(1964) 02 CAL CK 0013

In the Calcutta High Court

Case No : Civil Revn. No. 2305 of 1959

Murari Mohan Ghose APPELLANT

Vs

Zonal Manager, Eastern Zone, Life Insurance Corporation of India RESPONDENT

Date of Decision : 20-02-1964

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 311
Life Insurance Corporation Act, 1956 — Section 11(2)

Citation : AIR 1964 Cal 388

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Salil Kumar Dutta, for the Appellant; Ranadev Chaudhuri and Prasanta Kumar Ghose for Respondents (Nos. 1 to 7 and 10), for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application under Article 226 of the Constitution by the petitioner, Murari Mohan Ghose against the Life Insurance Corporation of India and other persons associated with that Corporation. The petitioner seeks for a Mandamus upon the respondents to cancel, rescind and withdraw the orders contained in the letters Nos. Dev/AN dated the 4th December, 1958. ADM/DEV/15037 dated the 20th June, 1939 and Dev/AG/16481 dated 6/7th July, 1959, directing him in effect to act as Field Officer. These letters are annexed as G, J and K to the petition.

2. The letter of the 4th December, 1958, informed the petitioner that his services had been transferred from National Fire & General Insurance Co. Ltd., Calcutta to the Corporation once again and he was placed under City Branch Unit No. 4 as Field Officer with effect from 1-12-58. It also says that he would be paid remuneration on the existing terms till he was categorised on the basis of his performance from 1-12-58 to 30-11-59. The letter of the 20th June, 1959 similarly asked the petitioner to report to City Branch No. 4 as a Field Officer and

to carry on with his duties as such. It also informs the petitioner that no assurance was given to him by the Life Insurance Corporation of India about the future assignment and that his further promotion would depend on his performance as a Field Officer. Lastly, the letter of the 6/7 July, 1959, informs him that the reports about his work have not been at all commendable and are against his efficiency and he was requested to pay more attention to the work.

3. The petitioner obtained this Rule from this Court on the 14th July, 1959.

4. A short account of the facts on which the petitioner bases his claim in this application will be appropriate to begin with. By a letter dated 3rd March, 1955, a copy of which is annexed to the petition it is shown that the petitioner was appointed by the New India Assurance Co. Ltd. with a designation of ''Superintenden of Agencies'' on a certainremuneration and allowances in that Company. In that letter of appointment the most important term was the provision for a minimum policy business of Rs. 75 lacs with a scheduled premium income of Rs. 4 1/2 lacs which the petitioner was supposed to get through the organisation of Agents and Organisers whom he was to train and activise. Therealter the nationalisation of life insurance came in and on or about the 23rd August, 1958, after the petitioner had been taken over by the Life Insurance Corporation of India, a proposal was made to appoint the petitioner as Assistant Branch Manager at the Midnapore Branch of the Life Insurance Corporation of India as a "purely temporary measure" on "tentative basis". But the proposal never materialised because the petitioner himself wrote on the 30th August, 1959, that on personal reasons he wanted to remain posted in Calcutta and be declined to go to Midnapore. Thereafter on the 15th October, 1958, the petitioner wrote a further letter requesting the Zonal Manager to allow him to "remain at Calcutta with any alignment." In fact the significant words of that letter are "I beg to request you to kindly allow me to remain at Calcutta with any assignment that you think fit for me." Having said that it is difficult to see how he can now make the present claim in the petition. On the 28th October, 1959, the petitioner was kept back in Calcutta and was assigned the post of an Inspector. In the letter of the 26th October, 1956, the ''Zonal Manager wrote to the petitioner "we note that you are not in a position to join duties assigned to you as Assistant Branch Manager at Midnapore. We are, therefore, making alternative arrangement for this position. As there is no suitable vacancy at Calcutta you will now have to work as an Inspector," There was no protest by the petitioner that he could not work as an Inspector nor did he assert at that time in reply to this that he was already working as Assistant Branch Manager of the Corporation. In fact he seems to accept the post of an Inspector and applied for books and papers for general information. The next stage is reached on the 19th February, 1957, when the petitioner was transferred with effect from 1st January, 1957, to work as a Unit Superintendent in National Fire and General Insurance Co., which was a subsidiary to the Life Insurance Corporation. He went on transfer as a Unit Superintendent there. There was a lien on his services in the Life Insurance Corporation although there is no letter from the Life Insurance Corporation itself.

The letter from the National Fire and General Insurance Co. Ltd., dated 19th February, 1957 shows this : "your service has been transferred to us with effect from 1st February, 1957, with a lien on the services of the Corporation."

5. In the meantime on the 30th December, 1957, the Life Insurance Corporation Field Officers'' (Alteration of Remuneration and Other Terms and Conditions of Service) Order, 1957, came into force and on the 27th November, 1958, the petitioner was retransferred from the National Fire and General Insurance Co. Ltd., to the Corporation with effect from the 1st December, 1958. Apparently from the facts recorded it appears that the National Fire and General Insurance Co. Ltd., was not satisfied with the petitioner''s service and did not want to continue with him. He was, therefore, allowed to exercise his lien to come over to the services with the Life Insurance Corporation.

6. Mr. Dutta appearing on behalf of the petitioner has urged three grounds in support of this Rule. His first ground is that the petitioner has been reduced in rank as a Field Officer. This reduction in rank as a Field Officer is illegal, ultra vires and is discriminatory. According to him the petitioner was an Assistant Branch Manager with Class I service and the present office of the Field Officer to which he has been transferred is a Class II service. It may be recorded here that so far as the petitioner''s actual salary is concerned his salary is higher than what he was getting and from that point of view he has suffered no pecuniary prejudice. It is really an application to fight for a status, a name and a rank. Mr. Dutta in support of this argument also submits that the petitioner has been made to do the field work which is lower kind and quality of work than what he had been doing as Superintendent of Agencies or as Unit Superintendent and that persons who are junior to the petitioner have already been appointed Assistant Branch Managers over the petitioner''s head. This in-short is the main argument and is the main grievance of the petitioner on this point.

7. No doubt the petitioner had the designation of "Superintendent of Agencies" with his previous insurer employers, the New India Assurance Co. Ltd. But the designation really does not improve the position. The main contention of the petitioner even as the Superintendent of Agencies with the New India Assurance Co. Ltd., was to procure business as indicated above. In fact the designation "Superintendent of Agencies" in various Insurance Companies prior to nationalisation did not indicate identical duties or functions involving the same standard of responsibility and duties and the rank of a Superintendent of Agencies was below that of Assistant Branch Manager (Development) under the Lite Insurance Corporation.

8. On Section 11 of the Life Insurance Corporation Act I have sufficiently expressed my views in the Division Bench judgment of this Court in K.D. Banerji Vs. Life Insurance Corporation of India, and have nothing else to add here. The Life Insurance Corporation Field Officers'' (Alteration of Remuneration and Other Terms and Conditions of Service) Order, 1957 dated the 30th December, 1957, was made u/s 11(2) of the Life Insurance Corporation Act, 1956. By Clause 2 (c)

of that Order a ''Field Officer'' has been defined. Mr. Dutta has challenged the validity of such a definition and has contended before me that it is ultra vires the Act and the Constitution. Before I discuss his arguments on this branch of his submissions it will be appropriate to set out the definition in Clause 2(c) of the Life Insurance Corporation Field Officers'' (Alteration of Remuneration and Other Terms and Conditions of Service) Order, as aforesaid which is as follows :

"Field Officer" means a person whether designated by an insurer as Branch Manager. Branch Secretary, Assistant Branch Manager, Assistant Branch Secretary, Zonal Agency Manager, Superintendent of Agencies, Divisonal Superintendent Organiser or by any other name, who before the 1st day of September 1956, was wholly or mainly engaged in the development of new life insurance busiuess for the insurer by supervising, either directly or through one or more intermediaries, the work of persons procurring or soliciting new life insurance business, and who was remunerated by a regular monthly salary; and who has become an employee of the Corporation u/s 11 of the Act; but does not include any person now in the employment of the Corporation as Assistant Branch Manager, Branch Manager or in any higher capacity."

9. Mr. Dutta contends that this definition of "Field Officer" is ultra vires the Act. I am unable to accept his contention. It is clearly provided u/s 11(2) of the Life Insurance Corporation Act that the Central Government for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurers has the power to alter whether by way of reduction or otherwise the remuneration and the other terms and conditions o? service to such extent and in such manner as it thinks fit. Therefore, an employee who continues his employment with the Corporation must necessarily have to be satisfied with this statutory provision. There is no hardship in this because he is given a choice. If the alteration is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three months'' remuneration unless otherwise provided by his contract of service. The ''Field Officer'' under the definition quoted above expressly includes inter alia a Superintendent of Agencies, a designation which was answered by the petitioner in the present case. Therefore, to call the Superintendent of Agencies as a Field Officer is not a reduction in rank or status.

10. This definition also in my view does not mean any unconstitutional discrimination among classes so as to hit Article 14 of the Constitution which Mr. Dutta seems to think. Many miscellaneous officers under miscellaneous names performed a number of miscellaneous duties before the nationalisation of Insurance and therefore, it was thought necessary to introduce some standardisation or categorisation or unanimity in this complex mess of functionaries under different names. "Field Officer" therefore, was a compendious term which covered a number of functionaries described there. I see no discrimination in that classification. It is a reasonable classification expressly

indicating intelligible and rational criteria. The dominant note unifying these different functionaries under one broad category of "Field Officer" is that trese various persons under different names are "wholly or mainly engaged in the development of new life insurance business for the insurer by supervising either directly or through one or more intermdiaries the work of persons procuring or soliciting new life insurance business, and who was remunerated by a regular monthly salary" That is an intelligible and rational principle of classification. That is the reason why this Lite Insurance Corporation Field Officers'' Order has been designated in ordinary parlance as the Categorisation Order.

11. The argument of discrimination, therefore, cannot prevail against this Order. Mr. Dutta, however, linked up his argument on discrimination by saying that the officers junior to the petitioner have been promoted as Assistant Branch Managers. He puts that forward as a proof of discriminatian, but then that does not make this Life Insurance Corporation Field Officers'' Order or the designation thereunder discriminatory. That argument, even if it were valid, could at best have been an argument against its proper application if individual instances are malaciously or unfairly discriminated against on proved facts. That surely is not an argument to call the whole Order invalid but will only mean that upon proof a particular case of discrimination may be struck down. But that argument also of individual discrimination in the present case cannot succeed because repeated letters and reports were there on record to suggest that the petitioner''s work had been most unsatisfactory and it is stated on affidavit on behalf of the Life Insurance Corporation that the persons who have been promoted won their promotion on the ground of work, merit and efficiency. The allegation, therefore, of individual discrimination has not been proved in this case.

12. Two other decisions of this Court (1) in Girija Sankar Sen Gupta v. Zonal Manager, Eastern Zone, Life Insurance Corporation of India, : AIR1963Cal574 and (2) an unreported decision in Sailendra Nath Roy v. Zonal Manager, Eastern Zone, Life Insurance Corporation of India in Civil Rule Nos. 4083 to 4085 of 1958 D/-20-8-1983 (Call have also taken a view against the contention of the petitioner on this point.

13. I, therefore, for reasons stated above overrule the first argument on behalf of the petitioner and hold that the Life Insurance Corporation Field Officers'' Order and the definition of the ''Field Officer'' thereunder are not illegal or ultra vires either Section 11(2) of the Life Insurance Corporation Act or Article 14 of the Constitution.

14. The second point on behalf of the petitioner is that when the petitioner was transferred to the National Fire and General Insurance Co., Ltd. as its Unit Superintendent, he kept a lien and therefore, it was contended that the petitioner should get the post of the Assistant Branch Manager. This argument also cannot succeed. No doubt the petitioner had a lien on his services with the Life Insurance Corporation when he was transferred as a Unit Superintendent to the Corporation''s subsidiary the National Fire and General Insurance Co., Ltd.,

but that lien was not a lien on the post of Assistant Branch Manager under the Corporation. The lien has been satisfied because the petitioner was accepted back in the service under the Lite Insurance Corporation when the subsidiary returned the petitioner. The petitioner cannot claim a lien on the particular post or office or designation of the Assistant Branch Manager of the Corporation for the simple reason that he had none. When he was transferred to the subsidiary company he was not employed as an Assistant Branch Manager with the Life Insurance Corporation. That wilt be seen from the account of fact which I have given above. The post at that time which the petitioner held was the post of an Inspector. Therefore, under the plea of recovery of his lien the petitioner cannot now claim a lien on the post of the Assistant Branch Manager under the Life Insurance Corporation. I need only repeat that there was no protest by the petitioner when he was assigned the post of an Inspector under the Life Insurance Corporation, as indeed he could not, after having requested the Corporation to allow him to remain in Calcutta with ''any assignment'' that the Zonal Manager thought fit for him. The argument, therefore, must fail and I overrule it.

15. Lastly Mr. Dutta on behalf of the petitioner contends that the Life Insurance Corporation Field Officers'' Order does not apply to the petitioner by reason of the last portion of the definition in Clause 2 (c) thereof as quoted above, namely, "but does not include any person now in the employment of the Corporation as Assistant Branch Manager, Branch Manager or in any higher capacity". The argument is that the petitioner was employed by the Corporation as Assistant Branch Manager and therefore the definition of ''Field Officer'' in Clause 2 (c) of that order cannot apply to him. This argument is based on a wrong assumption of fact. The petitioner was never in fact employed by the Life Insurance Corporation as an Assistant Branch Manager. The facts stated above prove this. The letter of the 23rd August, 1956, from A, Rajagopalan to the petitioner was only a proposal and an information of the proposal and was in these terms :

"..... it is proposed to appoint you as Assistant Branch Manager at the Midnapore Branch of the Life Insurance Corporation of India. This appointment is provisional and will be subject to review and confirmation by the Corporation in due course."

The letter of the 24th August, 1956, by Srinivasan to the petitioner was also a proposal and said :

"..... your name has been proposed for the post of Assistant Branch Manager (Development) at Midnapore, in the Life Insurance Corporation of India. You will appreciate that this is tentative and subject to confirmation. Accordingly this is to be kept strictly confidential.

I have however to request you to be ready to take up your new position immediately on receiving further instructions."

But this was not accepted by the petitioner. He never joined nor did he say that he had accepted the proposal to go to Midnapore as an Assistant Branch

Manager. In fact he declined to go to Midnapore, The petitioner himself wrote on the 15th October, 1956, to be allowed to remain in Calcutta with any assignment that the Zonal Manager thought fit and expressly said there as follows :

"I hope to be excused for my not joining at the Midnapore district....."

Thereupon by the letter of the 26th October, 1958. the Zonal Manager informed him regarding the fact that as the petitioner was not in a position to join the duties as Assistant Branch Manager at Midnapore and as there was no other suitable vacancy at Calcutta, the petitioner must have to work as Inspector.

16. On that state of facts the petitioner, in my view, cannot come within the benefit of exclusion in the last portion of the definition of the ''Field Officer'' in Clause 2 (c) of the Categorisation Order which only excluded a person at the relevant moment employed under the Corporation as Assistant Branch Manager. In point of fact the petitioner never was at any moment actually employed by the Corporation as its Assistant Branch Manager. The petitioner, therefore, cannot be excluded from the Categorisation of a Field Officer by virtue of that portion of the Order in the definition.

17. Broadly speaking, as I have indicated above, there is no prejudice suffered by the petitioner in concrete terms. His salary far from being affected has improved. He is, therefore, not prejudiced on the ground of salary. Mr. Dutta attempted to argue that in the matter of termination of services a Field Officer has no protection. That again is an argument based on a misconception because by Clause 10 of the very Life Insurance Field Officers'' Order it is provided that an opportunity of showing cause has to be given to a Field Officer in such a case and after conducting an enquiry, the services of any Field Officer may, with the prior approval of the Chairman of the Corporation, be terminated without assigning any reason after giving the Field Officer three months'' notice thereof in writing. In any event I do not think that this point makes any difference to the petitioner''s case here before me.

18. For these reasons the petition fails and I discharge the Rule. I make no order as to costs.