

(2015) 08 OHC CK 0026

In the Orissa High Court

Case No : O.J.C. No. 13137 of 2000 and W.P. (C) No. 5937 of 2002

Abdul Majid

APPELLANT

Vs

National Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Industrial Disputes Act, 1947 — Section 2(g), 2(s)
Specific Relief Act, 1963 — Section 14

Citation : (2015) 147 FLR 1042 : (2016) LLR 197

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : Lingaraj Dash and J.M. Rout, for the Appellant; S.K. Mishra, D.P. Nanda, P.K. Mishra, V.N. Nayak, J.K. Nanda, P.K. Mohapatra and M.K. Pati, for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The petitioner who was entrusted with the work of house keeping pursuant to agreement to discharge duties of caretaker has filed OJC No. 13137 of 2000 claiming salary from the month of July, 2000 and seeking for a direction for payment of current salary regularly.

In W.P.(C) No. 5937 of 2002 the very same petitioner has sought for quashing of the order of termination dated 29.9.2000 passed by the authority vide Annexure-4 with a direction to the opposite parties to allow him to continue to work as caretaker in available vacancy.

The National Insurance Company Limited is one of the subsidiary Companies of General Insurance Corporation of India, which is a Govt. of India undertaking. The affairs of the company is managed, financed and controlled by the General Insurance Corporation of India. The company which has set up a transit flat at Belvedere Estate, Alipore, Kolkata desired to entrust the work of house keeping to the petitioner. Pursuant to which the petitioner entered into an agreement on

6.12.1989 and worked as a caretaker as per the terms and conditions stipulated in the agreement. The company reserved the right to terminate the services of the caretaker by giving a months' notice or vice-versa. In the event the conduct or the action of the caretaker is not found satisfactory, the company shall have the right to terminate the contract without notice. In consideration of the service rendered, the company shall pay a monthly compensation of Rs. 1200/- and all other profits or loss by selling food etc. to the guests. Pursuant to such agreement, the petitioner was allowed to discharge his duty at the transit house at Kolkata. In the year 1991, there was a representation from individual caretakers and association for revision and regularization of remuneration of caretaker vis-a-vis revision of class-IV pay scale and notional increments. Considering the same, the General Insurance Company, issued a circular dated 8.7.1991 wherein it was decided to revise the remuneration from 1.1.1989, 1.1.1990 and 1.1.1991 as per the pay and allowances excluding HRA to peons under the amendment scheme, 1989 with subsequent amendments dated 6.7.1990. Pursuant to such circular, the caretaker working in the General Insurance Corporation including the petitioner were getting emoluments of class IV employees of the company excluding the HRA allowances. The post of caretaker at Bhubaneswar fell vacant on account of transfer of Arun Kumar Jena, caretaker who was working at Bhubaneswar office. Consequently, the case of the petitioner was recommended for transfer to Bhubaneswar transit camp to work there. Accordingly, a letter was issued on 23.8.1999 to the petitioner intimating the termination of agreement dated 6.12.1989 between the petitioner and the company so far as Kolkata transit house is concerned. The petitioner was paid salary till June, 2000 but due to non-payment thereafter, he preferred a writ petition before the Kolkata High Court bearing No. 14633 of 2000 and the same was disposed of as not maintainable. Thereafter, the petitioner filed OJC No. 13137 of 2000 before this Court with a prayer to release the salary from July, 2000. But vide order dated 29.9.2000, the Sr. Divisional Manager, intimated the petitioner that his services as caretaker have been terminated. Therefore, he has filed WPC No. 5937 of 2002 challenging the said order of termination and sought for reinstatement and grant of all consequential benefits.

2. Mr. Lingaraj Dash, learned Counsel for the petitioner vehemently urged that the petitioner was discharging his duty as caretaker since 1989 and was getting his remuneration regularly at par with scale applicable to the sub staff of the company excluding HRA allowance. Though the caretakers employed by the General Insurance Company through-out India are treated as sub staff of the company and are paid salary of the sub staff, the petitioner has been discriminated. It is stated that there always exists employer employee relationship between the company and the petitioner throughout his employment in the company. Therefore, the termination of services of the petitioner without any notice/opportunity of hearing, cannot sustain in the eye of law and the so called contract is sham/vague. The termination of service cannot take away the petitioner's right without any reasonable cause and the order of termination

dated 29.9.2000 has never been served on the petitioner and the said fact has come to his notice after receiving the counter affidavit filed by the company in OJC No. 13137 of 2000. Therefore, he seeks for quashing of the said order of termination and claims for release of consequential benefits as due admissible in accordance with law. In order to substantiate his case, he has relied upon State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another, , State of Punjab Vs. Amar Singh Harika, , Indian Petrochemicals Corporation Ltd. and another v. Shramik Sena and others 1999 (83) FLR 75 (SC) and Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, .

3. Per contra, Mr. D.P. Nanda, learned Counsel for the opposite parties, raised preliminary objection with regard to maintainability of the writ petition and urged that by virtue of the agreement dated 6.12.1989 the petitioner was given contract job of house keeping of the guest house set up by the company at Kolkata. Thereafter, on termination of the agreement, the petitioner entered into a fresh agreement on 8.11.1999 to work as a caretaker of guest house at Bhubaneswar. The job was entrusted on a contractual basis and upon closure of the guest house at Bhubaneswar, the agreement was terminated as per the terms contained therein. Therefore the approach of the petitioner for enforcing such agreement or making any claim on the basis of such agreement cannot be sustained and as such there is no post of caretaker in the service hierarchy of the opposite party. If he claims as an employee of the company, then he may be considered as a workmen category and he has to raise dispute before the industrial forum and as such the present writ petition is not maintainable as claimed. The contract having been terminated w.e.f. 30.9.2000, prayer made by the petitioner for release of salary and for payment of current salary is not permissible and there exists no employer-employee relationship between the company and the petitioner. As the job of the petitioner is purely contractual in nature, he cannot invoke the same by filing the present writ petition. The petitioner had been engaged as an independent contractor to look after the guest house of the company and to provide service to the officers and staff who stay in the guest house as per the terms and conditions enumerated therein. The petitioner had never been appointed as a regular employee of the company, therefore the service condition of regular employees, governed and regulated by General Insurance (Rationalization and Revision of Pay Scales and other conditions of services of Supervisory, Clerical and Subordinate Staff) Scheme 1974 as amended upto date cannot have any application to the petitioner and there is no post of caretaker is available under the scheme. In order to substantiate his contention, he has relied upon the judgments in Dayanidhi Mohanty Vs. State of Orissa and Another, and 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, .

4. On the basis of the facts pleaded above, the admitted position is that the petitioner had been entrusted with the work of house keeping at Kolkata

pursuant to an agreement executed on 6.12.1989. The agreement itself contained details of the work to be discharged by the petitioner as a caretaker of the guest house and as per the condition stipulated therein the petitioner is entitled to get monthly compensation of Rs. 1200/- per month for the service rendered as caretaker and all other profits or loss by selling and supplying foods etc. to the guest. In consonance with the terms and conditions of such agreement, the petitioner was paid the monthly compensation but subsequently the same was revised by granting monthly compensation at par with class-IV sub staff of the company excluding the house rent. But that ipso facto cannot be construed that the petitioner is an employee of the company reason being that the petitioner is bound by the terms and conditions of engagement pursuant to agreement executed between the parties. Since there was a requirement of caretaker at the guest house in Bhubaneswar the agreement which was executed on 6.12.1989 was terminated and the petitioner was called upon to execute a fresh agreement on 8.11.1999. Pursuant to such agreement, he has been allowed to discharge duty of caretaker in the guest house at Bhubaneswar. But the company decided to close the guest house at Bhubaneswar and accordingly the agreement so executed was terminated by giving a months' notice as per para-IV of the agreement w.e.f. 30.9.2000. On the basis of materials available on record, it appears that the petitioner having entered into the agreement with opposite party was allowed to discharge duty of caretaker and when there was closure of guest house, there was termination of the agreement. Therefore the contract ceased and once the contract ceased, the petitioner cannot claim the benefit under the agreement which is no more in existence.

5. State of Punjab (supra) is a case of Government servant, who had been dismissed from service but the disciplinary order was communicated to him subsequently. In that case, the Apex Court considered the same and held that an order of dismissal passed by the appropriate authority and kept on its file without being communicated to the officer concerned or otherwise published does not 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. The ratio of the said case has no application to the present context in view of the fact that with termination of agreement, the petitioner has been disallowed to work, that itself indicates that the petitioner is bound by the terms of the agreement executed between the parties.

6. In State of Uttar Pradesh and another (supra), wherein one Audh Narain Singh was appointed by one Dhanpat Singh Tondon, Government Treasurer with the approval of the District Magistrate to carry out the work entrusted by the State subject to control of the State Government. Therefore, it was considered that he was an employee of the Government. If he has been removed from his post, it requires an opportunity of hearing. But the ratio of the said case is also not applicable to the present context. More so, if the petitioner is aggrieved by violation of any of the terms and conditions, he may approach the appropriate

forum instead of invoking jurisdiction under Article 226 of the Constitution of India.

7. In *Indian Petrochemical Corporation Ltd. and another (supra)*, on which reliance is placed by the learned Counsel for the petitioner that the respondents workmen were employed in the statutory canteen managed by contractor. The Apex Court held that they are workmen of the establishment for the purpose of Factories Act only and not ipso facto workmen of the establishment for other purpose like recruitment, seniority, promotion, retirement benefits etc. In the present case, the said analogy is not applicable in view of the fact that even though at one point of time the authorities have extended monthly compensation at par with class-IV employees excluding HRA that ipso facto cannot be construed that the petitioner is an employee of the opposite parties. The service regulation framed by the corporation does not indicate any cadre of caretakers so as to consider that the petitioner is an employee of the opposite parties. In any case, if the petitioner claims to be a workmen category then also this Court has no jurisdiction to entertain such application.

8. In *Hussainbhai (supra)*, the Apex Court laid down the principles to apply test to consider the relationship of workmen and employer with reference to sections 2(s) and 2(g) of the Industrial Disputes Act. Applying the said test also to the present context, the petitioner cannot be construed to be a workmen under the opposite parties.

9. In *Dayanidhi Mohanty (supra)*, this Court while considering the question whether an order of reinstatement can be passed in connection with the said case, it was held that under the common law, the Court cannot ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. That is also the effect of the provision contained in section 14 of the Specific Relief Act. But then, the law has carved out some exceptions in this regard.

10. In *S.R. Tewari Vs. District Board Agra and Another*, , the Apex Court considered three exceptions, namely, (i) where a public servant is sought to be removed from service in contravention of the provision contained in Article 311 of the Constitution; (ii) where a worker is dismissed and an industrial Court orders for reinstatement; and (iii) where an employee of a statutory body has been dismissed in breach or violation of a statutory provision. To the same effect are the decisions in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , *Indian Airlines Corporation Vs. Sukhdeo Rai*, . The matter was exhaustively dealt in *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , following which in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, , *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, and *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the same view has been taken.

11. In view of such position, if the petitioner claims that he is a workmen and entitled to be continued in service then he has to approach the Industrial Dispute Forum and more so he cannot be treated as an employee of any statutory body as his continuance is being regulated by the terms of agreement executed between the parties. For any violation thereof, remedy available under law is to approach the common law forum. Therefore, this Court is of the considered view that the relief sought for by the petitioner cannot be granted as the writ petition is not maintainable on the basis of the nature of grievance made therein. Accordingly, the writ petitions are dismissed. However, there is no order to cost.