
(2005) 03 CAL CK 0055

In the Calcutta High Court

Case No : M.A.T. No. 3490 of 1998 and F.M.A. No. 191 of 2003

Prasanta Banerjee

APPELLANT

Vs

Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 3 CALLT 549 : (2005) 3 CHN 168 : (2006) 108 FLR 768

Hon'ble Judges : V.S. Sirpurkar, C.J.;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Ashis Kr. Sanyal and Mihir Kr. Kundu, for the Appellant; M.B. Sarkar and Abdus Hadi, for the Respondent

Final Decision : Dismissed

Judgement

Asok Kumar Ganguly, J.—This appeal is directed against a judgment and order dated 04.09.1998 passed by a learned Judge of the Writ Court whereby the learned Judge dismissed the writ petition holding, inter alia, that the extension of probationary period of the writ petitioner depends upon the satisfaction of the employer. Detailed facts are as follows :

Pursuant to an advertisement in Aajkal, a daily Bengali newspaper, for filling up the posts of trainee Inspector of General Insurance Marketing, the writ petitioner applied and he was interviewed by the employer and sent on training. On successful completion of his training, the petitioner was appointed by Oriental Insurance Company (hereinafter called "the said Company") as a Probationary Development Officer by a provisional appointment letter dated 20.05.87. Subsequently another appointment letter was issued on 12.06.87, containing the terms of appointment. One of the terms was that the petitioner will be on probation for a period of 12 months which may be extended at the discretion of the employer for a further period not exceeding 12 months. Clause 4 of the Terms and Conditions on which emphasis was placed by the learned Counsel for the appellant during the argument is set out below for better appreciation :

"4. During the probationary/extended probationary period, you will be required to fulfil the following requirements :

(a) (i) You will have to procure a minimum premium income of Rs. 2.0 lacs from at least 12 clients with minimum premium of Rs. 1,000/- from each such client or alternatively from PO clients with minimum premium of Rs. 500/- from each such client."

2. On or about 12.08.88, the petitioner was communicated of the management decision to terminate his services. Such termination order was based on the letter dated 26.07.88 issued by the respondent No. 2.

3. Thereafter the petitioner made two representations in writing against the termination of his services. In answer to one of such representations, Assistant General Manager of the said company wrote back by a letter dated 29.03.90 indicating therein the reasons for the termination of the petitioner's service. Those reasons are as follows :

"You were appointed as Probationary Dev. Officer on 3.8.87 with a target of Rs. 2 lacs to be completed within 1 year. We had observed that you could place a premium of Rs. 20,976/- only during 1 year and as a result your services were terminated. We have also obtained information from the concerned D.O. that you are not holding valid licence to work as agent but you have placed business to the tune of Rs. 7,755/- only through one of your erstwhile agent during the period of 1.4.89 to 31.3.90.

In view of the above we find no reason to consider your re-appointment."

4. Before the Writ Court, an affidavit-in-opposition was filed by the said company and in paragraph 7 thereof the following facts were pleaded :

"In particular, I say that the petitioner submitted a premium of Rs. 40,000/- only out of which an amount of Rs. 28,295/- paid by cheque was dishonoured and no arrangement was made by the petitioner to reimburse the said amount in cash. I further say that whether the premium of Rs. 15,475/- has been credited in the account of the respondent's Asansol Divisional Office would be known and confirmed only after verifying the records, and the respondents reserve its comment on the same."

5. In the reply filed by writ petitioner, paragraph 7 was dealt with in paragraph 4, but the aforesaid facts have not been controverted.

6. It is well-settled by a plethora of precedents that when an employee is put on a period of probation by the employer, the employee does not acquire any right to the post. Rather the employee is put on a trial. The period of probation gives the employer a locus poenitentiae which means a right to withdraw from an incompleting transaction (Black's Law Dictionary page 848, 5th Edition). This has been recognised by the Apex Court in *Ajit Singh and Others Vs. State of Punjab and Another*, (see page 498, Para 7 of the report).

7. In this case the petitioner's appointment, on the basis of the appointment letter containing the terms, was given to him in June, 1987 and the decision to terminate his service was taken in July, 1988 and the same was communicated to him in August, 1988. As the petitioner made several representations, the said company communicated to him the reasons for such termination. It is clear from such communication that the reason is that the petitioner failed to give satisfactory performance as a Probationary Development Officer and failed to reach the target of procuring the minimum amount of premium. It is obvious that while terminating the services of the petitioner no stigma was fastened on to him nor any misconduct was attributed to him. It has not been even argued by the learned Counsel for the petitioner that the service of the petitioner was terminated by way of misconduct and thereby requiring the holding of an enquiry.

8. The only point argued by the petitioner's Counsel in assailing the order of termination is that while terminating the petitioner's services, the respondent-company relied on Clause 4(a)(i) of the terms of employment, (set out above) and that the said clause gives an unfettered discretion in the employer. It was contended that it does not appear clearly from the terms whether the minimum premium income of Rs. 2 lacs is to be procured during the probationary period or during the extended period of probation. According to the learned Counsel, this clause of the terms of employment is entirely vague and makes the situation unpredictable for the employee. In support of such contention, reliance was placed on certain judgments.

9. Before discussing those judgments, this Court proposes to deal with the factual aspect of the clauses incorporating the terms of employment.

10. First of all, the petitioner accepted the clauses. Assuming such terms were accepted by the petitioner under the pressure of economic duress, there is nothing on record to show that the petitioner after accepting the terms ever raised any objection or even any query about how to meet the target mentioned in the clause. The said company kept a little flexibility in the clause in the matter of reaching the target deliberately. Suppose there is one employee who has procured income to the extent of Rs. 1,80,000/- (Rupees one lakh eighty thousand) in the first year of probation and in that case, the said company may extend the period of probation, enabling the employee to reach the target of 2 lacs during the extended period of probation. There is nothing vague or unpredictable about it. But here the petitioner, apart from not having an agent's licence, could procure a premium income of Rs. 20,000/- only. Therefore his probationary period was not extended and services were terminated. In taking such a step the said company did not do anything which is either unpredictable or vague.

11. The decision in the case of S.G. Jaisinghani Vs. Union of India (UOI) and Others, , cited by the learned Counsel for the petitioner was rendered in a totally different fact situation. The validity of the seniority rule in regard to Income Tax Service Class I and Class II along with the improper implementation of the

"quota" recruitment to the service was challenged as infringing the guarantee of Articles 14 and 16 of the Constitution. While considering the said challenge, the learned Judges explained the principles of Rule of Law in paragraph 14 and observed that both predictability and the absence of arbitrary power form its bedrock. There can be no dispute with these propositions, but they have no application to the present case. No unpredictable decision has been taken in this case by the said company by terminating the service of a probationer in accordance with the terms of appointment.

12. The decision in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , was not at all dealing with the case of a probationer. In the subsequent judgment of the Supreme Court in Life Insurance Corporation v. R.S.R. Kulkarni, discussed later, the Apex Court held that the ratio in Brojonath does not apply in the case of a probationer.

13. The last decision cited on behalf of the petitioner-appellant was rendered in the case of Chandra Prakash Shahi v. State of U.P. and Ors., reported in AIR 2004 SC 1706. Reliance was placed on paragraph 24 where it has been observed that if in the course of assessment of an employee's work, any defect is noted that should be brought to the notice of the employee so that he can improve. Without any such communication, it is not fair to terminate the service. This observation was made by the Apex Court while appreciating the ratio in the case of Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another, .

14. Now whether such a communication was made or not is purely a question of fact. It also depends on the service conditions which govern individual cases. Here no such condition in the contract of service was brought to the Court's notice. Nor any such case has been made out on facts in the writ petition. So the decision in Chandra Prakash is of no assistance to the petitioner in this case.

15. The learned Counsel for the said company, on the other hand, placed reliance on a decision in the case of Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni, . In that case, the respondent was an Assistant Development Officer of the appellant Corporation and the service of the respondent was terminated during the period of probation. The termination order was challenged and such challenge was upheld by both the Single Bench and Division Bench of the High Court by relying on the judgment in Brojonath.

16. The Supreme Court categorically held that the ratio in Brojonath cannot apply to the case of a probationer. In paragraphs 4 and 6 of the LIC (supra), the Supreme Court pointed out the difference between the case of a permanent employee and that of a probationer. That a probationer is on trial and does not have any right to the post was reiterated by the Apex Court after discussing the relevant case laws. It was pointed out that only a case of termination of a probationer alleging misconduct calls for some enquiry and for an opportunity to the probationer to rebut the allegations. But in other cases, no notice or opportunity of hearing before termination is required to be given to the

probationer.

17. This Court is in respectful agreement with this view of the Apex Court and, in my opinion, the learned Judge of the Writ Court, on a correct appreciation of facts and law, rightly refused to interfere with the order of termination. This Court affirms the view taken by the learned Judge of the Writ Court.

18. Therefore the appeal is dismissed.

19. No order as to costs.

V.S. Sirpurkar, C.J.

20. I agree.