

(1987) 02 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Appeal No. 1606 of 1986

A.K. Parmar

APPELLANT

Vs

Delhi Tourism Development Corporation and Others

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Citation : (1987) ILR Delhi 123 : (1987) LabIC 2274

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : G.D. Gupta, B.R. Kapur, N.K. Sangle and Ashok Gumani, for the Appellant;

Judgement

Kirpal, J.

(1) The challenge in this writ petition under Article 226 of the Constitution of India is to the order whereby the petitioner's services were terminated.

(2) Briefly stated the facts are that respondent No. I is a public sector undertaking which is registered under the provisions of the Companies Act. Pursuant to an advertisement in the paper the petitioner applied for the post of Projects Officer. By office memorandum dated 11th October, 1976 the petitioner was appointed as a Projects Officer in the pay- scale of Rs. 650-30-740-35-880-EB-40-960. It was stated in this office memorandum that pending finalisation of the service rules his appointment was purely temporary and his services were liable to be terminated at any time without assigning any reason therefore.

(3) On 17th July, 1979 an office order was passed which is in the following terms :-

"CONSEQUENT upon the approval of the Board of Directors Shri Ashok Kumar Parmar, Projects Officer is hereby promoted as Manager (Tourism) with effect from 1st January, 1979 in the pay scale of Rs. 700-40-900-EB-40-1100-50-1300. His pay for the period from October, 1978 to December, 1978 will be calculated

@ Rs. 8501- per month in the pay scale of Rs. 650-960 and @ Rs. 7801- per month with effect from 1st January, 1979 in the pay scale of Rs. 700-40-900-EB-40-1100-50-1300. as per the Government rules."

This order had been passed pursuant to the decision taken by the Board of Directors of the respondent Corporation in its meeting held on 5th June, 1979. One of the items on the agenda was regarding "increase of duties and emoluments of the Projects Officer". The resolution which was passed with regard to the said item was as follows :-

"RESOLVED that Shri Ashok Parmar, Projects Officer be and is hereby redesignated .as Manager (Tourism) in the pay scale of Rs. 700-1300 with effect from 1-1-1979. His salary may be fixed in the said scale as per the rules of the Government of India."

(4) According to the petitioner there are other posts of manager which are existing in the said Corporation and which are inter-chainable posts. It is alleged in the writ petition that the other posts of manager are for Tourism, Transport, Infl and Public Relations.

(5) On 25th July, 1986, while the petitioner was working as Manager (Public Relations) his services were terminated. The said order of termination reads as follows :-

"YOU are hereby removed with immediate effect from your services with the Corporation in exercise of the powers vested in me vide Article 55(21) of the Memorandum and Articles of Association of the Corporation."

Article 55(21) to which reference is made in this impugned order reads as under :-

"55. Without prejudice to the general powers conferred by these Articles and subject to the provisions of Section 291, 294 and 297 of the Act the Board of Directors shall have the following powers :-

(21) At the discretion of the Chairman of or at their discretion to appoint, remove or suspend such secretaries, clerks, agents and servants as they may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and require security in such instances and to such amounts as they or the Chairman may think fit, provided that the approval of the Lt. Governor is obtained for appointment in the higher category of posts (Rs. 2,500-3,000 and above) of persons who have already attained the age of 58 years."

The petitioner represented against the said order of termination. The representation was filed with the Lt. Governor but before any reply could be received the present writ petition was filed challenging the aforesaid order dated 25th July, 1986.

(6) In the return which has been filed on behalf of the respondents it has been

contended that the petitioner was a temporary employee and it had been decided that there should be a reduction in the number of posts with a view to bring about economy. The reduction of posts had been recommended by a Committee which had been constituted and one of the posts of Managers was abolished. It is further alleged that on the abolition of the said post the then Chairman of the Corporation Shri D. C. Sankhla (respondent No. 2) examined the comparative records of all the five managers who were working's managers at that time and came to the conclusion that the services of the petitioner should be terminated as he had become surplus. It might hereby be mentioned that under Article 56 the Chairman has the power to exercise all the functions and authority of the Board subject to the rectification of the action was taken. It has been stated by Shri Kapur on behalf of the respondents that a resolution by circulation was passed by majority of Board of Directors upholding the action which had been taken by the Chairman. The validity of this resolution is challenged by Mr. Gupta but I need not go into that question and shall proceed on the assumption that the resolution was validly passed.

(7) The first attack of Mr. Gupta is to the validity of Article 55 (21) reproduced hereinabove. The aforesaid Article gives a power to terminate the services of an employee. It gives no indication as to in what circumstances that power is to be exercised. Furthermore the said power can be exercised in respect of all employees whether permanent or temporary. A similar power was contained in the Standing Order in the case of Employees of Hindustan Steel Ltd. The Supreme Court in the case of Workmen of Hindustan Steel Ltd. Vs. Hindustan Steel. Ltd. and others 1985 (50) FLR14 held that such arbitrary, unanalyzed and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of the security to continue to employ him was violative of the basic requirement of natural justice and, as such that power was ultra-vires. A similar question also arose in a case West Bengal State Electricity Board & others Vs. Desh Bandhu Ghosh & others 1985 (5) F.L.R. 456. In that case also the management had the power to terminate the services of permanent employee by serving on him three months notice or by paying salary in lieu of the notice. The Supreme Court held that such a regulation was not valid as it was totally arbitrary and conferred on the Board a power which was capable of vicious discrimination. A similar question again arose before the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, where a similar power was given to the management to terminate the services of a permanent employee by giving three months notice, was held to be arbitrary. The aforesaid decisions of the Supreme Court were followed by the Division Bench of this Court in the case of D.T.C. Mazdoor Congress and others Vs. Union of India and others 1986 (53) 158. A similar regulation giving the management the authority to terminate the services of an employee without any notice was held to be ultra vires.

(8) Mr. Kapur, the learned counsel for the respondents however contends that in the present case the petitioner, was a temporary employee and Therefore the

said provisions could be validly invoked. The question as to what was the status of the petitioner will be dealt with by me presently. However Article 55(21) applies to permanent as well as the temporary employees. There is no separate rule with regard to the temporary employees. For example the Central Government servants are governed by Central Government Temporary Service Rules where a specific provision is made which provides for termination of service. In the present case no such rule has been brought to my notice. The only power which the respondents have to terminate the services of employees, both permanent and temporary, is contained in the afore said Article 55(21). This Article gives arbitrary and unbridled power to the authorities to dismiss the service of any employee. Following the ratio of the aforesaid decisions this provision cannot be upheld.

(9) In any case, assuming that such a power would be *ultra vires* unless so far as it is to be exercised in respect of a permanent servant. In the present case I am unable to agree with the learned counsel for the respondents to the effect that the petitioner was a temporary employee whose services could be terminated at any time. The office order dated 17th July, 1979 which has been quoted hereinabove, clearly shows that the petitioner was promoted from the post of Projects Officer which was in the pay-scale of Rs. 650-960 to the post of Manager (Tourism) in the higher pay-scale of Rs. 700-1300. whereas in the order dated 11th October, 1976 when the petitioner was appointed as a Projects Officer it was stated that his appointment was purely temporary. In the office order of 17th July, 1979 it has not been stated that the petitioner was being promoted as a manager on ad-hoc basis or in the officiating basis or in temporary capacity. Shri Kapur however contended, placing reliance on the resolution of the Board dated 25th June, 1979, that this is a case where only the designation of the petitioner was changed. According to the learned counsel this is not a case of promotion. I am unable to agree with this submission. It is no doubt true that in the resolution of 25th June, 1979 it has been mentioned that the Projects Officer is being re-designated as Manager but the resolution has to be read as a whole. The resolution clearly provides that there are to be increase of duties of the petitioner along with increase for his emoluments. Simultaneously his designation was also changed from Projects Officer to that of Manager. To my mind this will clearly amount to the petitioner being promoted to a higher post. It is not as if the post which the petitioner was holding was upgraded. If it was a case of mere up radiation then there would have been no increase in the number and nature of duties. Where there is an increase in the nature of duties and simultaneously a person is placed in higher pay-scale then the only conclusion which can follow from there is that the person has been promoted to a higher post. The post of Projects Officer carrying lesser duties, lesser pay scale and having different designation cannot possibly be equated with a post of Manager carrying higher duties and higher pay-scale. So also whether there is graded post or not,, as sought to be contended by Shri Kapur, is immaterial. What is to be seen is whether the petitioner was promoted from lower scale to higher scale and

the answer is obviously in the affirmative. Neither in the resolution dated 25th June, 1979 nor in the office order of 17th July, 1979 it is stated that the promotion or appointment of the petitioner as Manager is on temporary or officiating basis. Assuming, for the sake of argument, that the learned counsel for the respondents is correct and the petitioner's post is redesignated to that of a manager, nevertheless the petitioner by virtue of the said resolution of the Board of Directors was appointed to this re-designated post and his appointment was not in a temporary capacity. The petitioner can only be regarded as having been regularly and permanently appointed to the post of manager. This being so, the aforesaid decisions of the Supreme Court and this Court would squarely apply to the facts of the present case and the provisions of Article 55 (21) in so far as it gives right to the respondents to terminate the services of permanent regularly appointed employees without giving any opportunity of being heard is clearly illegal and void. On this ground alone Therefore, the petitioner is entitled to succeed.

(10) There is another submission on behalf of the petitioner. It has been contended in the petition that there were 4 posts of managers and at the time when the petitioner was removed from services two of the posts were lying vacant. According to the respondents they have taken action against the petitioner because one post was abolished and the petitioner was declared to be surplus. But if after the abolition four posts continued to exist against which only two persons were regularly appointed then the petitioner could not be regarded as being surplus. In such an event no action could be taken against the petitioner and his services could not be terminated. Learned counsel for the respondents has stated, that all the four posts were. All the four posts of managers were being occupied by Shri Banerjee, Shri Suman Sharma, Shri Khurana and Shri K. B. Sharma. Learned counsel for the respondents however admitted, during the course of arguments that Shri Suman Sharma and Shri K. B. Sharma were promoted only on ad-hoc basis. It was further stated that the ad-hoc promotions of these two persons had at no time been Rectified by the Board of Directors. Both Suman Sharma and K. B. Sharma were not holding the post of managers on regular basis. It was only a working arrangement which appears to have been made by the respondents for looking after the works of managers. Learned counsel for the petitioner Therefore is correct in his submissions that as on 25th July, 1986 there were three regularly appointed managers and they were the petitioner himself, Shri Khurana and Shri Banerjee. The number of posts of managers was five and even if one post was abolished though there is no former order abolishing such a post there remain four posts against which only three persons had been regularly appointed. In fact according to the petitioner Shri Khurana is on deputation to the Corporation but a deputationist may also be regarded as a regular appointee. This shows that there was no regularly appointed manager who could be regarded as surplus. If the petitioner was not surplus then there could be no action for terminating his service because of the abolition of one post. If the petitioner's services were terminated because of his

alleged bad service record then again that action was not warranted because the service cannot be terminated on the ground of bad record without following the principles of natural justice. Looking at it from any point of view I find the action of the respondents in terminating the service of the petitioner without affording him an opportunity of being heard is bad in law.

(11) For the aforesaid reasons this writ petition is allowed. The impugned order dated 25th July, 1986 passed by the respondents is quashed. Provisions of Article 55 (21) are held to be illegal and ultra vires. The petitioner shall be entitled to reinstatement with full back wages. The petitioner shall also be entitled to costs of this petition. Counsel fee Rs. 1000.00.