
(1960) 02 CAL CK 0031
In the Calcutta High Court
Case No : Civil Revn. No. 768 of 1959

Ranjit Ghosh

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 09-02-1960

Acts Referred:

Constitution of India, 1950 — Article 12, 311
Damodar Valley Corporation Act, 1948 — Section 51

Citation : AIR 1960 Cal 549 : (1960) 1 CALLT 395

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Dutt and Nanda Lal Pal, for the Appellant; Chandra Nath Mukherjee for Opposite Party Nos. 1 and 2 and J. Majumdar, for Opposite Party No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows : The Damodar Valley Corporation, the respondent No. 1 in this case, is a statutory corporation which came into existence as a result of the passing of the Damodar Valley Corporation Act, being Act XIV of 1948, which came into operation on the 7th July, 1948. On the 8th April, 1950 the petitioner was offered the post of Assistant (Mechanical) Engineer in the work-charged establishment of the said Corporation, by the Director of Personnel. On the 19th August, 1950 he was appointed to the post of the Assistant Engineer (Mechanical) with effect from the 1st July, 1950. On the 20th June, 1951 he entered into articles of agreement with the Corporation, a copy whereof is annexure "X" to the affidavit in opposition affirmed by Sohan Lal. The terms and conditions of his appointment are set out in the said articles. It was stated therein that his appointment would be for a term of three years commencing from 1st July, 1950 extensible at the option of the Corporation, with the consent of the petitioner. Clause 4 of the agreement deals with the question of termination of service, and Sub-clause (iii) of Clause 4 provides that except during the period of probation, the services of the petitioner would be liable to

termination by three calendar months" notice in writing, given at any time during the said term of three years, by either side, without any cause being assigned. It was further provided that the Corporation might, in lieu of notice, pay to the petitioner a sum equivalent to his wages for three months. On the 12th May, 1953 we find the Director of Personnel writing to him saying that his services would not be required with effect from the 1st July, 1953 after the expiry of his original term of appointment. Against this the petitioner made certain representations and on the 15th June, 1953 the petitioner was informed that on reconsideration the Corporation had decided to extend the term of his employment for a period of one year. The period of employment of the petitioner continued to be extended from time to time, and on the 21st June, 1954 he was transferred to an officiating post, to act as Executive Engineer (Mechanical Division), B and I, Damodar Valley Corporation. On the 30th April, 1958 the petitioner was informed by the Director of Personnel that the term of his employment would expire on the 30th June, 1958. The letter then proceeds to say as follows :

"The Corporation desires to extend the term of your employment for a further period of two years from the 1st July, 1958 as Assistant Engineer in the pay scale of Rs. 200-800/-."

It was further stated that in "all matters concerning his service under the renewal offer, he would be governed by the D. V. C. Service Regulations and other relevant Regulations and orders of the Corporation for the time being in force". The petitioner accepted these terms and an order was made on the 1st August, 1958 a copy whereof is annexure "21" to the affidavit in opposition filed by Sohan Lal. That order states that the period of employment of the petitioner had been extended for two years, with effect from the 1st July, 1958 in accordance with the terms offered to him in the letter dated the 30th April, 1958 and that he had been allowed to continue to officiate as Executive Engineer (Mech.) till a substitute was posted. On the 24th October, 1958 the Director of Personnel wrote to the petitioner that the petitioner's services would no longer be required and under Clause 4(iii) of the Agreement dated the 20th June, 1951 read with the subsequent agreement and extension orders, the petitioner would be granted a sum equal to three months' basic pay. To this, the petitioner protested, and on the 12th December, 1958 the Director of Personnel wrote to the petitioner that his services as Officiating Executive Engineer (Mechanical) was no longer required. It was stated further that if the petitioner was prepared to remain in the services of the Corporation as Assistant Engineer (Mechanical), he would be allowed to continue at Bokaro, until he was transferred to the Durgapur Thermal Power Station or some other station. To this course, the petitioner did not agree. According to him, he had been promoted to the post of Officiating Executive Engineer (Mechanical) by direct appointment, not on the basis that his substantive post was Assistant Mechanical Engineer, but by regular promotion, and therefore he was not prepared to accept the post of Assistant Engineer. The authorities have not accepted this position and hence this application has been

made.

2. The first point taken is that the petitioner had been promoted to the post of Executive Engineer (Mechanical) and therefore there could be no question of proceeding under the agreement of 1951, in terminating his services. In my opinion, that is not in accord with the facts of this case. It is true that the petitioner was allowed to officiate in the higher post of Executive Engineer (Mechanical), but this, as has been made clear in the correspondence and orders, was merely an officiating post. The substantive post of the petitioner was that of an Assistant Engineer. Actually, in the letter dated the 30th April, 1958 (annexure "Z") and the office order dated the 10th August, 1958 (annexure "ZI") of the affidavit in opposition affirmed by Sohan Lal, this has been amply made clear. In the first mentioned letter, it has been distinctly stated that the offer of renewal was only for an extension of the term of the petitioner's employment as Assistant Engineer (Mechanical) for a further period of two years. There was no extension of his office as Executive Engineer (Mechanical), although it was made clear by the office order dated the 1st August, 1958 that during his extended period as Assistant Engineer, he would be allowed to continue to officiate as Executive Engineer (Mechanical) till a substitute was posted. It would certainly have been better if he was reverted to his substantive post and then his services were terminated, I could have understood this objection if events did not happen as they did. Not only were the authorities agreeable to revert him to his substantive post, preparatory to passing any further orders, but they were agreeable to his continuing in that post. The petitioner however refused to accept that offer. Consequently, there is no point in saying that he should have been reverted and then his services terminated. It is next urged that this reversion was by way of punishment and therefore in accordance with the Regulations which came to be framed at material time, the procedure laid down in Regulation 96 should have been followed. That Regulation speaks about reduction to a lower class or post by way of penalty. In fact, it has enumerated several classes of penalties which may be imposed on an employee of the Corporation, It is only when the reversion is by way of penalty that this procedure has to be adopted, by issuing 3 charge-sheet and/or getting an explanation thereto. In this particular case, the reversion was not by way of penalty. There is no material before me to show that the reversion was made by way of punishment. On the contrary, it was expressly made in terms of the agreement of 1951. That being so, I do not think that there is any violation of the Regulations.

3. It is next stated that even apart from the Regulations the matter is governed by Article 311 of the Constitution. The argument is somewhat as follows : It is said that Article 12 of the Constitution lays that the word "State" would include not only the Government but all local or other authorities within the territory of India, or under the control of the Government of India. It is therefore argued that the Damodar Valley Corporation, which is controlled by Government is also a "State", and therefore its employees are civil servants entitled to take advantage of Article 311 of the Constitution. In my opinion, there is nothing in this point. It

is true that under the Act, Government exercises a considerable amount of control. Indeed, Section 51 contains the heading "Control of Central Government". That does not however mean that Article 311 applies to the Corporation. So far as Article 12 is concerned the short answer is that it has been made clear in the Article itself that the particular definition introduced therein was only for the purpose of Part III of the Constitution, which deals with fundamental rights. The Constitution does not give a general definition of the word "State", excepting what is contained in Article 1. In Articles 12, 36, 152 and 308 which are Articles at the commencement of the various parts of the Constitution, the word "State" has been defined for the purpose of that Part only. So far as Article 311 is concerned, it is contained in Part XIV, of which the introductory Article is 308. This merely states that the expression "State" for the purpose of Part XIV does not include the State of Jammu and Kashmir. It is obvious therefore that the word "State" has not been used in the same meaning throughout the Constitution. It is conceivable that for the purposes of fundamental rights the word "State" has been given an extended meaning. I find no reason to hold that this definition ought to be imported in Part XIV of the Constitution. Apart from this, I find that the question has now been decided by reported decisions in almost all the Courts of India. I will only mention some. In this Court, Bose, J., held in *Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others*, , that the Corporation was a statutory corporation and Article 311 did not apply. The same conclusion was arrived at by Bachawat, J., in *Damodar Valley Corporation y. Provat Roy*," 60 Cal WN 1023. In *Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd. and Another*, , a Division Bench of the Patna High Court have decided that the company, although owned by the Union Government, was not governed by Article 311 or Article 320 of the Constitution, and that its employees are not civil servants. The learned Chief Justice referred to two English cases which are directly on the point, namely, *Tamlin v. Hannaford* (1950) 1 KB 18, and *Ebbw Vale Urban District Council v. South Wales Traffic Area Licensing Authority* (1951) 2 KB 366. In the first case, it was held that the British Transport Commission was a statutory authority and that its servants were not civil servants and its properties were not Crown properties. In that case, it was shown that the control of the Crown was paramount and yet it was held that the employees were not civil servants. In the second case, the British Transport Commission acting under the Transport Act 1947 acquired all the shares of a passenger road transport company with power to appoint and dismiss all their directors. Even so, it was held that the servants of the company were not servants of Government. In all these cases, it was held that the question as to whether an employee should be given an opportunity of showing cause before his services were terminated depended on the law governing the particular statutory corporation. The Indian cases have definitely held that Article 311 of the Constitution was not applicable. I must therefore accept this view and hold that the employees of the Damodar Valley Corporation are not civil servants within the meaning of Article 311. In this particular case, the petitioner would be governed by the terms of his agreement which, as I have

mentioned above, attracted the regulations framed under it, and I see no violation of the provisions of the Regulations. Termination of service in accordance with the agreement is not by way of penalty and calls for no particular procedure.

4. The result is that the petitioner has not been able to establish any ground for interference in this case and the application must fail.

5. The Rule is discharged. Interim, if any, is vacated. There will be no order as to costs.