**(2019) 04 CAL CK 0088**

**In the Calcutta High Court**

**Case No :** Writ Petitions (WP) No. 1182 (W) Of 2019

Rakesh Kumar Sahoo APPELLANT

Vs

State Bank Of India & Ors RESPONDENT

**Date of Decision :** 26-04-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 21, 38, 43

**Citation :** (2019) 04 CAL CK 0088

**Hon'ble Judges :** Amrita Sinha, J

**Bench :** Single Bench

**Advocate :** Soumya Majumdar, Swarup Banerjee, Deb Dutta Sen, Prasun Ghosh

**Final Decision :** Dismissed

## Judgement

Amrita Sinha, J

In response to an advertisement published in the newspaper in the year 2007 the petitioner applied for being appointed in the post of Law Officer in the State Bank of India (SBI for short). The petitioner being successful in the recruitment process was issued appointment letter on 2nd February, 2009 for a period of three years from 2nd February, 2009 to 1st February, 2012 in the post of Junior Law Officer - S1 on contract and cost to the company basis. The service of the petitioner was governed by the State Bank of India Service Rules for Law Officers appointed on contract basis - 2008 and the amendments thereof.

The service of the petitioner was renewed till 31st March, 2012 on the existing and usual terms and conditions.

There was a revision of the terms of the contract whereby the contractual officers' who were engaged prior to 1st April, 2012 were to be guided by the revised terms of contract at the discretion of the bank from 1st April, 2012.

A contractual employee who secured 60% marks in his last performance appraisal was eligible for being engaged as per the revised terms of contract. The eligible contractual officers were to execute a fresh contract from 1st April, 2012. A contractual officer depending upon successful performance would be fitted in the designation as per annexure - III of the said contract.

As the petitioner had the requisite cut off marks in his last performance appraisal report he was eligible for appointment according to the revised terms of contract from 1st April, 2012. A fresh engagement letter was issued in favour of the petitioner on 20th July, 2012. As per the fresh contract the petitioner being the Law Officer of the bank was designated as the Assistant Vice-President for a period of two years from 1st April, 2012 to 31st March, 2014. The tenure of the petitioner as Vice-President (Law Officer) on contract was again extended for a period of two years from 1st April, 2014 to 31st March, 2016. The contract of the petitioner as Vice-President of the bank was once again extended for a further period of three years from 1st April, 2016 to 31st March, 2019.

By a letter dated 1st January, 2019 issued by the Assistant General Manager the service of the petitioner was decided to be terminated at the close of business on 31st January, 2019 vide note no. SARG/HR/APR/2018-19/104 dated 1st January, 2019. The SARG note dated 1st January, 2019 mentioned that as per management memo no. HR/CM/5/2018-19/903 no contractual employee should be in the service of the bank for a continuous period of ten years since the time of original joining. As the date of joining of the petitioner was 2nd February, 2009 he would complete ten years of service on 1st February, 2019, accordingly, it is proposed to terminate his contract on 31st January, 2019. As per the said note the General Manager was authorized to issue the termination of job contract to the officer concerned.

The petitioner being aggrieved by the said decision to terminate his service has filed the instant writ application with a prayer for setting aside the said impugned letter of termination and the approval note both dated 1st January, 2019 being Annexure-P9 to the writ petition. The petitioner has made a further prayer for directing the respondents to absorb him as permanent employee in the existing sanctioned vacant post and provide him the consequential benefits.

The grounds for challenging the impugned letter of termination are that the letter of termination has been issued by an officer who is not authorized under law to issue the same. The performance of the petitioner being satisfactory his service cannot be abruptly terminated on the apprehension that the petitioner will claim absorption as permanent employee of the bank upon completion of ten years of continuous service.

It has been submitted that according to the 2008 Rules read with the 2012 revised Rules it is the appointing authority i.e. the General Manager of the bank who can issue the order of termination of contract. In the instant case the order of termination was issued by the Assistant General Manager and hence the same is in violation of the rules framed by the bank. The Assistant General Manager lacked the competence to issue the letter of termination.

 

The reasons for termination as mentioned in the note dated 1st January, 2019 impugned herein is unconstitutional. The same amounts to exploitation of the service of the petitioner. The same is contrary to the principles enshrined under Articles 14, 21, 38 and 43 of the Constitution of India. The termination was neither need-based nor performance-based.

There are several sanctioned vacant posts of Law Officers and Deputy Manager in the bank and the bank is taking steps for recruitment for filling up the said vacant sanctioned posts.

The petitioner was appointed in a vacant sanctioned post by following the regular recruitment rules. The petitioner being a regular contractual appointee his service cannot be terminated solely on the ground that the petitioner will seek regularisation after completion of ten years of service.

The petitioner relies upon the decision delivered in the case of Kumari Shrilekha Vidyarthi & Ors. vs. State of Uttar Pradesh & Ors. reported in (1991)1 SCC 212 paragraphs 21, 22, 24, 27, 29, 31, 33, 40 and 47 and submits that if the order impugned is in violation of Article 14 of the Constitution of India there can be no impediment to strike it down. All action of the public functionary must be guided by reason and not whim, caprice or personal predilections.

The Ld. counsel refers to the decision delivered by the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Ltd. & Ors. vs. Brojonath Ganguly & Ors. AIR 1986 SC 1971 paragraph 113 wherein it was held that the courts will strike down any unfair and unreasonable clause/agreement entered into by parties when there is a gross inequality in their bargaining power and the victimised party had no meaningful choice but to give his assent to the contract however unreasonable, unfair a clause in that contract effect people at large and are injurious to public interest.

He further relies upon an unreported decision of the Hon'ble Supreme Court passed in Civil Appeal nos. 7423-7429 of 2018 (Narendra Kumar Tiwari vs. The State of Jharkhand & Ors.) wherein the Hon'ble Court held that all persons who had worked for more than ten years as on 10th April, 2006 (the date of decision in Uma Devi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification are entitled to be considered for regularisation.

It has been submitted that the judgment delivered in the case of Narendra Kumar Tiwari (supra) in August, 2018 may have prompted the bank management to issue the impugned letter of termination allegedly supported by the office note dated 1st January, 2019.

The learned advocate appearing on behalf of the respondent bank submits that the petitioner is not entitled to the reliefs as prayed for in the writ petition in view of the fact that the petitioner was appointed on contract basis for a particular specified period and the petitioner do not have any legal right to claim absorption as a permanent employee of the bank.

According to Clause 21 of the contract the bank was entitled to terminate the service of the petitioner by giving one month's notice or by paying one month's compensation without assigning any reason to justify such decision. It is the policy decision of the bank not to continue the service of contractual employees for more than ten continuous years. The bank's decision to terminate the service is well-informed and a reasoned one taken in accordance with the terms and conditions of the contract which binds the petitioner and the bank and accordingly the same is liable to be upheld by this Court.

As per the terms of the contract the service of the petitioner expires on the last day of the contract and on every occasion a fresh contract is entered between the parties. He submits that the petitioner was initially appointed on 2nd February, 2009 and would attain ten years' service on 1st February, 2019. The contract of the petitioner was inadvertently extended till 31st March, 2019 which was beyond the stipulated period of ten years and to rectify the error the bank management took decision to terminate the service of the petitioner on and from 31st January, 2019. There is no provision in the contract for extending the contractual service period beyond ten years as would be evident from Clause 4 of the revised Terms and Conditions for Engagement of Officers Engaged on Contract and the sub Clauses thereunder.

The Court in exercise of its writ jurisdiction ought not to pass any order compelling the bank to enter into any fresh contract for absorbing the petitioner in regular service or to extend the tenure of the service of the petitioner beyond the period of ten years.

The learned advocate controverts the submission of the petitioner regarding competence of the person issuing the order of termination. He submits that from the note annexed to the termination letter at page 78 of the writ petition it would appear that the note prepared by the Assistant General Manager proposing to terminate the bank's contract with the petitioner was sent to the General Manager being the appointing authority for his approval. In the said note it was specifically mentioned that on approval of the proposal to terminate the service of the petitioner the bank will serve notice to the petitioner regarding termination of the job contract. It is only after receiving the approval of the General Manager the decision to terminate was merely communicated to the petitioner by the Assistant General Manager of the bank. There is no legal infirmity in the said termination notice wherein it has been indicated that the appropriate authority has decided to terminate his service on the close of business from 31st January, 2019.

As regards absorption of the petitioner in regular service it has been submitted that there is no such provision in the contract and the advertisement that has been made for appointment of Deputy Legal Manager was in respect of regular service and not a contractual one.

 

The learned advocate relies upon the decision delivered in the case of Satish Chandra Anand vs. The Union of India reported in AIR 1953 SC 250 paragraphs 10 and 11 wherein the Court held that there was no compulsion of the petitioner to enter into the contract he did. He was free under the law as any other person to accept or reject the offer which was made to him.

He further relies upon the decision delivered in the case of State of Orissa vs. Chandra Shekhar Mishra reported in (2002)2 SCC 583 wherein it was held that there was no question of being granted the relief of being directed to be appointed as a regular employee in case of a contractual employee.

He relies upon the case of Gridco Ltd. & Anr. Vs. Sadananda Dolui & Ors. reported in AIR 2012 SC 729 wherein the Court held that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision so long as the action taken by the authority is not shown to be vitiated by the infirmities of illegality, perversity, unreasonable, unfair or irrational and so long as the action is not demonstrably in outrageous deviance of logic the Writ Court would do well to respect the decision under challenge.

Upon hearing the submissions made on behalf of both the parties and upon perusal of the materials on record it appears that the petitioner was initially engaged as Law Officer on contractual basis after following a selection procedure through open competition i.e. written test and interview. The service of the petitioner was governed by the State Bank of India Service Rules of Law Officers appointed on contract basis - 2008. The terms of contract was revised by the State Bank of India and the said revised terms of contract came into effect on and from 1st April, 2012. The petitioner was guided by the revised terms of contract. As per the revised terms the eligible contractual officers had to execute a fresh contract from 1st April, 2012 and depending upon his successful performance the contractual officer was to be fitted in the designation as per annexure - III.

According to clause 4 of the revised terms a contractual officer shall have to secure minimum 60% marks in his/her last performance appraisal report. The officers who fail to secure minimum 60% marks will not be eligible for the revised terms and their contract was to be terminated by giving one month's notice effective from 1st April, 2012. The eligible contractual officers who were agreeable to the bank's revised contract shall be required to execute a fresh contract. The contractual officers were engaged for a period of one year. After successful completion of one year by securing minimum appraisal score on average of 90% of marks at the discretion of the bank the officers may be engaged as Assistant Vice President on a fresh contract. The initial engagement as Assistant Vice President will be for two years. After successful completion of two years as Assistant Vice President at the discretion of the bank the engagement may be for a further period of two years. After successful completion of four years (initial 2 yrs. + extended 2 yrs.) as Assistant Vice President at the discretion of the bank the officer may be engaged on fresh contract as Vice President for two years. After successful completion of two years as Vice President at the discretion of the bank the engagement may be for a further period of three years, i.e. initial 2 yrs. + extended 3 yrs. For each engagement there will be a fresh contract and the service will automatically come to end on the date of expiry of the contract. The contract of employment could be terminated by the bank at any time by giving one month's notice or by paying an amount equal to one month's compensation without assigning any reason(s) whatsoever. Plainly said, the maximum contractual period was ten years, i.e. 1yr (law officer)+ 2 yrs (Assistant Vice President) + 2yrs (Assistant Vice President) + 2yrs (Vice President) + 3yrs (Vice President) = 10 yrs. There was no provision in the rules for renewing and / or extending the contractual period beyond ten years.

The termination clause of the contract mentions that the contractual officers are engaged for skilled/identified jobs and their continuance in the bank's service on contract will be incumbent upon the need of the bank. Their service can be terminated at any time by giving a months' notice/one months' compensation. The contractual officer was also entitled to terminate the contract of employment by giving one months' notice or by paying an amount equal to one months' compensation. The contract of employment can be terminated at any time without assigning any reason whatsoever. The decision to terminate will be taken by the appointing authority on the recommendation of the department head under whom the contractual officer is working.

The petitioner was engaged as Law Officer with the designation Assistant Vice President on contract basis from 1st April, 2012 to 31st March, 2014. The engagement of the petitioner as Vice President (Law Officer) was again renewed for a period of two years from 1st April, 2014 to 31st March, 2016. The period of contract of the petitioner as Vice President (Law Officer) was further renewed for three years from 1st April, 2016 to 31st March, 2019. In the engagement letter it was categorically mentioned that the same was contractual in nature and the period of contract will come to an end with the expiry of the said term.

It is interesting to note that in all the contract forms it has been mentioned that the officer was "engaged on contract". The respondent bank purposely avoided the term "appointed". It indicates that the petitioner has been engaged for a particular work for a definite period of time, which also indicates that the petitioner was never appointed in a particular post. The terms and conditions of the contract mentions that "following category of officers engaged on contract or otherwise elevated to any of the designations on contractual basis" which signifies that an officer is not engaged against a particular post. Though in the initial advertisement (2007-2008) it was mentioned regarding recruitment on contract basis in the post of Law Officer but in the revised terms of contract which came into effect from 1st April, 2012 the terms "appointment" and "post" are significantly missing. This signifies that the service of an officer was solely at the discretion of the bank depending upon its need. The officer concerned also had the liberty to discontinue his engagement by giving one months' notice or by paying an amount equal to one months' compensation. The bank could have terminated the engagement of an officer without assigning any reason for the same.

It appears that the petitioner served the bank since 2nd February, 2009 and his engagement was renewed periodically on the self-same terms and conditions. The petitioner all along knew that his contract of engagement was time bound with maximum period of ten years. It was never intended to be made permanent. The petitioner knowing fully well that his service may be terminated or his tenure extended at the sole discretion of the bank remained attached to the bank for nearly ten long years. There was no indication by the bank that the service of the contractual officers will be made permanent. Even though the termination clause seems to be very stringent the petitioner accepted the same.

In case an employer engages an officer for a particular period and the officer accepts the engagement knowing fully well that his engagement will come to an end when the period is over can the employee turn around and demand the employer to make his engagement permanent? The answer is in the negative. A contractual officer cannot apply force upon his employer to make his engagement permanent. Continuation of the engagement of a contractual employee as per the revised terms of contract was at the discretion of the employer.

In the instant case the service of the petitioner was terminated two months prior to the completion of his contractual period. Had it been a case that the engagement of the petitioner was not extended / renewed after the contract came to an end then could the petitioner have any say in the matter? Possibly no.

The allegation of the petitioner that the bank was hiring officers to perform the same nature of work to drive at the point that there is permanent need of the bank for law officers does not help the petitioner in any manner. The bank is entitled to employ officers according to its needs following the relevant rules.

An employee appointed against a permanent post enjoys certain service benefits which the contractual employees do not. The rules and regulations guiding regular employees are different from the ones guiding contractual employees. Both cannot be equated.

The decision rendered in the case of Narandra Kumar Tiwari (supra) does not help the petitioner, nor does the principle laid down in the case of Uma Devi apply in case of the petitioner. In both the cases the appointments were irregular. In the instant case the petitioner was appointed following a selection procedure i.e.; the engagement was regular but contractual. Moreover the cut off date as mentioned in the case of Uma Devi (10.04.2006) stands in the way of the petitioner as he was engaged in 2009 long after the cut-off date fixed in the case of Uma Devi.

 

Though in the case of Shrilekha Vidyarthi (supra) it has been held that Article 14 of the Constitution of India applies in contractual matters and if the policy or any action of the government fails to satisfy the test of reasonableness it would be unconstitutional the facts of the case of Shrilekha Vidyarthi (supra) are completely different from the facts of the instant case. In Shrilekha Vidyarthi's case the government by general order terminated all appointments of government counsels in all the district of the State irrespective of the fact whether the term of the incumbent had expired or was subsisting. In the said case the Court held that the "office or post had a public element which alone is sufficient to attract the power of judicial review for testing the validity of the impugned circular on the anvil of Article 14". In the case at hand the petitioner was not appointed in any post. He was engaged for performing a particular work. An element of malice was also present in the case of Shrilekha Vidyarthi.

Malice has not been pleaded in the case at hand.

In Brojonath Ganguly (supra) the Hon'ble Supreme Court was of the view that the courts will strike down any unfair and unreasonable clause/agreement entered into by parties as a party to a contract did not have any choice due to the superior bargaining power of the other party. In the instant case it is not a clause that is required to be struck down but the entire contract of appointment of the petitioner on contractual basis is required to be struck down if any relief is to be granted in favour of the petitioner. The root of the issue is the contractual appointment of the petitioner which the petitioner presently intends to regularise.

In the case of Chandra Shekhar Mishra (supra) the Supreme Court held that in case of a contractual employee there could be no question of granting the relief of being directed to be appointed as a regular employee. The Supreme Court in Satish Chandra (supra) held that there was no compulsion on the petitioner to enter into the contract he did. He was free under the law to accept or reject the offer. He can avail the rights and remedies available to him under his contract which has been denied to him. He has not been discriminated against and he has not been denied the protection of law which others similarly situated could claim. The remedy of a writ is misconceived. The Court further held that when the petitioner's first five years contract came to an end he was not a permanent government servant and the government was not bound to re-employee him or to continue him in service. Though the employment was continued it was a new and fresh contract. The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution and those who choose to accept those terms and enter into the contract they are bound by them.

In Gridco Ltd. (supra) the Court held that so long as the action taken by the authority is not shown to be vitiated by infirmities and so long as the action is not demonstrably in outrageous defiance of logic the writ court would do well to respect the decision under challenge. It held that renewal of contract of employment depended upon perception of management as to usefulness of respondent and need for an incumbent in position held by him. It has to be kept in mind that modern commercial world executive is engaged on account of their expertise in a particular field and those who are so employed are free to be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.

Absorbing contractual employees in regular posts will amount to violation of Article 14 of the Constitution. The regular process of recruitment will be jeopardised. This will create a parallel channel of employment which is neither desirable nor permissible. In the absence of any rule permitting lateral entry by absorbing contractual employees in regular posts no direction to that effect can be passed by the writ Court. The employer is entitled to select the best possible candidate by way of an open selection. The "State" is bound to follow a free, fair and transparent recruitment process.

Moreover, it is not the case of the petitioner that the bank is recruiting officers for the first time in his ten years of service career and he did not get a chance to appear in the selection process meant for regular jobs. It seems that the petitioner was content with his job on contract basis and never looked or thought beyond it as his tenure of engagement got extended on regular basis. The petitioner has served the maximum contractual period of ten years. The moment the employer invoked the termination clause by giving a months' notice the petitioner fell back upon the decision delivered in the case of Uma Devi (supra) and Narendra Kumar Tiwari (supra).

The petitioner chose to remain attached with the respondent bank is spite of knowing the fact that his engagement could have been terminated or his tenure not extended at the sole discretion of the bank. He knew that as per the revised rules his contract could not have been extended or renewed beyond a period of ten years. It is true that the petitioner has put in his prime years of his career in the service of the bank and that without any plausible reason his engagement has been terminated. There is no allegation of incompetence on his part. His appraisal reports are extremely good but the aforesaid are not the considerations on which the bank may be compelled or directed to withdraw the order of termination and to absorb him in regular service.

The submission of the petitioner that the letter of termination has been issued by an authority which is not authorised to issue the same does not hold much water. The letter of termination clearly speaks that the appropriate authority has decided to terminate the service of the petitioner and the decision of the appropriate authority has merely been communicated by the Assistant General Manager of the bank. The decision to terminate the service of the petitioner was taken by the appropriate authority and not by the officer communicating the same.

The ground that the memo which has been relied upon by the bank to terminate the service of the petitioner was prospective in operation and the same could not be applied in case of the petitioner is also not a tenable one. The same do not have any application in the case of the petitioner in as much as the bank has arrived at a policy of not engaging the service of contractual employee for more than a continuous period of ten years. The bank is entitled to adopt its own policy as long as it is not contrary to the provisions laid down in the Constitution of India. Disengaging a contractual employee who has put in ten continuous years of service does not violate any provision under the Constitution of India accordingly the same cannot be faulted. It is an overall policy of the bank and it has not been alleged that the same has been made applicable only in case of the petitioner. The petitioner may rightly feel that he has been exploited but at the same time it cannot be lost sight of the fact that the petitioner allowed himself to be exploited by the bank.

In view of the discussions made hereinabove no relief can be granted to the petitioner in the instant case.

W.P No. 1182 (W) of 2019 stands dismissed.

There will, however, be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

 