
(1976) 08 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 783 of 1974

K.S. Bansal

APPELLANT

Vs

Indian Airlines and Others

RESPONDENT

Date of Decision : 10-08-1976

Acts Referred:

Citation : AIR 1977 Delhi 114 : (1976) ILR Delhi 724 : (1977) LabIC 739 : (1976) RLR 246

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : G.D. Gupta, G.B. Rai, O.C. Mathur and J.N. Aggarwal, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) This case raises a point of widespread application. The question is about the powers of the statutory corporations to terminate the services of their employees.

(2) The petitioner joined the Indian Airlines Corporation on 20th October, 1955 as an office assistant. Since then he had been working there. In October, 1973 there was a general strike in the Corporation. On 24th November, 1973 the Corporation declared a lock-out. On 18th December, 1973 lock-out was lifted. But in December, 1973 the Corporation demanded an undertaking from its employees and those who were prepared to give an undertaking in the prescribed form could join service.

(3) On 24th December, 1973 the petitioner gave an undertaking in the form demanded. But he however added the following in the undertaking:

"I save all my previous claims, on reciprocal basis and in accordance with the law of the land".

Apparently this undertaking was not accepted and he was not taken back in service.

(4) In March, 1974 the petitioner brought a writ petition (No. 357 of 1974) with regard to his claim for promotion.

(5) On 20th June, 1974 he filed the present writ petition. Here he claimed that the undertaking given by him on 24th December, 1973 should have been accepted and he should have been taken back in service. He also claimed that the lock-out declared by the Corporation was illegal.

(6) This writ petition came up for admission during vacation before S. N. Shanker, J. On 25th June, 1974 he issued notice for 13th August, 1974 to the Corporation to show cause why the petition be not admitted. On a miscellaneous application moved by the petitioner lie passed the following order :

"IN the meantime it will be open to the petitioner to join service subject to his rights in this writ petition".

(7) On 26th June, 1974 the petitioner went to the Corporation. He told them that he wanted to join. The Corporation asked him to give a fresh undertaking. He gave it. On 27th June, 1974 he was allowed to join duty.

(8) On 24th July, 1974 the Corporation passed the following order:

"IA Chairman & Managing Director Indian Airlines, Airlines House, New Delhi. 24th July, 1974. No. CH-4935 Shri K. S. Bansal, Office Assistant, Indian Airlines Hqrs. New Delhi. This is to inform you that with effect from 25th July, 1974 your services will no longer be required by the Corporation and stand terminated by virtue of Rule 13 of the Service Rules applicable to you. You will be paid 30 days basic pay in lieu of the notice contemplated under the said Rule. The Accounts Department has been advised to settle your accounts immediately. sd/- P. C. Lal CHAIRMAN".

(9) On 7th August, 1974 the petitioner amended the writ petition in view of the order of termination of his services. Now the claim in the present writ petition is that the order dated 24th July, 1974 terminating petitioner's services be declared a nullity.

(10) The principal question in this writ petition is whether the order dated 24th July, 1974 is null and void. This order has been passed in terms of Rule 13. Rule 13 reads as under : "The services of an employee are terminable at 30 days notice on either side or basic pay in lieu". The Corporation has framed rules in exercise of the powers conferred on it by section 45 of the Air Corporations Act, 1953. Rule 13 is one of the rules framed by them which were published in the Gazette of India on 12th of March, 1960.

(11) In exercise of the powers conferred by section 45 of the Act, the Corporation has also framed regulations. These were published in the Gazette of India on 25th November, 1961. Regulation No. 17 is in these terms :

"17. Any one or more of the following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee of the

Corporation:- (a) Censure to be conveyed in writing with reasons for the same. (b) Fine, as provided in the Payment of Wages Act and applicable to employees governed by the Factories Act. (c) Forfeiture of emoluments payable for a period not exceeding three days and applicable to employees up to and including Grade 12 only. (d) Recovery from the pay of the whole or part of any pecuniary loss caused to the Corporation by the default or breach of orders or negligence of the employee himself or of another employee for whom he has stood surety. (e) Withholding of increments or promotion. (f) Reduction to a lower post or grade or to a lower stage in the time-scale including stoppage of efficiency bar, if any. (g) Removal from the service of the Corporation. (h) Dismissal without retirement benefits in part or full."

Explanations: The termination of service of an employee :- (a) appointed on probation, during or on the expiration of the period of such probation ; (b) appointed on temporary basis, during or on the expiration of the temporary period ; (c) appointed under contract, in accordance with or on the expiration of such period of contract ; shall not be deemed to be removal or dismissal within the meaning of this Rule".

(12) One admitted fact of fundamental importance in the case is this. On 15th March, 1974 the petitioner wrote a letter to the President of India in which he said that the lock-out declared by the Chairman, Air Chief Marshall P. C. Lal was illegal and that the Air Chief was mismanaging the affairs of the Corporation. On 3rd May, 1974 he wrote another letter to the "President of India, Prime Minister, and her colleagues in the Cabinet Ministers Brothers & Sisters Member of Parliament of India". Here again he said that the lock-out was illegal. P. C. Lal, it was said, had stopped catering and transport to the passengers and had transferred the bus fleet of the Indian Airlines to his own enterprise by the name of Ex-Servicemen Air Links Transport Service Pvt. Ltd. where according to what the petitioner had heard P. C. Lal was the major shareholder of the firm. The petitioner said several other unsavoury things about P. C. Lal in these two letters which it is unnecessary to repeat it here.

(13) In their return the Corporation sought to justify the order of termination on the ground that they "found that the wild personal allegations and aspersions made by the petitioner against the Chairman of the Indian Airlines which were defamatory in character, were wholly false, frivolous and mischievous and undermined and defamed the institution in which he was employed".

(14) Counsel for the petitioner submits that it is one of those cases where the petitioner's services have been terminated on account of his writing letters. This, he says, constitutes a misconduct within the meaning of Reg. 16. A case of misconduct, it is further argued, must be dealt with under the "Rules of Conduct and Disciplinary Procedure" which form part of the Regulations. In other words the argument is that to a case such as the petitioner's Reg. 17 is attracted and the petitioner was entitled to a show cause notice, a charge sheet and an enquiry. This having not been done the termination of the petitioner's services

simplicities under Rule 13 is void, the counsel said.

(15) Counsel for the Corporation on the other hand submits that Rule 13 and Regulation 17 give two separate and independent powers to the Corporation. It is open to the Corporation to exercise one or the other as it thinks fit according to the nature of the case. Whether the petitioner's services can simply be terminated under Rule 13 and the Corporation need not resort to Reg. 17 is the question which falls to be decided in this case.

(16) The petitioner was employed in 1955. It is not disputed that he is a confirmed employee of the Corporation. Under the rules, a permanent employee means an employee who has completed a prescribed probationary period and who has been confirmed thereafter as regular member of the staff against the "permanent" sanctioned establishment rule 6(12). A temporary employee means an employee whose services have been engaged for a specified period, which may be extended from time to time, for work of a temporary nature against the "temporary" sanctioned establishment rule 6(13).

(17) It is nobody's case that the petitioner was a temporary employee. His counsel contends that he was a permanent employee and , Therefore he was entitled to hold the post until he attained the age of 55 years under Rule 12. In substance the petitioner's case is that he had a right to the post and his services could be dispensed with only after following the procedure of Reg. 17 and the succeeding regulations. In his submission Rule 13 is not at all applicable to a case such as the present one.

(18) Counsel for the petitioner says that to the case of permanent employees Rule 13 has no application. Reg. 17 is the only regulation applicable to them, he said. This argument he tries to substantiate by relying on the Explanation to Reg. 17 which says that if the services of an employee falling under clauses (a), (b) or (c) are terminated then it will not be deemed to be a case of removal or dismissal within the meaning of that regulation. The Explanation, counsel argues, controls Rule 13.

(19) I cannot accept this submission. The reason is plain. A probationer, a temporary employee and one appointed under a contract can always be asked to go without assigning any reason for such are the terms of their engagement. It is not disputed that the petitioner's case does not fall within the Explanation. He is neither a probationer nor one appointed on a temporary basis nor under a contract. He was governed by the rules and regulations of the Corporation.

(20) Rule 13 is an independent power. There are no conditions pre-requisite for its applicability. To say that it does not apply to the case of a permanent employee and applies only to the cases of a probationer, a temporary employee or an employee appointed under a contract is to misread it. Rule 13 is expressed in forthright terms , which are absolute and all-embracing. The master need not give reason for terminating the contract. If he has reasons locked up in his own breast he need not state them. The only thing is that the action should not be

mala fide.

(21) But the question which I posed at the beginning remains unanswered. To what cases then will the Reg. 17 apply if Rule 13 is applicable to all cases ? The scope and ambit of similar regulations in the case of Air India Corporation came up for consideration before the Supreme Court in *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*, . The Air India Corporation like the Indian Airlines Corporation was created by an Act of the Central legislature. Air India Corporation has Reg. 48 which is almost similar to Rule 13 of the Indian Airlines Corporation. Their Reg. 43 is similar to Reg. 17 of the Indian Airlines Corporation. These Regulations were similarly framed by the Air India Corporation u/s 45 of the Air Corporation Act, 1953.

(22) Of Regulation 48 of the Air India Employee's Service Regulations, the Supreme Court has said :

"REGULATION 48 which has been set out earlier as its plain language shows does not lay down or contemplate any defined essential pre-requisite for invoking its operation. Action under this regulation can be validly taken by the employer at his sweet will without assigning any reason. He is not bound to disclose why he does not want to continue in service the employee concerned".

(23) In the order of discharge in the present case nothing has been said about the letters and misconduct. On its face the language does not show that the petitioner's services were terminated because of any misconduct. Prima fade, Therefore, the impugned order is not an order discharging or punishing the petitioner for any misconduct.

(24) But then the counsel for the petitioner argued that the face or the form of the order is not conclusive and that the court is entitled to and indeed should go behind the form and by looking at the real substance of the matter try to find the real cause and then come to its conclusion whether or not the order is a mere camouflage for an order of dismissal for misconduct. For this submission he relies on *S.R. Tewari Vs. District Board Agra and Another*, .

(25) Undoubtedly the form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is, Therefore, open to the court to go behind the form of the order and look at the substance. If the court comes to the conclusion that though in form the order amounts to termination simplicities in reality it cloaks dismissal for misconduct, it will be open to it to set aside HCD/76-4 the order as a colourable exercise of the power by the management. A long line of decision has held this to be the law. (See : *The Chartered Bank, Bombay v. The Chartered Bank Employees Union*, 1960 11 Lu 222 , & *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, , *Management of Murgugan Mills Ltd. Vs. Industrial Tribunal Madras and Another*, *The Workmen of Sudder Office, Cinnamara Vs. Management of Sudder Office and Another*, .

(26) Under Rule 13 the employer is entitled to terminate the services of an employee provided his action is bona fide. If the court finds that the power has been exercised mala fide then it can strike down the order of termination simpliciter. Therefore the form of the order is not decisive. The attending circumstances have to be seen in each case. If the action of the management is not mala fide it is not open to question. The employer "at his sweet will" as the Supreme Court has held can take bona fide action under Rule 13 without assigning any reason.

(27) In *Rebellow's* case (*Supra*) an order of termination simplicities under Reg. 48 of the Air India Employee's Service Regulations was passed against Rebellow. The management had strong suspicion against him that his private conduct and behavior with air hostesses was not above board. Instead of holding an enquiry into his conduct the management terminated his services under Reg. 48. Rebellow went to the labour court. The labour court decided in his favor. It held that the dismissal was not a discharge simplicities but in breach of the provisions of section 33 of the Industrial Disputes Act. The Air India Corporation took the matter in appeal to the Supreme Court under Article 136 of the Constitution. The Supreme Court set aside the order of the labour court and held that the labour court was not right in holding that Rebellow was guilty of misconduct and his services were terminated for this reason. Speaking for the court *Dua, J.* said :

"THE complainant, it may be remembered had to deal with airhostesses in the performance of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behavior while dealing with them it cannot be said that loss of confidence was not bona fide. Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if bona fide, is our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services; but such termination can on no rational grounds be considered to be for misconduct and must, Therefore, be held to be permissible and immune from challenge." In the course of the judgment *Dua, J.* said : "The order does not suggest any misconduct on the part of the complainant and indeed it is not possible to hold this order to be based on any conceivable misconduct".

(28) In *L. Michael and Another Vs. Johnson Pumps Ltd.*, the employer was suspecting that the workman since 1968 was divulging secrets of his business. But the employer did not disclose the grounds on which the suspicion arose. After 1968 the workman was given two increments in appreciation of his hard work. The employer's case that he had lost confidence in the workman was disbelieved. The Supreme Court held that the action of termination simplicities was not bona fide.

(29) The principles which the judicial decisions lay down can be summed up as follows :

1. The employer cannot hire and fire the employee as he pleases. Otherwise this will completely negative security of service secured to industrial employees through industrial adjudication. There is no unfettered right of the employer under the contract of employment.

2. If the employer terminates the employment simpliciter the action must be bona fide....If the termination of service is a colourable exercise of the power or a result of victimisation or unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination (The Management of Murugan Mills Ltd. (Supra)).

3. The form of the order is not conclusive. The tribunal can go behind the order to find the reasons which led to the order and then consider whether the termination was a colourable exercise of the power or was a result of unfair labour practice or victimisation.

4. "If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the court the grounds of his impugned action so that the same may be tested judicially" [Michael's case (Supra) p. 405].

5. "The loss of confidence is no new armour for the management ; otherwise security of tenure ensured by the industrial jurisprudence and authenticated by a catena of cases of the Supreme Court will be subverted by this neofomula" [Michael's case (Supra) p. 404]. It is a wrong reading of the Supreme Court decision in Rebellow's case (Supra) that loss of confidence was held to be an independent ground for termination simpliciter. It is "not that the loss of confidence was exalted as a ground but the special circumstances of the case exonerated had faith in discharge simpliciter". [Michael's case (Supra) p. 404].

These then are the principles. Apply them to this case.

(30) On the facts of the present case it is clear that the petitioner's services were terminated because of the two letters he had written in March and May, 1974 to the President of India. The petitioner does not deny the authorship of these two letters. Nor has he raised any ground of defense in his counter-affidavit why those letters were written by him. If the letters are admitted to have been written by him as he does an enquiry and a charge sheet etc. will be an idle formality. Rule 13 in such a case can properly be invoked. The employer can terminate the services simpliciter. In these circumstances it is not possible to hold that the action of the Corporation is mala fide or that it is a colourable exercise of power.

(31) The petitioner cannot put his case higher than Rebellow. Rebellow was a workman. He invoked the jurisdiction of the labour court. The decision of the labour court was challenged by the Corporation in the Supreme Court. The same is here. The petitioner is a workman : See Section (2s) of the Industrial Disputes

Act. The Indian Airlines Corporation is governed by the Industrial Disputes Act. The services of the workman have been terminated. He was entitled to raise an industrial dispute : See Section 2A of the Industrial Disputes" Act. He was entitled to have an adjudication from the labour court. But he did not go to the labour court. Instead he preferred to come to this Court under Article 226 of the Constitution. If the labour court had tried this case all that it had to decide was : Is the action mala fide or does it amount to victimisation or unfair labour practice or a colourable exercise of powers vested in the management ? These are precisely the questions I have to answer. No other enquiry can be made into the action of the management. The frontiers of judicial review extend only that far and no further. At least judicial decisions do not go beyond this.

(32) Counsel for the petitioner has argued that the termination is for misconduct and that I must hold that only Reg. 17 was applicable. The action having not been taken under Reg. 17 it must be declared a nullity. This is the burden of his argument. I cannot accept this submission.

(33) The present case is not a case of straight forward relationship of master and servant. The Rules and Regulations of the Corporation govern the service conditions of the employees. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, the Supreme Court has held that the Rules and Regulations framed by the statutory corporations have the force of law and the employees have a statutory status and are entitled to a declaration of being in employment when their dismissal or removal is in contravention of the statutory provisions. The Supreme Court overruled its previous decision in Indian Airlines Corporation Vs. Sukhdeo Rai, .

(34) It is well established that to an employee of a statutory corporation Article 311 of the Constitution does not apply. Counsel referred me to cases under Article 311. I think they have no relevance.

(35) The Indian Airlines Corporation is a statutory Corporation. It is a creature of the Air Corporations Act, 1953. It has two separate powers under Rule 13 and Reg. 17. If it wishes to punish an employee for misconduct it must take action under Reg. 17. If it does not want to punish the employee for misconduct it can pass an order of discharge simplicities under Rule 13. It can also do a third thing. It can start proceedings against the employee under Reg. 17. It can level a charge. It can hold an enquiry. And even if at the conclusion of the enquiry the employer finds him guilty of misconduct it may not impose the penalty enumerated in Reg. 17. It can pass an order [of discharge simplicities under Rule 13. This is exactly what happened in Jabalpur Electric Supply Co. Vs. Sambhu Prasad Srivastava and Others, . In that case the employer on enquiry was satisfied that an act of misconduct for which the employee was liable to dismissal had been proved but he took a merciful view of his conduct and passed an order of discharge as distinct from the order of dismissal. The court said "this

is a case in which the employer has acted, fairly and even generously in terminating the services of the employee under Cl. 20". This shows that the two powers can commingle.

(36) The Corporation had two alternatives in this case. If the Corporation preferred to act under Rule 13 it would not be reasonable to say that the Corporation should have charged the petitioner with misconduct and held an enquiry. The fact that it did not do so but exercised its power under Rule 13. cannot render the order mala fide or one passed in colourable exercise of its power. (See: The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another, .

(37) In my opinion the order in this case does not show that the petitioner's services were terminated because of any misconduct. Nor can I hold that the termination of service is mala fide or a colourable exercise of power vested in the management. The opinion formed by the management about the suitability of the petitioner in view of his admitted authorship of the letters is, I think, not open to judicial review. On the material I cannot hold the action of the management anything but bona fide.

(38) REBELLOW'S case is an example where the court found the action of the management bona fide. Michael's case is an illustration where the court held the order of termination simplicities to be mala fide and colourable exercise of the power. Which side of the dividing line does this case fall ? I think this case is analogous to Rebellow's case. I find no difference between the two in principle. I would uphold the action of the Corporation.

(39) Counsel raised another point. He said that it was incumbent for the Corporation to tender the pay to the petitioner at the time of passing the order on 24th July, 1974. In this connection he referred me to Senior Superintendent v. K. V. Gopinath 1972 S.L.R. 390. I do not agree. The wording of rule 5 of the Central Service (Temporary Service) Rules, 1965 in that case was entirely different from Rule 13 in the present case. On the wording of the Rule the Supreme Court held that termination of service had to be simultaneous with the payment to the employee of whatever was due to him. In Rule 13 there are no such words. I am not prepared to hold that the payment of salary to the petitioner was to be simultaneous with the issue of the order of termination on 24th July, 1974.

(40) For these reasons I would dismiss the petition but make no order as to costs.