
(1980) 03 DEL CK 0019
In the Delhi High Court
Case No : L.P.A. No. 196 of 1971

P.L. Bhardwaj

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 04-03-1980

Acts Referred:

Citation : (1981) 1 LLJ 501

Hon'ble Judges : Yogeshwar Dayal, J;D.K. Kapur, J

Bench : Division Bench

Judgement

D.K. Kapur, J.—The services of the appellant were terminated on 17th June, 1970, under Rule 18 of the State Bank of India (Officers and Assistants) Services Rules. He instituted Civil Writ No. 711 of 1970, which was decided by judgment dated 3rd May, 1971, against the petitioner. The unsuccessful petitioner has then appealed under clause 10 of the Letters Patent. The appeal was filed on 12th July, 1970, immediately after the re-opening of the High Court after vacations, so it is within time.

2. The Rule under which the services of the appellant were terminated, i.e., Rule 18 reads as follows :

"18. The Bank may terminate the service of any employee other than a Probationary Assistant on given him three calendar months" previous notice in writing or three months" substantive salary in lieu of notice".

3. The order that was passed by the Managing Director of the State Bank of India on 17th, June, 1979, which is impugned reads as follows :

"Bombay, 17th June, 1970.

Shri P. L. Bhardwaj,

Dear Sir, We have to advise that the Executive Committee of the Central Board at its meeting held to day resolved that your services be terminated in terms of

Rule 18 of the State Bank of India (Officers and Assistants) Services Rules on payment of three months' salary in lieu of notice. Accordingly your services stand terminated with effect from the 20th June, 1970.

Yours faithfully,

Sd. -

Managing Director".

Thus the services of the appellants were terminated by giving him three months' salary under the aforementioned Rule. It cannot be said that the order is contrary to the Rule.

4. It appears that there is a background to the order of termination which appears from the facts set out in the petition. The petitioner was a Probationary Officer in the State Bank of India who was confirmed with effect from 1st October, 1968, and selected for an Intermediate Course for Probationer Officer at the Staff Training College, State Bank of India, Hyderabad. On a New Year Eve on 31st December, 1968, an incident occurred involving breach of general instruction of the college. The Principle of the college, took action in the matter on 2nd January, 1969, on 3rd January the training was terminated and the appellant together with another trainee Shri A. K. Dutta were returned to the Local Head Office of the Bank of New Delhi. The Bank issued a notice to the appellant on 23rd January, 1969, calling upon his Explanation regarding contravention of Rules 11 and 14 of the General Instructions of the Hyderabad College. On 29th March, 1969, the All India State Bank of India Supervising Staff Federation, Bombay sent a resolution passed by the Federation on 25th March, 1969, condemning the action of the Principal of the Hyderabad College in sending back the two trainees before the completion of the course. By a letter dated 21st April, 1969, the appellant was required by the Bank to report on 23rd April, 1969, to Shri B. K. Mukerji, Deputy Secretary and Treasurer, State Bank of India, Hyderabad. Then the above letter was issued.

5. In the counter-affidavit filed in the writ petition, the Bank's case was that Shri Mukerji had been appointed to investigate the matter but on receipts of the report the Bank's though concerned about the conduct of the petitioner ... did not take any further action in the matter. Instead, on an overall consideration of the record of the probationary officer it was decided to terminate his services under Rule 18.

6. The judgment under appeal shows that five contentions had been urged in support of the petition which were :

(a) That the said Rule 18 did not apply to the appellant.

(b) Rule 18 did not apply in the case of a confirmed employee of the Bank.

(c) Rule 18 was ultra virus of Rule 20.

(d) No order terminating the services of the petitioner could be passed without giving him a hearing, and

(e) There was discrimination between the petitioner and A. K. Dutta because the other trainee was continued in service.

The learned single Judge held as a preliminary matter that the State Bank of India was amenable to the writ jurisdiction of the Court.

7. It was contended on behalf of the State Bank before the single Judge that the termination of service of the appellant was not amenable to the writ jurisdiction because it was action taken on a contract and remedy lay by way of suit and not by way of writ. This argument was accepted. It was held that the Service Rules under which action had been taken were not statutory rules and it was a mere case of a master terminating the services of his servant. The judgment under appeal has hardly turned on this point.

8. It was also urged before the learned single Judge that Rule 18 was *ex facie* bad because it contravened Arts. 14 and 16 of the Constitution of India. But this point was rejected on the ground that the petitioner joined service of his own free will and was governed by the State Bank of India (Officers and Assistants) Service Rules. No other person similarly situated had been treated differently, so Arts. 14 and 16 of the Constitution were not applicable and no relief could be granted to the appellant.

9. On the question of discrimination, it was urged that the petitioner and Shri A. K. Dutta had been differently treated, but this point was rejected on the ground that there was no material to substantiate the case for discrimination.

10. The learned single Judge pointed out the Rule 18 of the Rules authorised the Bank to terminate the services of any employee by giving three calendar months' notice. It was recorded that this introduces an element of insecurity in the tenure which according to Mr. Anthony learned counsel for the petitioner was highly undesirable especially in relation to a statutory body. The learned single Judge observed :

"But the redress of this grievance can be had not through the writ Court but from other quarters."

The Petition was accordingly dismissed.

11. In Support of this appeal it was urged that there was a difference of opinion between two Division Benches of this Court with regard to the State Bank of India Service Rules. In *Ved Parkash Malhotra v. State Bank of India* and another ILR (1974) 1 Del 660, it had been held that the State Bank of India had dismissed the petitioner under a contract and there was no violation of any statute or statutory restriction. In *A. R. Joshi v. State Bank of India*, L.P.A. No. 136 of 1977, decided on 4th February, 1980, by a Bench of this Court, it had been held that a dismissal of an employee of the State Bank of India required

compliance with the rules of natural justice and, Therefore, the question whether the rules had statutory effect or contractual effect had to be decided by reference to a larger Bench. We are not satisfied that actually there is a difference on this point between the two judgments. The second decision had not turned on whether the Rule were contractual or statutory. Reliance was placed on the Supreme Court's judgment in Sukhdev Singh v. Bhagatram 1975-I L.L.J. 399, wherein it was held that regulations framed by various bodies like the Life Insurance Corporation of India and the Financial Corporation of India have statutory force. The judgment in A.R. Joshi's case proceeded on the basis that the decision in Sukhdev Singh's case had to be applied and not the decision of the Division Bench reported in Ved Parkash Malhotra's case

12. In our view the question whether the Rule are statutory or contractual makes very little difference in the present case. Action has been taken against the appellant under a particular Rule. That Rule clearly allows the termination of services by giving three months' notice. There is a direct judgment of the Supreme Court bearing on the facts the present case. That is Delhi Transport undertaking v. Balbir Saran Goel 1970-II L.L.J. 20, The facts of that case show that an order had been passed by the Delhi Road Transport Authority terminating the services of the employee under Regulation 9(b) of the D.R.T.A. (conditions of Appointment and Service Regulation) 1952, which had been framed under the Delhi Road Transport Authority Act, 1950. A suit had been filed challenging the termination order on the ground that it was not a termination of service simplicities but a dismissal. The suit had succeeded, it was held that the dismissal of the employee was illegal. Appeals against the decree in that suit were affirmed right up to the Letters patent Bench. The Supreme Court held that the Rules allowed the services of the employee to be terminated in two ways. Either the service could be terminated for misconduct or it could be terminated by giving one month's notice or salary in lieu thereof. If the services were terminated by giving notice, then it was not the same thing as terminating the services on account of misconduct.

13. In the latter case an enquiry was necessary. It was urged before the Supreme Court that though the order was perfectly harmless and innocuous, it was merely a camouflage for inflicting the punishment because the employee had filed a writ petition under Art. 226 of the Constitution without exhausting contemporary remedies.

14. Before the Supreme Court a distinction was drawn between the cases which fall under Art. 311 and those which fall under Regulations. On an analysis of the case law, the Supreme Court set out the propositions which had been stated in State of Punjab v. Sukhraj Bahadur, [1970-I L.L.J. 373] and came to the conclusion that as the services were terminated in accordance with the Regulation No. 9(b) governing the conditions of employment, it was immaterial what was the nature. No charge sheet was preferred and nor any enquiry had been held. It had not been established that the order was mala fide and so it was

open to the employer to terminate the services after giving notice or pay in lieu of notice. It was observed :

"Even if the employers of the respondent thought that he was a cantankerous person and it was not desirable to retain him in service it was open to them to terminate his service in terms of Regulation 9(b) and it was not necessary to dismiss him by way of punishment for misconduct."

This judgment seems to apply with full force in the present case. The rules applicable in this case Rule 18 which has already been quoted and the following two Rules :

"19. Nothing in Rule 18 shall affect the right of the Bank :

(a) to retire or dismiss an employee or call upon an employee to resign without notice or substantive salary in lieu thereof, in accordance with the provision of Rule 20 or 50 and

(b) to terminate the service of an employee without notice or substantive salary in lieu thereof on his being certified by the Bank's Medical Officer to be permanently incapacitated for further continuous service in the Bank."

20. An employee shall retire from the service of the Bank on attaining the age of fifty-five years or upon the completion of thirty years" pensionable service, whichever occurs first"

Rule 50 of the Rules shows the procedure that is to be followed if a person is to be dismissed from service. The portion of Rule 20 which is mentioned in Rule 19 refers to the case where an employee may be called upon to retire after completion of 25 years service which is the proviso not reproduced above. In case the Bank had wanted to dismiss the appellant they would have to hold an enquiry frame a charge and go through the entire procedure necessary for dismissing the appellant or taking other disciplinary action against him. It appears that the Bank preferred to terminate the appellant's services just as in the case of Balbir Saran Goel, decided by the Supreme Court. There were two alternative open to the employer under the Regulations. In the circumstances there is nothing to distinguish the present case from the case decided by the Supreme Court.

15. It has not been urged in support of the present appeal that the order terminating the appellant's service is a camouflage dismissal order not does it appear that any charge sheet was ever served on the appellant with a view to taking disciplinary proceedings against him. An enquiry was held regarding the incident in the Staff Training College, Hyderabad which took place on 31st December, 1968. A lady visitor being a cabaret singer was allowed to stay in the college premises beyond the visiting hours 5 and 7 P.M. and in fact stayed on until the early hours of 1st January without the prior permission of the Principal. But it appears that no disciplinary proceedings were initiated as a result of that incident. Instead, it appears that the Bank preferred to terminate the service of

the appellant under Rule 18.

16. It was urged by the appellant that action under Rule 18 is ultra virus of Rule 20, but this appears to be a misconceived contention. If the services of the person are terminated then obviously he cannot serve till the retirement age of 55. As in the case of Balbir Saran Goel, the provisions of Art. 311 of the Constitution are not applicable and so the order of termination of services simplicities cannot be read as an order of dismissal in spite of the fact that the employee was a confirmed employee. The Rule allowing for termination of service on the giving of a notice applies equally to all the persons covered by the Rules. Accordingly this appeal has to fail and is dismissed, but we have the parties to bear their own costs.