
(1993) 07 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Appeal No. 907 of 1974

Ravi Kumar Sukhija

APPELLANT

Vs

G.V. Jannah, Custodian and Others

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1994) 53 DLT 402

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : G.D. Gupta, I.S. Goyal, O.K.C. Grover, S.C. Dhanda, Nandita Chandra and K.C. Mittal, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition is brought seeking writ of certiorari or any other writ for quashing order dated March 28, 1973, passed by respondent No. 2 by which the services of the petitioner were terminated.

(2) The facts of the case are that the petitioner was employed as an Inspector at Sirsa by the Divisional Manager of the then. M/s. Indian Mercantile Insurance Company Ltd., New Delhi, with effect from December 1, 1970, at a total salary of Rs. 200.00 r month vide letter dated December 4, 1970. Services of the petitioner were terminated by the respondent vide letter dated March 28, 1973, with effect from April 30, 1973.

(3) On May 13, 1971, the Management of one hundred and six General Insurance Companies including that of M/s. Indian Mercantile Insurance Company Ltd. was taken over by the Government of India in pursuance of the provisions of an Ordinance, namely, General Insurance (Emergency Provisions) Ordinance 1971, which was later on substituted by an Act of Parliament known as General Insurance (Emergency Provisions) Act, 1971. In view of the provisions of the statute the Management vested in the Central Government of

all these insurance companies and the Central Government appointed Custodians for the said insurance companies for managing affairs of the insurance companies". Respondent No. 3 was appointed for carrying out the provisions of the Act and on January 1, 1973, the general insurance business was nationalised under the General Insurance Business (Nationalisation) Act 1972. Respondent No. 1 was appointed as Custodian of M/s. Oriental Fire & General Insurance Company Ltd. with which the business of M/s. Indian Mercantile Insurance Co. Ltd. was merged.

(4) The challenge to the order of termination is on the basis that the same is arbitrary and the reasons given for termination of services of the petitioner are on the face of it irrelevant and misleading. It is urged in the petition that in the letter of appointment "it was mentioned that in the first year of the appointment the expected business to be earned by the petitioner should be to the tune of Rs. 30,000.00 and the petitioner had achieved that target in the first year of his appointment i.e. in the year 1971 but in the year 1972 the petitioner could do the business to the tune of Rs. 26,628/14? and suddenly the appointment of the petitioner was terminated. According to the terms of the appointment letter, the probation period fixed was six months but he was to be confirmed on being found to be carrying on his work satisfactorily. In the termination letter the reason given is that the petitioner was required to have business of Rs. 50,000.00 every year and he could have the business of only Rs. 26,628/14? and thus, the petitioner's work has been found not up to the mark.

(5) In the counter-affidavit now it is admitted that according to the terms of letter of appointment the expectation of business of the petitioner was only to the tune of Rs. 30,000.00 per annum and Rs. 50,000.00 has been mentioned in the impugned order as a typographical mistake. Strangely while admitting this typographical mistake in the impugned order in para 17 of the counter-affidavit it has been mentioned that the petitioner was to be confirmed if he was to procure premium income of Rs. 45,000.00 in the year 1972, but his performance had deteriorated and came to Rs. 26,628/14? which was at the precaution cost of 11.25% and despite reminding him of poor performance the petitioner did not improve and thus, the petitioner was not found suitable for the job and hence, his services had been terminated.

(6) It is not disputed that before passing the order of termination no communication of whatsoever nature had been addressed to the petitioner in order to point out to him that he was lacking in reaching the norms of the job expected of him and the reason for his giving less business for the year 1972. It is also clear that till the order of termination was passed against the petitioner, the petitioner was deemed to be on probation.

(7) The learned Counsel for the respondents has drawn my attention to Rule 11 of the Code of Conduct to be observed by insurance companies carrying on General Insurance Business in India which has been framed under the Insurance Act, 1938. Rule 11 of the said Code framed under Rule 17 E of the Insurance

Rules, 1939, requires that the total cost of all field-workers in a year should not exceed 30 percent of the allowed expenses (excluding commission). So it has been urged that keeping in view the salary being paid to the petitioner the business procured by him for the year 1972 did not come up to the standard fixed in this Code as it fell short of 1.2%. In the impugned order it is mentioned that the petitioner had reached the average of 7-1/2% as per the Code of Conduct, It appears to be wrong and it appears that it has been calculated on the basis of expected premium to be procured at Rs. 50,000.00 while now it is not disputed that the expected premium to be earned by the petitioner was not more than Rs. 30,000.00 per year.

(8) The important question to be decided in the writ petition is whether the respondents were justified in law in terminating the services of the petitioner in the second year of his employment on the reasons given in the impugned order which on the face of it are incorrect. The figure of Rs. 50,000.00 which ought to have been Rs. 30,000.00 and instead of 7-1 1/2% it should have been petitioner's total salary of a year vis-a-vis business earned by him did fall short only by 1.2%. If these correct figures had been to the knowledge of the Divisional Manager who passed the impugned order it may be that the Divisional Manager might not have thought that the performance of the petitioner was not so low as to resort to drastic measure of terminating his services only in the second year of his employment. It is too much to believe that there was only typographical mistake in the impugned order when figure of Rs. 50,000.00 was mentioned instead of Rs. 30,000.00 .

(9) In the case of Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others, , the facts, in brief, were that the petitioner was appointed on ad hoc basis on February 16, 1982, but her appointment was continued on ad hoc basis for about three years and her services were terminated on January 12, 1985. The Supreme Court observed that:-

"IN the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies, indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability."

(10) While endorsing the ratio laid down in the cases of Champaklal Chimanlal Shah Vs. The Union of India (UOI), and Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, , which were the cases of termination of an employee who was on probation on the ground that work of the employee was not sound satisfactory and he was found not suitable for being remained in service the Supreme Court held that no rule is being laid down that there should

be regular inquiry in said cases and what is said to be emphasized is that such an employee be informed about the work and performance being not up to the mark and without giving any such opportunity to the employee to come up to the mark it would not be fairplay on the part of the employer to straightway terminate the services of the employee. The ratio laid down in this case clearly applies to the facts of the present. It appears that on receiving the order of termination the petitioner sent the representation in which he highlighted the reasons for small deficiencies in his business procurement for the year 1972. He has mentioned that the area where he was functioning was having the business of persons dealing in cotton but with the coming into force of Cotton Corporation of India the said businessman suffered and thus, there occurred slight deficiency in the target which the petitioner was supposed to achieve. He also mentioned that his request forgetting some business from some close-by area which did not fall in his field was declined. His representation was, however, rejected without giving any reasons.

(11) Be that as it may, keeping in view the fact that in the impugned order of termination of services of the petitioner, the reasons given are factually being not correct, there is no escape but to hold that the order of termination is arbitrary and has been passed without application of mind and thus cannot be sustained.

(12) Counsel for the respondents has also contended that even if this Court is to set aside the impugned order, the Court should not order reinstatement of the petitioner in the service inasmuch as a long period has passed and there has taken place sea changes in the establishment of the insurance companies and with the reinstatement of the petitioner there would arise complications in adjusting the petitioner in any proper place inasmuch as designations and pay-scales of the officials now working with the Insurance Company have also undergone drastic changes. He has also pointed out that new Code of Conduct has been laid down which even requires training of the employees etc.

(13) The learned Counsel for the petitioner, on the other hand, has contended that the impugned order on the face of it is arbitrary and has been passed at the beginning of the career of the petitioner, so it is a fit case where the petitioner should be directed to be reinstated with all consequential benefits. He has also drawn my attention to the affidavit of the petitioner filed on January 22, 1992, wherein the petitioner has mentioned that after his services were terminated he completed his graduation and helped his father in business from 1979-82 and thereafter he was in service of a public company and had drawn certain emoluments from 1982 to June 1991 and since then he is unemployed. He has argued that the cases where Courts have not allowed reinstatement after passage of long years are those where the employees services have been terminated on account of employer having some doubt about the integrity of the employees.

(14) Counsel for the respondents has made reference to a judgment of the Supreme Court in *H.L Kamla v .The Chairman-cum-Managing Director, New India*

Assurance Co. Ltd. & Anr., Civil Appeal No. 655 of 1986 decided on January 17, 1992. It is a case of an employee of Insurance Company. The appellant in that case was suspected of embezzlement and his services were terminated. The Supreme Court while setting aside the order of termination held that normally on termination being set aside the order of reinstatement should follow but the Supreme Court in view of the peculiar facts of the said case held that payment of compensation of Rs. 1,00,000.00 would suffice. In the said case the services were terminated in the year 1973.

(15) He has then referred to a judgment of the Karnataka High Court in the case of Shri K.P. Puttaram v. Vijaya Bank Ltd., 1991 LLR 824. In the said case the petitioner had been dismissed in the year 1970 and in view of the peculiar facts of that case the reinstatement was not ordered and compensation was directed to be given. The peculiar fact of the case was that the petitioner after termination of services had joined the legal profession. In P.C. Bumotra Vs. Chairman-cum-Managing Director, New India Assurance Co. Ltd. and another, , the services of the appellant were terminated for unsatisfactory performance of his duties. The services were terminated in the year 1976 and still the Supreme Court instead of directing reinstatement had awarded a sum of Rs. 1,00,000.00 .

(16) In the present case, keeping in view the facts that services of the petitioner were terminated in the year 1973 and since then many changes must have occurred in the service conditions of the employees working with the respondent and following the ratio in the case of P.C. Bumotra (supra), I hold that it would not be a fit case for directing reinstatement of the petitioner.

(17) I allow the writ petition, make the rule absolute and quash the impugned order but instead of relief of reinstatement, grant compensation of Rs. 1,00,000 / - to the petitioner and the said amount should be segregated for the purpose of income- tax from the year 1973 onwards. The parties are, however, left to bear their own costs. The amount be paid to the petitioner within two months. If the amount is not so paid, the petitioner shall be entitled to have interest at 12% per annum till the date of payment after the expiry of the period of two months.