

(2001) 04 RAJ CK 0101

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1043 of 2000

D.K. Chaplot

APPELLANT

Vs

Regional Manager, National Insurance Company and Others

RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92(2)

Constitution of India, 1950 — Article 14, 16

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 2, 25(6)

Limitation Act, 1963 — Article 127

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16(5)

Citation : (2001) 3 RLW 1781 : (2001) 2 WLC 717 : (2001) 3 WLN 205

Hon'ble Judges : P.P. Naolekar, J; Khem Chand Sharma, J

Bench : Division Bench

Advocate : Naina Saraf, for the Appellant; Alok Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.

(1). The petitioner appellant hereinafter to be called as "the petitioner" employed as a Development Officer, Branch-II with the respondent National Insurance Company and was posted in the Divisional Office at Udaipur. He was charge sheeted on 8.9.1999 and the respondent No.3 was appointed as enquiry officer, but before regular inquiry could proceed the petitioner apprehending Injustice at the instance of enquiry officer, moved an application before the competent authority with a request to change the enquiry officer. The competent authority declined his request and the respondent No.3 continued as enquiry Officer. The petitioner's further request for appointment of Shri K.C. Shukla as his Defence Assistant was also declined.

(2). Feeling aggrieved by the action of the respondents in not changing the enquiry officer and disallowing the participation of Shri K,C. Shukla as his defence nominee on the ground that he is a retired employee and that a retired

employee cannot be allowed to represent the delinquent, the petitioner preferred a writ petition bearing No. 3864/2000. The learned Single Judge after hearing learned counsel for the parties and considering the documents on record partly allowed the writ petition, thereby accepting the prayer of the petitioner for change of enquiry officer and refusing to allow a retired employee participate in the enquiry proceedings as the petitioner's defence assistant. Hence this special appeal.

(3). Mrs. Naina Saraf, learned counsel appearing on behalf of the petitioner contended that the petitioner is legally entitled to seek the assistance of a retired employee of the respondent company to defend him during the enquiry proceedings and the learned Single Judge has rejected the aforesaid prayer by wrongly interpreting Rule 25 of the Rules. She has vehemently submitted that a retired employee can very well be allowed to participate as a defence assistant for the delinquent even as per the provisions of Sub-rule (6) of Rule 25 of the Rules.

(4). Learned counsel then submitted that while disallowing the prayer of the petitioner to allow him to engage a retired employee in his defence, the learned Single Judge has given very narrow interpretation to the word "employee". She has submitted that the only Intention of the rules making authority was that legal practitioner should not be allowed to participate as defence assistance in the enquiry proceedings, and, therefore, the delinquent may take the assistance of any employee except a legal practitioner. She has submitted that a perusal of the language of Rule 25(6) would make it clear that there cannot be any impediment in taking the assistance of a retired employee. The rules should be given wider interpretation. If two reasonable interpretation are possible, the court should adopt reasonable and just construction. In support of her argument, learned counsel has a relied upon a decision of this court in *Devi Ram v. The Union of India* (1).

(5). It has also been submitted by the learned counsel for the petitioner that the petitioner has been subjected to hostile discrimination inasmuch as Shri K.C. Shukla, whom the petitioner wanted to engage his defence assistant has been allowed to appear as a defence assistant in the departmental enquiry against one Shri Anil Baxi.

(6). On the other hand, Mr. Alok Sharma, appearing on behalf of the respondents No.1 and 2 has controverted the aforesaid arguments and submitted that the petitioner has no legal or vested right to ask for the services of a retired employee as a defence assistant to assist him in disciplinary proceedings against him in the light of the language of sub rule (6) of Rule 25 of the Rules, which specifically provides that an employee may take assistance of any other employee but may not engage a legal practitioner for the purpose. He submitted even if the rule does not specifically restrict a retired employee of the company to be engaged as a defence assistance to assist the delinquent, it is not for the court to rectify the same by making its own addition. He has also submitted that

since Mr. Shukla stood retired, he cannot be considered to be an employee of the respondent company. For an employee it is essential that relationship of master and servant should exist with the employer. In support of his above submission learned counsel has placed reliance on *ESI Corporation v. Tata Engineering & Locomotive Company Ltd.* (2), & *P.M. Patel & Sons v. Union of India* (3).

(7). As regards the argument of the learned counsel for the petitioner about violation of Article 14 & 16 of the Constitution of India, learned counsel for the respondent submitted that any illegality, if committed should not be allowed to be perpetuated. He submitted that if any illegality or irregularity has been committed by the respondent company in allowing the services of a retired employee as a defence assistance in some other case, the petitioner cannot claim the same illegality or irregularity on the ground of denial. In support of his submission, learned counsel has referred to a decision of the Apex Court in *Gursharan Singh and Others v. New Delhi Municipal Committee and Others* (4).

(8). We have considered the rival contentions of the learned counsel for the Parties and have perused the impugned order of the learned Single Judge and the record of the case.

(9). The only question that arises for consideration of this court is, as to whether a retired employee of the company can be permitted to appear as a defence assistant to defend the delinquent in the inquiry proceedings?

(10). The disciplinary proceedings as against the employees of the respondent Company are governed by the General Insurance (Conduct, Discipline & Appeal) Rules, 1975, (for short, to be referred to as the Conduct Rules), To deal with the controversy; It would be appropriate to first refer to the definition of "employee". Rule 2(g) provides that "employee" means any employee of the Corporation and/or its Subsidiaries other than the casual, work charged or contingent staff. So far as appointment of defence assistant by me delinquent is concerned, Sub-rule (6) of Rule 25 of the Conduct Rules provides that the employee may take the assistance of any other employee but may not engage a legal practitioner for this purpose. However, there is no specific provision in the Conduct Rules framed by the respondent Company so as to debar a retired employee to take part as a defence assistance in the disciplinary proceedings.

(11). A bare perusal of the language of Sub-rule 6 of Rule 25 of the Conduct Rules would make it clear that while framing the conduct rules the only intention of the rules making authority was to restrict the services of a legal practitioners to be utilised by the delinquent in his/her defence in the departmental Inquiry. Admittedly, the rule docs not specifically provides for taking assistance of a retired employee, but at the same time it also does not mention that only the existing employee may take part as a defence assistance in the Inquiry proceedings against an employee.

(12). To deal with the question, it must also be noted that the Rules making authority while specifically restricting the services of a legal practitioner only,

have left open the services of "any other employee" for being utilised as defence assistant by a delinquent employee in the inquiry proceedings. If the provisions of rule 2(g) which defines the word "employee" and the provisions of Rule 25(6) of the Conduct Rules are read together, it would be crystal clear that neither the retired employee is excluded from the definition of employee contained in rule 2(g) nor there is any exclusion of a retired employee from the words "any other employee" as contained in rule 25(6) of the Conduct Rules.

(13). We may also take assistance of various conduct rules governing the disciplinary proceedings framed by the different States, Corporations, Semi Government Departments, Banking Institutions and the Government of Rajasthan. Instead referring to Various conduct rules, we must refer only to the conduct rules framed by the Government of Rajasthan, namely, the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. Like Rule 25(6) in the Instant case, there is rule 16(5) in the Rules of 1958. It would be proper to quote rule 16(5) of the CCA Rules 1958, which reads as under:

"Rule 16(5) - The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant or retired Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority, having regard to the circumstances of the case, so permit."

(14). Thus, it is evident from a bare reading of Rule 16(5) quoted above that a Govt. servant may take the assistance of a retired Govt. servant in the inquiry proceedings and rest of the provision as to the restriction of services of a legal practitioner in both the rules is same. In the present case, if we go through the language of Rule 25(6) of the Conduct Rules, it would make it abundantly clear that the Rules making authority intended only to restrict the services of a legal practitioner and therefore, it can safely be inferred that the Rules making authority left open very wide options by using the words "the services of any other employee" including a retired employee.

(15). Admittedly, to be an employee, it is essential that there must exist relation of master and servant. It cannot be said that if a person retires from services, he is ceased to be an employee. He is always an employee and would remain as an employee, may be as a retired employee, and the relation of master and servant continues till he survives. Even after the death of a Government servant, he is considered to be a deceased employee.

(16). While interpreting the rule, we are conscious that general words in a statute must receive a general construction unless there is something in the Act itself such as the subject matter with which the Act is dealing or the context in which the said words are used to show the intention of the Legislature that they must be given a restrictive meaning.

(17). The definition of "employee" quoted hereinabove is clear and explicit. It only excludes Casual, Work-charged or contingent staff, but certainly, not a retired employee. Had the Rules making authority intended to exclude a "retired employee", the words "retired employee" must have appeared along with casual, work charged on contingent staff as contained in rule 2(g) of the Rules.

(18). The words "employee may take assistance of any other employee but may not engage a legal practitioner for the purpose" appearing in sub rule (6) of Rule 25 of the Rules must be given wider effect and it must be construed that an employee may take assistance of any other employee including a retired employee but he may not be a legal practitioner. We do not find any ambiguity in Rule 25(6) of the Rules. In our considered opinion, the language of the rule is plain, clear and explicit and no question of its interpretation does arise except that the words "any other employee" used in the rule should be given fair construction and the words any other employee must Include a retired employee as well.

(19). We have carefully gone through the case laws cited by the learned counsel for the respondents. In P.K. Uni v. Nirmal Industries (5), the question for consideration before the Hon"ble Court was with respect to the construction of two sets of provisions prescribing different periods of limitation, whether consistent or inconsistent. The Apex Court held that the correct construction of Rule 92(2) of Order XXI of the Civil Procedure Code, 1908 leads to the irresistible conclusion that the time for marking a deposit in terms of Rule 92(2) of Order XXI is 30 days, and Article 127 of the Limitation Act, 1963 prescribing the period for making an application under Rule 89 of Order XXI has no relevance to the prescribed time for making the deposit. In our view this case has no application to the facts of the present case.

(20). In Indian Administrative Services (S.C.S.) Association v. Union of India, (6), the question before the Apex Court was with regard to interpretation of statutes and it was held that in case of ambiguity the court can endeavour to iron out the creases and adopt a just, reasonable and sensible construction in consonance with the legislative intention and that if the provision is found to be defective, wrong, ultra vires or violative of fundamental rights, court can strike it down, but it cannot substitute its own words and phrases to supply casus omissus. This case, in our opinion, is also not applicable to the facts and circumstances and the issue involved in the present case.

(21). In view of what has been discussed above, we have no hesitation in holding that a retired employee also being an employee of the respondent company within the meaning of rule 2(g) of the Conduct Rules can be allowed to participate as a defence assistant of an employee in the inquiry proceedings in view of the provisions of sub rule (6) of Rule 25 of the Conduct Rules subject to he being not a legal practitioner, which is the only restriction.

(22). In the result, this special appeal must succeeds and is hereby allowed. The

order impugned in the appeal is set aside. The petitioner would be free to take the assistance of a retired employee to assist him in enquiry proceedings against him. In the facts and circumstances of the case there will be no order as to costs.