

(1961) 08 CAL CK 0020
In the Calcutta High Court
Case No : C.R. No. 4141 of 1958

Sunil Kumar Mukherjee

APPELLANT

Vs

Zonal Manager, Eastern Zone, Life Insurance Corporation of
India

RESPONDENT

Date of Decision : 07-08-1961

Acts Referred:

Constitution of India, 1950 — Article 14
Life Insurance Corporation Act, 1956 — Section 11(2)

Citation : AIR 1962 Cal 75

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Dutt and Salil Kumar Dutt, for the Appellant; S.M. Bose, General, Prasanta Kumar Ghosh, for Opposite Parties Nos. 1 to 7; Debi Prasad Pal, for Opposite Party No. 8, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows: The petitioner was employed by the Metropolitan Insurance Company Limited, as an Inspector since 1955. .In January, 1956, the Life. Insurance (Emergency Provisions) Ordinance (No. 1 of 1956) was promulgated, to provide for the taking over of the management of all the insurance business in the Union of India, pending nationalisation of the same. It came into operation on January 19, 1956. From that date, all life insurance business in India became a "Controlled Business" vested in the Central Government. This ordinance was eventually repealed on the 21st March, 1956 by the promulgation of the Life Insurance Corporation Act (Act 31 of 1956). On the 1st September, 1956 the Life Insurance Corporation of India was established and u/s .11 of the said Act, all employees of Insurers became employees of the Corporation. On or about the 25th July, 1957 the Life Insurance Corporation issued a letter to the petitioner a copy whereof is exhibit "E" to the petition. It stated that the petitioner was to operate as an Inspector of Agencies under the Barrackpore Branch of the Corporation. His duties would be mainly to organise and develop the business of the Corporation and it subsidiaries, within

the area allotted to him. He was to secure through his agents, a minimum life business of six lacs yielding a "first year"s schedule premium income of not less than Rs. 24,050/-". It was further stated that his categorisation would depend upon the business done. Such categorisation was to be made on or after the 1st October, 1957. In September and December 1957, two separate circulars were issued by the Managing Director of the Corporation, affecting the status of the employees. These circulars have been challenged as being of no legal effect, because the Managing Director had not himself the right of framing rules or regulations under the Act.

2. I now come to an order promulgated by the Central Government dated the 30th December, 1957. This is known as the "Categorisation Order" and is also referred to as the "Blue Order," having been printed and distributed on paper of a blue tint, a copy whereof is exhibit H to the petition. This order was made by the Central Government in exercise of powers conferred by Sub-section (2) of Section 11 of the said Act. Sub-section (1), of Section 11 lays down that after the appointed day, the employees, of all insurers were to be deemed to have become the employees of the Corporation, to hold office thereunder by the same tenure and on the same remuneration and upon the same terms and conditions as before. This was however a state of things contemplated for the time being only, that is to say, until the Corporation could stabilize its affairs. Sub-section (2) of Section 11 lays down that notwithstanding anything contained in Sub-section (1) or any contract of service, the Central Government may, for the purposes of rationalizing the pay scales of employees of insurers whose ""controlled business" had been transferred to and vested in it, or for the purpose of reducing the remuneration payable to employees in cases where such reduction is called for, might make alterations in the remuneration and terms of service which must be accepted by the employee or he had the option of leaving the services of the Corporation, after getting due compensation.

3. This categorisation order dated the 30th December, 1957 was therefore intended to alter the existing terms and conditions and remuneration of the employees, and laid down what was to be done in future. Under Clause (e) of paragraph (2) of the said order, a "field officer" has been defined. In short, it includes within its ambit all employees excepting those who were merely entrusted with administrative work, like Branch Managers, or Assistant Branch Managers. An Inspector of Agencies would come under this definition. Under paragraph (5) of the said order, the scales of pay and allowances of the field officers were prescribed. It must be noted however that although the scale was fixed, it did not mean that all field officers came to have the same pay. In paragraph 11 it is provided that the actual pay and allowances admissible to any field officer within the scale specified in paragraph 5 would be determined in accordance with such principles as may be laid down by the Corporation, by Regulations made in this behalf u/s 49 of the said Act. I have already stated that in 1957, the Managing Director issued two circulars dealing with the terms and conditions of the services of the employees of the Corporation. This however is

not in accordance with law and a regulation as contemplated in paragraph (11) was issued on or about the 24th May, 1958, a copy Whereof is exhibit "J" to the petition. The point to be noted is Chat it includes as an annexure, one of the circulars issued by the Managing Director, namely, the circular of the 2nd December, 1957. Thus, although the said circular is by itself of no legal effect, it came to be of legal effect by being incorporated in this regulation. At a point of time, between the categorisation order and the coming into force of the regulations" that is to say, on the 14th February, 1958 the petitioner was notified by the Divisional Manager that, in accordance with the said categorisation order he was to work as a "field officer" attached to the Barrack-pore Branch, until further orders. That he became a field officer is also admitted in the affidavit-in-opposition filed by Sri Asoke Ranjan Sen. senior Divisional Manager of the Corporation, affirmed on 26-6-1959. In paragraph 7 it is stated that the petitioner's service was transferred to the Corporation as an Inspector, which designation . Was subsequently changed to "field officer". By an order dated the 16th October, 1958 the services of the petitioner were terminated. The letter intimating this is annexure "P" to the petition and the relevant part thereof is as follows :

"In terms of Section 5 of the Categorisation Circular of the 2nd December, 1957. your case was examined by the Special Committee appointed by the Board of the Corporation to review the cases of Ex-Branch Secretaries etc. In accordance with the recommendations of the Committee which have been accepted by the Corporation, it has been decided to terminate your services with immediate effect.""

You will be paid your emoluments upto the current month and one month's salary in lieu of notice."

4. It is this order of termination, against which this application is directed. The events which led to the termination are as follows : As I have already stated, the petitioner was entrusted with the task of bringing and/or organising, additional business for the Corporation. It is stated" in the affidavits that his performance, instead of coming up to expectation, was nil. In the petition and in the main affidavit this position was not challenged. Subsequent ly, a supplementary affidavit has been filed by which it appears that his total performance was not exactly nil but amounted to a small sum which however is grossly inadequate. It is for this reason: that the matter was placed before a Special Committee- which recommended that his services should be terminated and accordingly, the petitioner's services have been dispensed with. Now, the short point is as to whether this termination of service was done in accordance with the Rules promulgated by or contained in, the categorisation order. The relevant Rule is paragraph 10 (a) of the said order; which runs as follows:

"10. Penalties and termination of service--

(a) In case of unsatisfactory performance of duties by a field officer or if a field

officer shows negligence in his work or is guilty of misconduct or is otherwise incapable of discharging his duties satisfactorily, his remuneration may be reduced or his services may be terminated after giving him an opportunity of showing cause against the action proposed to be taken in regard to him and after conducting such enquiry as the Corporation thinks fit."

5. It is admitted that the petitioner was not given any opportunity of showing cause against the action proposed to be taken. The learned Advocate General, however, argues that the provisions of para 10(a) did not apply, because the petitioner, was not a field officer as defined by the said order. According to him, a person could not become a field officer as denned in the said order, until his categorisation was complete. He says that even before such categorisation was completed, it was found that the petitioner's record of work was grossly inadequate, and therefore, the matter was placed before the Special Committee and according to its recommendation, his services were terminated. I am unable to accept this contention. It appears to me that the categorisation order cannot at all be supported unless on the ground that the time had come to act u/s 11(2) of the said Act and change the terms of service of the employees of the Corporation including the remuneration of all existing employees. The petitioner prior to this order was acting as an Inspector of Agencies. Therefore, according to the definition contained in the said order, he became a "Field Officer", as lie was not an administrative officer, but one entrusted with the task of procuring business for the Corporation, After this categorisation order came into operation, any person who satisfied the definition of the word "Field Officer," became one. That this was so, is amply corroborated by the action of the Corporation itself. I have already mentioned that by letter dated the 14th February. J958 the petitioner was informed that, in terms of the categorisation order, he was to work as a field officer. In the affidavit-in-opposition, it has been clearly admitted that the petitioner became a field officer. After this, it is not possible to argue that the petitioner did not become a field officer, but had some other status until categorisation was completed. What happened was that under the categorisation order, the scale of pay was fixed, but paragraph 11 of the said order contemplated that regulations should be framed to fit a particular field officer into the scale of pay. When so fitted, one might draw higher pay than another. But I see no warrant for concluding that until suck categorisation was complete, an employee could not become a field officer although he satisfied the definition as contained in the categorisation order. Now, if the petitioner became a field officer, then paragraph 10 (a) automatically applies to him. I have already set out the provisions thereof, and it clearly shows that in the facts and circumstances of this case, before terminating the petitioner's services, he should have been given an opportunity of showing cause against the action proposed to be taken. If what is said about him is correct, then it shows negligence in his work, or it shows that he was incapable of discharging his duties satisfactorily. Under these circumstances, if it was proposed to decrease his, remuneration or terminate his services, it was necessary to give him an

opportunity of showing cause against the proposed action. It is stated in the affidavits that the petitioner was called upon, and did give, certain figures to the Special Committee. That however cannot be a substitute for an opportunity of showing cause, he was never asked either by the Divisional Manager, or by the Special Committee to show cause upon a charge of incapacity to discharge his duties properly or on any other charge whatsoever.

6. In my opinion/ therefore, this application should succeed upon this point. Mr. Dutt has also argued that the categorisation order itself is ultra vires. The reasons advanced by him are as follows: Firstly, he says that Section 11(2) of the said Act contemplates that rules may be introduced by the Central Government for certain definite purposes mentioned therein. The first is the rationalisation of the pay scales of the employees. The second is for the purpose of reducing remuneration payable to the employees in cases where it is called for, in the interest of the Corporation and/or the policy holders. Mr. Dutt argues that this means that rules framed under this sub-section, must be uniform and applicable to everyone equally. Therefore, there should be no discrimination between Managers Assistant Managers, Branch Managers and Field Officers. In my opinion, this argument cannot be accepted. There is nothing in Sub-section (2) of Section 11 which states that different scales, of remuneration, cannot be fixed between different "classes of employees. To differentiate between employees who are purely concerned with administration and those who are concerned with field work for the purposes of procuring business for the corporation, seems to be eminently rational, and warranted by law. That being so, I do not see why the categorisation order is bad on this ground. Secondly, Mr. Dutt argues that the fixation could only be made by the Central Government, whereas -the Corporation's own letter shows that the circular of the Managing Director was relied upon. In my opinion, there is nothing in this point as well. As I have already mentioned, the circulars issued by the Managing Director were by themselves not of legal effect, but the December circular has been incorporated in the Regulations framed for categorisation, and has thereby obtained legal effect. I do not see how this is an argument for challenging the legality of the categorisation order. In my opinion, the categorisation order is perfectly valid and is in accordance with law. The petitioner being a field officer, and not having been given an opportunity of showing cause under paragraph 10 (a) of the said order against the termination of his services, it must be held that the order was not passed in accordance with law.

7. The Rule is therefore made absolute. There will be a writ in the nature of Certiorari quashing and/or setting aside the order dated the 16th October, 1958 and/or any order which may be the foundation thereof, terminating the services of the petitioner. There will be a Writ in the nature of Mandamus directing the respondents not to give effect to the said order.

8. This will however be without prejudice to the rights of the respondents to proceed against the petitioner in accordance with law and particularly in terms of

paragraph 10 of the Categorisation Order.

9. There will be no order for costs in this Rule.