
(2012) 04 DEL CK 0389

In the Delhi High Court

Case No : Regular First Appeal (OS) 36 of 2008

Juliana Loieau

APPELLANT

Vs

British High Commission and Others

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 86
Constitution of India, 1950 — Article 14

Citation : (2012) 130 DRJ 552

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Joy Basu with Mr. Sumant De, for the Appellant; Vibhu Bakhru instructed by Mr. P. Nagesh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide Ex.P-1, dated October 08, 1982, the appellant was offered appointment as a Nurse, Grade-III at the British High Commission Hospital by the British High Commission. Clause 3, 5 and 6 of Ex.P-1 read as under:

3. The appointment is temporary and is subject to 12 months probation. It carries no right to permanent appointment or promotion nor to pension or gratuity on its termination. The appointment may be terminated on or before the completion of the probationary period without notice or cause assigned. Thereof ter it may be terminated by one month's notice in writing on either side.

5. On completion of one year of service, or such extended period as the High Commissioner may require, you will become a member of the British High Commission India Staff Provident Fund, a copy of the Trust Deed and Rules whereof is attached.

6. i. At the discretion of the High Commissioner you will be paid a terminal gratuity calculated on the following basis should your appointment be terminated:

(a) On death -After 1 year's service, 15 days pay for each year of service or part year of service in excess of 6 months, up to a maximum of 20 months salary.

(b) On termination of employment or retirement, resignation, medical grounds and redundancy - Subject to a qualifying period of 5 year's continuous service, 15 days pay for each year of service or part year of service in excess of 6 months, up to a maximum of 20 months salary.

ii. The gratuity will be calculated using the monthly salary rate at the date of the termination of employment.

iii. The age of retirement is 58 years.

iv. No gratuity will be paid if our employment is terminated for misconduct or if you voluntarily resign in order to avoid dismissal.

2. Clause 5 of Ex.P-1 makes a reference to the rules which we find are contained in a booklet captioned: "Conditions of Service for Locally-Engaged Staff. The booklet is Ex.P-2. Term-5 on the subject: PROBATION - TERMINATION OF APPOINTMENT, Term-14 on the subject: PROVIDENT FUND AND GRATUITIES, Term-19 on the subject: SERVICE AND DISCIPLINE and Term-21 on the subject: LOCALLY ENGAGED STAFF MEDICAL SCHEME whereof read as under:-

5. PROBATION - TERMINATION OF APPOINTMENT

5.1 All locally-engaged staff appointments are subject to the satisfactory completion of a probationary period of one year. The appointment may be terminated on or before the completion of the probationary period without notice or cause assigned. If, at the end of the initial probation period, the officer's performance, though promising, is still not entirely satisfactory, the probation period may be extended up to 3 months. After such extension the appointment of any officer who still cannot be considered entirely suitable must be terminated. Thereafter, the appointment will be terminable on one month's notice in writing by either party. Neither party is required to give any reason for the termination of the appointment. However, an employee who is guilty of wilful misconduct, disobedience or neglect of duty may be dismissed immediately and without notice. Any leave due must be taken during the period of notice unless prior approval to the contrary has been obtained. Staff may not receive payment in lieu of earned leave due to them on termination.

5.2.

14. PROVIDENT FUND AND GRATUITIES

Provident Fund

14.1 On completion of one year of service or such extended period as the High Commisisoner may require, staff will become members of the British High Commission Staff Provident Fund. Copies of the Trust Deed and Rules are given to all staff. Compulsory contributions of 8% of salary are payable both by the

employee and by the employer. In addition, employees may elect to make additional voluntary contribution of 4%, 8% or 12% of salary.

Gratuities

14.2 There is, in connection with the Provident Fund Scheme, a Gratuity Scheme known as the "New Gratuity Scheme". Staff engaged prior to the introduction of the Provident Fund Scheme on 1.10.75 could opt to join the Fund or remain under the terms of the "Old Gratuity Scheme". Staff who opted to join the Fund will receive benefits under the terms of the old gratuity scheme for service prior to 1 October 1975, benefits being calculated on their pay during the final month before termination of employment and the total period of employment counting towards the qualifying period.

The New Gratuity Scheme

14.3 (a) On Death - After one year's service, 15 days pay for each year of service or part year in excess of 6 months up to a maximum of 20 months salary.

(b) On termination of employment on retirement, resignation, medical grounds and redundancy - subject to a qualifying period of 5 years continuous service 15 days pay for each year of service or part year in excess of 6 months up to a maximum of 20 months salary. (c) No gratuity is payable if the appointment is terminated on grounds of misconduct.

19. SERVICE AND DISCIPLINE

Officers are expected to perform their duties diligently and conscientiously to the best of their ability and to obey instructions relating to their duties and conduct given them by their superiors. If an officer is not giving satisfactory service, he will be warned by his superior officer. Continued unsatisfactory service could lead to the withholding of an increment which is due, or to termination of appointment. Likewise, breaches of discipline may lead to the withholding of an increment or transfer to another department, and in serious cases may be recorded in writing on the officer's personal file or lead to dismissal. Officers are given every opportunity to provide an explanation of unacceptable conduct before a final decision is reached.

21. LOCALLY ENGAGED STAFF MEDICAL SCHEME

21.1

21.2

21.3 Persons eligible to participate in the Scheme subject to the provision of paragraph 21.4 are:

(a) Members of the locally engaged staff of the High Commission and Deputy High Commissions who are employed full time provided they have completed three months service under the terms of their engagement and if absent on leave are on authorized ordinary or special leave, or authorized sick leave

(whether on full or half salary) at the period during which a claim to benefit arises

(b) Bona-fide wives of eligible male employees, provided husband and wife are living together in the Union Territory of Delhi, or in Bombay, Calcutta and Madras

(c) Bona-fide children under 18 years of age of eligible male employees provided:

(i) they are dependent upon their father

(ii) are living permanently with their father and mother in the Union Territory of Delhi or in Bombay, Calcutta and Madras

(iii) are not engaged in any form of regular or full-time paid employment

21.4 Persons in the following categories are not covered by the Scheme and are not eligible to benefit from it:

(a) Casual, temporary or part-time employees

(b) Employees on unpaid leave

(c) Employees who are wives or children of members of the UK-based staff if they are entitled to receive benefits under the terms of the Diplomatic Service Medical Scheme

(d) Female employees who have formally renounced their entitlement to benefit under another medical scheme by virtue of their husband's employment

(e) Husband and children of female employees except that at the discretion of the High Commissioner/Deputy High Commissioners the children of an eligible employee who is a widow wholly supported by and living permanently with her will be eligible if under 18 years of age and not engaged in any form of regular or full-time employment.

3. Having successfully completed the probation, vide Ex.P-4, dated November 02, 1983, the appellant was informed as under:-

Dear Miss Adambukulam, I am pleased to inform you that as you have satisfactorily completed your period of probation on 1 November 1983 you are not confirmed in your appointment as a Nurse, Grade LE III, on the terms and conditions laid down in your letter of appointment.

4. Having rendered unblemished and satisfactory service for nearly 13 years, lightning struck the appellant when a month's notice was given to her informing that after expiry of said one month period her services would be terminated. The communication dated August 07, 1995 so informing the appellant is Ex.P-11. It reads as under:

Mrs.J.Loiseau

1. I write to inform you that in accordance with the terms of paragraph 3 of your letter of appointment dated 8th October 1982 I hereby give you 31 days notice

of the termination of your employment with the British High Commission in New Delhi. The terms of your letter of appointment do not require me to give reasons for this decision and I do not intend to do so.

2. Please make contact with Miss A. Peters, who will ensure that you complete all the departure formalities in good time and receive everything that is due to you on departure.

3. I take this opportunity to thank you for the service which you have rendered to the British High Commission, and to wish you well for the future

5. Eschewing reference to a protracted series of communications exchanged between the appellant and the first respondent as also the foreign office of the Government of United Kingdom thereafter; the reason being that nothing turns on them, and noting a failure of the parties to settle the dispute; after obtaining sanction from the Central Government as contemplated by Section 86 of the CPC 1908, the appellant filed a suit seeking damages against the British High Commission. Appellant impleaded two employees of the High Commission as defendants No. 2 and 3 respectively.

6. Needless to state, damages claimed were the salary and other benefits which appellant would have received till she would have attained the age of 58 years, a term of engagement to which she would be entitled to as per Term No. 13 of the "Conditions of Service for Locally-Engaged Staff in India.

7. On institution of the suit summons for settlement of issues were served upon the respondents who filed a written statement urging that appellant's employment being purely contractual in nature was determinable by a month's notice, which was given. The impleadment of respondent Nos.2 and 3, as defendants No. 2 and 3, was questioned as being a case of mis-joinder of parties.

8. Vide order dated August 07, 2002, three issues were settled. The first issue was: Whether the suit is bad for mis-joinder of parties. The second issue settled was: Whether services of the appellant were terminated in violation of the terms of appointment as per Ex.P-1 and alternatively whether principles of natural justice were violated. The third issue settled was contingent to the appellant succeeding on issue No. 2 i.e. if termination was found to be illegal. The issue settled was: What damages by way of compensation the appellant was entitled to.

9. The appellant examined, besides herself as PW-1, her husband as PW-2 and one Sh.S.D. Murthy, the Protocol Officer of the Ministry of External Affairs as PW-3, whose examination as a witness we find totally irrelevant for the reason PW-3 proved the sanction granted by the Central Government to the appellant to sue a foreign State, which was not necessary to be proved for the reason no issue was settled inasmuch as the relatable averment in the plaint was not traversed in the written statement filed. The respondent examined its Counselor (Management) as DW-1.

10. We need not note the testimony of even said witnesses, for the reason, learned counsel for the parties agree that the debate between the parties has to be settled with reference to Ex.P-1, Ex.P-2, Ex.P-4 and Ex.P-11, all documents whose existence and validity was not in dispute between the parties. The effect of various clauses contained in the two documents, Ex.P-1 and Ex.P-2 fell for consideration.

11. Transgressing a little from the narratives, we wish to highlight that a little application of mind would have resulted in the matter not being required to proceed for recording oral evidence. Ex.P-1, Ex.P-2, Ex.P-4 and Ex.P-11 were undisputed documents. Their contents were not in dispute. Effect of various clauses of Ex.P-1 and Ex.P-2 had to be debated with reference to the known principles of law.

12. At the heart of the matter was the issue: Whether the respondent No. 1 had validly terminated the employment of the appellant.

13. Rightly distinguishing the decisions reported as 1960 (1) LLJ 587 Assam Oil Co. Ltd. v. Its Workmen, 1960 (1) LLJ 222 Chartered Bank Bombay v. Chartered Bank Employees Union & Anr., and 1980 (1) LLJ 137 Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, the learned Single Judge has considered the terms of employment of the appellant as purely contractual. The three decisions pertained to issues between Management and workmen and thus the Industrial Disputes Act 1947 being attracted. Suffice would it be to state that the origin of every service is an offer and acceptance i.e. a contract. But where pursuant to the contract the employment assumes a status akin to services under the Union and the States or where a statute like the Industrial Disputes Act 1947 intervenes or where the service is statutorily regulated, alone can it be argued that the conditions of service would be governed beyond the letter of offer on terms whereof the appointment is offered.

14. Unfortunately, the learned Single Judge has not brought out the issues which were argued with reference to the appointment being contractual in nature and thus we make no further reference to the impugned decision, save and except to note that the learned Single Judge has referred to a fourth decision reported as T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, but has not correctly culled out its ratio and has hence given wrong reasons to distinguish said decision, in para 22 of the impugned decision. We shall be noting the said decision for the ratio to be extracted as we proceed to deal with the arguments advanced.

15. Mr. Joy Basu, learned counsel for the appellant concedes that appellant's appointment is governed by a contract, but urges that the contractual appointment is not determinable by a one month notice being given and unless there were good reasons to terminate the employment, the appellant would be entitled to serve till the age of 58 years being the term of employment as per Term No. 13 of the Conditions of Service of Locally-Engaged Staff in India. Learned counsel urged that even in private matters, as held by the Supreme

Court in para 9 of the decision in T.P.Daver's case (supra), the act being not in good faith or in violation of principles of natural justice could be considered.

16. Admittedly, Ex.P-11 has not been preceded by any show-cause notice issued to the appellant informing her of any misconduct committed by her, much less calling upon the appellant to show-cause as to why her services be not terminated.

17. With reference to the application of the principles of natural justice and good faith in a private action, the applicability thereof in light of the decision of the Supreme Court in T.P. Daver's case (supra) has to be understood with reference to the facts of the said case.

18. The respondent lodge was a Masonic Lodge and had roots with the Scottish Institution known as Grand Lodge of Ancient Free and Accepted Masons of Scotland. Its membership was opened to fellow brethren who had to pay a fee to become the member of the lodge. The membership was as per the rules of the lodge and empowered the governing body of the lodge to expel a member if the member violated the rules of the lodge.

19. The Supreme Court noted that the source of the power of the club to expel its member is the contract on the basis of which membership was acquired but observed that this contractual origin of the rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rules must be strictly complied with by the club. The action of expulsion being penal, in that, depriving the member the benefit of the membership of the club, the Supreme Court observed that if power of expulsion was used collaterally it would not be an act in good faith and it is in this context that the doctrine of bias was invoked in the cases of domestic bodies such as clubs. To put it plain, as we understand to be, where a contract stipulates a manner of exercising a power and prescribes conditions upon which the power can be exercised, exercising power outside those conditions would obviously be biased and hence not in good faith. On the applicability of The Principles of Natural Justice, the Supreme Court clarified that in relation to private affairs of private bodies, it would only mean the principles of fair play deeply rooted in the minds of the modern men and women and no more.

20. Thus, the argument of learned counsel for the appellant that in the absence of a show-cause notice, principles of natural justice are violated, is neither here nor there.

21. The question of substance argued was, with reference to the terms of letter of offer as also the Conditions of Service for Locally-Engaged Staff, and which we need to note an answer.

22. With reference to clause-3 of Ex.P-1, where the power to terminate the service by a one month's notice in writing is stipulated, the submission urged is that the said clause states that initial appointment would be temporary and

would be subject to 12 months probation within which period the appointment may be terminated without cause assigned. The last sentence of clause-3:

Thereafter it may be terminated by one month's notice in writing on either side, is interpreted by learned counsel for the appellant to mean the period between probation period and confirmed service.

23. Now, there is no period between the end of the probation period and the beginning of a regular service. The moment probation ends, unless there is cessation of master-servant relationship, permanency commences. Conceding so, learned counsel for the appellant urges that clause-5 of Ex.P-1 refers to "such extended period and thus urges that it is this interregnum period to which the last sentence of clause-3 would be applicable to.

24. The argument ignores the fact that clause-5 has to be read in conjunction with clause-3 and the two read together make it clear that initial appointment for 12 months i.e. one year is on probation and the probation may be extended for such period as the British High Commissioner may deem proper and only upon successful completion of probation would the appointee be governed by the Rules. Probation and extended probation is one period. Thus, it is concluded by us that the power of termination conferred by the last sentence of clause-3 of Ex.P-1 pertains to the period post successful completion of probation.

25. Term-5 of the Rules called Conditions of Service for Locally-Engaged Staff also speaks of initial appointment being on probation.

26. With reference to Term No. 19 of the Conditions of Service for Locally-Engaged Staff, learned counsel for the appellant urged that unsatisfactory service required a prior warning and a misdemeanour required an explanation of the alleged unacceptable conduct before termination and it is in this context learned counsel brings out another facet of the application of the Principles of Natural Justice. The argument is that if deviant behaviour calls for an explanation to be sought i.e. a hearing, it would be paradoxical that a non-deviant behaviour would attract the service being terminated without the employee knowing the reason why the service is terminated.

27. The Conditions of Service for Locally-Engaged Staff make eligible the employees who have successfully completed probation to receive the benefit of provident fund and gratuity.

28. The argument ignores the fact that vide Term 14.3(c) of the Conditions of Service for Locally-Engaged Staff, no gratuity was payable if the appointment was terminated on grounds of misconduct. Any other form of termination, made eligible the employee to receive gratuity.

29. Since termination on account of misconduct takes away the right to receive gratuity i.e. has an adverse consequence against the interest of the employee, the term of hearing the employee with respect to the misconduct is incorporated in the Rules and thus there would be no place to import said concept in a

termination simplicitor with benefit of gratuity.

30. The last argument that the appellant had a legitimate expectation to know the reason why her services were terminated, is noted and rejected for the reason the Doctrine of Legitimate Expectation is a facet of Article 14 of the Constitution of India and would be available only against the State. No other argument is advanced. The appeal is dismissed but without any order as to costs.