

(1995) 11 AHC CK 0091
In the Allahabad High Court
Case No : C.M.W.P. No. 7765 of 1984

Hans Kumar Srivastava

APPELLANT

Vs

U.P. State Leather Development and Marketing Corporation
Ltd. and Another

RESPONDENT

Date of Decision : 30-11-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 311(2)
Railway Establishment Code — Rule 148(3), 149(3)

Citation : (1996) AWC 1 Supp

Hon'ble Judges : Paritosh K. Mukherjee, J; Jagdish Bhalla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagdish Bhalla, J.—Hans Kumar Srivastava, Petitioner herein, was appointed on the post of Deputy Manager vide order dated 20.11.1974, by the U.P. State Leather Development and Marketing Corporation Ltd., Agra. Thereafter, by order dated 18.4.1977, passed by the Managing Director, the designation of the Petitioner was changed to the Divisional Manager. On 18.5.1983 the Petitioner was given three increments, and, thereafter, he was allowed to cross efficiency bar in the year 1981.

2. By the order dated 31.3.1984, contained in Annexure-II to the writ petition, the Petitioner's services were dispensed with by giving him three months' notice, in terms of service rules applicable to the Employees of U.P. State Leather Development and Marketing Corporation, Agra, which is set out herein below:

A confirmed employee may be discharged from the service of the Corporation under the Orders of the competent authority on three months' notice or by giving 3 months' salary in lieu thereof. The competent authority for purposes of this rule will be the next higher level than the appointing authority for that category of post. The competent authority on getting a recommendation from the appointing authority for the discharge of a confirmed employee with reasons

thereof, may give an opportunity to the employee concerned for explaining himself before coming to a decision.

3. From above, it is crystally clear that the Petitioner was given three months' salary in lieu of three months' notice, and, thereafter his services were dispensed with by the aforesaid impugned order.

4. When the instant writ petition was moved by Sri. B. P. Srivastava, learned Counsel, appearing on behalf of the Petitioner on 23.5.1984, no interim order was granted by the Bench consisting of Hon'ble Gopi Nath and Hon'ble V. K. Mehrotra, JJ.

5. Although, at the initial moving of the writ petition the vires of the aforesaid rule, with regard to the dispensing with the services of a permanent employee was not challenged by the Petitioner, but subsequently, by an amendment application the vires of the rule, with regard to the aforesaid provision was challenged.

6. It is relevant to point out the decision of Calcutta High Court, in the case of Gaur Chandra Sarkar v. West Bengal State Electricity Board 89 CWN 474 : 1985 CHN 294, whereby a Division Bench, consisting of Hon'ble M. M. Dutta, J. and my brother (Paritosh K. Mukherjee. J.) took view that Regulation 34 of West Bengal State Electricity Board Regulation, which contains similar provision to dispense the services of a permanent employee, has been declared arbitrary and as such ultra vires, violative of provisions of Article 14 of the Constitution of India.

7. The aforesaid view was also affirmed by Supreme Court in the case of West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, , by Hon'ble O. Chinnappa Reddy, Hon'ble E.S. Venkataramiah and Hon'ble R. B. Misra, JJ.

8. An extract of the aforesaid judgment of Apex Court in the case of West Bengal State Electricity Board and Ors. v. Desh Bandhu Ghosh and Ors. (supra) is being quoted herein below:

We are not impressed with the submission of the learned Counsel for the Board. On the fact of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked "hire and fire rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers. In Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., Rules 148(3) and 149(3) of the Indian Railways Establishment Code were challenged on the ground that they were contrary to Article 311(2) of the Constitution. The challenge was upheld though no opinion was expressed on the question whether the rule offended Article 14 of the Constitution. Since then Article 14 has been interpreted in several decisions of this Court and confirm and exercise of arbitrary power on and by the State

or its instrumentalities have been drowned upon and struck down by this Court as offending Article 14.

9. Further, for the convenience of this Court, it is necessary to set down the provision of Regulation 34 of W. E. State Electricity Board Regulation which is as follows:

In case of a permanent employee, his services may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof.

10. As such, rule relating to the framing of U.P. Leather Development and Marketing Corporation Ltd. which is almost caused in similar language as has been framed under Regulation 34 of West Bengal State Electricity Board Regulations, regarding dispensing the services, and or terminating the services of a permanent employee is altogether same, but not identical, in our considered view, the Respondents cannot be Justified by dispensing the services of the Petitioner, who is a permanent employee, as indicated above.

11. Therefore, in our considered view, this writ petition is entitled to succeed, and allowed.

12. Accordingly, the impugned order dated 31.3.1984, passed by the Managing Director, U.P. State Leather Development and Marketing Corporation Ltd. Agra, set out at Annexure II to the writ petition is set aside and quashed.

13. Respondents are directed to reinstate the Petitioner in service forthwith, preferably within three days and pay all back wages as well as increments and other consequential benefits, within another period of two months from the date of production of a certified copy of this order, respectively.

14. Writ petition is allowed to the extent indicated above.

15. There will be no order as to costs.