
(1980) 03 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No. 2482 of 1978

K. Palanikumar

APPELLANT

Vs

Indian Bank and Another

RESPONDENT

Date of Decision : 06-03-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (1980) 1 LLJ 414

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

1. The facts leading to the writ petition are as follows : The petitioner passed B. Com, examination in the year 1977 held by the Madras University. He belongs to the Scheduled caste. An advertisement appeared sometime in December, 1977 in the Hindu calling for applications from candidates for appointment as clerk/shroff under the first respondent-Indian Bank. The petitioner filed his application. It requires to be stated at this stage that the advertisement indicated the nature of particulars which the candidate was required to furnish. Under column (h) the candidate was required to furnish the names of relatives, if any, working in Indian Bank and the nature of relationship together with the name of the Branch where they work. Admittedly the petitioner's step-brother was working in the Bank in its Bombay Fort Branch. Thinking that this column related only to parents and, therefore, he need not give the particulars required in his application dated 21-1-1978 that column was left blank. On 1-8-1978 the petitioner was directed to be present for an interview at the Staff Training College, "Leelavathi Mansion, II Floor No. 69, Armenian street, Madras-1. The petitioner did take the interview. Thereafter by an order dated 15th November, 1978, the petitioner was provisionally selected for appointment as a clerk in the service of the Bank subject to be being medically found fit for the job on the following terms and conditions :

"1. Your starting salary will be Rs. 190 p.m. with such Dearness Allowance as

may be sanctioned from time to time (the present D.A. being Rs. 319.20) and proportionate local allowance of Rs. 48 p.m. during the period of training only.

2. You will be bound by the rules and regulations of the Bank from time to time.

3. You will be on probation with salary for a period of six months from the date of joining. Notwithstanding anything contained in this letter, your service are liable to be terminated at the sole discretion of the Bank even before the expiry of the probationary period without assigning any reason, therefore, but with one month's notice or on payment of a month's salary and allowances in lieu of notice.

4. You will have to work in any officer of the Bank or at any branch of the Bank as the Bank may require you to work from time to time and also discharge all the duties which may be assigned to you.

5. You should produce satisfactory evidence of your date of birth and general and other qualifications.

6. You should produce a certificate of physical fitness from a Registered medical practitioner and also three copies of your passport size photo recently taken at your own cost.

7. Candidates belonging to Scheduled caste and Scheduled Tribe should produce a community certificate in original as per specimen enclosed".

It was further stated that if he was agreeable to the above terms and conditions he was required to report at the Staff Training College, II Floor Leelavathi Mansion, 69, Armenian street, Madras-1 at his own expenses on 27-11-1978. The acceptance of the offer by the petitioner was directed to reach the Assistant General Manager (Personnel) on or before the 23rd November, 1978. It was made clear that otherwise the office of appointment would automatically stand cancelled. Thereafter he was required to file a service joining letter in which column 11 was as under :

"Name or names of relations, if any, in the service of the Bank and nature of relationship".

This column was left blank by the petitioner. On 13th December, 1978 the following communication emanated from the Bank to the petitioner.

"Further to our appointment order dated 15-12-1978 you have been posted at our Mount Road Branch please note to report for duty at our Mount Road instead of Konganapuram branch. Other terms and conditions of the appointment order remain unchanged".

Then on 14th of May, 1979 the impugned order was passed stating :

"As per clause 3 of the terms and conditions contained in the appointment order cited above, your are terminated from the services of our Bank forthwith.

Though your services can be terminated at the sole discretion of the Bank without assigning any reason therefore. We have to inform you that you secured appointment in our Bank by suppressing the fact that your brother Shri K. Rajagopalan is employed and is now working is an Officer in our Bombay Fort Branch at the time of your applying for a post in our Bank as well as on the date of your joining the Bank.

You will be paid a month's salary in lieu of one month's notice period by our Mount Road Branch".

It is in these circumstances, the present writ petition for certiorarified mandamus has come to be preferred to quash the order dated 14th May, 1979 and to direct the respondents to reinstate the petitioner in service as clerk/shroff with all attendant benefits.

2. Mr. A. Ramachandran, learned counsel for the petitioner raises the following submissions :

The rights of the parties in the instant case are governed by the Sastry Award which is binding between the parties. Paragraph 493 of the Award does not require these particulars but merely states that the relatives should not be employed in the same office. Therefore, the very instance of particulars in this column which are not germane for the appointment is itself arbitrary. The petitioner sought an employment in his own right and on his own merits. There is no reason why he should be required to give particulars to his step brother who is working far away in Bombay Fort Branch.

3. Then again the so-called suppression is not a material suppression which will vitiate the order of appointment or which would require the termination of probation. As a matter of fact, there are instances as quoted in the petition as items (i) and (iii) in ground (g). Wherein there were similar suppressions but nevertheless the respondent-Bank was prepared to condone and, therefore, the petitioner has been subjected to a hostile treatment, thereby violating Art. 14 of the Constitution. Lastly, it is urged that the termination of probation must be for a valid cause and it cannot be done arbitrarily. In the instant case just on the last day before the completion of six months as laid down in paragraph 495 in Sastry Award, the termination has come to be given effect to. Even assuming that the respondent-Bank has got that power of termination it cannot pass an order containing a stigma on the petitioner as if he had suppressed. The Supreme Court in *Ramana v. I. A. Authority of India*, A.I.R.1979 1629 in dealing with a case of contractual nature has held that the public bodies or institutions are also expected to conform to certain norms and cannot afford to act arbitrarily. In *Miss. P. S. Geeta v. Central Bank of India*, (1979) 1 Andra Weekly Reporter 73 at page 81, it has been held that a provision giving preference to the employees of the Bank was violative of Art. 16 and is offensive of equal protection under law. That principle also has to be applied in this case.

4. As against these submissions the learned counsel for the respondents would

submit that a termination of the petitioner's services came to be effected purely because of clause (3) of the order of appointment which states that the services of the petitioner as a probationer could be terminated at the sole discretion of the Bank without assigning any reason. As a matter of fact, the Sastry Award in paragraph 522 also contemplates such termination. This is a case in which the confidence reposed by the employer is lost because of the failure to furnish an information. As to how it would have materially affected his chances of selection or appointment is a different matter altogether. The question here is whether the petitioner has suppressed. If that be so his conduct in so far as he suppressed an information whether material or not, would amount to unsatisfactory conduct and on that basis the probation can be terminated. In law for termination of probation no reason need be assigned. More so when clause 3 provides for that. Nevertheless in order that the petitioner might know the reason was given. In support of this the learned counsel relies on *Dr. G. Srihari v. Madras Dock Labour Board* and another, 1980 I L.L.J.105. Then he submitted that as regards the parties who are supposed to have been favoured they have not been impleaded in this writ petition. However, in the counter-affidavit these allegations have been traversed and that would fully answer the arguments of the petitioner and the learned counsel prays that that portion of the counter-affidavit may be treated as part and parcel of his arguments concerning the so called discrimination. Reliance is also placed on *K. Palanichamy v. Canara Bank*, (1978) - Labour and Industrial cases 303 and *Gopalan v. Managing Director*, (1979) KLT 848, where under similar circumstances, a suppression was held to be bad and the employer had every right to terminate the services. In any event in so far as the probation has been terminated and that termination is not by way of disciplinary action but owing to a power traceable to a contract, that order can easily be upheld as laid down in *P. Christopher Jobez Vs. Indian Bank and Another*, at page 279. Lastly, where probation is terminated it is not by way of disciplinary action as laid down by the Supreme Court in *State of Maharashtra v. Veerappa R. Saboji and another*, : (1979) IILLJ393SC . For all these reasons, the learned counsel submitted that there would be no difficulty in upholding the impugned order.

4. In the instant case the petitioner was required to state in his appreciation in column (h) the names of all relatives, if any, working in the Indian Bank and the nature of relationship together with the name of the Branch where they are working. Admittedly the petitioner's step-brother was working in the Bombay Fort Branch of the Bank. However, the petitioner did not furnish any information as against that column (h) but left it blank. Thereafter as seen above by an order dated 15th November, 1978 the petitioner was appointed subject to the condition that he would be on probation for a period of six months from the date of joining. It was further stated that notwithstanding anything contained in this letter his services were liable to be terminated at the sole discretion of the Bank before the expiry of the probationary period without assigning any reason, therefore, but with one month's notice or on payment of one month's salary and allowance in lieu of notice. Therefore, according to the respondent-Bank the

impugned order dated 14th May, 1979 comes to be passed as per clause (3) of the appointment order. That alone would be enough. However, the impugned order which I have extracted above, goes on to proceed that the petitioner had suppressed the fact about his brother being employed in Bombay Fort Branch of the Bank. It requires to be noticed at this stage that after the appointment order dated 15th November, 1978 the petitioner was called upon to file in the particulars of column 11 of the service joining report which also required him to give the name or names of relations, if any, in the service of the Bank and nature of relationship. That was also left blank. I do not think the Court can be called upon to adjudicate the question as to whether this suppression is a material suppression or immaterial suppression.

5. First and foremost, where the services of a probationer are terminated in accordance with the terms of the contract the ruling as laid down in *State of Maharashtra v. Veerappa R. Saboji*, : (1979)IILLJ393SC , and *P. Christopher Jobez Vs. Indian Bank and Another*, - would apply. As a matter of fact in the latter case a Division Bench of this Court observed as under :

"We have already pointed out that though the impugned order of termination of the services results in certain serious consequences to the petitioner, it is not penal in character for the service conditions specifically provide for termination of services on giving three month's notice or on lieu of notice and it is only in and it is only that power which has been exercised by the second respondent in this case."

Such an order, not being an order passed in the course of a disciplinary proceeding no complaint of violation of the principles of natural justice could be made in *The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others*, , the Standing Orders of the Bombay Municipal Corporation enabled the Corporation to terminate the services of the employees on the one month's notice. In exercise of that power the services of an employee were terminated for unsatisfactory record of service. The question arose whether it is termination simpliciter or whether it is punitive in character. The Industrial Court dealing with that question set aside the order of termination on the ground that the impugned order of termination is of a punitive character passed without a domestic enquiry and, therefore, it could not be sustained. When the matter came before the Supreme Court it took the view that it is responsible to regard the order of termination as punitive in character so as to invite the application of clause (2) of Standing Order 21 read with Standing Order 23 which provided for an elaborate enquiry in cases of termination of an employment of misconduct as a result of disciplinary enquiry. The Supreme Court in support of its view referred to series of its decisions rendered earlier.

6. In *K. Palanichamy v. Canara Bank, Bangalore*, 1978 L.I.C.303 one of us sitting singly have held that an order terminating the services under clause 3 of the Special Contract of service entered into between the employee and the Canara Bank after giving three month's salary in lieu of notice for unsatisfactory work is

not a termination of service for misconduct vitiated violation of principles of natural justice in that no enquiry was conducted before the actual termination of services. In that case it has been pointed out that where an 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 the actual exercise of the contractual rights. Therein the termination of services was stated to be for unsatisfactory work. Even then it was held not to be of a punitive character. In this case the order of termination does not cast any aspersions on the petitioner and it is merely a termination simpliciter. So long as the second respondent has got the option to terminate the services of the petitioner on giving three months' notice or three months' salary in lieu of notice the exercise of the power cannot be questioned on the ground that the order of termination was not preceded by any enquiry.

7. The ratio of this decision squarely applies. Then again it requires to be noted at this stage that the salary Award which undoubtedly is binding between both the parties in paragraph 522 states :

"We now proceed to the subject of termination of employment. We give the following directions : (1) In cases not involving disciplinary action for misconduct and subject to clause (6) below the employment of a permanent employee may be terminated by three month's notice or on payment of three months' pay and allowances in lieu of notice. The services of a probationer may be terminated by one month's notice or on payment of a month pay and allowances in lieu of notice".

At the same time, it is also necessary for me to refer to paragraph 485 of the Award wherein it is stated :

"We respectfully agree with the said direction and direct that ordinarily the period of probation should not exceed six months. However, in case of persons whose work is not found to be quite satisfactory during the said period but who are likely to improve and give satisfaction if a further opportunity is given to them the period may be extended by three months provided due notice in writing is given to them and their consent in writing is obtained before the extension of their period of probation".

Therefore, strictly in accordance with these two paragraphs of the Sastry Award the probation under the order of appointment dated 15th November, 1978 was fixed at six months and was held to be terminable at the sole discretion of the Bank. This case does not involve any disciplinary action whatever. Nor is it punitive in character. That would be sufficient to uphold the order. Nevertheless arguments have been addressed as to whether this requirement in the light of paragraph 493 of the Sastry Award could be held to be a reasonable requirement. I have already held that it is not within the province of the Court to

go into the reasonableness or otherwise of this requirement. The reason according to me is that the Bank is an institution wherein confidence and confidence alone counts. Where therefore, an employer, namely, the respondent-Bank is satisfied that the applicant has not come forward to furnish an information which is required to be furnished it must have lost confidence to continue him in service and that is why the order impugned clearly mentions about suppression. In this connection it is worthwhile referring to *Gopalan v. Managing Director*, (1979) KLT848. That was a case in which the petitioner's appointment was a mistaken appointment in ignorance of his character and antecedents which he successful kept away from the employer not only by non-disclosure (despite requirement to disclose but also by making a false declaration that he was not previously employed anywhere. It was held that it was a case of not mere "suppression veri" but one of suggestion false and that Ext. P6 communication informing the petitioner that he had been discharged from service of the Bank as at close of business on 23-2-1978 was merely a declaration that there had been no appointment of the petitioner to the service of the Bank. In the instant case it is not necessary for me to go to that extent as the Division Bench of the Kerala High Court has declared in the decision cited. Suffice it to state that it is a mere termination of probation. It is well-settled that probation means satisfaction of the employer. Once the employer is not satisfied in terms of the contract, it is well open to the employer to dispense with the services of the particular employee. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the question arose as to how far Courts could interfere in the realm of confidence. In paragraph 9 at page 1635 it was observed as under :

"That takes us to the next question whether the acceptance of the tender the acceptance of the tender of the 4th respondent was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf of the 1st and the 4th respondent that the appellant had no locus standi to maintain the writ petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted; what grievance could he have if the tender of the 4th respondent was wrongly accepted. A person whose tender was rejected might very well complain that the tender of someone else was wrongly accepted. A person whose tender of the 4th respondent was rejected might very well complain that the tender of some one else was wrongly accepted but it was submitted how could a person who never tendered and who was at no time in the field put forward such a complaint ? This argument in our opinion is misconceived and cannot be sustained for a moment. The grievance of the appellant it may be noted was not that tender was rejected as a result improper acceptance of the tender of the 4th respondent but that he was differentially treated and denied equality of opportunity with the 4th respondent in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a

tender he also would have submitted a tender and competed for obtaining a contract. But he was precluded from submitting a tender and entering the field of consideration by reason of the condition of eligibility while so far as the 4th respondent were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was the grievance made by the appellant in the writ petition and there can be no doubt that if this grievance were well-founded the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of the 4th respondent was vitiated by any legal infirmity". Again at page 1642 it was observed :

"Now obviously where a Corporation is an instrumentality or agency of Government it would in the exercise of its power or discretion be subject to the same constitutional or public law limitation as Government. The rule inhabiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise and it cannot be arbitrarily and other enter into relationship with any person it lies as its action must be in conformity with some principle which meets the test of reason and relevance."

I do not think this decision in any manner helps the petitioner. We are not in this issue as to the jurisdiction of the Court to interfere in the realm of the contract. Here the order is mere termination of probation made under power of the contract and the petitioner cannot have any valid complaint whatever. Nor am I able to accept the argument of the learned counsel for the petitioner that this case a stigma on the petitioner. Equally *Miss P. S. Geeta v. Central Bank of India*, 1979 I AnWR73, does not afford any assistance to the petitioner since in that case the question arose whether under a particular rule twenty five per cent of the posts reserved to the children of the employees was violence of Arts. 14 to 16 of the Constitution. The observations contained in the judgment are too general in nature which have no application to the facts of this case.

8. Lastly, as regards discrimination the allegation of the petitioner in ground (g) are as under :

(1) I understand that one K. Sathyanarayana clerk/shroff who is now working in the Poduru branch (Andhra Pradesh) mentioned only the name of his father Shri K. Rama Rao who was also working as clerk/shroff at Veeravasaram branch of the Bank. But he did not mention about his brother's employment (the name of his brother being K. Venkateswaralu working as a peon at Bheemavaram office). Although Sathyanarayana was placed under suspension and an enquiry was ordered about these omissions nevertheless, on receiving the explanation his suspension order was revoked and he was allowed to work in the Poduru branch with stoppage of three increments.

(2) I understand that Shri Balasubramaniam who is now working as clerk/shroff

in the Commander-in-Chief Road Branch, Madras-8 did not give particulars regarding his sister's employment who was working in the Teni branch and although the Bank issued a show-cause notice to Balasubramaniam his appointment was regularised on receiving his explanation and he was confirmed in the Bank's services without even a warning.

(3) I state that one Miss Kalai Selvi belonging to Schedule caste who was not even a graduate applied for a clerk's post and she was entertained and given the appointment immediately after she acquired the degree. I may state here that the advertisement which appeared in the papers makes it mandatory for the applicant to be a graduate and at the time Selvi made the application she was only studying the final year B.A. and was not a graduate. Miss Kalai Selvi is now working in the Personnel Branch at Head Office."

To this the answer of the Bank in its counter affidavit is as under :

"The allegations in para 6(g) are denied as untenable. K. Sathyanarayana is a confirmed employee of the Bank. He was not a mere probationer. Hence disciplinary action was initiated and he was punished with imposition of punishment of stoppage of increments. So also Balasubramaniam is a permanent and confirmed employee who did not fill up the column in question and left it blank. In his case, before he was appointed to the service of the Bank he applied for appointment in the Bank in response to a subsequent advertisement published by the Bank and in that he correctly furnished the information called for. The explanation offered by him was found to be satisfactory by the Bank. Hence further action against him was dropped. Miss Kalai Selvi did not complete the graduation at the time of sending her application for appointment. But when she took up a written test she was a qualified graduate. She disclosed her having not completed graduation in her application. There was, therefore, no suppression of fact on her part. Hence the examples cited and further allegations in para 6(h) and (i) are not correct. Hence the question of discrimination does not arise and there is no substance on the allegations made by the petitioner."

First of all the petitioner has not chosen to implied those persons against whom he has been given details of hostile treatment. Be that so. Nevertheless in so far as this has been satisfactorily explained that should be held to be enough. More than above these even at the risk of repetition. I should say that the impugned order is one of termination of probation simpliciter which means the employer is not satisfied with the conduct of the employee. That would be enough to uphold the impugned order.

9. For all these reasons the writ petition has to fail and it will stand dismissed. However, there will be no order as to costs.