations from the judgment would be pertinent:

"The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act No.X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension."

The aforesaid ruling was relied upon by the Hon'ble Supreme Court again in B.R. Patel v. State of Maharashtra, 1968 SLR 593.

6. In Chanan Singh Vs. Registrar, Cooperative Societies, Punjab and others, 1976(1) SLR 20, the Hon'ble Supreme Court observed as follows:

"Before parting with this case, we would like to make it clear that counsel for the cooperative bank has not been able to show any power to suspend an employee pending enquiry. If that be so, the suspension of the appellant is plainly without the pale of law and he would be entitled to his salary during the period till final orders are passed. Since the matter has been pending long enough, we are assured by counsel for the respondent that final orders may be passed within one month from today."

From the above rulings it is clear that the applicant could be suspended from work pending investigation into his conduct but without any specific provision he cannot be denied wages during the period of suspension. The respondents have clearly stated that a preliminary enquiry had been held before the order of suspension was issued. The respondents however, have not been able to show us any rule by which a casual mazdoor with temporary status can be denied wages during the period of suspension. Obviously the CCS (CCA) Rules do not apply to casual workers even under the Scheme "Casual Labours (Grant of Temporary Status and Regularisation) Scheme of 1939, a copy of which is at Annexure to the Counter Affidavit. Para 9 of the Scheme reads as follows:

"If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services."

There is no provision for denial of wages or grant of

subsistence allowance during the period of suspension.

It may be argued that as a casual mazdoor as distinguished from a regular employee, the applicant even otherwise is not entitled to continuity of service and being on daily wages, his contract of service begins when he is engaged in the beginning of the day and ends when his duty ends at the end of the day. The Scheme itself states in para 5 (3) as follows:

"Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed anywhere within the recruitment unit/territorial circles on the basis of availability of work."

(emphasis added)

Even accepting that the applicant is on daily contract, so long as during the period he is denied engagement on the basis of the impugned order at Annexure-I, <sup>and</sup> his juniors are being engaged, there is violation of Article 14 of the constitution and since this deprivation of livelihood has been without any notice to him, there is violation of the principles of natural justice. <sup>also.</sup> Accordingly, <sup>during the period of suspension,</sup> for the days any of his juniors remain in service and earned wages, the applicant also will be entitled to wages despite his status of a casual worker.

7. In the facts and circumstances, we allow the application, set aside the impugned orders at Annexure-I and Annexure-II and direct the respondents to pay the applicant full wages during the period of his suspended service for the days when any of his juniors were engaged in casual service and paid wages including wages paid during paid holidays if any. There is no order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
VICE CHAIRMAN

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