

(2008) 02 DEL CK 0308
In the Delhi High Court
Case No : CS (OS) No. 1739 of 1998

Juliana Loiseau

APPELLANT

Vs

The British High Commission and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 86(2)
Constitution of India, 1950 — Article 226, 311
Industrial Disputes Act, 1947 — Section 10A

Citation : (2008) 152 DLT 788 : (2008) 102 DRJ 429

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : B. Bhattacharya, Joy Basu and Madhurendra Kumar, for the Appellant; P. Nagesh, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present suit is instituted by the plaintiff praying inter alias for a decree of damages/compensation for an amount of Rs. 71,00,000/- together with pre-suit, pendente lite and future interest in favor of the plaintiff and against the defendants on account of the loss of salary, provident fund, gratuity benefits, future job prospects, pension benefits etc., claimed by the plaintiff.

2. The undisputed facts leading to the institution of the present suit are that vide letter of appointment dated 8.10.1982 (Ex.P-1), the plaintiff was appointed as a Staff Nurse Grade-III with the defendant No. 1, The British High Commission, New Delhi, w.e.f. 1.11.1982. Enclosed with the said letter of appointment, was a Booklet containing the conditions of service for Locally Engaged Staff (Ex.P-2). The said appointment was subject to probation for a period of twelve months, which period was completed by the plaintiff on 1.11.1983. Thereafter, vide letter dated 2.11.1983 (Ex.P-4), the plaintiff was confirmed in the service of the defendant No. 1 as Nurse Grade III. The plaintiff became a member of the defendant's Staff Provident Fund, vide letter dated 2.11.1983, (Ex.P-5). After

the plaintiff continued working with the defendant No. 1 for a period of about 12 years, a letter dated 07.08.1995 (Ex.P-11) was issued to her whereby the plaintiff was intimated on behalf of the defendant No. 1 that her service was being terminated by invoking the terms of para 3 of the letter of appointment dated 08.10.1982, issued to her. Aggrieved by the said termination of her services, the plaintiff has instituted the present suit against the defendant, after obtaining necessary sanctions from the Ministry of External Affairs, Government of India, which was accorded by the Ministry vide its letter dated 18.3.1998 (Ex.PW-3/1).

3. Vide order dated 7.8.2002, the following issues were framed:

(i) Whether the suit is bad for mis-joinder of parties? OPD

(ii) Whether termination of service of plaintiff by the defendant is in violation of terms and conditions of appointment letter dated 8.10.1982 and principles of natural justice? OPP

(iii) If issue No. 2 is decided in favor of the plaintiff, then to what amount of damages and compensation is the plaintiff entitled to? OPP

4. In support of her case, the plaintiff stepped in the witness box as PW-1. Her husband, Mr.R.Loiseau deposed in her favor as PW-2. PW-3, Sh.S.D. Moorthy, Protocol Officer, Ministry of External Affairs, Government of India was summoned by the plaintiff to prove the letter dated 18.3.1998, issued by the Ministry giving its consent to the plaintiff u/s 86(2) of the CPC for instituting the present suit against the British High Commission. The said letter dated 18.3.1998, was exhibited as Ex.PW-3/1. On their part, the defendants produced Sh.Ian Douglas Kydd, Counselor (Management) of defendant No. 1 as DW-1. Both the parties cross examined the witnesses produced by the other side.

5. It may be stated at the outset that issue No. 1, onus of which was on the defendants was not pressed by the counsel for the defendants and no arguments were addressed on the said issue, thus leaving issues No. 2 & 3 for adjudication. As issues No. 2 and 3 are interlinked, issue No. 3 flowing from issue No. 2, they are being decided collectively.

6. Learned Counsel for the plaintiff argued that the act of the defendants in terminating the services of the plaintiff was in disregard of paras 3 and 16 of the letter of appointment dated 8.10.1982 (Ex.P-1) and in gross violation of the Rules contained in the Conditions of Service Rule Book (Ex.P-2) (hereinafter referred to as "the Rules"), particularly Rule 19 thereof, which was an integral part of the letter of appointment. It was submitted that though para 3 of the said letter of appointment provided that the appointment may be terminated before completion of probationary period without notice or cause assigned, but termination of services without giving any reasons, or any notice to show cause, after a period of 12 years of rendering regular service amounted to illegality and arbitrariness. It was further submitted that it was incumbent upon the

defendants to disclose reasons for terminating the services of the plaintiff and to afford her an opportunity to defend herself by granting a hearing, in absence of which, the basic principles of natural justice stood violated. It was contended by the counsel for the plaintiff that on confirmation, para 3 of the letter of appointment dated 8.10.1982 became inapplicable to the plaintiff and any termination thereafter could only be done by invoking the provisions of Rule 19 of the Rules.

7. Much emphasis was laid on Rule 19 of the Rules to state that the plaintiff was neither warned asking her to explain her conduct/performance, nor was she given a notice to show cause before a final decision was taken by the defendants for terminating the services of the plaintiff. It was urged that termination simplicities was in violation of the said Rule 19, which was an integral part of the appointment letter, and any termination done de hors the said rule, was bad in law. Reliance in this regard was placed by the counsel for the plaintiff on the following judgments:

(i) Assam Oil Company Vs. Its Workmen,

(ii) Chartered Bank, Bombay v. Chartered Bank Employees" Union and Anr. 1960 I LLJ 222

(iii) T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum,

(iv) Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others,

8. Learned Counsel for the plaintiff also contended that there appears to be an agenda behind the act of the defendants in terminating the services of the plaintiff and this was sought to be substantiated by relying on various letters addressed by the defendants to the plaintiffs (Ex.P-7 to Ex.P-10), to contend that the conduct of the plaintiff was exemplary throughout the period of her service.

9. Per contra, counsel for the defendants stated that the act of the defendants in terminating the services of the plaintiff was neither contrary to law, nor to the terms & conditions of the appointment letter issued to the plaintiff. It was submitted that the termination of the plaintiff was not in violation of paras 3 and 16 of the said letter of appointment dated 8.10.1982 (Ex.P-1) and that the letter of confirmation dated 2.11.1983 (Ex. P-4) only reiterated that the plaintiff's employment was on the terms and conditions as laid down in her initial letter of appointment. Attention of the Court was drawn to para 3 of the said letter of appointment to state that it clearly stipulated that even after completion of the probationary period, the services of the plaintiff could be terminated by either side by giving one month's notice in writing.

10. With regard to the plaintiff's contention that her termination was not in accordance with Rule 19 of the Rules, learned Counsel for the defendants submitted that the plaintiff's case was not covered under the said Rule 19, but was rather governed by Rule 5 which provides that even after the initial

probation period is over, the appointment could still be terminated by either party by giving one month's notice. It was contended that there was no hiatus between the end of the probation period of the plaintiff and the commencement of the period of her permanent appointment as sought to be urged on behalf of the plaintiff.

11. It was further stated on behalf of the defendants that there was no need to serve a notice to show cause on the plaintiff, or to afford her an opportunity of hearing, since the termination of her service was a termination simpliciter, done strictly in accordance in with the terms of the contract, and was not stigmatic in nature. It was also stated that the plaintiff was entitled only to payment of gratuity under the conditions of service applicable to her, which amount has already been paid to her, and that no pension as claimed by her was payable under the said conditions of service.

12. Learned Counsel for the defendants sought to distinguish the judgments relied on by the counsel for the plaintiff by stating that in all of those judgments, the remedy being pursued was under the Industrial Disputes Act, and the proceedings were under Article 226 of the Constitution of India, unlike the present case, which is to be decided strictly in accordance with terms of the contract governing the parties.

13. In rejoinder, counsel for the plaintiff emphasized on the fact that principles of natural justice are applicable even to contractual matters. Reliance was also placed on the Terminal Gratuity Form to contend that there was a requirement for giving reasons for termination of service even under the said form, which was not complied with by the defendants.

14. I have heard the counsels for both the parties and have carefully perused the documents placed on record along with the evidence adduced by the parties.

15. As a decision on the entire issue hinges on the letter of appointment dated 8.10.1982 (Ex.P1), and the interpretation of Rules 5 and 19 of the Rules (Ex.P-2), it is necessary to refer to the relevant clauses. Paras 3 and 16 of the letter of appointment dated 8.10.1982 read as below:

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. Thereafter it may be terminated by one month's notice in writing on either side.

X X X

16. The terms of this offer are personal to yourself and are not necessarily the same as those under which other staff in the High Commission are employed. Enclosed is a booklet which sets out the main conditions of service of locally engaged staff.

16. Rules 5.1 and 19 of the Conditions of Service for Locally Engaged Staff as contained in the Rules are 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 willful 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.

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.

17. A perusal of the letter of appointment dated 8.10.1982 shows that the plaintiff was governed not only by the terms and conditions contained in the said letter but also by the conditions of service contained in the Rules. A perusal of the letter dated 8.10.1982 also shows that the appointment of the plaintiff was initially temporary and subject to probation for a period of 12 months and that her appointment was liable to be terminated on or before the completion of the period of probation without any notice or cause assigned. However, it was clarified that after the period of probation was over, the services of the plaintiff could be terminated by issuance of one month's notice in writing on either side. The interpretation sought to be given by the counsel for the plaintiff to the aforesaid Rule 3 that on the confirmation of the plaintiff, the said Rule 3 became inapplicable to the plaintiff and could not be invoked by the defendants and that the services of the plaintiff could only be terminated in the manner as laid down in Rule 19 of the Rules, is not borne out from a collective reading of the aforesaid

documents. The said conclusion is fortified by a reading of Rule 1 of the Rules which states as below:

Conditions of Service for Locally Engaged Staff in India

1. General

This booklet contains the main conditions of service of locally engaged staff employed at British Diplomatic Service Posts in India: the High Commission in Delhi, Deputy High Commissions in Bombay, Calcutta and Madras. These conditions follow generally the practice of good local employers.

...A letter of appointment is issued to all staff on engagement; this sets out conditions of service which will apply to the employee personally.

18. The aforesaid Rule 1 read with para 16 of the letter of appointment of the plaintiff makes it clear that while the Rules contained the main conditions of service as applicable to the plaintiff, the conditions of service set out in the letter of appointment were specifically applicable to the plaintiff alone. Thus for the plaintiff to contend that as the period of probation of the plaintiff was one year with effect from 1.11.1982 and she was confirmed by the defendant No. 1 vide letter dated 2.11.1983, the word "thereafter" used in the last line of para 3 of the letter of appointment (Ex.P-1) ought to be interpreted to mean the period between the end of the probation period of the plaintiff and the commencement of the period of her permanent appointment, is unacceptable for the reason that the plaintiff was appointed on probation basis with effect from 1.11.1982 and vide letter dated 2.11.1983 (Ex.P-4) she was confirmed in service on completion of the period of probation on 1.11.1983. Thus it cannot be said that there was a hiatus between the end of the period of probation and the commencement of the period of permanent appointment of the plaintiff.

19. In so far as Rule 5.1 of the Rules is concerned, the same also reiterates the position as contained in para 3 of the letter of appointment of the plaintiff by stating clearly that the period of probation of locally engaged staff shall be one year which may be extended up to three months and thereafter, the appointment will be terminable on one month's notice in writing by either party. The said Rule further clarifies that neither party is required to give any reasons for the termination of the appointment. Thus for the plaintiff to contend that her letter of termination dated 7.8.1995 (Ex.P-11) did not furnish any reasons or that the plaintiff was entitled to be afforded an opportunity of hearing before a final decision was taken by the defendants to terminate her services cannot be sustained, as the terms of the contract governing the plaintiff and the defendants itself made it abundantly clear that no reasons were required to be given for a decision to terminate the services of the plaintiff and only one month's notice was required to be given in writing by either party to terminate the appointment.

20. Rule 19 of the Rules which are service and disciplinary rules cannot be held to be applicable to the plaintiff inasmuch as it is not a case where the plaintiff

had not rendered satisfactory service or had committed breach of discipline, for a warning or punishment of withholding of increment to be issued to her. Hence the plea of the plaintiff that an enquiry ought to have been held and an opportunity of hearing afforded to her to provide an Explanation for her conduct as provided for in Rule 19, is not sustainable.

21. The judgment in the case of Gujarat Steel Tube (*supra*) on which the counsel for the plaintiff placed reliance, relates to a case where the petitioner management terminated the services of 853 workmen with one stroke of pen resulting in reference of the disputes to arbitration u/s 10A of the Industrial Disputes Act. The Arbitrator upheld the action of the management resulting in the respondent union filing a writ petition in the High Court for reversal of the Arbitrator's award. The said writ petition filed by the respondent union was allowed and aggrieved by the said decision, the petitioner management approached the Supreme Court. It was in the aforesaid context that the Supreme Court made an observation to the effect that if the Standing Orders or terms of contract permit the employer to terminate the services or his employee by discharge simpliciter, without assigning reasons, it would be open to him to take recourse to the said term or condition and terminate the services of his employee but when the validity of such termination is challenged in industrial adjudication, it would be open for the Industrial Tribunal to enquire whether the impugned discharge was effected in bona fide exercise of the power conferred by the terms of employment. In other words, the Industrial Tribunal would be entitled to go behind the words and form and decide whether it was a discharge implicate or not. It was in the aforesaid factual background that the observations were made by the Supreme Court. However, the facts of the case in hand are entirely different and thus the said judgment has no application.

22. In the case of Lodge Victoria (*supra*), the Supreme Court was dealing with the internal disputes of members of a masonic lodge and in that context it considered the source of power of associations like clubs and lodges to expel their members. While referring to the principles governing members of the lodge in question, the Supreme Court gave certain findings in the peculiar facts and circumstances of the said case and also observed that the court has to see broadly the circumstances of each case to decide as to whether the principles of natural justice were applied or not. Similarly, the judgments cited by the counsel for the plaintiff in the cases of Chartered Bank (*supra*) and Assam Oil Company (*supra*) were rendered in the context of the Industrial Disputes Act and the issue therein related to the power of the Industrial Tribunal to go behind the words and form to decide whether the discharge of an employee was a discharge implicate or not, as also to enquire into the bona fides as well as justifiability of the action taken by the management.

23. In the present case, the relationship between the plaintiff and the defendant No. 1 is strictly within the realm of a contract between two private parties which is governed by the terms and conditions of employment as contained in the letter

of appointment as also in the conditions of service as laid down in the Rules. Thus the plaintiff has neither invoked the provisions of Article 311 of the Constitution of India or those contained in the Industrial Disputes Act or any Statute. The dispute between the plaintiff and the defendant No. 1 would Therefore squarely fall within the four corners of a contract which has to be construed by the Court strictly as per the terms and conditions contained in the contract.

24. Having arrived at a finding that the terms and conditions of the contract governing the appointment of the plaintiff permitted the defendant No. 1 to terminate the services of the plaintiff by giving one month's notice and without stating any reasons for the termination, then issue No. 2 has to be decided against the plaintiff. It is held that the termination of service of the plaintiff by the defendant is not in violation of the terms and conditions of the appointment letter dated 8.10.1982, nor have the principles of natural justice been violated by the defendants.

25. Pertaining to issue No. 3, in so far as the claims of the plaintiff towards payment of arrears of provident fund and gratuity are concerned, the counsel for the plaintiff stated that she has received the entire arrears due and payable to her till the date of the termination of her service. It is also not denied that pension was not payable to the plaintiff under the conditions of service. Once it has been held that the termination of the service of the plaintiff is not contrary to the contract of service and the same is valid and legal, and once issue No. 2 has been decided against the plaintiff, there arises no question of granting consequential relief as sought by the plaintiff for a decree of damages/ compensation against the defendants to the tune of Rs. 71,00,000/- on account of loss of salary, loss of PF benefits, loss of future job prospects, loss of pension or mental torture for the period after the date of termination of her services, i.e. after 7.8.1995. Thus issue No. 3 is also decided against the plaintiff.

26. As a result of the aforesaid discussion, the suit is dismissed. Parties are left to bear their own costs.