

(2006) 05 DEL CK 0068

In the Delhi High Court

Case No : Civil Writ Petition No. 7750 of 2003

Lt. Col. L. Oliver (Retd.)

APPELLANT

Vs

The Delhi Stock Exchange Association Ltd. and Another

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2006) 110 FLR 1028

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Shailender S. Dahiya, for the Appellant; R.K. Saini, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In these writ proceedings, the challenge is to the termination order issued on 4.8.1998 dispensing with the services of the petitioner, who was working as Assistant General Manager in the respondent Delhi Stock Exchange (DSE). The termination was effected pursuant to a condition in the appointment letter issued by DSE.

2. The petitioner was appointed on 22-9-1992 by DSE as Senior Manager(Systems). The appointment letter contained a condition, enabling the DSE to terminate his services without cause, by mere issuance of a notice. The said condition read as follows:

Notice Your services shall be liable to be terminated on three months notice or salary in lieu thereof on either side except on disciplinary grounds, in which case, no such notice or payment in lieu thereof shall be necessary.

3. The termination order dated 4-8-1998 impugned in these proceedings reads as follows:

Dear Sir, In accordance with the decision of the Board of Directors at their

meeting held today, i.e on 04-08-1998 and in accordance with para 4 of your letter of appointment dated 22-09-1992, your services are hereby terminated with immediate effect.

Cheque No. 747618 dated 4-09-1998 for Rs. 60,443/- (sixty thousand four hundred and thirty three only) drawn on Canara Bank, Delhi Stock Exchange branch, New Delhi-2, being the salary for the month of August 1998 and three months salary in lieu of notice is enclosed.

Yours faithfully,

for THE DELHI STOCK EXCHANGE ASSOCIATION LTD.

4. The petitioner impugns the termination, as arbitrary. It is asserted that the DSE is "State" within the meaning of Article 12 of the Constitution of India. It is also claimed that the DSE, being a state instrumentality could not have dispensed with the petitioner's services, without cause, and that recourse to clause 4 is arbitrary and unconstitutional. The petitioner claims reinstatement, and arrears of salary; he also avers that he was out of employment, all this while.

5. Learned Counsel appearing on behalf of the petitioner submitted that the issues raised in these proceedings are squarely covered by a Division Bench ruling of this Court in Delhi Stock Exchange and Another Vs. K.C. Sharma and Others, . The court overruled the objection of DSE that it was not "State" in the following terms:

61. Having regard to the various decisions, we are of the opinion that the appellant satisfies the following conditions laid down by the apex court in Ramana Dayaram Shetty v. The International Airport Authority of India (supra):

- (i) there is control over the management of the Corporation by the state;
- (ii) the corporation enjoys state conferred or state protected monopoly status; and
- (iii) the functions carried on by the corporation closely relate to the governmental functions inasmuch as
 - (a) that it is under deep rooted, all pervasive and extensive control of the Government through the Securities Exchange Board of India under the SEBI Act of 1992 and SCRA of 1956;
 - (b) it has a complete monopoly status within the specified territorial limits.
 - (c) It carries out important public/state functions that of completely controlling and regulating the transactions in securities in the country.

The court then went on to hold that the termination, by recourse to the stipulation in the contract was arbitrary, in the following terms:

66. Having regard to the fact that such a provision has been held ultra vires, we

are of the opinion that the petitioner's services could not have been dispensed with relying on or on the basis of the provisions contained in the offer of appointment.

6. Counsel also submitted that in K.C. Sharma's case, the court had directed payment of compensation. These findings, it was contended, were affirmed by the Supreme Court in the judgment reported as K.C. Sharma Vs. Delhi Stock Exchange and Others, .

7. In its counter affidavit, the DSE sought to contend that these writ proceedings were not maintainable, and that it was not "State". It was also contended that the impugned order of termination was issued in bona fide exercise of power and cannot be called arbitrary.

8. Counsel for the respondent DSE, Mr. R.K. Saini, submitted that even though the judgment of this Court was affirmed by the Supreme Court, the petitioner cannot claim to be aggrieved, because he attained the age of superannuation. It was also submitted that the petitioner has approached the court in 2003, complaining to be aggrieved by the impugned order, which was issued in 1998. It was also contended that the action was taken when the DSE had not been declared as "State" and the action was bona fide.

9. The legal issue as to whether the DSE is "State" and whether the power invoked, to terminate an official or employee, without cause, by merely issuing a notice, stands concluded, by the decision of the Supreme Court, in K.C. Sharma's case. The court held inter alia, as follows:

Answering question No. 1, the Division Bench held that the Delhi Stock Exchange satisfied the conditions laid down by this Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , and Therefore, the First Respondent was "State" within the meaning of Article 12 and amenable to the writ jurisdiction of the High Court. On the second question, the Division Bench came to the conclusion that the appellant was a permanent employee. Having regard to the fact that the provision corresponding to clause (4) of his letter of appointment has been held ultra virus in a series of judgments of this Court, the Division Bench was of the opinion that the appellant's service could not have been dispensed with by relying on or on the basis of the provisions contained in paragraph 4 of the letter of appointment.

...

We are in agreement with the conclusions of the Division Bench that the respondent No. 1 is amenable to the writ jurisdiction, that the termination of services of the appellant in purported exercise of powers vested under paragraph (4) of letter of appointment dated 12.11.1993 is illegal and that, in the facts and circumstances of the case, the removal of the appellant from the service was both malafide and unjustified.

10. I am of the opinion that the declaration of law by the Supreme Court, in the

above case, concludes the issue, both as to the applicability of standards of Article 14 to the DSE, and the legality of the clause, viz Para 4 in the petitioner's appointment letter; it is arbitrary and violative of Article 14 of the Constitution of India.

11. The question which arises is what relief would the petitioner be entitled to in the facts of this case. The petitioner has produced certain calculations, to show that at the time of his termination, he was drawing a gross salary of Rs. 43,238/-; he has also relied upon a copy of the Director's report for the year ended 31-3-1998, to say that the statement reflected his annual emoluments to be Rs. 3,15,000/-. Counsel Therefore contended that the formula applied in K.C. Sharma's case by the Division Bench, as modified by the Supreme Court ought to be followed, in this case, and the respondents should be directed to pay compensation on a similar basis.

12. The relevant portion of the Division Bench judgment, dealing with the issue of compensation, reads as follows:

91. Some sort of a guess work and to some extent even a rule of thumb may be imperative in calculating the damages. In the instant case, the appellant, by orders of this Court passed from time to time, has already paid a sum of Rs. 7,50,000/- to the writ petitioner/respondent. The services of the writ petitioner/respondent were terminated, he was given over a sum of Rs. 42,000/- in lieu of three months' wages. Admittedly, he was entitled to the annual gratuity also. According to the appellant, he was entitled to a sum of Rs. 30,000/- per month. It is, Therefore, not a case where the writ petitioner did not receive any sum from the appellant at all.

On the question of amount of compensation to be paid in lieu of reinstatement, the Hon'ble Supreme Court has held:

Para 10 ``In our considered opinion, compensation equivalent to 3.33 years salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the Appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:

1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:

i. He will be getting this amount without working.

ii. He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

iii. If he had been reinstated he would have earned the salary only up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond

the date of superannuation for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

iv. The corpus of lump sum compensation would remain intact, in any event.

92. In that view of the matter, we are of the opinion that payment of compensation for a sum of Rs. 12 lakhs shall meet the ends of justice. Out of the aforementioned amount of Rs. 12 lakhs, the amount which has already been paid to the respondent by the appellant, shall be adjusted. Such balance amount should be paid to the appellant within a period of three months from date.

13. The petitioner's case too, is similar to the facts in K.C.Sharma's case, as far as emoluments are concerned. He has alleged that he was out of employment for the last eight years. If he had been allowed to continue in service, he would have retired on 30-6-2004

14. The above factual matrix shows that the petitioner's case is quite similar to the facts in K.C.Sharma's case. At the time of termination of his services, he was paid an amount of Rs. 60,443/-. In K.C. Sharma's case, the employee was paid Rs. 42,000/- as three months' pay; he was terminated from services in 1996; in that case too, the initial appointment was made in 1992. In view of these, I am of the opinion that actuarial calculations made by this Court, as modified by the Supreme Court, would be appropriate as compensation payable by the DSE to the petitioner too. The respondents, Therefore, should pay a sum of Rs. 15,00,000/- (Rupees fifteen lakhs only) to the petitioner in this case.

15. In view of the foregoing discussion, the impugned order of termination is hereby quashed. In the peculiar circumstances of the case, having regard to the fact that reinstatement is not possible, a direction is issued to the respondent DSE to pay compensation quantified at Rs. 15,00,000/- (Rupees fifteen lakhs only) within eight weeks from today. The writ petition is accordingly allowed in the above terms, with no order as to costs.