

(1993) 02 DEL CK 0041

In the Delhi High Court

Case No : Letters Patent Appeal No. 25 of 1991

Indian Railway Construction Company Ltd. and Others

APPELLANT

Vs

A.K. Dogra

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1993) 50 DLT 200 : (1993) 25 DRJ 472 : (1993) 2 ILR Delhi 477 : (1993) 2 LLJ 45

Hon'ble Judges : G.C. Mittal, J;A.D. Singh, J

Bench : Division Bench

Advocate : S.C. Gupta, A.K. Singhia and Swantantar Kumar, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is an appeal directed against the judgment and order of the learned single Judge dated May 27,1991 in Cwp No.3406 of 1990 whereby the orders of the appellant No.1 dated September 6,1990 and October 22,1990 terminating the services of the respondent have been quashed, with a declaration that the respondent will continue to remain in service of the appellant till his services are terminated in accordance with law, or until he attains the age of superannuation.

(2) The facts of the case lie in a narrow compass and are not in dispute. Pursuant to an advertisement the respondent who was serving as Lt. Colonel in the Indian Army, applied for the post of Chief Project Manager under the control of appellant No.1. The said appellant by its letter dated December 22,1988 offered to the respondent the post of Chief Project Manager in the scale of 2250-2500 for a period of two years. The said letter of offer explicitly stated that the appointment to the post of Chief Project Manager was purely on contract basis and would be for a period of two years terminable any time without notice and without assigning any reason therefore. It is not disputed that the respondent accepted the appointment without any reservation on the terms and conditions mentioned in the letter of offer dated December 22,1988 and joined

duty on March 17,1989. Before the respondent could complete the full term of his appointment, appellant No.1, by Office Memorandum dated September 6,1990, terminated his services without assigning any reasons. It seems, however, that due to the representation of the appellant the order of termination was kept in abeyance. But this was not to be for long as on October 22, 1990, the respondent received another Office Order whereby the services were terminated again with effect from September 6,1990. The respondent challenged these orders of termination by means of the aforesaid writ petition mainly on the strength of the decision of the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ,and Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, and also sought a declaration to the effect that the petitioner continues to remain in employment of the appellant, Indian Railway Construction Co. Ltd., till his services are terminated in accordance with law.

(3) The learned single Judge accepted the writ petition of the respondent and quashed the orders terminating his service with the declaration as indicated above.

(4) Appearing for the appellant, learned counsel Mr. S.C. Gupta, Senior Advocate contended that the order of the learned single Judge was erroneous in as much as according to the terms of the appointment the services of the petitioner could be terminated without notice. Learned counsel submitted that the principle laid down in Delhi Transport Corporation and Central Inland Water Transport Corporation Ltd. cases will not apply as the respondent was a highly placed officer who did not suffer from any disability owing to an unequal bargaining, power visa-vis the appellant. According to him the judgment in that case would not apply to the class and category to which the respondent belongs. He further submitted that the order clearly suffers from an apparent infirmity in as much as the appointment of the respondent was only for a period of two years with effect from March 7,1989 and his appointment could not run after the expiry of period of two years. Learned counsel also submitted that the respondent was appointed as Chief Project Manager for a particular project and due to reduction of work the services of the petitioner were no longer required.

(5) On the other band, Mr. Swantantar Kumar, learned counsel appearing for the respondent submitted that the learned single Judge was correct in holding that the orders- of the appellant suffered from the vice of arbitrariness. Mr. Kumar also canvassed that the respondent's right to remain in service did not come to an end after the expiry of two years period and he would continue in service unless and until his service is lawfully terminated by the appellant Corporation or till he attains the age of superannuation. He pointed out that the respondent was appointed as Chief Project Manager of the Corporation and not for a particular project. Even if the work at a particular project was insufficient nevertheless

there were other projects for which the respondent could be posted, contended the learned counsel.

(6) We have considered the respective submissions of the learned counsel for the parties.

(7) The first question which arises for determination is whether the said appellant could terminate the services of the respondent before his term of appointment expired without assigning any reason. It is well settled that executive action must be informed by reason and must not be arbitrary as arbitrariness is opposed to the principle of equality enshrined in Article 14 of the Constitution, This glorious and glittering facet of Article 14 of the Constitution was unraveled in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , and since then it has found expression in several decisions. (See: *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, . A recent decision of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, is also instructive. In this case the services of the public prosecutors were terminated en masse by the State of U.P. The Supreme Court while considering the validity of the omnibus termination

(8) Order observed as follows: "The impugned circular itself does not indicate the compelling reason, .if any, for the drastic step of replacing all the Government Counsel in every branch at the district level throughout the State of U.P., irrespective of the fact whether the tenure of the incumbent had expired or not.....Non-application of mind to individual cases before issuing a general circular terminating all such appointments throughout the State of U.P. is itself eloquent of the arbitrariness writ large on the face of the circular. It is obvious that issuance of the impugned circular was not governed by any rule but by whim or fancy of someone totally unaware of the requirements of rule of law, neatly spelled out. in the case of *John Wilkes (1770) 4 Burr. 2528* more than two centuries back and quoted with approval by this court almost a quarter century earlier in *Jaisinghani's case (supra)*. We have considered it necessary to reemphasize this aspect and reiterate what has been said so often by this court only because we find that some persons entrusted with the task of governance appeared to be unaware of the fact that the exercise of discretion they have must be governed by rule, not by humour, whim, caprice or fancy or personal predilections. It also disturbs us to find that the legal Remembrance's Department of the State of U.P. which has the duty to correctly advise the State Government in such matters, overlook the obvious and failed to discharge its bounden duty of correctly advising the State Government in matters of law. We would like to believe that the impugned circular was issued for want of proper legal advice in this behalf instead of any ulterior motive suggested- by the petitioners/ appellants... Viewed in any manner, the impugned circular dated

6.2.1990 is arbitrary. It terminates all- the appointments of Government counsel in the District of the State of U.P. by an omnibus order, even though these appointments are individual. No common reason applicable to all of them justifying their termination in one stroke on a reasonable ground has been shown. The submission on behalf of the State of U.P. at the hearing that many of them were likely to be re-appointed is by itself ample proof of the fact that there was total non-application of mind to the individual cases before issuing the general order terminating all .the appointments. This was done in spite of the clear provisions in the L.R. Manual laying down the detailed procedure for appointment, termination and renewal of tenure and the requirement to first consider the existing incumbent for renewal of his tenure and to take steps for a fresh appointment only in his place if the existing incumbent is not found suitable in comparison to more suitable person available for appointment at the time of renewal. In the case of existing appointees, the decision has to be first reached about the their non suitability for renewal before deciding to take steps for making fresh appointments to replace them. None of these steps were taken and no material has been produced to show that any existing incumbent was found unsuitable for the office on objective assessment before the decision to replace all by fresh appointees were taken. The prescribed procedure laid down in the L.R. Manual which has to regulate exercise of this power was totally ignored. In short, nothing worthwhile has been shown on behalf of the State of U.P. to support the impugned action as reasonable and non arbitrary. The impugned circular must, Therefore, perish on the ground of arbitrariness which is an available for judicial review in such a situation. .

(9) Reverting to the case in hand it is clear that while terminating the service of the petitioner no reason has been given by the appellant except that his services were no longer required. We are not persuaded by the submission of the learned counsel for the appellant that no reasons were required for terminating the appointment of the petitioner as the same was based on contract. Even where the appointment is the result of a contract between the parties and one of the parties is an instrumentality of the State, the tenure of an employee cannot be cut short or brought to an end arbitrarily, at the whim and caprice, of the employer before the expiry of the period of his contract. There must exist adequate reasons for bringing to an end the services of an employee before the contractual period expires. We were told at the hearing by the learned counsel for the appellants that the appointment was for a particular project and since the work load was not much the service of the respondent was dispensed with before the expiry of the stipulated period. This argument does not hold water as the offer of appointment dated December 22, 1988 does not indicate even by implication that the respondent was appointed as Chief Project Manager in connection with a particular project. It cannot be disputed that there are more than one projects in the hands of the Corporation. We are fortified in this view by the advertisement of the Corporation for recruitment of staff for Delhi Mathura Road project.

(10) Learned counsel for the appellant then contended, though weakly, that there were certain complaints against the respondent. This argument is of no avail to the appellant. It is not disputed that no enquiry whatsoever was held against the respondent. If the order terminating the service of the respondent was founded on complaints and charges against him then in that event his service could not be dispensed with without affording a reasonable opportunity of hearing to him in regard thereto. In any view of the matter the service of the petitioner was terminated illegally before the stipulated period came to an end. Accordingly we uphold the order of the learned single Judge in so far as it knocks down the orders dated September 6, 1990 and October 22, 1990 terminating the service of the respondent. But the matter does not end here. We have still to examine the validity of the other direction of the learned single Judge that the respondent would continue to remain in service till the same is terminated in accordance with law or until he attains the age of superannuation.

(11) The effect of the order of the learned Single Judge is that the respondent continues in service even after the expiry of the fixed tenure of two years from the date he joined the service. It is for the parties to fix the duration of the contractual appointments and the courts cannot intervene to make the appointments run beyond the periods postulated in the contracts as otherwise it will amount to re-writing the contracts by courts, which is impermissible in law. The appointment of the respondent being fixed term appointment, having limited life span, his right to remain in service came to an end automatically by efflux of time on expiry of two years from March 17, 1990, the date when the respondent joined the service of the appellant in the capacity of Chief Project Manager.

(12) In this view of the matter, we are supported by the judgment of the Supreme Court in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, where the court was, inter alia, concerned with the claim of the appointee to remain in service after the expiry of fixed term appointment, which was in the following terms:

"WITH effect from the the date of joining Smt. Pushpa Rani Srivastava is appointed a consolidated fixed pay of Rs.2400.00 per month on contract basis for a period of six months in the Institute. The appointment of Smt. Srivastava is purely on ad hoc basis and is terminable without any notice."

(13) In dealing with the question the Supreme Court observed as follows:

"The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end"

(14) The learned single Judge has also read into the terms of the appointment of the respondent the concept of superannuation which is clearly erroneous. Concept of superannuation is wholly foreign to appointments having a fixed tenure or life span. This principle is well established and finds support from the decision of the Supreme Court in Dr. L.P. Agrawal Vs. Union of India and others,

in which it was held as follows:

"THE High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span".

(15) Learned counsel for the respondent cited a judgment of this court in Cwp 2941 of 1990 (Kehar Singh Vs. Electronics Corporation of India - decided on October 27, 1990 and against which SLP was also dismissed by the Supreme Court, to urge that respondent's right to continue in service did not come to an end on completion of two years period. This judgment cannot come to the rescue of the respondent as the employee had been in service for almost 13 years and in spite of that his services were not being regularised. This decision, Therefore, does not help the respondent as the facts of the present case are entirely different.

(16) Learned counsel for the respondent also invited our attention to the advertisement pursuant to which his client had applied for the post of Chief Project Manager. According to the advertisement the period of appointment was to be initially for a period of two years. Learned counsel submitted that this advertisement conveys the impression that after a lapse of two years the appointment was to continue. He submitted that on this basis the respondent had applied for the post in question. We are not impressed by the submission of the learned counsel as a perusal of the letter of the, appellant dated December 22, 1988, containing the term on which the job was offered to the respondent unequivocally shows that the appointment was to be for a fixed period of two years. This offer was accepted by the respondent without any reservation. Once having accepted the offer with open eyes it is not for him now to turn around and ask us to read something into the agreement which is not there. We also do not find any implied assurance in the letter of offer to the respondent that the appointment was expected to continue beyond two years. Besides there does not exist any proof of an oral assurance in this regard.

(17) Mr. Swantantar Kumar also relied upon Kumari Shrilekha Vidyarthi case (Supra) to point out that in Vidyarthi's case the Supreme Court while quashing the termination of the public prosecutors directed the State to continue them till their services were lawfully terminated even though the terms of some of the public prosecutors had already expired by the time the case came to be decided by the court. He draws a parallel with this case for seeking the said relief.

(18) The argument of the learned counsel is based on misconception about the true import of the terms of appointment of the public prosecutors in the U.P. Case As already noticed the State of U.P. by a general order terminated the services of all the public prosecutors. This was done in spite of the clear requirement in the rules to first consider the existing incumbent for renewal of his tenure and to take steps for a fresh appointment only if the existing incumbent was found unsuitable in comparison to more suitable persons

available for appointment at the time of renewal. In the case of existing appointee a decision had first to be reached for his non-suitability for renewal of his appointment before taking steps for making fresh appointments to replace him. In other words, an existing incumbent to the post of public prosecutors in the State of U.P. is required to be continued under rules even after the expiry of his term until such time he is replaced by a more suitable person in comparison to him. In the present case such a term of appointment is absent from the said letter of offer dated December 22, 1988.

(19) In the light of the above discussion, we hold that the service of the respondent was arbitrarily determined by the appellants before the expiry of the fixed term of two years. Accordingly we maintain the judgment and order of the learned single Judge dated May 27, 1991 to this extent that a writ in the nature of certiorari would issue quashing the orders of the appellants dated September 6, and October 22, 1990 terminating the services of the respondent and direct the appellants to treat the respondent to have continued in service as Chief Project Manager till the expiry of his fixed tenure of two years in accordance with letter of offer dated December 22, 1988. It is also directed that the respondent would be entitled to receive from the appellants within one month from today his salary and allowances from the date of his termination till the date of expiry of the said period of two years along with costs quantified at Rs.5000.00.

(20) The other direction of the learned single Judge that the respondent will continue in service of the appellants till his services are terminated in accordance with law or till the date of superannuation is set aside as it virtually has the affect of continuing the respondent even after the expiry of the said period of two years.