

(1994) 01 AHC CK 0099
In the Allahabad High Court
Case No : Spl. Appeal No. 283 of 1992

Life Insurance Corporation and Another	APPELLANT
Vs	
Rajeev Kumar Srivastava	RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Insurance Corporation Act, 1965 — Section 3

Citation : (1994) 68 FLR 610 : (1994) 2 LLJ 1136 : (1994) 2 UPLBEC 1041

Hon'ble Judges : V.K. Khanna, Acting C.J.; B.K. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This instant special appeal is directed against the judgment dated July 24, 1992 passed by a learned single Judge in Writ Petition 7801 of 1990 (S/S).
2. The relevant facts necessary for the disposal of the special appeal are stated.

Rajeev Kumar Srivastava, hereinafter called the respondent, preferred a writ petition under Article 226 of the Constitution of India challenging alleged oral termination of his service by the appellants on the ground that they have not done so in accordance with the provisions of the Industrial Disputes Act. The respondent claimed that he is a workman as stipulated under the Industrial Disputes Act, that since June 12, 1989 the respondent had been working in the Life Insurance Corporation as a Clerk and he had been getting salary as such as a daily rated employee upto the month of June, 1990, that the respondent is getting salary from appellant No. 2, after getting applications from him. Some of the applications and vouchers had been attached as Annexures 1 to 6 to the writ petition. The respondent claimed that he worked satisfactorily and as a workman who had worked for longer period than 240 days in a year he could not have been retrenched because of the provisions of Sections 2(oo), 25(F), 25(G) and 25(H) of Industrial Disputes Act. The respondent also claimed that his employment on contract basis is wholly one-sided and like other regular

employees of Class-III of the Corporation, he is also entitled to equal pay for equal work. The alleged retrenchment was, therefore, challenged on the ground that the provisions of Section 25(F) of the Industrial Disputes Act having not been followed the same is bad and illegal, that when sanctioned post is available the respondent could not have been retrenched and that oral termination is arbitrary, illegal and without jurisdiction. The respondent, therefore, claimed the relief that a writ in the nature of mandamus be issued commanding the opposite parties not to dispense with the respondent's service on the post of clerk and to treat him as a regular employee on the said post and to pay equal salary for equal work as if the respondent was a regular employee. A writ of certiorari to quash the oral order of termination of the respondent was also prayed for.

The Life Insurance Corporation contested the petitioner's case. It filed a counter-affidavit. The stand taken in the counter-affidavit was that the respondent was engaged on contract basis Rs. 40/- per day for doing the given work for fixed period. Reference was made to Annexures 1,3 and 5 to the writ petition wherein the respondent himself had confirmed that he worked on contract basis. It was said that Industrial Act will not be applicable in this case as the respondent was engaged on purely contract basis. It was further asserted that the respondent was given office work on contract basis on different occasions wherever there was a need for taking such work and he was paid salary as a daily rated contract employee. It was admitted that after July 1, 1990 the petitioner was not given any work since there was no work to be performed in the appellant's office on contract basis. It was also alleged in the counter-affidavit that on similar terms and conditions Sushil Mishra, Purshottam Singh and Chhitij Shukla mentioned in paragraph 11 of the writ petition worked for fixed number of days but none of these persons are continuing to work in the Corporation. The status of the respondent as a workman was strongly refuted. It was asserted that work on contract basis as was done by the respondent did not attract the provisions of Sections 2(o), 25(F), 25(G) and 25(H) of the Industrial Disputes Act. It was said that when the respondent's work was on the contract basis, he could not be said to have been retrenched. The stand of the Corporation had been that it has statutory powers to make temporary and regular appointment under the Life Insurance Corporation (Staff) Regulations 1960. The procedure for making regular appointment is entirely different to that of temporary appointment and the respondent is free to apply either to temporary or for regular appointment in the clerical cadre whenever there is vacancy, provided he fulfills the terms and conditions for the said appointment. The Annexure-1 with supporting vouchers and the respondent's applications stating therein that he has done clerical work on contractual basis were also filed.

The petitioner-respondent filed rejoinder-affidavit. In the rejoinder affidavit mainly the allegations of the writ petition were reiterated. It was also submitted that the Corporation has no power under its (Staff) Regulations to keep a person on contract basis. The writ petition was heard by learned Single Judge of this Court. He has been pleased to allow the writ petition by judgment dated July 24,

1992- It is against this judgment, that this special appeal has been preferred.

3. We have heard the learned counsel for the parties.

4. The submissions of the learned counsel for the appellants is that the learned single Judge has wrongly held that the Life Insurance Corporation of India is governed by the provisions of U.P. Industrial Disputes Act and the petitioner comes within the definition of "Workman" as given under the definition Clause of U.P. Industrial Disputes Act. He has further submitted that cessation of the service of the petitioner cannot be regulated by the provisions of Section 6-N of U.P. Industrial Disputes Act; It was also urged that no permission of the State Government is necessary and that the petitioner's non-engagement on contractual basis after the period of engagement came to an end does not amount to retrenchment within the meaning of U.P. Industrial Disputes Act. The learned counsel submitted that the Life Insurance Corporation is a Corporation established u/s 3 of the Life Insurance Corporation Act, 1956 and as per definition given in Section 2(a) of Industrial Disputes Act, 1947 the appropriate Government is the Central Government. According to the learned counsel, the petitioner's case is not covered by Section 2(oo) of the said Act. The learned counsel has drawn our attention to Annexures attached with the writ petition as well as Annexures attached with the counter-affidavit to point out that it is the own admission of the respondent that he worked on contract basis for fixed period on daily wages. For each days work, the respondent as per contract was paid Rs. 40/-and whenever the work came to an end the petitioner ceased to function. Thus the learned counsel pointed out that the view taken by the learned single judge is untenable under Law. The appellant's counsel has drawn our attention to a Division Bench decision of this Court passed in Civil Misc. Writ Petition 3583 of 1988 along with several other writ petitions in Re: Ashok Kumar Singh and Ors. v. Zonal Manager, Life Insurance Corporation, Kanpur, With reference to the said judgment it has been urged that because of the undertaking given before the National Industrial Tribunal that the Corporation should not make regular appointments till the hearing and disposal of the reference, from the open market, the Corporation had been taking work on contract basis. The learned counsel has also placed reliance on a judgment reported in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, ." The learned counsel submits that in the said case it has been firmly laid down by Hon"ble the Supreme Court that where the appointment is purely on ad hoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue on the post. This is so even if the person is continued from time to time on ad hoc basis for more than a year he cannot claim regularisation in service on that basis that he was appointed on ad hoc basis for more than a year. He has thus urged that the impugned judgment of learned single Judge is liable to be set aside and the appeal be allowed.

5. The learned counsel for the respondent has submitted that the judgment does

substantial justice between the parties. He has submitted that even if the provisions of U.P. Industrial Disputes Act do not apply, the provisions of the Industrial Disputes Act do apply and the conditions laid down in the Central Act also impose the same conditions which are contained in U.P. Industrial Disputes Act. As such the cessation of petitioner's work does amount to retrenchment. Hence the action of the appellants to discontinue the respondent's service without following the procedure envisaged in the Central Act has rightly been struck down. In support of his submission the learned counsel has placed reliance on a judgment reported in Hindustan Steel Ltd. Appellant v. The Presiding Officer, Labour Court, Orissa and Ors., respondents." (1977 1 LLJ 1). The learned counsel says that in this case the Honb"le Supreme Court has taken into account the provision of Sections 2(oo) and 25(F) and has held that automatic termination of service on efflux of contractual period amounts to retrenchment and non-compliance of provisions Sec 25(F) is fatal. The learned counsel has urged that the facts apply with full force to the facts of the present case and the respondent who is workman cannot be deprived benefit of his employment on the ground that he was merely working on contract basis for fixed period.

6. We have considered the above submission of the learned counsel for the parties.

7. A perusal of the judgment of the learned single Judge goes to show that while adjudicating the case of the parties he was of the view that the case is governed by the provisions of U.P. Industrial Disputes Act and the petitioner is governed by the definition of "workman" as given in definition clause of U.P. Industrial Disputes Act. This position may be clarified. Life Insurance Corporation of India is a Corporation established u/s 3 of Life Insurance Corporation Act, 1956 (31 of 1956). The Industrial Disputes Act, 1947 in Section 2(a) provides as under:

"2. Definition; In this Act, unless there is anything repugnant in the subject or context,

(a) "appropriate Government" means-

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government (Not relevant)..... or the Life Insurance Corporation of India established u/s 3 of Life Insurance Corporation Act, 1956 (31 of 1956)..... (Not relevant) Central Government and

(ii) in relation to any Ors. Industrial Dispute, the State Government".

The above definition clearly makes out that in an industrial dispute concerning Life Insurance Corporation the provisions of the Industrial Disputes Act will apply and not the provisions of U.P. Industrial Disputes Act. Thus the benefit of U.P. Industrial Disputes Act as given by the learned Single Judge to the respondent proceeds on wrong assumption and is rendered unsustainable.

8. The above conclusion leads us to consider as to whether corresponding provisions of the Industrial Disputes Act, can be applied to the facts of the

present case of the respondent. The respondent's engagement appears to have been done on contract basis by the Life Insurance Corporation of India on daily remuneration from time to time. The Annexures which have been attached by the respondent himself with the writ petition and also those which have been filed as Annexures along with the counter-affidavit go to establish that the respondent performed the clerical work on contract basis. The Annexures 1,3 as well as Annexure-5 attached with the writ petition are respondent's application of wages of the days he rendered service. In these applications he had claimed payment for clerical work done on contract basis. The applications begin with a reference in which the above words have been used. The certificate given by the Office Superintendent on these applications also stated that the respondent has worked on contractual basis. The vouchers identically say the same. Thus clearly it is a case where the petitioner was engaged by the Life Insurance Corporation to do clerical work on contract basis from time to time. It is also admitted by the Life Insurance Corporation in its counter affidavit that the petitioner ceased to work on contract basis from July 1, 1990 as there was no work in the office to be done on contract basis. Now it has to be seen whether automatic cessation of respondents employment on contractual basis by efflux of contractual period amounts to retrenchment as contained in the Industrial Disputes Act and as has been held in the case of M/s. Hindustan Steel Ltd. or not.

9. This leads us to consider the definition of "retrenchment" as given in Section 2(oo) under the Industrial Disputes Act. The said definition is quoted below:

"2 (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill health;"

Clause (bb) in the above definition was added by Act No. 49 of 1984. It came in force on August 18, 1984. The judgment of Hindustan Steel Ltd. was rendered before addition of the above clause (bb) in the above definition of retrenchment. Thus what was held in the decision of Hindustan Steel Ltd. cannot now be taken as the determining factor to the facts of the present case. Here the petitioner's case as per his own admission is a termination of his service as a result of non-

renewal of the contract of the respondent by the employer. It has been stated in the counter- affidavit that there was no work available on which respondent could be kept. The newly added clause (bb) to the definition of retrenchment saves the stand of Life Insurance Corporation that it is not a case of retrenchment of the respondent. We hold accordingly.

10. The next submission of the learned counsel of the appellants is that the judgment of Hon'ble Supreme Court in the case of Director, Institute of Management Development U.P. (supra) determines the case of the parties may be seen. In this case Honb'le Supreme Court has held that where the appointment is purely on ad hoc basis and is contractual and by efflux of time the appointment comes to an end, the person holding such post can have no right to continue on the said post. We have considered the submissions. The ratio of the judgment of Honb'le the Supreme Court leaves no room for doubt that the petitioner's contractual employment on daily payment basis having come to end by efflux of time, does not amount to retrenchment. Thus the provision of Section 25(F) of Industrial Disputes Act is also not attracted.

11. For the reasons stated above we allow the special appeal. The impugned judgment of learned Single Judge cannot be sustained and we accordingly set it aside. The result is that the writ petition fails.

12. We, however, take a sympathetic view as has been done in the case of Director, Institute of Management Development of U.P, v Pushpa Srivastava (supra) and say that it will be open to the appellants to engage the petitioner in service if they desire, and this judgment will not come into the way of their taking into consideration the petitioner's engagement on Class-III post.

No costs.