(1972) 07 CAL CK 0014

In the Calcutta High Court

Case No : Civil Rule No. 2954 (W) 1971

S.M. Roy APPELLANT

Vs

Sterling General Insurance Company Ltd. RESPONDENT

Date of Decision : 11-07-1972

Acts Referred:
General Insurance (Emergency Provisions) Act, 1971 — Section 3(1), 4(1), 4(2)

Citation : (1973) 1 ILR (Cal) 402

Hon'ble Judges : Salil K. Dattas, J

Bench : Single Bench

Advocate : Arun Prokash Chatterjee and Parimal K. Das Gupta, for the Appellant;Debi De and Prohhat Kumar Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Salil K. Datta, J.—This is an application by an employee of the Sterling General Insurance Company Ltd. (Respondent No. 1) for a writ in the nature of mandamus forbearing the Respondents from holding any enquiry regarding further retention of the Petitioner in his service with the above company, as contemplated in the letter dated August 31, 1971, of the Custodian of the company (Respondent No. 2) and also for a writ in the nature of certiorari quashing the said letter An interim order was passed on October 22, 1971, granting leave to the Respondents to proceed with the proposed investigation but restraining them from publishing or giving any effect to the result of the investigation. The Petitioner''s case is that he was appointed as Inspector of the company in terms of the letter of appointment dated February 14,1957 (annex. B to the petition). The Petitioner, though appointed as Inspector, was assigned the job of organising business in Bihar and West Bengal. The Petitioner commenced his work in 1958 and went on discharging his duty satisfactorily and in 1967, his annual business was Rs. 5 lacs while his salary rose to Rs. 1,115. The Petitioner was allowed to appoint agents and workers and was treated as Supervisor since 1961, recruited inspectors and supervised their work. The Petitioner soon fell a victim to factionalism as a result of envy due to sharp rise of his business and his salary was cut down by Rs. 650 from April, 1968, mala fide without assigning any reason which the Petitioner received with protest under force of circumstances. The Petitioner contended that he was entitled to and given credit of the business of his inspectors and there was no question of personal business to be procured by him. The Petitioner further claimed to be appointed as Chief Organiser, but the company verbally agreeing did not make the appointment.

2. On May 13, 1971, an Ordinance called the General Insurance (Emergency Provisions) Ordinance, 1971, came into force. By this Ordinance on the said date the management of undertakings of all insurers vested in the Central Government. This Ordinance was repealed on June 17, 1971, by the General Insurance (Emergency Provisions) Act, 1971, (XVII of 1971) and it was provided therein that the said Act was to be deemed to have come into force on May 13, 1971. On the basis of the said Ordinance it appears that a custodian of the company was appointed who is the said Respondent No. 2 in this Rule.

3. The Petitioner during May 25, 1971, to August 11, 1971, made representations to the company as also the Minister of Finance of the Central Government about his appointment as Chief Organiser of the company which the company failed to make contrary to assurances. On the letter to the Minister the Custodian in reply informed the Petitioner by letter dated August 31, 1971, that there was no evidence in the company''s record about the allegations made by the Petitioner and that each field officer or inspector would stand or fall according to the business he produced. It was stated further that the Petitioner''s performance did not justify his emoluments. In the letter the cost ratio for the past few years was disclosed and the Custodian expressed surprise why the Petitioner''s service was not terminated so long. The Custodian further informed the Petitioner that he was sending a copy of the letter to the Senior Regional Manager of the company at Calcutta to investigate and take necessary steps in the matter. Against this order the Petitioner has obtained this Rule.

4. The Petitioner''s contention is that the cost ratio disclosed was not correct as the business of the inspectors supervised by him was not taken into account. The impugned order threatening to terminate the Petitioner''s service was contrary to the principle of natural justice and also Article 16 of the Constitution. It was further contended that the proposed action threatened in the impugned letter was in excess of the Custodian''s power who under the law is only to discharge the day to day management. Further, it is the Central Government and not the Custodian who could terminate the Petitioner''s service.

5. The Rule was opposed by the Respondents who filed an affidavit-in-opposition denying all material allegations in the petition and contending, inter alia, that the petition should be dismissed in limine as no writ lies against a company. The remedy for wrongful dismissal threatened by the Respondent as alleged, if true, would raise a claim for damages for wrongful dismissal and there was no cause of action for the present application. It was stated that the Petitioner was

confirmed in service on the basis of the letter of appointment dated June 22, 1957 (annex. B to the affidavit-in-opposition). The Petitioner was given authority to recruit, direct and control agents introduced by him. It was further provided that the service would be terminable by one calender month''s notice. The Petitioner was required to work as Inspector and never as Supervisor and he never recruited inspector or supervisor. There was a draught in the business of the Petitioner in 1968 and his conveyance and entertainment allowances were withdrawn. The company never accepted the Petitioner''s claim for appointment as Chief Organiser and there was no basis for such claim. It was further stated that his performance did not justify even the reduced emoluments and for his further retention in service the Custodian directed investigation for taking necessary steps in the matter. The Petitioner is not entitled to credit other inspector''s business except what was actually secured by him personally. It was further stated that Rule 17E of the Insurance Rules governed the cost ratio for field workers in general insurance business and it was open to the company to decide the steps to be taken against the Petitioner considering the volume of business brought in by him. The Petitioner has no right to challenge this course of action and, accordingly, the petition should be dismissed.

6. In his affidavit-in-reply the Petitioner reiterated his allegations arid contentions made in the petition. It was further stated that the Petitioner had acquired a statutory status in his service and the threatened termination would not because of wrongful dismissal controlled by private contract. In the impugned letter the threat of termination of service violated constitutional guarantees and principles nature of justice. The Petitioner''s contract of service contained in the letter of appointment gave way to the statutory status by vesting the management of general insurance business in the Central Government. The Petitioner further stated that he never received the letter of June 22, 1957, and only letter of appointment received by him was the letter of the company dated February 14, 1957 (annex. B to the petition). The Petitioner challenged the cost - ratio of the Petitioner disclosed by the company as incorrect and according to him the business of inspectors supervised by him should have been included in his account.

7. It appears that in pursuance of order dated November 29, 1971, the Rule against the Respondent No. 5 stood discharged for not taking steps against it. This order was passed on a mis-apprehension of fact, as the said Respondent had entered appearance earlier. The order passed on an error of fact is recalled and this Respondent is represented by Mr. Probhat Kumar Mukherjee, Advocate, who is also representing the other Respondents.

8. Mr. Arun Prokash Chatterjee, the learned Advocate for the Petitioner, has raised various contentions in support of the Rule. It is contended that the Custodian being in charge of day to day management was not competent to pass the impugned order relating the service of the Petitioner. The management vested in the Central Government and the order relating to the Petitioner did not

form part of the day to day management. It will appear from Section 3(1) of the Act that on and from the appointed day, May 13, 1967, the management of the undertaking of all insurers vested in the Central Government. By Section 4(1) it is provided that the Central Government may appoint Custodian for the purpose of taking over the management of the undertakings of the insurers. Sub-section (2) of Section 4 provides that on the appointment of the Custodian, under its Sub-section (1), the charge of the management of the undertakings of the insurers shall vest in him. It is obvious that, in case where a custodian has been appointed, the charge of management of the undertakings vest in the custodian. Such charge of management embraces, in my opinion, general administration of the insurers which obviously includes the appointment of staff and termination of service of staff in the employ of the insurers. The custodian of an insurer in these circumstances is fully competent to pass appropriate orders relating to the service of the employees of such insurer.

9. The next point that has been urged is that the Petitioner had acquired a statutory status and the contract of service has been given a go by. This argument again is misconceived. It would appear under the provisions referred to above that the management of the insurer only has vested in the Central Government and on an appointment of the Custodian the charge of management has vested on him. By such process in place of the person in charge of management of the insurer the Custodian has been appointed to discharge the functions of the erstwhile management of the insurers. It does not mean that automatically the contract entered into by the insurer has come to an end and ceases to have effect in absence of any provision in the Ordinance or the Act to the contrary. There is thus no question of the employees acquiring any statutory status and it has to be remembered that the undertakings of the insurers have not been taken over or vested in the Central Government and what has vested is the management of the undertakings of the insurers only by and against whom all contracts are enforceable as such.

10. The next contention of Mr. Chatterjee is that Article 16 has been violated as the Petitioner is deprived of equality of opportunity in his service. It is contended that the Petitioner''s service is being terminated on a ground which does riot find place in the contract of service or in the statutory rules and regulations. It is further contended that while Rule 17E of the Insurance Rules is applied to the Petitioner, it is not applied to others thereby creating a class for the Petitioner by non-applying to others. Reference was made to the following observations of B. K. Mukherjea J (as his Lordships then was) in the decision of State of West Bengal v. Anwar Ali AIR 1962 S.C. 75 (Para. 50):

The position, therefore, is that when the statute is not itself discriminatory and the charge of violation of equal protection is only against the official, who is entrusted with the duty of carrying it into operation, the equal protection clause could be availed of in such cases; but the officer would have good defence if he could prove bona fides. But when the statute itself makes a discrimination without any proper or reasonable basis the statute would be invalidated for being in conflict with the equal protection clause, and the question as to how it is actually worked out may not necessarily be a material fact for consideration.

11. It is difficult to appreciate the contention of the Petitioner on this point. It has not been stated in the petition nor shown that Rule 17E itself is discriminatory and it has not been shown again with reference to any officer of the same class that its application has been discriminatory to the Petitioner with others of the same class who are left out. The only allegation made by the Petitioner is that the business of other inspectors was not taken into his account by the insurer. In the affidavit-in-opposition the Respondents have stated that the Petitioner had been working as an inspector and never as a supervisor so on such disputed averment it is not possible to accept the contention of the Petitioner. It is, therefore, obvious that no charge of discrimination can be sustained.

12. It would appear therefore that there is no scope for following the principles of natural justice in this case as the Petitioner''s service is governed by a contract of service which according to the Petitioner is annEx. B to the petition. Mr. Mukherjee has contended that the petition is not maintainable against a company which is not a, statutory body and further a writ cannot be obtained for enforcing a contract for service. Assuming that it could be said that a writ would be available against a custodian for performance of a statutory provision, we are concerned here with a contract of service which has got no statutory basis. Accordingly, the Petitioner''s service not being governed by statutory rules but by, individual contract there is no scope of issuance of any writ for enforcement of such contract of service of the Petitioner even if the service is terminated in breach of such contract as contended.

13. For the above reasons the application fails and the Rule is discharged without, however, any order as to costs. All interim orders are vacated.

14. As prayed for by Mr. Parimal Kumar Das Gupta let there be stay of the operation of the order made today by fourteen days from date.

