

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 38337 of 2008 (Z)

AGAINST THE ORDER/JUDGMENT IN CONTEMPT PETITION (C) NO.07/2008
IN OA 822/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH DATED 26.06.2008

PETITIONER(S) :/RESPONDENTS

1. UNION OF INDIA, REP. BY THE SECRETARY
TO GOVERNMENT OF INDIA,
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF POSTS, DAK BHAVAN, NEW DELHI.
2. THE CHIEF POST MASTER GENERAL, KERALA CIRCLE
THIRUVANANTHAPURAM.

BY ADV. SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNSEL

RESPONDENT(S) :/APPLICANT

BIPPI.M., S/O.KARTHAMBU,
EX.GRAMIN DAK SEVAK MAIL CARRIER, KALLAPPALLY P.O.,
R/AT.KARIPPADAKKAM HOUSE, PANATHUR PO., RAJAPURAM,
KASARGOD.

R1 BY ADV. SRI.P.C.SEBASTIAN
R1 BY ADV. SRI.MARTIN.G.THOTTAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF CONTEMPT CASE (CIVIL) NO.7 OF 2008 IN ORIGINAL APPLICATION NO.822 OF 2004 FILED BY THE RESPONDENT ALONG WITH ITS ANNEXURES BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P2 : COPY OF AFFIDAVIT FILED BY THE PETITIONERS IN CONTEMPT CASE (CIVIL) NO.7 OF 2008 IN ORIGINAL APPLICATION NO.822 OF 2004 ALONG WITH ITS ANNEXURE BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P3 : COPY OF ORDER DATED 26.06.2008 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN CONTEMPT CASE (CIVIL) NO.7 OF 2008 IN ORIGINAL APPLICATION NO.822 OF 2004.

//TRUE COPY//

PA TO JUDGE.

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

.....
WP(C) No.38337 of 2008
.....

Dated this the 12th day of January, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This writ petition under Article 227 of the Constitution of India is filed by Union of India and others. We have heard the learned counsel for the petitioners and the learned counsel for the respondent, a Gramin Dak Sevak Mail Carrier (GDSMC).
2. The respondent, while serving as a GDSMC, incurred a disability which falls within the definition of that term in Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, “Opportunities Act”, for short. Invoking the provisions of Rule 3 of the Gramin Dak Sevaks (Conduct and Employment) Rules 2001, the establishment terminated the service of the respondent on the only ground of his disability.

3. The respondent challenged the aforesaid action before the Central Administrative Tribunal. As per judgment dated 14.10.2005 in O.A.No.822 of 2004, Ernakulam Bench of the Tribunal held that the departmental rules, not being in conformity with the Opportunities Act, but in contradiction to it, are null and void. As per that judgment, the establishment was directed to permit the applicant (employee) to continue in service and to take action to adjust him against any other post in the same pay scale. Consequential direction was also given to create a supernumerary post, if that becomes necessary.

4. Following the aforesaid order of the Tribunal, the establishment admitted the employee to duty, but did not release him the amounts that had accrued to him during the period he was kept out of service. The employee, therefore, invoked the provisions of Section 12 of the Contempt of Courts Act, 1971 read with Rule 5 of the CAT (Contempt of Court) Rules, 1986, in view of Section 17 of the Administrative Tribunals Act, 1985. Adjudicating that

application, the Tribunal held that the aforementioned order dated 14.10.2005 issued by the Tribunal is sufficient to imply that the employee is not only entitled to continue in service but also that he shall be given continuity of service and arrears of pay and allowances. The Tribunal took the view that though the direction in the order dated 14.10.2005 does not, in explicit terms, include payment of arrears of pay and allowances, the same has to be implied as that is the effect of Section 47 of the Opportunities Act. It, in our view, quite magnanimously held that while non-release of the arrears of pay and allowances would not amount to contempt, the establishment had been implementing the earlier order of the Tribunal, in the manner indicated in the order issued on 26.06.2008 on the contempt of court case. The full import of the first order having been spelt out and explained by the Tribunal, the establishment was required to give effect to the statutory requirements under Section 47 of the Opportunities Act and that the establishment was directed to take necessary action in relation to release of arrears of pay and allowances.

5. Criticizing the aforesaid order dated 26.06.2008, the establishment is before us invoking Article 227 of the Constitution of India pleading that the same amounts to issuance of further directions and such orders cannot be issued in jurisdiction under the Contempt of Courts Act. The learned counsel on behalf of the establishment argued that the contents of the impugned order dated 26.06.2008 are, essentially, over and above the directions contained in the Tribunal's earlier order dated 14.10.2005, and therefore, the impugned order is issued in excess of jurisdiction.

6. Per contra, the learned counsel for the respondent employee argued that the Tribunal itself had clarified in the order dated 26.06.2008 that whatever being spelt out therein is nothing but the clear and complete effect of the directions contained in its order dated 14.10.2005, in the light of the contents of Section 47 of the Opportunities Act. He pointed out that this writ petition

invoking Article 227 of the Constitution of India is an abuse of the process of court, since there is no further direction issued by the Tribunal. He also argued that in any event, it could be considered that no action has been taken in terms of the provisions of the Contempt of Courts Act and issuance of further direction is within the authority of the Tribunal in terms of the provisions of the Administrative Tribunals Act and the impugned order, if at all it amounts to issuance of further direction, ought to be treated as one with jurisdiction and in conformity with the Tribunal's earlier order dated 14.10.2005.

7. Section 47 of the Opportunities Act deals with non-discrimination in Government employment. The statutory inhibition contained in sub-Section (1) of Section 47 is that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. The provisos occurring in that sub-Section indicate modalities in which management of such a person can be done and those modalities are to be carried in such

a way that they do not affect the pay scale and service benefits of the employee concerned. Sub-section (2) of Section 47 inhibits denial of promotion merely on ground of disability, subject of course to the eligibility of the establishment to identify any particular post or type of work from the said provision relating to promotion. So much so, the statutory command contained in sub-Section (1) of Section 47 is one that interdicts removal from service. It never contemplates the situation where a person is permitted to be sent out of service and later on reinstated. It does not countenance the severance of jural relationship between the master and servant on a ground relating to disability. That being so, the learned Tribunal, in our view, had very cautiously and correctly directed in its first order dated 14.10.2005 requiring the establishment to “permit the employee to continue in service”. Continuity in service is a continuous chain, which was not treated as broken at any point of time. The law not only does not permit breaking of continuity of service on a ground referable to disability; it, in fact, interdicts against snapping of such

continuity. In this view of the position of law emanating out of the clear terms of Section 47 of the Opportunities Act, the Tribunal was well within its jurisdiction in assimilating and clearly stating the true and complete effect of the order dated 14.10.2005 through the impugned order dated 26.06.2008. We have earlier said that the Tribunal had acted magnanimously. This we said because, in our view, if the establishment had not given full effect by releasing pay and allowances, it necessarily demonstrated a situation of disobedience of the directions contained in the first order of the Tribunal issued on 14.10.2005. Obviously, since some clarification had to be supplied by the Tribunal through its later order, which is impugned before us, it would only be just and reasonable to take that there was no wilful neglect or negligence in giving effect to and enforcing the earlier order dated 14.10.2005. That is exactly the reason why the Tribunal in its present order said that “Now that the full import of the order has been spelt out here, the respondents shall plunge into action with regard to payment of pay and allowances to the

applicant for the period he was kept out of service.” The Tribunal expected the establishment to do what is required in a time bound manner. We do not see that the terms of the impugned Ext.P3 are in any manner issued in excess of jurisdiction under the Administrative Tribunals Act. Under such circumstances, we see no ground to interfere with Ext.P3 at the instance of the writ petitioners. This writ petition, therefore, fails.

In the result, this writ petition is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)