
(1978) 02 MAD CK 0057
In the Madras High Court

A.A. Nathan

APPELLANT

Vs

United India Fire and General Insurance Company

RESPONDENT

Date of Decision : 03-02-1978

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12, 19

Constitution of India, 1950 — Article 12, 226

General Insurance (Emergency Provisions) Act, 1971 — Section 7

General Insurance Business (Nationalisation) Act, 1972 — Section 12, 5, 7

Citation : (1978) 1 LLJ 259

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner herein was originally appointed by the Union Co-operative Insurance Society Ltd., by an order dated 2-1-1963 as a Probationary Field Officer. The said order of appointment provided that his services might be deemed to be terminated at any time by giving one month's notice on either side. Subsequently he was confirmed as a Field Officer by an office order dated 29-9-1963 with effect from 1-9-1963. He was then promoted as a Development Officer and later as a Development Secretary. Later, by an order dated 19-2-1970 the petitioner was promoted as Development Manager of the Madras Regional office with effect from 1-2-1970. While he was functioning as a Development Manager, a custodian was appointed for the Union Co-operative Insurance Society Ltd., under the Nationalisation Act 17 of 1971. At that stage certain powers given to the petitioner to represent the Society in the matter of signing policies appears to have been withdrawn by the Zonal Manager, as a result of which misunderstandings have arisen between the petitioner and the Zonal Manager. Later under the provisions of the General Insurance Emergency Provisions Act 17 of 1971 the management of the Union Co-operative Insurance Society Ltd., hereinafter referred to as the Society,⁴ was taken over by the Government and entrusted to a custodian. Thereafter the General Insurance Business Nationalisation Act, 1972 came into force and under a notification

issued thereunder the said society merged with the first respondent-company. As a result of Section 7 of that Act the petitioner became from the date of merger an employee of the United India Fire and General Insurance Company Ltd., the first respondent herein. After his services stood transferred to the first respondent-company, by an order dated 4-10-73, his services had been terminated by giving one month's salary in lieu of one month's notice. The petitioner has challenged the validity of the said order terminating his services on various grounds: (1) That the terms contained in the original order of appointment dated 2-1-1963 cannot be taken to be the conditions of his services as a Development Manager which post he was holding at the time of the termination of his services, and, therefore, the termination of his services as per the original letter of appointment even by giving one month's notice will be illegal. (2) Even if the terms of the original order of appointment dated 2-1-1963 can be taken to be the present condition of service, still the termination of his services by giving him one month's salary in lieu of one months notice is not strictly in accordance with the said order of appointment and, therefore, it is illegal. (3) That the terms and conditions contained in the original order of appointment having become statutory in view of Section 7 of Central Act 17 of 1971, he is entitled to approach this Court for the issue of a writ of certiorari to quash the said illegal order of termination. The respondents in their counter-affidavit have stated, that though the first respondent is a statutory corporation it is not amenable to the writ of jurisdiction of this Court as it cannot be said to be an authority as contemplated by Article 12 of the Constitution of India. They have further stated that the impugned order of termination of services is strictly in accordance with the conditions of his original appointment that the termination of services on payment of one month's salary in lieu of notice is a substantial compliance with the said terms of appointment and that, therefore, the order of termination cannot be said to be illegal. They have also stated that even assuming that the order of termination is illegal the remedy of the petitioner is to sue only for damages for wrongful termination of services and not to have the order of termination quashed in a writ petition before this Court.

2. Before dealing with the merits of the petitioner's contentions, the preliminary objection raised by the respondents regarding the maintainability of the writ petition has to be considered. Dealing with a similar objection this Court has held in *K.G. Mathew Vs. Chairman-cum-Managing Director, National Insurance Co. Limited and Others*, , following the decision of the Supreme Court in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, , that as the insurance company after nationalisation being a statutory body and having a statutory status will be an authority within the meaning of Article 12 of the Constitution and, therefore, a writ could issue to such a statutory company. In that case after referring to the various provisions of the General Insurance Business (Nationalisation) Act, 1972 this Court has taken the view that whatever

the acquiring company does is only under the general directions and control of the Central Government and, therefore, it should be taken to be an authority to which a writ can issue under Article 226. In that case the National Insurance Company Ltd., which is also one of the four acquiring companies under the said Nationalisation Act was held to be amenable to the writ jurisdiction. Following the said decision I hold that a writ of certiorari is maintainable in this case against the respondents.

3. Now I will come to the merits of the petitioner's contentions. The petitioner's contention that the conditions of appointment contained in the original order of appointment dated 2-1-1963 will not apply as he was working at the time of the termination of his services in a higher post cannot be accepted. It is not the petitioner's case that the terms and conditions of appointment contained in the said letter were varied or superseded by any subsequent order. Even though he has been promoted to a higher post there was variation only in emoluments but the other conditions of service will have to naturally continue till it is superseded or modified. I am, therefore, of the view that the mode of termination of service provided for in the original order of appointment is applicable to the petitioner even though he had been promoted to a higher post.

The second contention of the petitioner is that even assuming that the mode of termination of service contained in the letter dated 2-1-1963 is still applicable to him, his services have been terminated not by giving one month's notice as provided therein but by giving one month's salary in lieu of notice and that this is clearly illegal. Though the learned Counsel for the respondents submits that the termination of services by payment of one month's salary in lieu of one month's salary notice contemplated in the original order of appointment is valid in that no prejudice has been caused to the petitioner by giving one month's salary in lieu of notice, the legal position appears to be clear that giving one month's salary in lieu of one month's notice contemplated as the mode of termination of service is not strictly legal. This question had come up for consideration before a Bench of this Court in *Percy Edward Warne Vs. The Ouchterlony Valley Estate (1938) Ltd.*, . In that case the contract of service provided for three months' notice on either side for termination of a contract of service. The employee's services were, however, terminated by the employer not by giving three months' notice but by giving three months' salary in lieu of notice. The question arose whether the termination of service was in accordance with the terms of the service contract. The Court held that unless the contract of service itself provided for payment of salary in lieu of notice, payment of salary of in lieu of notice cannot be taken to be strictly in accordance with the contract of service. It was contended in that case on behalf of the employer that payment of salary for the period of notice can, even in the absence of such a provision in the contract of service, takes the place of three months' notice that there cannot be any reasonable objection for the employee to receive the salary without doing any work for the period of notice, and that such a payment will clearly be an advantage to the employee rather than prejudicial to him. While rejecting the

above contention the Court pointed out that it is for the employee to choose and not for the employer to dictate and it is settled law that in the absence of an express term in the contract of usage to that effect an employee cannot be dismissed from service without notice by paying his salary for the period in lieu of notice. In view of the said Bench decision it has to be held that the termination of the services of the petitioner by the impugned order is not in accordance with the terms of the order of appointment.

4. Then the further question to be considered is whether this Court can quash the impugned order on the ground that it is not in accordance with the terms of the order of appointment as prayed for the petitioner or whether he has to go before a Civil Court for damages for wrongful dismissal, as urged by the respondents. According to the learned Counsel for the respondents even if the first respondent-company is treated as an authority as contemplated by Article 12 of the Constitution in that it is a statutory body, still the relief of quashing the order of termination and putting back the petitioner to his original service cannot be given by this Court treating the petitioner as having a statutory status. According to him it is not as if all the employees who are working under the first respondent can claim to have a statutory status and it is only those persons whose service conditions are governed by the statutory rules and regulations can be said to have a statutory status and not persons like the petitioner whose services could be terminated by giving a month's notice. The learned Counsel for the respondents submits that even if the removal of an employee is contrary to the conditions of service it would not necessarily result in the removal having to be declared void, though it might give rise to a claim from the employee for damages for wrongful termination of service. In *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, the Supreme Court has laid down that the employment under public Corporations is public employment that, therefore, such employees should have such protection which appertains to public employment, that the theory based on public employment goes some way towards reversal of the common law position based on the theory of master and servant that in public employment there should be a presumption that the service of an employee will not be terminated except in accordance with the statutory rules and regulations governing the conditions of their service, that in the case of public employment declaration is a normal remedy for wrongful dismissal which will only be refused in exceptional circumstances and that the remedy of declaration should be a ready made instrument to provide reinstatement in public employment. In that case the Supreme Court cited with approval the following observations of Lord Sterndale, M.R. in *Hanson v. Radcliffe* U.D.C. (1922) 2 Ch. 490.

The power of the Court to make declarations when it is a question of determining the rights of two parties to a contract, is now almost unlimited or limited only by the discretion of the Court.

The learned Judges pointed out in that case that the regulations framed by the Corporations were intended to be binding upon them and were the basis on which employments were made and that if the dismissal from public employment were made and that if the dismissal is based on a defined procedure under the said regulations the procedure must be scrupulously observed, that the rules and regulations framed by the statutory bodies have the force of law and that as the employees of those statutory bodies have a statutory status they are entitled to a declaration of their being in employment when their dismissal or removal is in contravention of statutory procedure. In view of the said decision, if the terms and conditions contained in the original order of appointment have got a statutory force, then the termination of the petitioner's services without following the mode of termination as provided therein has to be declared void. It is true, the original order of appointment was merely a private contract of service as between a master and servant. But the original employer, viz., the Union Co-operative Insurance Society Ltd., has merged with the first respondent-company by virtue of a statutory notification issued u/s 5(1) of the General Insurance Business (Nationalisation) Act 1972. Act 57 of 1972 As a result of the said notification the said society which is an existing insurer as defined in that Act, stood transferred and vested in the first respondent-company. Section 7 of that Act provides for the transfer of services of the existing employees to the Indian Insurance Company with which the existing insurer had merged. Section 7 says that every employee shall, on the appointed day, automatically become an employee of the Indian Insurance Company in which the undertaking of the insurer has vested and shall hold his office under the Indian Insurance Company "on the same terms and conditions" as would have been applicable to him if there had been no such vesting and shall continue to do so unless and until his employment in the Indian Insurance Company in which the undertaking or part has vested is terminated or until the terms and conditions are duly altered by the Indian Insurance Company. The first respondent comes under the definition of "Indian Insurance Company" and it is not in dispute that the petitioner's original employer has vested with the said company. According to the learned Counsel for the petitioner in view of the said section the petitioner's service has become statutory and, therefore, he is entitled to continue in the service on the same terms and conditions till it is modified by the first respondent-company. It is not the case of the first respondent that the terms and conditions applicable to the petitioner were at any time modified after the vesting contemplated by Section 5, The learned Counsel for the respondents would, however, say that the objection of Section 7 is not to confer a statutory status but merely to continue the old conditions of service till they are modified by statutory regulations, and that Section 7 cannot have the effect of making the existing conditions of service statutory. The learned Counsel refers to Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 which provides that an employee of an existing bank shall hold his office in the corresponding new bank on the same terms and conditions as are applicable to them until the same is modified or duly altered by the corresponding new bank and Section 19(3) which

treats the existing regulations, rule, by law and order of the existing bank as a regulation made by the corresponding new bank u/s 19(1) and submits that since there is no such a provision in the Central Act 57 of 1972 the existing terms and conditions of service cannot be treated as having been passed by the first respondent-company. I am of the view that though there is no such a provision in Central Act 57 of 1972 as is contained in Section 19(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 the effect of Section 7 of the Act 57 of 1972 is that the employees whose services have been taken over under that section in the first respondent's company have been given a statutory guarantee that their services will be governed by the terms and conditions which exist already till they are modified Therefore, Section 7 should be taken to give a statutory force to the terms and conditions of service already existing even though no statutory regulations have been framed as contemplated by Section 12(2) of the Act 57 of 1972 Section 7 clearly refers to the existing terms and conditions and says that they will be continued unless and until they are altered by any regulation framed u/s 12. Therefore, the Legislature has contemplated the continuance of the existing conditions of service as governing the relationship between the employees and the first respondent company. In *Lachhman Das Aggarwal v. P.N.B. and Anr.* (1978) S.L.J. 71, a similar question arose in the case of an employee governed by the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. In that case Staff Department Circular No.20 issued prior to the acquisition of the Bank by the Government continued to be in force and no fresh regulation was framed u/s 19(2)(d) of the Banking Companies (Acquisition and Transfer of Undertaking) Act relating to conditions of service of the employees. An employee was discharged from service without following the procedure set out in the said Staff Circular. That order of discharge was challenged as illegal and the Court held that the Staff Circular No.20 had the same effect of a regulation made u/s 19(2)(d) in view of Section 19(3) and, therefore, any breach of the circular which has been given statutory force will warrant the quashing of the order and restoring the petitioner to service with consequential benefits. In *J.C. Chakravarthy v. Union of India* 82 C.W.N. 134 an insurance company which has been nationalised had terminated the services of an employee and when that order of termination was challenged it was held that on the date on which the petitioner was served with the notice of termination of his service, he had no statutory status or protection guaranteeing the existing terms and conditions of service of the employees and that in the absence of such statutory status or protection the petitioner was not entitled to a mandamus for any breach of the condition of service. This decision proceeds on the basis that under the provisions of the General Insurance Emergency Provisions Act, 1971 it is only the management of the insurance company that has been taken over by the custodian and that under the provisions of that Act the existing terms and conditions of employees of the insurance companies which have been nationalised have not been given any statutory force. But as already stated, in this case Section 7 gives such a statutory protection guaranteeing the terms and conditions of the service of the

employees who have taken over by the first respondent-company. I am, therefore, of the view that the impugned order terminating the petitioners services is not a mere breach of a contract of service but it amounts to a breach of a contract of service but it amounts to a breach of a statutory guarantee, given by Section 7 of the Act. If there is a non-compliance with the statutory provisions in terminating the services of an employee who has got a statutory status, the Court can give relief by quashing the order as being void and reinstating the petitioner to his original position. If the respondents' contention that the only remedy open to the petitioner is to go before a civil Court for damages for wrongful termination of services is accepted, the statutory guarantee or protection given in Section 7 of the Act will mean nothing to persons like the petitioner. I, therefore, hold that the petitioner is entitled to the relief prayed for by him in the writ petition. The writ petition is, therefore, allowed and the impugned order is quashed. There will, however, be no order as to costs.