

(1982) 09 DEL CK 0044

In the Delhi High Court

Case No : Civil Writ Appeal No. 1463 of 1973

G.B. Kanuga

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-1982

Acts Referred:

Citation : (1983) ILR Delhi 431

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : O.P. Malhotra, Sat Pal, S.C. Malik and J. Lal, for the Appellant;

Judgement

M.L. Jain, J.

(1) The petitioner G.B. Kanuga entered the services of the Bank of Baroda Ltd. by an agreement for a period of two years from 14-4-1965 as a site engineer in Delhi. The formal agreement was executed on 9-12-1965. It provided that if the Managing Director, or any other official of the Bank for the time being in authority shall be of opinion (which shall be conclusive) that the site engineer has been guilty of inter alias gross misconduct or insubordination or by reason of any events (which may have happened before or after he entered the Bank's service), it is undesirable to continue him in the service of the Bank. they shall be at liberty forthwith to determine this agreement .A letter was issued to him by the Deputy General Manager of the Bank placing him on probation for a period of two years from the date of joining. But he was confirmed on 14-10-1965.

(2) The Bank then framed rules called "the Bank of Baroda Officers Service Rules" in the year 1969. Upon nationalisation, as per section 19(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, these rules until new regulations are framed are the Rules which govern the service conditions of the officers of the Bank. According to Rule 8.1 of the said rules, every officer shall serve the Bank honestly, faithfully, diligently and abide by the Rules and Regulations of the Bank. They also specified certain acts of

misconduct, the relevant two conditions with which we are most likely concerned are acts subversive of good conduct and discipline and willful breach of rules, regulations and procedure of the Bank. Rule 8.2 provides that an enquiry may be held against an officer who commits any act of misconduct in which a charge sheet and an opportunity to be heard in defense shall be given and the Bank shall follow the rules of natural justice in the conduct of such enquiry. If as a result of such enquiry, a person is found guilty of misconduct, penalty prescribed in Rule 8.3 can be imposed. No such procedure was followed in the case of the petitioner. His services were terminated on 11-10-1973 by the Chairman-cum-Managing Director with immediate effect upon payment of three months' pay and allowance in lieu of notice. It is against that order that the present petition was filed.

(3) The circumstances which have led to the dismissal of the petitioner are as follows. In spite of local opposition, he was granted sick leave for a month with effect from 1-9-1971, by the Industrial Adviser of the Bank. It appears that he continued to be ill thereafter. The petitioner got a certificate on 17-3-72 from a private medical practitioner, Dr. J.K. Tuli, certifying that he was fit to join duty, but since he was suffering from hypertension and coronary insufficiency, he was advised light work and avoid excessive mental or physical stress. Yet it seems he was not allowed to join. The Assistant Regional Manager by his letter dated 28-3-1972 informed the petitioner that he has not recovered completely from his illness and asked him to resume duties only after he was fully fit and that he will be treated on leave during the period of his absence. But the petitioner by his letter of 7-4-1972 insisted that he should be allowed to join duty and allotted light work. On 10-4-1972, he was transferred and directed to report at the Central Office, Bombay. The petitioner then went on leave with effect from 14-4-1972. He alleges, he went to Bombay on 5-5-1973 and asked for payment of salary from December.

(4) Since no adequate reply was received, he came back to Delhi on 6-5-1973. On 7-6-1973, the Bank again asked him to join duty at Bombay. The Chairman and Managing Director by his letter of 13-6-1973 asked the petitioner to report to Mr. R. K. Gandhi, Chief Legal Adviser of the Bank, Bombay. On 2-7-1973 the petitioner applied for leave of any kind due to him as his wife was ill in Delhi. He also stated that the climate of Bombay also does not suit him. By a letter of 1-8-1973, the Bank decided to treat him as on sick leave without pay from 1-12-1972. He reported at Bombay on 1-10-1973. On 3-10-1973 he submitted a medical certificate of fitness. He made a representation to the Chairman on 9-10-1973 asking for the payment due to him. On 11-10-1973 however, what he got was a letter of termination. He challenges this termination by the present writ petition and claims reinstatement with back wages. His contention is that under the Rules there is no provision under which the service could be terminated by three months' notice and the order is not an order of termination simpliciter but is an order of dismissal. He also alleged mala fides on the part of the Chairman and Managing Director and the Chief Legal Adviser. In answer to

the charge of mala fides that he was victimised by the said officers, no affidavit appears to have been filed by the said officers. The Mala fides, Therefore, he contends, should be held to have been proved,

(5) The short defense to the whole case is that it was a matter of contract and not a status, and it is inherent right of a master to dismiss the services of the servant and enquiry is required only if a stigma is intended to be cast. Since there was no intention to cast any stigma, no disciplinary action was taken against the petitioner and his services were dispensed with by an order of termination simpliciter. I was referred to Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., , and Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , in support (2). My attention was specially drawn to para 54 of the latter decision that even if there is suspicion of misconduct, the master may say that he does not wish to bother about it any may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter. But the same decision also purports to lay down that the requirement of bona fides was essential in such a case. The form of the order is not conclusive and the court can go behind the order to find the reasons which led to the order. The court can find from other proceedings or documents connected with the formal order of termination whether the true ground for termination is a colourable exercise of the employer's power or victimisation or unfair labour practice. If thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. Given an alleged misconduct and live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination are given and non-injurious terminology is used.

(6) From the record, it appears that the petitioner in spite of his work in constructing the building of the Bank of Baroda in Delhi had become an inconvenient officer and was most unwilling to join at Bombay and has been on leave on one reason or the other. This to my mind is an act subversive of discipline. The order no doubt is innocuous and appears as if it were the case of termination simpliciter. But upon a closer examination and the background, it does not seem to be so. That apart, the petitioner being a permanent employee of the Bank with a right to retire at the age of 60 years, it was necessary that his services should have been terminated in accordance with the rules, that is by holding a disciplinary enquiry, even if the background was not foundation, but only a motive for termination of the service. It is too late in the day to contend that the Bank is not an instrumentality of the State and their acts are not amenable to judicial review. The only ground taken by the Bank in their counter affidavit was that the services of the petitioner were terminated according to the practice and procedure of the Bank. After nationalisation, the Bank has to establish that the action is in accordance with the regulations framed by it which they have not been able to do so and Mr. Malik's sole contention has been to assert that as long as the idea is not to cast any stigma, the services of a Bank

employee can be terminated without any enquiry, so that the servant may make good in other walks of life. This perhaps would be true in case of a temporary employee, but where a person is confirmed and holds a sort of a right to hold the post, then in spite of the original contract and the unsuitability of the petitioner, his services cannot be dispensed with, without a formal enquiry. I need not now go into the question of mala fides on the part of the respondents.

(7) I accept this writ petition, quash the impugned order and direct that the petitioner shall be reinstated and shall be deemed to have been in service of the Bank with all consequential benefits. There will be no order as to costs.