

(1996) 09 AHC CK 0121
In the Allahabad High Court
Case No : C.M.W.P. No. 13590 of 1988

Gajendra Kumar Patel

APPELLANT

Vs

Uttar Pradesh Public Service Tribunal No. III and Others

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Garhwal Mandal Vikas Nigam General Service Rules — Rule 23(2)

Citation : (1996) 3 AWC 1772 : (1998) 3 LLJ 822

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Janardan Sahai, for the Appellant;

Final Decision : Allowed

Judgement

J.C. Gupta, J.—By means of this writ petition, the petitioner has prayed for the quashing of the termination order dated November 14, 1984 contained in Annexure-6 to the writ petition, to issue direction to reinstate the petitioner in the service, to pay him the arrears of salary and allowances and confer consequential benefits of seniority etc. as if the termination order had never been made. It has also been prayed that a writ of mandamus be issued commanding the respondents to make a requisite order allowing the petitioner to cross the efficiency bar at the stage of Rs. 1770/- with effect from July 1, 1984.

2. The petitioner under the order of the Managing Director of the Garhwal Mandal Vikas Nigam Limited (hereinafter referred to as the "Nigam") dated January 4, 1978, was appointed as Finance Manager after the approval of the State Government, He was initially appointed temporarily on one year's probation. The appointment letter provided that his services would be terminated at any time on one month's notice or on payment of one month's salary in lieu of notice. It is stated that on June 18, 1979 the petitioner was promoted to the next higher grade with the approval of the chairman of the Nigam. After the expiry of the period of probation, the petitioner stood confirmed and the petitioner was a

"regular employee" within the meaning of Section 3 (xviii) of the Garhwal Mandal Vikas Nigam Ltd. General Service Rules.

3. The services of the petitioner were terminated by means of the impugned order dated November 14, 1984 (Annexure-6 to this writ petition). The said order purports to have been issued under Rule 23(2) of the Service Rules by paying three months salary in lieu of three months notice.

4. The petitioner challenged the aforesaid order by means of writ petition before this Court, which was dismissed on the ground of alternative remedy. The petitioner thereafter filed claim petition before the Public Service Tribunal, Respondent No. 2 challenging the termination order, inter alia, on the grounds that the order was mala fide; that it was without jurisdiction having been made by the Managing Director, who did not possess power of termination, as such power vested only in the Corporation. The Tribunal by its order dated April 20, 1988 dismissed the claim petition. Aggrieved thereby, the present writ petition has been filed.

5. In the counter-affidavit it is claimed that the termination order has been passed in accordance with law. The Managing Director was fully competent to pass the order and this question has been discussed in detail by the Tribunal. It is further stated that Rule 23 of the Service Rules is not ultra vires to any provisions of law nor it is against the public policy.

6. The impugned termination order has been assailed by the petitioner mainly on three grounds. Firstly, that Rule 23(2) of the Service Rules of the Nigam, under which the order impugned purports to have been made, is ultra vires to Articles 14 and 16 of the Constitution as the under the services of even regular employee could be terminated by three months notice or payment of three months pay in lieu of the notice which gives an unfettered power on the authority concerned to act arbitrarily. Rule 23(2) of the Service Rules is also otherwise against the public policy. Secondly, that the order is void as the services of the petitioner, a regular employee, have been terminated without giving him any opportunity of hearing and since the principle of natural justice has not been excluded in the Rules, the same ought to have been followed. Thirdly, that it was only the corporation which could legally exercise powers u/s 23(2) of the Service Rules and the order passed by the Managing Director is void having been made by an authority not competent to act.

7. Learned counsel for the petitioner relying upon the decisions in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, contended that the Rule in question which makes a provision for the termination of services of even a regular permanent employee by giving three months notice should be held to be ultra vires to the provisions of Article 14 of the Constitution of India.

8. In the written statement filed before the Claims Tribunal, whose copy has

been annexed as Annexure-3 to the rejoinder affidavit, it has been admitted by the Nigam that the petitioner had attained the status of regular employee after completing one year's probation. The Nigam while issuing the impugned termination order also treated the petitioner as a regular employee. "Regular employee" has been defined under Rule 3(xvii) of the Service Rules, to mean an employee whose employment by the terms of his engagement is terminable by three months' notice or who has been made regular against a sanctioned post, without limit of time under the Corporation.

9. From the above definition it is evident that even the service of an employee, who has been made regular against a sanctioned post without limit of time under the Corporation can be terminated after giving him three months' notice or pay in lieu thereof under Rule 23(2) of the Rules, which reads as under:

"Unless otherwise agreed upon in writing between the Corporation and the regular employee, the Corporation and the regular employee, the Corporation shall be entitled to terminate the service of an employee without assigning any notice in writing or on payment of a sum equivalent to the amount of salary for the period of notice, or as the case may be for the period by which such notice falls short of the said period of 3 months."

10. In the case of Delhi Transport Corporation (*supra*) more or less similar Rule came up for consideration and the Rule was held to be ultra vires to the provisions of Article 14 of the Constitution of India. Similarly in Brojo Nath Ganguly's case (*supra*) the Apex Court held the terms contract of the employment as also Service Rules of the company, which provided for termination of services of permanent employees without assigning any reason on three months' notice or pay in lieu thereof, to be unconscionable, arbitrary and violative of Article 14 of the Constitution.

11. The learned counsel for the petitioner placed before me copy of the judgment given in Writ Petition No. 8181 of 1987 *G.L. Kandwal v. State of U.P.* by a Division Bench of Lucknow Bench of this Court. The services of a regular employee of the Garhwal Mandal Vikas Nigam Ltd. were terminated by simply issuing an order under Rule 23(2) of the Service Rules of the Nigam without giving the employee any opportunity of hearing and it was held that such a termination order was non est and the same was quashed. In the present case also the authority has passed the termination order under Rule 23(2) of the aforesaid Service Rules without giving any show cause notice to the petitioner or holding any inquiry. The present case is squarely covered by the aforesaid Division Bench decision and therefore for the same reasons the impugned order is not sustainable.

12. The learned counsel for the petitioner also argued that Rule 23(2) specifically makes a mention of the word "Corporation", which alone could terminate the services of an employee under the said Rules. He contended that the term "Corporation" has been used in the said Rules in contrast to the use of term

"appointing authority" in Rule 21(1) which lays down that any employee directly recruited to a post may at any time, during or at the end of the period of probation as the case may be, be discharged from the service of the Corporation under the orders of the Appointing Authority. It has further been pointed out by the learned counsel for the petitioner that the term "Corporation" used in Rule 23(2) denote the Garhwal Mandal Vikas Nigam Ltd. as defined in Rule 3(vi) of the Rules. The learned counsel further invited attention of the Court to Article 78 of the Articles of the Memorandum of Association, which provides that the Board of Directors shall be entitled to exercise the powers of the Corporation. Thus according to his submissions the Managing Director, who has passed the impugned order had no authority to exercise powers of termination under Rule 23(2) of the Service Rules. It is further argued that the delegation of powers to the Managing Director was to the extent that he could make promotion and even accept resignation for the posts carrying maximum pay scale of Rs. 1200. Thus by no stretch of imagination it could be said that the Managing Director had the delegated powers of the Board for passing an order of termination in respect of an employee, who was in a higher pay scale. It is further stated that in any view of the matter the delegation of powers to the Managing Director was ineffective as the same was done before the Service Rules were enforced. On the other hand, the learned Standing Counsel vehemently argued that the Managing Director had such delegated powers. Since the order in question has been found to be not sustainable on the first ground itself, it is not necessary for me to go into the question whether the Managing Director, who has passed the impugned order, had the powers and authority to make such order or not.

13. For the above reasons and in view of the aforesaid Division Bench decision, this writ petition must succeed.

14. The writ petition is allowed. The impugned order dated November 14, 1988 (Annexure-6 to the writ petition) is quashed. The petitioner will be entitled to all consequential benefits as if the termination order has not been passed. However, the question of payment of salary for the period from the date of termination order till the date of reinstatement shall be decided by the Corporation in accordance with the relevant Rules. The respondents are further directed to consider according to law the petitioner's case of crossing the Efficiency Bar from the due date.

15. In the circumstances no order as to costs is made.