(1999) 03 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 13982 of 1997

N. Ranganathan APPELLANT

Vs

Tamil Nadu Agro Industries Corporation Limited RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:

Citation : (1999) 03 MAD CK 0082

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Vaidyanathan, for Row and Reddy, for the Appellant; Venkataraman, for Aiyar and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—Petitioner seeks a Writ of Certiorarified Mandamus, calling for the records, relating to the charge memo issued by the Respondent, bearing RC. No. 6824/P&A3/97 dated 22-8-1997 and quash the same and to direct the Respondent Corporation to settle the terminal benefits due to the Petitioner.

2. The Petitioner joined the services of the Tamil Nadu Industrial Development Corporation Limited (TIDCO) as Financial Analyst on 20-6-1982 and subsequently was transferred as Deputy Financial Controller to the Tamil Nadu Steels Limited at Arakkonam, which is a subsidiary unit of TIDCO from 4-4-1985. By circular dated 17-4-1989, TIDCO called for willingness from the eligible candidates, viz. Financial Analysts, Senior Accounts Officer, etc. for appointment of a second level officer in the Accounts Department of the Respondent corporation. The Petitioner opted for the same, and accordingly, he was relieved from the services of Tamil Nadu Steels Ltd., with effect from 22-11-1989 and joined the Respondent Corporation as Deputy Financial Controller, on 10-1-1990, as per the appointment order dated, 22-12-1989, which reads as follows:

The Tamil Nadu Agro Industries Corporation Limited, Madras 32 Proceedings No. 5150/P&A2/89 Dt.22-12-1989 Present: Thiru V. Sundaram I.A.S. Managing

Director Sub: TAI - Estt. - Appointment of Thiru N. Ranganathan, Deputy Financial Controller, Tamil Nadu Steels Limited, Arakonam as Deputy Financial Controller in TAI on regular basis - Orders issued.

Ref.: 1. Lr. No. 20(b)/B-II/89, dated 22-11-89 from the Executive Director, TIDCO, Madras.

2. Lr. No. Pl/13552/89, dt. 4-12-89 from the Managing Director, Tamil Nadu Steels Ltd., Arakonam.

3. Minutes of the 164th Meeting of Board of Directors of TAI held on 5-12-1989.

In the reference cited (1) & (2) above, the Tamilnadu Industrial Development Corporation Limited, Madras and the Tamil Nadu Steels Limited, Arakonam have expressed their consent to relieve Thiru N. Ranganathan, Deputy Financial Controller, Tamil Nadu Steels Limited, Arakonam on the basis of 2. The Board of Director of TAI in their 164th Meeting held on 5-12-89 has resolved to absorb Thiru N. Ranganathan as Deputy Financial Controller in the Corporation on a regular basis by relaxing the existing rules prescribed by the Government for recruitment and to obtain the necessary approval of the Government for the above relaxation. The Board has also resolved that pending approval of the Government he may be called to join the Corporation.

3. In accordance with resolutions of the meetings of the Board of Directors of TAI held on 24-10-89 and 5-12-89, Thiru Ranganathan, Deputy Financial Controller, Tamilnadu Steels Limited, Arakonam a wholly owned subsidiary of TIDCO is appointed as Deputy Financial Controller in the scale of pay of Rs. 3700-125-4700-150-5000 on regular basis subject to the approval of the Government of Tamilnadu with regard to the relaxation of the existing rules prescribed by the Government for recruitment. The pay of Thiru N. Ranganathan, Deputy Financial Controller in the above scale of pay will be fixed separately.

4. Thiru N. Ranganathan is requested to join duty in TAI after getting proper relief from Tamilnadu Steels Limited, Arakonam and TIDCO.

This order comes into force with Immediate effect. Sd/- Managing Director

3. However, the Government, by G.O. Ms. No. 771, Agriculture (AE.II) Department, dated 14-12-1992, refused to grant approval to the post of Deputy Financial Controller in the Respondent Corporation. The relevant portion of the G.O. Ms. No. 771, Agriculture (AE.II) Department, dated 14-12-1992, reads as follows:

In his letters read above the Managing Director, Tamil Nadu Agro Industries Corporation Limited (TAI) has reported that in order to develop a second line in Finance Department of the Corporation and to help the Financial Controller and Chief Accounts Officer, one sanctioned post of Accounts Officer in the scale of Rs. 1340-75-1715-90-2345 (pre-revised) was upgraded to that of Deputy Financial Controller in the scale of pay of 2150-110-2170-125-3090 (pre revised) with

Board''s approval and Thiru N. Ranganathan who was working as Deputy Financial Controller in Tamilnadu Steels Limited, Arakonam was appointed as Deputy Financial Controller in TAI Corporation on regular basis with effect from 10-1 -90. He has, therefore, requested the Government to relax the rules prescribed by the Government for recruitment purpose in G.O. Ms. No. 241, Finance (BPE) Department, dated 11-4-1988.

2. The Government, after careful examination of the proposal of Managing Director, TAI consider that after the revision of scales based on Fifth of pay Commission recommendations, G.O. Ms. No. 340, Finance (BPE) dated 12-5-88 was in force and for posts with maximum of the scale of pay exceeding Rs. 4050/- prior approval of the Government ought to have been obtained. Appointment of the officer without approval of the Government is irregular.

3. When G.O. Ms. No. 241, Finance (BPE), dated 11-4-88 is not applicable in the present case, provision in the Government order have been taken for deciding the matter without obtaining any clarification from Government. This is irregular. Skipping of 2 levels of scales of pay and upgrading the post of Accounts Officer to Deputy Financial Controller is not at all correct in principle. Moreover, even without framing rules for this post, the question of absorbing Thiru N. Ranganathan from Tamil Nadu Steels Limited is not correct. Actually for creation of the post itself, Government approval ought to have been obtained and for appointment to this post proper procedure to be followed either calling persons from open market or by promotion as the case may be after framing ad hoc rules for the post. Without following any of the procedures mentioned above and without also obtaining No Objection Certificate from Employment Exchange, selection of a person for appointment to such a high post is highly irregular.

4. The Government also consider that there is no need for the creation of the post as the volumes of the work relating to financial administration have come down following the closure of Solvent Extraction Plant at Ponakulam and Namakkal and the Alfalfa Meal Plant at Uduamlpet. It has been clearly indicated that as per G.O. Ms. No. 488 Finance, dated 30-5-1989 and G.O. Ms. No. 742, Finance (BG .1) dated 10-7-1990, there is ban on creation of post. The upgradation of a post, namely, the Accounts Officer is nothing but the creation of a new post especially when the corporation has upgraded the post by two levels ahead to the existing post.

5. The Managing Director , TAI is therefore directed to abolish the post of Deputy Financial Controller in TAI Corporation as it was created without the approval of Government and without consulting the Employment Exchange. The Government also direct the Managing Director, TAI, Corporation to discharge Thiru. Ranganathan, Deputy Financial Controller, TAI, Corporation with immediate effect.

6. The Government, however, ratify the action of Managing Director, TAI Corporation in having allowed Thiru. N. Ranganathan as Deputy Financial Controller from 10-1-1990 to the date of issue of this order as a special case.

7. The Managing Director, TAI Corporation is instructed not to resort to any such irregular creation of post or appointment without following the rules and without consulting Employment Exchange in future.

8. This order issues with the concurrence of Finance Department vide its U.O. No. 183/ DD(K)/92 dated 4-11-92.

4. Aggrieved by the said G.O. No. 771. Agriculture (AE.II) Department dated 14-12-1992, the Petitioner preferred W.P. No. 21163 of 1992, and continued as Deputy Financial Controller under the interim orders of this Court. During the pendency of W.P. No. 21163 of 1992, the Board of Directors of the Respondent corporation, by resolution dated 28-3-1995 resolved to request the Government to reconsider the case of the Petitioner and to regularise his services as Deputy Financial Controller with the Respondent corporation from 23-12-1992 to 6-1-1994. On the basis of the above resolution, the Government, taking note of the fact that there was no post of Deputy Financial Controller in the Respondent corporation, by G.O. No. 345 Agricultural dated 26-6-95, accepted the resolution of the Respondent corporation on condition that the Respondent corporation should not appoint a separate Financial Controller and the corporation should be managed by only one Deputy Financial Controller.

5. The Petitioner, placing reliance on C1.20 of the Service Rules of the Respondent corporation, submitted his letter of resignation dated 23-12-1996, stating that he was unable to continue in the services of the Respondent corporation due to transfer of his wife from Chennai to Bangalore and requested the Respondent corporation to relieve him from service within two months from 23.12.1996 as per the service rules, Cl.20 of the service rules of the Respondent corporation reads as follows:

20. Discharge Termination or Resignation of Service after Confirmation: After confirmation, an employee may be discharged from the services of the corporation for sufficient reasons by the competent appointing authority, or he may leave or discontinue from the service of the corporation in either case after giving two months'' notice in writing in that behalf or by payment of two months'' total pay in lieu of such notice.

6. In continuation of his letter dated 23-12-1996, the Petitioner also submitted another letter dated 27-1-1997 giving two months notice for his resignation as required under Rule 20, as referred to above. The Respondent corporation by its letter dated 17-3-1997, informed the Petitioner that his request of resignation would be considered only after appointing a suitable substitute in his place as the post cannot be kept vacant as per the statutory requirements under the Companies Act. The Petitioner made further representations on 19-3-1997, 25-3-1997, 31-3-1997 and 15-4-1997, reiterating his stand that he is unable to continue in the services of the Respondent corporation till a substitute is appointed in his place. The Petitioner ultimately by his letter dated 27-9-1997 requested the Respondent corporation for a relieving order since the notice

period of two months from the date of his earlier letter of resignation viz. 27-1-1997 had already expired by 27-3-1997 itself. The Respondent corporation, however, by .letter dated 1-8-1997, called for the remarks from the Petitioner with regard to certain audit objections received from the Internal Audit Officer. In reply to the letter dated 1-8-1997, the Petitioner, by his letter dated 11-8-1997, informed the Respondent corporation that since the notice period of two months'' had already expired by 27-3-1997 itself, he is deemed to have been discharged from the services of the corporation as per Rule 20 of the service rules. The Petitioner, without prejudice to the above contention, also submitted his explanation not satisfied with the explanation. Not satisfied with the explanation offered by the Petitioner, the Respondent served a charge memo dated 22-8-1997 on the Petitioner. Hence the above writ petition.

7. Mr. Vaidyanathan, learned Counsel for the Petitioner, referring to Rule 2(f) of the service rules of the Respondent corporation, wherein the term ''employees'' has been defined as all persons in the whole time employment of the corporation, in the administrative, executive, commercial, financial, accounts, audit, technical or other departments of the corporation and whether permanent, official or temporary and whether employed as advisors, officers or of ministerial or subordinate staff and whether under a contract of service or not, but not including work charged or daily rated employees, contends that the Petitioner, being an employee of the Respondent corporation, is entitled to be discharged from service after giving two months notice in writing or by payment of two months'' total pay in the lieu of such notice as per Rule 20 of the service rules of the Respondent corporation. To substantiate the case of Petitioner, learned Counsel for the Petitioner placed reliance on V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, ; B.J. Shelat Vs. State of Gujarat and Others, ; K. Ambalavanan v. Singapore Airlines Limited and Anr. 1991 W.L.R. 71 and Union of India and others Vs. Sayed Muzaffar Mir, and contends that once the Petitioner had already terminated his contract of service with the Respondent corporation by giving proper notice as contemplated under Rule 20 of the service rules, the relationship of the employer and employee between the Petitioner and the Respondent corporation ceased, to exist and the Petitioner was deemed to have been relieved or discharged from the services of the Respondent corporation with effect from 27-3-3997, after the expiry of two months notice period from 27-1-1997, and, therefore, the charge memo dated 22-8-1997, impugned in this writ petition is totally without jurisdiction "and suffers from want of authority in law.

8. Mr. Venkataraman, learned Counsel for the Respondent corporation, relying on the counter-affidavit filed, contends that the Petitioner is not an employee as defined under Rule 2(f) of the service rules; a plain reading of the appointment letter dated 22-12-1989 issued to the Petitioner, the G.O. No. 771 Agriculture (AE.II) Department dated 14-12-1992, where in the Government refused to grant approval for the post of Deputy Financial Controller, and the subsequent G.O. No. 345, Agriculture dated 26-6-1996, granting approval to the said

appointment with a condition that the Respondent corporation should not appoint a separate Financial Controller and the Respondent corporation should be managed with the only one Deputy Financial Controller, makes it clear that the appointment of the Petitioner as Deputy Financial Controller in the Respondent corporation is nothing but a special arrangement; and therefore contends that the Petitioner is exempted from the definition of "employee" as defined under Rule 2(f) of the service rules, by application of Rule 3 of the service rules, which reads as follows;

3. Scope and Application of the rules:": These rules shall apply to all the employees of the corporation provided that employees under a specific agreement or arrangement shall not be governed by rules or shall be governed by them only subject to such special terms, conditions or stipulations as may be provided for by such agreement or arrangement.

9. Learned Counsel for the Respondent corporation further contends that even though the Petitioner was appointed as Deputy Financial Controller, in fact, he was discharging the functions of the Financial Controller as the Government by G.O. Ms. No. 345 dated 26-6-1995, accorded approval on a condition that the Respondent corporation should not appoint a separate Financial Controller and the Respondent corporation should be managed with only one Deputy Financial Controller and therefore the appointment of the Petitioner as Deputy Financial Controller is a special arrangement, which is not governed by the service rules as observed in G.O. Ms. No. 771 Agriculture (AE.II) Department, dated 14-12-1992. It is alleged that the Petitioner had abused and misused his position as Deputy Financial'' Controller and committed gross irregularities, resulting in financial loss to the Respondent corporation which ultimately necessitated the Respondent corporation to issue the charge memo dated 22-8-1997 on the basis of the objections raised in the internal audit report; and in any event, the Petitioner could not be deemed to have been relieved or discharged from the service of the Respondent corporation in view of the Respondent corporation''s letter dated 17-3-1997 stating that the Petitioner could not be relieved from service til! a substitute was appointed in his place and consequently, the Respondent corporation has got every right to proceed with disciplinary action against the Petitioner as proposed under the charge memo dated 22-8-1997 issued to him.

10. I have given my careful consideration to the submissions of both sides.

11. It is well settled in law that the Government cannot take any disciplinary action against Government Servant even if he. is not relieved or discharged from his duties after the expiry of the notice period of his resignation.

12. In Union of India and others Vs. Sayed Muzaffar Mir, , following the decision in B.J. Shelat Vs. State of Gujarat and Others, the Apex Court has held that where the Government servant seeks premature retirement, the same does not require any acceptance and comes into effect on the completion of the notice period.

13. A Division Bench of this Court in Ambalavanan v. Singapore Airlines Limited and Anr. 1991 Writ L.R 71 .held as follows:

...applying the ratio of the decision reported in Punjab National Bank v. P.K. Mittal 1983 1 MLJ.373 and Punjab National Bank Vs. P.K. Mittal, , we hold that the resignation of the Appellant came into effect automatically from 1-1-1979 and it did not depend upon either its acceptance or communication of such acceptance to the Appellant. In our view, the acceptance of the resignation having regard to the Conditions of Service, is not a sine qua non for making the resignation effective. The letter dated 7-2-1979 was at best only in the nature of a communication of the consequences of the resignation letter dated 26.11.1978 and not actually the authority or basis for putting an end to the services of the Appellant..

14. In my considered opinion, none of the decisions referred to above, which were relied on by the Petitioner, is applicable to the facts and circumstances of the case on hand. A plain reading of the appointment letter dated 22-11-1989 as referred to above, makes it clear that the Petitioner was appointed only after relaxing the existing service rules of the Respondent Corporation. But, the Respondent Corporation failed to get the prior approval of the Government for such relaxation and consequently the Government, by G.O. Ms. No. 771 Agriculture (AE.II) Department, dated 14-12-1992 refused to accord approval to the appointment of the Petitioner. However, the Government subsequently reconsidered the same and granted approval, by G.O. Ms. No. 345 Agriculture, dated 26-6-1995, on condition that the Respondent corporation should not appoint a separate Financial Controller and the corporation should be managed with the only one Deputy Financial Controller. Therefore, it is clear that the Service Rules of the Respondent corporation do not provide for appointment of the Deputy Financial Controller as observed by the Government in G.O. Ms. No. 771 Agriculture (AE.II) Department, dated 14-12-1992 that the skipping of two levels of scales of pay and upgrading the post of Accounts Officer to Deputy Financial Controller was not at all correct in principle and that absorption of the Petitioner as Deputy Financial Controller without framing rules for the said post is not correct. In the said G.O. it is also observed that there is no need for the creation of the post as the volumes of work relating to financial administration had come down and therefore the Respondent corporation was instructed not to resort to any such irregular creation of post and appointment without following the rules and without counselling the Employment Exchange in future. Therefore I am satisfied the very appointment of the Petitioner as Deputy Financial Controller was a special arrangement in view of the subsequent regularisation. The appointment of the Petitioner as Deputy Financial Controller thus being a special arrangement as per Rule 3 of the service rules, he could not be considered as an employee within the definition of Rule 2(f) of service rules and consequently he is not entitled to rely on Rule 20 of the service rules. Therefore, the Petitioner could not be deemed to have been relieved or discharged from the services of the Respondent Corporation on 27-3-1997 on the expiry of the notice

period of two months from 23-1-1997 and consequently, the Petitioner is deemed to be in continuous service of the Respondent Corporation and hence the Respondent Corporation is entitled to take appropriate disciplinary action against the Petitioner as proposed under the charge memo dated 22-8-1997 issued to the Petitioner on the basis of the objection raised in the audit report.

15. In the result, the writ petition is dismissed. No Costs.

