
(1996) 06 CAL CK 0044
In the Calcutta High Court
Case No : C.O. 17931 (W) of 1993

Sur D.K.

APPELLANT

Vs

Tata Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 11-06-1996

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : 100 CWN 1003 : (1998) 3 LLJ 429

Hon'ble Judges : D.P. Kundu, J

Bench : Single Bench

Advocate : R.K. Mukherjee and Kalpana Khan Mondal, for the Appellant; Hirak Mitra, S. Ghosh, M. Roy and D. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Kundu, J.—The writ petitioner was appointed to the post of Assistant Superintendent for tool room in the TISCO Maintenance Shop, Adityapur complex under the Tata Iron and Steel Company Ltd. In paragraph 6 of the Writ petition it has been stated that one of the terms of letter of appointment was that the service of the Writ petitioner would be governed by the Standing Orders and the said Standing Orders had been framed under the Industrial" Employment (Standing Orders) Act, 1946 and the said Standing Orders had been duly certified by the certifying officer in accordance with the provisions contained in the aforesaid Act of 1946 and the rules framed thereunder. In paragraph 13 of the Writ petition the Writ petitioner stated that by and under Memo No. AC 2525 dated November 11, 1.983 the manager of TISCO, Adityapur Complex, recorded that the Writ petitioner joined the service on November 11, 1983. It is case of the Writ petitioner that the Writ petitioner was appointed to a permanent vacancy with effect from November 11, 1983. The Writ petitioner further sated that he was given a Flat No. A/20 which the Writ petitioner occupied on December 15, 1983. Subsequently he was given Flat No. A/31, in place of Flat No. A/20. It is the case of the Writ petitioner that the Writ petitioner is still in

occupation of the said Flat No. A/31. The Writ petitioner stated that he was redesignated as junior manager with pay scale of RAO-3 with effect from June 1, 1985. The Writ petitioner alleged that this redesignation was made as appreciation of efficient performance of works by the Writ petitioner. The Writ petitioner stated that the Writ petitioner's performance was highly appreciated by the Chairman and Managing Director of TISCO. Mr. Russi Modi by a letter dated December 25, 1983 fixed the emoluments of the Writ petitioner separately. It is the case of the Writ petitioner that the work of the Writ petitioner was appreciated and he was awarded special emolument. The Writ petitioner stated that by and under a memo dated March 30, 1983 the Senior Additional Manager redesignated the Writ petitioner as Assistant Manager. By virtue of a memo dated November 1, 1991 issued by the Executive Director (operations) the Writ petitioner was redesignated as Manager in Officer Level 01. Ultimately by virtue of memo No. AC333.94/93 dated November 6, 1993 issued by the General Manager (Engineering) the Writ petitioner was informed that his service was no longer required by the company and was therefore terminated with immediate effect. The Writ petitioner was further intimated that the salary till December 31, 1993 in lieu of notice pay along with 5 months' wages as compensation at the rate of 15 days' wages for every completed year of service was being remitted to the Writ petitioner's account in the bank. For the final settlement of dues the Writ petitioner was advised to meet General Manager (Finance and Accounts) on any working day during working hours.

2. The Writ petitioner in this Writ application has called in question termination of his service and has prayed for the following reliefs :

(a) A Writ of or in the nature of certiorari calling upon the Respondents to produce or cause to produce to Registrar, appellate Side, of this Hon'ble Court, papers, records and documents relating to and/or arising out of termination of service of the petitioner so that conscionable justice may be done by quashing the same ;

(b) For a Writ of or in the nature of mandamus commanding and directing the Respondents to cancel/withdraw/rescind the Memo of termination of service of the petitioner and to forbear them, their agents, subordinates from giving effect to or further effect to the said Memo of termination of service of the petitioner ;

(c) For a declaration that the petitioner is in service and has been doing his duties as if the petitioner's service has not been terminated ;

(d) For a Writ of or in the nature of mandamus commanding and directing the Respondents to pay to the petitioner full back wages, salaries and other monetary benefits and service benefits holding as if the petitioner is in service and has been doing his duty disregarding the termination of service of the petitioner. For interim order directing the Respondents to pay to the petitioners lump sum amount for his maintenance with the family ;

(f) For an interim order of injunction restraining the respondents from, disturbing

the possession of the Flat No.A/31 which is in occupation of the petitioner till the disposal of the Rule.

(g) Rule in terms of prayers (a), (b), (c) and (d)above ;

(h) Interim order in terms of prayer (e) and (f) above ;

(i) To make the Rule absolute, if the Respondents fail to show sufficient cause or return ;

(j) To pass such other or further order or orders as your Lordships may deem fit and proper ;

(k) Costs of, and incidental to, this petition,

3. Respondents have filed their affidavit-in-opposition controverting allegations made against them. It was argued on behalf of the respondents that this Court has no territorial jurisdiction over the subject matter involved in the Writ proceedings because no part of the cause of action arose within the territorial jurisdiction of this Court. The second submission of the learned Advocate for the respondents was that this Court cannot pass any order directing reinstatement of the Writ petitioner in the service. It was further submitted by the respondents that there was no violation of the provisions of the Standing Order by the respondents while terminating the service of the Writ petitioner. The Learned Advocate appearing for the Writ petitioner argued that this Court has territorial jurisdiction over the subject matter involved in the Writ proceeding. It was also argued on behalf of the Writ petitioner that this Court can pass an order directing reinstatement of the Writ petitioner in the service. It was also argued on behalf of the Writ petitioner that provisions of Standing Order guiding the service condition of the Writ petitioner have been breached. Large number of decisions were cited in support of the submissions that this Court has territorial jurisdiction over the subject matter involved in this proceeding, it is not necessary to refer to those decisions because this Court assumes that this Court has territorial jurisdiction over the subject matter involved in this proceedings.

4. Hon''ble Supreme Court in the Rajasthan State Road Transport Corporation and Anr. v. Krishnakant reported in (1995 11 LLJ 728) while deciding the status of the certified Standing Orders, considered large number of its earlier decisions and thereafter, inter alia, observed as follows :

" The consensus of these decisions is: the certified Standing Orders constitute statutory terms and conditions of service. Though we have some reservations as to the basis of the above dicta as pointed out supra, we respectfully accept it both on the ground of state decisions as well as judicial discipline even so, we are unable to say that they constitute "statutory provisions" within the meaning of the dicta in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, where it was held: "The employees of these statutory bodies have a

statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions". Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a Writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status, It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves."

5. In Rajasthan State Road Transport Corporation's case (supra) while summarising the principles. Hon"ble Supreme Court inter alia, observed as follows at p. 741 :

"Similarly, where the dispute involves the recognition created by enactments like Industrial Employment (Standing Orders) Act, 1946- which can be called "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open."

6. The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employees and employers, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate Court where recourse to Civil Court is open according to the principles indicated herein.

7. In view of aforesaid decision of Supreme Court in Rajasthan State Road Transport Corporation's case (supra), the certified Standing Orders cannot be elevated to the status of statutory provisions or having statutory force and, therefore Writ Jurisdiction cannot be invoked on the ground of alleged breach of the provisions of the certified Standing Order.

8. The Learned Advocate for the respondents, relied upon a decision of the Learned Division Bench of this High Court in Calcutta Electric Supply Corporation Ltd. and Another Vs. Ramratan Mahato, In Calcutta Electric Supply Corporation's case (supra) it was held by the Learned Division Bench of this Court that generally a contract of persona! service is not enforceable by specific performance and the employee cannot be heard to say that in spite of the termination of his service he is still in employment. It was held that if his service has been wrongly terminated in breach of the contract for service his remedy will

lie in damages. It is only in certain exceptional cases that a Civil Court or a Tribunal is entitled to make a declaration that inspite of the termination of service, the employee concerned will remain in employment of his employer. These exceptions are (1) a public servant who has been dismissed from service in contravention of Article 311(2) reinstatement of a dismissed worker under industrial law or by labour or Industrial Tribunal and (3) a statutory body when it has acted in breach of a mandatory obligation imposed by statute, there may also be a fourth class of cases where a statute confers status upon an employee and if an order is made in violation of any statute and if such violation affects his status conferred by the statute, then a Court of law can make a declaration that the order is a nullity.

9. From the facts and circumstances of case it is evident that the Writ Petitioner's case is not covered by any of the exceptions mentioned by the Learned Division Bench of this High Court. Therefore, this Court cannot pass any order directing reinstatement of the Writ petitioner in service.

10. In view of the discussions made hereinabove the Writ petition is dismissed. All interim orders are vacated. However, there shall be no order as to costs.