
(1992) 07 CAL CK 0021

In the Calcutta High Court

Case No : Appeal from Original Order No. 257 of 1988

Md. Abdur Rahim

APPELLANT

Vs

The Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 22-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311
Contract Act, 1872 — Section 23

Citation : (1993) 1 CALLT 41

Hon'ble Judges : Siba Prasad Rajkhowa, J; Khwaja Mohammad Yusuf, J

Bench : Division Bench

Advocate : Sunit Dutt and Sk. Hasan Salahuddin, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Khwaja Mohammad Yusuf, J.—This appeal has been preferred against the judgment and order dated 3rd July, 1986 passed by a learned Single Judge discharging the Rule. The case of the writ petitioner, inter alia, is that he joined as a Tahsildar on 13th January, 1971 after executing an Agreement and in terms of the said Agreement the appellant's service is governed by the Government Servants' Conduct Rules and the West Bengal Services (Classification, Control and Appeal) Rules, 1971. The Subdivisional Officer, Alipur Sadar by an order dated 24th December, 1977 terminated the petitioner/appellant's service with effect from 1st January, 1978 in terms of Clause 11 of the said Agreement. His grievance is that his services were terminated without affording him any opportunity to show cause and without giving him any opportunity of hearing or conducting any departmental enquiry into his conduct. The charge against him is : (i) manipulation of false signatures which he admitted in writing ; (ii) he was involved in manipulating some forged mutation orders which is under investigation in Bhangar Police Station Case No. 21 of 1978 ; and (iii) he fabricated false signatures of another Tahsildar on some rent receipts. .

2. The allegations made against the appellant are refuted by him and he in his affidavit-in-reply annexed a certificate from the District Enforcement Officer, Bhargar Zone, 24-Parganas that he was not wanted in connection with Bhargar Police Station Case No. 21 of 1978. But the appellant admitted that in the absence of the Tahsildar Islam Ali Mollah he had collected rents on his behalf by signing his name in the dakhilas and deposited the amounts so collected in the bank in the name of Islam Ali Mollah. The appellant further submitted that he also granted two dakhilas in the name of Islam Ali Mollah for collecting a sum of Rs. 261.05 p., but he did not deposit the amount since it was collected in part. He tendered apology for the same.

3. The State respondents maintained that the appellant's representation were rejected after proper consideration and after giving him an opportunity of being heard. The State respondents also states that a departmental enquiry followed and he was found guilty. The respondents have relied in their affidavit-in-opposition that they have right under Clause 2 and Clause 11 of the Agreement to terminate the service of a Tahsildar and they have done so in accordance with law.

4. Mr. Dutt, learned Advocate appearing for the writ petitioner/appellant, has submitted that the very action of the Sub-Divisional Officer, Alipur Sadar, terminating the service of the appellant is contrary to the well-established law of the land. The question of going into what he did or did not will be considered not now. But the first point for consideration is whether the appellant has been rightly removed from service in accordance with law or whether the charges were proved against him or he was sacked contrary to law. In this connection, he cited the West Bengal Land Management Manual, 1977 with particular reference to Chapter II thereof from Rules 15 to 25 which relate to Tahsildar's functions, remunerations and conditions of service. Rule 25 in particular relates to suspension and the subsistence grant relating thereto. He also cited a number of decisions of the Supreme Court in support of his contentions which are convincingly in favour of the appellant and shall be discussed hereinafter. We are not going into the charges levelled against the appellant. But first we go whether in the face of those charges which were not proved beyond doubt through a departmental enquiry, whether it was proper on the part of the authority concerned to terminate the service of the appellant and also we are to examine whether Clause 11 of the Agreement stands a judicial test. When a Tahsildar according to Clause 4(e) of the Agreement is to be governed by the Government Servants' Conduct Rules and also by the West Bengal Services (Classification, Control and Appeal) Rules, 1971, then how Clauses 2 and 11 of the said Agreement can be applicable on the face of Clause 4(e). More so Clause 11 is quite arbitrary and against the principles of natural justice giving the Government unlimited power to dismiss the Tahsildars at whim. The said Clause 11 is quoted hereunder :-

"That the Government shall have the right and be entitled to discharge the

employee or terminate this Agreement without any previous notice if the employee commits any breach of any of the terms and conditions herein contained or he is found to be otherwise negligent or inefficient or his work is found to be otherwise unsatisfactory and the decision of the Government in that respect shall be final and binding."

5. This particular clause, as stated above, gives unlimited power to an officer to take any action against the Tahsildar in accordance with his sweetwill without any previous intimation to him of any breach he has committed. Such an arbitrary power of discharge from service of a government employee has been condemned by the Supreme Court in several decisions. The foremost decision on the point is that of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, where the Supreme Court in words categorically held as ultra vires Article 14 of the Constitution and violative of Directive Principles as contained in Articles 39(a) and Article 41 of the Constitution and also void u/s 23 of the Contract Act as being opposed to public policy, the much maligned Rule 9(i) of the Service, Discipline and Appeal Rules, 1979 of the Central Inland Water Transport Corporation Ltd. Rule 9(i) was almost similar to Clause 11 of the Agreement in the instant case of the appellant relating to Tahsildars. The principle underlined in Clause 11 has been condemned by the Supreme Court in the aforesaid decision as unfair and unreasonable contract with a clause entered into between the parties who are not equal in bargaining power. The Supreme Court says that the Court should strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. The Supreme Court says that the Court should strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. The Supreme Court held that it would also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules might be. The Supreme Court held that they are opposed to public policy and require to be adjudged void. In this particular decision which must be treated as a landmark decision of the Supreme Court, Their Lordships further observed that in deciding any case which may not be covered by any authority, Courts have before them the beacon light of the preamble to the Constitution. Lacking precedent, the Court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in the Constitution.

6. The above-mentioned decision of the Supreme Court was further strengthened

by a 5-Bench 4 to 1 verdict in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . In this majority judgment, P. B. Sawant, J. went a step further and said :-

"Both the society and the individual employees, therefore, have an anxious interest in service conditions being well defined and explicit to the extent possible. The arbitrary rules which are also sometimes described as Henry VIII Rules, can have no place in any service conditions".

7. Further, as referred to earlier, in paragraph 282 of the Delhi Transport Corporation's case, K. Ramaswamy, J. held specifically as under : -

"Accordingly I hold that the ratio in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, was correctly laid and requires no reconsideration".

8. In this connection, another decision of the Supreme Court goes in favour of the appellant which is reported in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, Here the Supreme Court again said that any State action in respect of a Government Post should not be treated purely contractual but public element is attached to it. In case of the Government's arbitrary, unreasonable or irrational State action i.e. termination of appointment, Article 14 of the Constitution is attracted. We do not think that any further decision is required so far as this matter is concerned.

9. In our considered opinion, Appendix IV containing the Agreement with a Tahsildar upon which the appellant was a signatory is directly hit by the Central Inland Water Transport Corporation's case. It was an Agreement between the two unequals ; the State with all its might and a poor man seeking job of a petty Tahsildar who has no right to utter a single word but to sign on the form given to him containing the Agreement. We hold that Clause

11 of the said Agreement is contrary to Section 23 of the Contract Act as well as ultra vires Article 14 of the Constitution.

10. The appellant cannot be removed from service until and unless there is a departmental proceeding against him with proper enquiry where he should be allowed to adduce evidence and make out a proper defence and thereafter the authorities can take a decision. Unless and until this procedure is adopted by merely applying Clause 11, no one's service can be taken away by the Government, and more so when one is governed by the Government Servants' Conduct Rules and the West Bengal Services (Classification, Control and Appeal) Rules, 1971. We make it clear that even apart from the application of aforesaid rules and in keeping with the Supreme Court decision, nobody's service can be terminated by the Government or an organisation coming under Article 12 of the Constitution at its sweet-will or according to the terms as laid down in Clause 11 of the Agreement.

11. In the circumstances, the order No. 5716 dated 24th December, 1977 issued

by the Sub-Divisional Officer, Alipur Sadar terminating the services of the writ petitioner/appellant is hereby quashed and the judgment and order dated 3rd July, 1986 by the learned Trial Judge is set aside. The appellant is hereby re-instated as the Tahsildar with effect from 1st January, 1978 and thereafter shall be absorbed and designated as Bhumi Sahayak with effect from 1st July, 1984 in accordance with the Notification dated 25th February, 1988 issued by the Board of Revenue, West Bengal and other relevant government orders and circulars. The respondents including the Secretary, Land and Land Utilisation and Land Reforms Department, Government of West Bengal, respondent No. 4, are directed to implement the order. We further direct the Board of Revenue, Government of West Bengal and its Special Secretary to implement the aforesaid order. This order must be implemented within 30 days from the date of communication of the same to all the respondents including the Special Secretary of the Board of Revenue.

12. The writ petitioner/appellant shall be paid all his arrear dues with effect from 1st January, 1978 within three months from the date of communication of the order and there will be no break of service.

The appeal is accordingly allowed. There will be no order as to costs. Let xerox copy of this order be made available to the petitioner/appellant on usual undertaking and upon compliance of the necessary formalities.

S. P. Rajkhowa, J.,

13. I agree.