SENIOR SUPERINTENDENT, R.M.S. COCHIN & ANR. A

v.

K. V. GOPINATH, SORTER

February 18, 1972

[C. A. VAIDIALINGAM AND G. K. MITTER, JJ.] B

Civil Servant—Central Services (Temporary Service) Rules 1965, *r.* 5(1) *(b) proviso—Scope of.*

The services of the respondent, a temporary government servant, were terminated on a particular day, but his salary and allowances due till then were not paid on that date. The High Court held that the termination was not in accordance with the provisions of r. 5 of the Central Service C (Temporary Service) Rules, 1965.

Dismissing the appeal to this Court,

HELD : (1) Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under r. 1(b) the period prescribed for such notice is one month. The proviso to the sub-rule however gives the Government an option not to retain the D employee in service till the expiry of the period of the notice; but to be effective, the termination of service has to be *simultaneous with the payment* to the employee of whatever is due to him. The operative words of the proviso are 'the services of any such government servant may be *terminated forthwith by payment*', showing that the payment is a condition of the termination of service forthwith. [532 D-F]

(2) Since the words used are plain and unambiguous they must be construed in their ordinary sense without any considerations of policy. E [532 F-G]

(3) There will always be some time during which the authority deliberates over the matter and makes up his mind, and within that time, directions can be given that the pay and allowances of the government servant should be calculated so that they could be offered to the employee at the time when the order of termination is served on him. There is no difficulty in the calculation because the payment is to be made 'at F the same rates at which he was drawing them immediately before the termination of his services.' Therefore, there is no merit in the contention that it would be impossible for the authorities to give effect to the proviso if payment was to be made simultaneously with the service on the employee of the order of termination. [532 H; 533 A-D]

(4) The words of the rule construed in the *State of U.P.* v. *Dinanath Rai*, C.A. No. 1734/68 dt. 11-10-1968, though some what similar to the G words of r. 5 only entitled the employee to pay for the period of the notice but did not lay down any condition as to *when* the payment was to be made. [534 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1706 of 1971.

Appeal by special leave from the judgment and order dated H January 5, 1971 of the Kerala High Court in Civil Writ Appeal No. 534 of 1969.

A *R. H. Dhebar*, for the appellants.

A. S. R. Chari, A. K. Gupta, S. C. Agarwal and *V. J. Francis*, for the respondent.

The Judgment of the Court was delivered by

B **Mitter, J.** The only question involved in this appeal is, whether the order dated September 25, 1968 terminating the services of the respondent, a temporary Government servant, was in accordance with the provisions of Rule 5 of the Central Service (Temporary Service) Rules 1965, hereinafter referred to as the 'Rules'.

C The services of the respondent appear to have been terminated on the basis of the directive contained in a circular dated 12th September 1968 that action should be taken against every employee who absented himself from duty on 19th September, 1968. No contention was raised at any stage that no action could D be taken under Rule 5. This said rule reads :—

"5. Termination of temporary service.—

(1) (a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing E given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month;

Provided that the services of any such Government servant may be terminated forthwith by payment to him F of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month.

G XX XX XX XX."

It is admitted that payment of the salary and allowances was not made to the respondent on 25th September, 1968. According to the respondent the disbursing officer was intimated about the order of termination only on the 28th September when he was supplied with the necessary funds. As against this it was alleged H in the counter affidavit to the writ petition filed by the respondent in the High Court that one month's pay and allowances had been sent by money order to the respondent. The question is,

whether the order of termination of service can be sustained because of absence of payment on the 25th September. The order was quashed by a learned single Judge of the High Court and this was upheld by a Division Bench in appeal. A

Apart from the authorities which were cited at the Bar, it appears to us that the rule is capable of the only interpretation that the order of termination can be upheld if the requisite amount in terms of the rule was paid into the hands of the employee or made available to him at the same time as he was served with the order. Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under rule 1(b) the period prescribed for such notice is one month. The proviso to sub-r. (b) however gives the Government an additional right in that it gives an option to the Government not to retain the services of the employee till the expiry of the period of the notice : if it so chooses to terminate the service at any time it can do so forthwith "by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month." At the risk of repetition, we may note that the operative words of the proviso are "the services of any such Government servant may be terminated forthwith by payment". To put the matter in a nutshell, to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him. We need not pause to consider the question as to what would be the effect if there was a bonafide mistake as to the amount which is to be paid. The rule does not lend itself to the interpretation that the termination of service becomes effective as soon as the order is served on the Government servant irrespective of the question as to when the payment due to him is to be made. If that was the intention of the framers of the rule, the proviso would have been differently worded. As has often been said that if "the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense," "and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ and as to which decisions may vary".—see Craies on Statute Law, Sixth Edition, pages 86 and 92. B C D E F G

It is not for us to enter into a discussion as to why the proviso was framed as we find it. It was argued that it would, in the ordinary course of things, be almost impossible for the authorities to give effect to the proviso if payment has to be made at the time the order of termination is served on the employee. It was submitted that before any payment can be made by Government, H

A sanction has to be taken and some time must elapse before the necessary procedure is complied with and money obtained either from the treasury or a cheque made out to cover the amount due to the employee. It was also argued that if the construction given by the High Court to the rule is to be maintained, the appointing authority could never ask the employee to go at once even when B it found that it was necessary in the interest of Government to require him to do so. It is difficult to contemplate a case in which an appointing authority has to make up his mind on the spur of the moment that a particular employee should be asked to go immediately. Normally a Government employee is not asked to go unless some complaint is made against him for some irregularities detected in his work. This is always followed by some C enquiry into his conduct, however brief, as it is only as a result of an enquiry that the authority makes up its mind that it would not be in public interest to retain the service of the employee any longer. Within the time which is taken for such deliberation *i.e.*, the preliminary enquiry, direction can certainly be given that the pay and allowances of the government servant concerned should D be calculated so that it could be offered to the employee at the time when the order of termination is served on him. There can be no difficulty in the calculation because the payment is to be made "at the same rates at which he was drawing them immediately before the termination of his services."

E It was suggested on behalf of the respondent that the construction of the rule should be such as would mitigate the rigour of an order of termination inasmuch as where notice of a full month is given the Government servant knows that he will have to find some other employment without delay and he can make his arrangements accordingly; but if he is to be asked to leave at F once and to depend on the mercy of the Government as to when it will pay him for the period of the notice, it would be very hard on the employee. We do not think it necessary to express any view as to whether the rule was so framed on account of any such reason and we must give effect to the plain meaning of the words of the rule.

G Our attention was drawn to a decision of this Court which had been cited on behalf of the appellant in the High Court—*The State of Uttar Pradesh* v. *Dinanath Rai*(1) There the rule was differently worded. The rule in that case ran as follows :—

H "In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of U.P. is pleased to make the following general rule

(1) Civil Appeal No. 1734 of 1968 dated 11th October, 1968.

regulating the termination of services of temporary Government servants : A

(1) Notwithstanding anything to the contrary in any existing rules and orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant. B

(2) The period of such notice shall be one month given either by the appointing authority to the Government servant, or by the Government servant to the appointing authority, provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof; provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice." C D

In that case this Court had observed :

"The rule does not say that the pay should be given in cash or by cheque at the time the notice is issued. Knowing the way the Governments are run, it would be difficult to ascribe this intention to the rule-making authority. There is no doubt that the Government servant would be entitled to the pay in lieu of notice but this would be in the ordinary course." E

No doubt the language of that rule is somewhat similar to the words of rule 5 but there is an essential difference. The rule only means that the pay for 30 days or less may be substituted for service for the period of the notice. In other words, the rule only entitles the employee to pay for the period of the notice without laying down any condition as to when the payment is to be given. F G

In this case, as we have already noted, "termination forthwith" is to be "by payment to the Government servant" of the sum mentioned. Payment is a condition of the termination of service forthwith. The facts of this case show that the circular which formed the basis of the order of termination was issued on the 12th September; the employee, it would appear, had absented himself from duty on the 19th September. The appointing authority had at least six days within which time the amount due to the respondent could have been calculated. H

A In our view, the decisions in *Seshavataram* v. *State of Hyderabad*(1) and *Venkataswami* v. *Director of Commerce & Industries*(2) do not help the appellant.

The appeal is therefore dismissed and in terms of the order granting special leave, the appellant must pay the costs of the B respondent.

V.P.S.

Appeal dismissed.

(1) [1959]—2 L.L.J. 227.
(2) [1959]—2 L.L.J. 702.