
(1977) 04 MAD CK 0039
In the Madras High Court

K. Palanichamy

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 20-04-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1977) 2 MLJ 474

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner herein was appointed as an Agriculture Extension Officer by the first respondent-Bank, under a special contract of service, dated 1st May, 1970. According to the contract, the appointment will be for a period of 2 years on a fixed monthly remuneration of Rs. 350.00. Clause 3 of the said contract says that even during the period of 2 years, the petitioner may resign or terminate the contract by giving three months' notice in writing addressed to the General Manager of the Bank or his services may be terminated by the Bank by giving him three months' notice in writing, or as a consequence of disciplinary action under the provisions of Chapter XI of the Canara Bank Limited Service" Code (hereinafter referred to as the Code). By an order, dated 3rd February, 1971, the first respondent bank, terminated the services of the petitioner with effect from 4th February, 1971 as per the said Clause 3 on payment of three months' salary in lieu of notice as contemplated under the contract. The said order which terminates the services of the petitioner, has been questioned in this writ petition.

2. According to the learned Counsel for the petitioner, the order, dated 3rd February, 1971 terminating the petitioner's services though purports to have been passed in exercise of the right conferred on the Bank under Clause 3 of the contract, it is in fact an order imposing a penalty for misconduct, and the said order having been passed without conducting any enquiry after" giving an opportunity to the petitioner to defend himself, the order should be taken to be

bad for violation of the principles of natural justice. Learned Counsel construes the impugned order as an order imposing penalty as it says that the work and progress of the petitioner was not satisfactory. According to the learned Counsel the allegation of unsatisfactory performance of work has to be treated as a stigma and therefore the order of termination of service based on such stigma, should be taken to be an order imposing a penalty. Learned Counsel for the petitioner further submits that Clause 3 of the contract itself contemplates the disciplinary enquiry under Chapter XI of the Code if any termination of service is to be based on an allegation of unsatisfactory performance of work. The case of the petitioner is that the order terminating his services by exercise of the power conferred under Clause 3 of the contract of employment, virtually amounts to an order of penalty which has been imposed without conducting a due enquiry and that therefore the order should be taken to be void for the violation of the principles of natural justice. Learned Counsel for the petitioner refers to the following two decisions in support of his stand.

3. In *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, , there was an order of discharge of a probationer during the period of probation in exercise of the managerial power in the letter of appointment to terminate the services without any notice and without assigning any reason therefor. The dispute relating to that discharge was referred to the Labour Court. It was contended by the discharged employee before the Labour Court that the order of discharge was improper, mala fide and an act of victimization. The management contended that it had absolute discretion to assess the work of the employee during the period of probation and to terminate her services on the ground of unsatisfactory work. The Labour Court did not accept this contention, but held that there was no probationary period fixed for the discharged employee and that the termination of the services of the respondent by the management was mala fide, illegal and unjustified. When the matter was taken up to the Supreme Court, the Supreme Court observed that even assuming that the management had the power under the terms of appointment to terminate the services of the employee during the probationary period without notice and without assigning any reason, if the validity of the termination is challenged in an industrial adjudication, it would be competent to the industrial tribunal to enquire whether the order of termination was effected in the bona fide exercise of its power conferred by the contract. If the discharge of the employee has been ordered by the management in bona fide exercise of its power, the industrial tribunal will not interfere with it, the order of termination if found to be mala fide or if it amounts to victimization of the employee or an unfair labour practice or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power arising out of the contract, it is open to the industrial tribunal to interfere with the order of the management and to afford proper relief to the employee". The said decision proceeds on the basis that even in the matter of exercise of a contractual right to terminate the services of an employee when it is challenged as mala fide, the matter could be

gone into by the Industrial Tribunal. The Industrial Tribunal can interfere with the exercise of the power by the management in suitable cases, if the contractual right has been exercised with ulterior motive and not in bona fide exercise of the power conferred under the contract.

4. I am unable to accept the said decision as an authority for the proposition that wherever a contractual right of termination of services is exercised by an employer, the same could be scrutinised and interfered with by the Court in exercise of the power under Article 226 of the Constitution of India. The jurisdiction of the Labour Court or Industrial Tribunal springs from the reference made to it by the Government and if the question of discharge of an employee is referred to as a question of dispute, then the Labour Court or the Industrial Tribunal can go into the question as to whether the order of discharge has been made in bona fide exercise of the power conferred by the contract. But that is not to say that any order of discharge in exercise of the employer's contractual right can be scrutinized by the Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

5. In *Associated Corporation of Industries v. Additional Commissioner for Workmen's Compensation* (1972) 1 L.L.J. 108, there was a termination of the services of an employees by the employer on the ground of negligence and incompetence. The said termination was challenged in an appeal u/s 41 of the Madras Shops and Establishments Act, 1947. In that appeal, it was contended by the employer that the termination of service was for a reasonable cause and that therefore no enquiry on the allegation of negligence and incompetence was called for. The appellate authority held that the termination was not proper and none of the requirements of Section 41(1) was satisfied to justify the order of termination and that therefore the termination cannot be held to be for a reasonable cause. When the matter was taken up to this Court, Ramaprasada Rao, J., (as he then was) held that no doubt, it is for the employer to decide for himself subjectively as to whether his employee's services have to be terminated or not but that even such subjective appraisal must depend upon cogent material which has to be placed before an independent tribunal like the Appellate Tribunal constituted by the statute u/s 41(2) of the Act, who in the ultimate analysis should agree with the employer that there was such reasonable cause for termination. Where the employer decides to terminate the services of an employee on certain accusations, it must be established that the charges levelled against the employee are justified and proper. Ultimately the learned Judge was not satisfied that the necessity for the termination of the services of the employee was bona fide and was for a reasonable cause. The learned Judge also referred to the attempt of the employer from the very beginning to dispense with the service of the employee somehow. This decision also does not support the petitioner's case. This decision merely lays down the principle that whenever an employer terminates the services of an employee whether it be by exercise of the power conferred under the contract of employment or as a result of a disciplinary proceedings arising out of some misconduct, he should be in a

position, to satisfy the appellate authority that there are necessary materials to substantiate the accusations made or charges levelled against the employee which formed the basis for the termination of the employee.

6. The above two decisions related to the proceedings before the Labour Court under the Industrial Disputes Act, and the appellate authority under the Shops and Establishments Act, where the order of termination of the services had been specifically the subject-matter of the enquiry. Therefore I do not think that the principle laid down in those decisions will be of any help to the petitioner in the present case. In this case, the exercise of the power given to the employer under the contract of employment to terminate the services of the employee by giving 3 months' notice has been challenged straightaway under Article 226 of the Constitution of India. The question therefore is whether this Court can interfere with the exercise of such a power by the employer merely on the ground that the order of termination contains a reference to the petitioner's unsatisfactory work.

7. Learned Counsel for the petitioner submits that unsatisfactory work of an employee should be treated as misconduct and when the petitioner has been discharged for the unsatisfactory work, it should be taken to be a punishment for misconduct. Learned Counsel refers to the following passage in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, .

In the absence of any standing order the unsatisfactory work of an employee may be treated as misconduct and when the respondent was discharged according to the management for unsatisfactory work, it should be taken that her discharge was tantamount to punishment for an alleged misconduct.

8. I do not consider it necessary to go into the question as to whether the termination on the ground of unsatisfactory work will amount to an order of termination for misconduct. In this case the impugned order does not in so many words say that the petitioner's services are terminated, for misconduct. The services of the petitioner had been terminated specifically in exercise of the power conferred by Clause 3 of the special contract of service entered into between the petitioner and the Bank. In the order there is a reference to the petitioner's unsatisfactory work. That reference was made only for the purpose of invoking Clause 3 of the contract. It cannot be taken to change the character of the order.

9. In *Ramiah (V.) Vs. State Bank of India*, , an employee of the State Bank of India, against whom disciplinary proceedings had been initiated, was subsequently discharged from service in exercise of the contractual right to terminate the service after giving 2 months' notice. The order of discharge specifically referred to the charges levelled against the petitioner and the reluctance of the bank to terminate the services of the petitioner on the basis of those charges. It was contended by the employee that since the order terminating his services contained a reference to the charges and the disciplinary proceedings that followed, the order should be taken to be an order of

termination for misconduct and as such violative of the principles of natural justice. A division bench of this Court said:

notwithstanding that the order is one which is violative of the principles of natural justice, it cannot be interfered with by the Court so long as the employer has exercised its contractual right to terminate the services of the employee.

The Court ultimately expressed the view. that

an analysis of the order in the setting in which it was made, and on a fair interpretation of its purport and tenor, can lead only to the conclusion that it is really what it ex facie claims to be, an invocation of the power derived from contract to terminate the services of the appellant. As the learned Judge (Veeraswami, J.,) rightly observed, if we may say so with respect, the occasion for the exercise of the power is one thing, and the basis for the act of termination is quite another. Certainly, without the prior facts or the charges and the enquiry, and the ultimate conviction of the relevant authority that the charges had been established, the act of termination under the contract is not explicable. But, in our view, the motive which led to the exercise of a function, has to be carefully distinguished from the nature of the act.

This decision clearly establishes the proposition that where the order terminating the services of an employee has been passed in exercise of the contractual right by the employer, the motive which led to the exercise of such a power has to be carefully distinguished from the nature of the order. Even if the reason or occasion for exercise of the power has been set out in the order, that will not go to invalidate actual exercise of the contractual right. In view of the said decision, I have to hold that notwithstanding the reference to the petitioner's unsatisfactory work in the impugned order, it cannot be held to be an order terminating the petitioner's services for misconduct. Only if the order is taken to be an order of termination of services for misconduct, it can be said that the order is vitiated for the violation of the principles of natural justice. As I am of the view that the impugned order is not an order of termination for misconduct, but is only an order made in exercise of the power conferred on the employer under the terms of contract, the order cannot be set aside by this Court. In this view, the writ petition fails and is dismissed. However, there will be no order as to costs.