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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.368/87

National Association of
Directorate of Marketing
and Inspection Employees,
through Regional Branch,
Western Zone, New Central Government
Building, 3rd Floor, New Marine
Lines, Bombay-400 020.

.. Applicant.

V/s

- 1) Joint Agriculture and
Marketing Advisor,
Government of India,
New Secretariat Building,
Opposite: Cricket Stadium,
Nagpur.
- 2) Senior Agriculture Officer,
Western Zone, Regional Office,
New Central Government Building,
3rd Floor, New Marine Lines,
Bombay-400 020. .. Respondents.

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil.
Hon'ble Member(A) J.G.Rajadhyaksha.

Appearance:

1. Mr.D.V.Gangal, Advocate
for the applicant.
2. Mr.J.D.Desai, Advocate
(for Mr.M.I.Sethna)
for the Respondents.

TRIBUNAL'S ORDER:

Date: 19-6-1987.

Heard Mr.Gangal for the applicant and Mr.
J.D.Desai for Mr.M.I.Sethna for the respondents.

The application is admitted. Issue notices
to the respondents calling upon them to file reply on
31st of July, 1987 and to serve a copy thereof to the
applicant.

We have also heard the Advocates on the ques-
tion of granting interim relief. Shri Mukeshkumar Chota-
bhai Patel was working with the respondents. He was on
leave on 14th and 15th of April, 1987. He did not join
duties, however, and went on applying for further leave.

It is alleged that he had an apprehension that his services would be terminated. The prayer in the main application is that such termination is bad and hence an interim relief is prayed that the termination order, not as yet received by the employee, should be stayed.

Mr.Gangal submitted that the termination order has not been actually served on the employee and hence it would not be effective. As against that Mr.J.D.Desai urged that the said employee has been evading service of notice. He showed us the relevant file from which the termination order has been sent by Registered Post to the known and registered address of the said employee on 27-4-87. The employee was not available at that address and hence it was redirected to Ahmedabad for service. At Ahmedabad also it could not be served and the registered packet again came back to Petlad on 9-5-1987. Attempt was made again to serve the packet on 10-5-1987. It was not feasible hence it was sent back to Ahmedabad, as the Postman was informed that the employee had gone to Ahmedabad. The packet was sent to Ahmedabad. Attempt was made to serve it on the employee. However, it could not be served hence it was returned to Petlad and thereafter it was sent back to the sender, the employer department.

Mr.Gangal relied upon the decision of the Supreme Court in the case of State of Punjab v. Amar Singh reported in 1956 AIR 8 C 1313. In that case an order of dismissal was issued on 3-6-1949. But the copy thereof was not sent to the employee. It was only on 28-5-1951 that he came to know about the dismissal order. The question was as to whether the dismissal

order operates from the date of the order or from the date of communication. The Supreme Court in paragraph 11 has held that mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. The relevant discussion on this question appears in paragraph 11 in the following words:

- " An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within ~~in~~ his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him?"
- " We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published..."
- " In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on 3rd June, 1949 could not be said to have taken effect until the respondent came to know about it on the 28th of May, 1951."

Thus what is important is whether the employee has come to know about the impugned order. In the present matter, the ~~in~~ interim relief has been prayed in following terms: " Pending the hearing and final disposal of this application stay the termination of his service of the employee at Annexure 'A' which order the said employee (Contd...4)

has not yet received and allow him to continue on the present post of Lower Division Clerk." It is, therefore, clear that the employee has knowledge of the termination order in question.

The matter can also be viewed from another angle. As discussed above, the department has sent the termination order by registered post, on the address given by the employee in the office. The manner in which the said registered letter has been sent from Petlad to Ahmedabad and back on various occasions has been relied upon by Mr. J.D. Desai to contend that having knowledge about this order the employee had been evading the service thereof. In our opinion there is much substance in this contention. Secondly, the fact that the employee has ~~not~~ not resumed duties till now and has been applying for leave for one reason or the other is the indication that he knows about the termination order. How the order is communicated is considered by the Supreme Court in the case of State of Punjab V. Khami Ram reported in AIR 1970 SC 214. In that case the suspension order was passed and sent to the concerned employee before the date of his retirement. However, that order was actually received by him after that date of retirement. The question arose as to when the order is said to be communicated. It was held that communication of such suspension order would be effective from the date it passes out of the office for being served on the employee. Of course, with respect to the dismissal order the Supreme Court said that, perhaps, knowledge of such order may be necessary. We have already observed that certain statements made in the application suggest that the employee has the knowledge of the termination order and that the only allegation is that the said termination

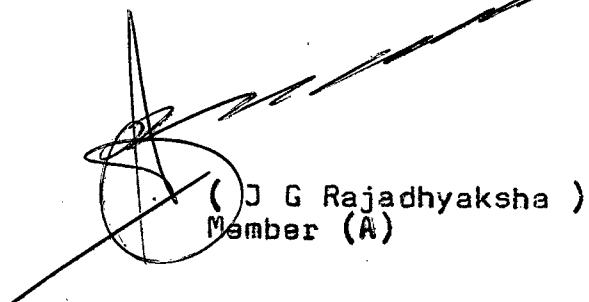
order is not received by him. Apart from that, the circumstances as to how the registered envelope moved for service between Petlad and Ahmedabad is a circumstance from which an inference can be drawn that the applicant has knowledge about the termination order.

We, therefore, hold that the termination order has been made effective and hence it will not be possible to stay such order.

Interim relief as prayed for is therefore rejected.



(B C Gadgil)
Vice-Chairman



(J G Rajadhyaksha)
Member (A)