
(1991) 10 MP CK 0036
In the Madhya Pradesh High Court
Case No : M.P.O. 3846 of 1989 (J.)

Suresh Kumar Kevat

APPELLANT

Vs

Madhya Pradesh State Tourism Development Corporation Ltd.

RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) 1 MPJR 49

Hon'ble Judges : K.L. Issrani, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : Ajit Singh and P. Diwakar, for the Appellant; R.N. Singh, for the Respondent

Judgement

K.L. Issrani, J.

This is a petition under Articles 226 and 227 of the Constitution of India by which the Petitioner challenges his termination order dated 23rd June, 1989 (Annexure P/1) passed by Managing Director of the Corporation (Respondent No. 2). The said order has been passed under by law No. 14 of the M. P. State Tourism Development Corporation Limited Service By laws, 1979 (hereinafter called "the Service Bylaws 1979), on giving three months pay in lieu of three months notice under the said bylaw.

The Petitioner challenges the constitutional validity of his termination order (Annex. P/1) and also the Service Bylaw No. 14 of the Corporation empowering the Respondents to terminate the services of the Petitioner on the ground that the same provides unguided arbitrary powers to the Respondents for terminating the service of an employee without there being any reasonable ground for the same. According to the Petitioner he cannot be removed from his services arbitrarily by the Respondents under the garb of bylaw No. 14 especially when he has not been found guilty of any misconduct. Even otherwise, if the Petitioner had committed any misconduct his services can not be terminated by the Respondents without giving him due opportunity of hearing as provided under

the Bylaws No. 36 and 37. The Petitioner has thus prayed for quashing of Bylaw No. 14 by declaring the same as un-constitutional and for his reinstatement after quashing termination order dated 23-6-1989 (Annexure P/1).

The Petitioner was initially appointed as a Clerk in the Corporation on 23-6-1982. Later on by order dated 1-12-1983, the Petitioner alongwith others was appointed as Receptionist, as per Annexure P-2 and P-3. According to the Petitioner he had been continuously working to the utmost satisfaction of his superiors for the last more than 7 years with his unblemished record to his credit. Number of letters by different groups of tourists were sent to the Respondents appreciating the services and amicable behaviour of he Petitioner. Copies of some of letters are filed as Annexures P-4 to P-8. The Petitioner was also given a letter of appreciation on 17-1-1986 by the Respondents themselves with regard to his services at the time of visit of the then Prime Minister in the State, a copy of which is filed as Annexure P-9. Not only this, the Petitioner's "Bison Retreat Unit" of which he was the Manager was given a best unit award by the Respondent No. 1 for the year 1986-87. The copy of the said Chairman's Trophy For the Best Unit awarded to the Petitioner for his outstanding performance is filed as Annexure P-10.

The Respondents have submitted that the services of the Petitioner were terminated on the ground that his services are no longer required by the Corporation. No stigma has been attached in the termination order. The appointment of the Petitioner was purely temporary and on adhoc basis. As per the conditions in the appointment order Annexure P-3, the services of the Petitioner could be terminated at any time on service of notice of one month or payment of salary in line thereof on either side. It was submitted that neither the provisions of Bylaw No. 14 are unconstitutional nor arbitrary in any manner, they are legal and valid. Since the termination order was simplicitor without creating any stigma on the character of the Petitioner, there was no illegality in the same. In paragraph 6 of the return it was however submitted that the working of the Petitioner was no up to the mark and many officers of the Corporation had reported against him.

The Petitioner on 25-9-1991 had filed an application for taking additional grounds by riling copy of the Seniority List Annexure P-11 and submitted that the Petitioner was appointed on the post of Receptionist on 7-12-1983 whereas the persons namely Shri Shakti Shankar Mazumdar, T. A. Ansari, N. M. Khan, Rajendra Singh Thakur, Virendra Singh Rana, Ajay Sharma and Kishorilal Patel were appointed as Receptionist in the later part of 1984 and 1985, who have been retained in the service whereas the Petitioner was shunted out. According to the Petitioner, in the year 1988 also the Respondents have further appointed many persons as receptionist. According to the Petitioner, the order of this termination is violative of Articles 14 and 16 of the Constitution of India. Copy of Annexure P/11 was the document filed in another writ petition Brijgopal v. State Tourism Development M. P. No. 3481/88.

The Respondents do not oppose the additional grounds.

For clarity the Bylaws No. 12, 13 & 14 which pertain to promotion, resignation and termination are reproduced below: -

(1) Promotion. -Promotion of an employee shall be regulated in accordance with the channels of promotion for various categories of the posts as may be specified in this behalf by the Board of the Managing Director.

(2) The Departmental Promotion Committee shall scrutinize the cases of persons eligible for promotion for different categories and make such recommendations as may be deemed proper.

(3) In selecting candidates for promotion, in addition to the minimum prescribed qualifications and seniority, regard shall be had to-

(i) integrity,

(ii) tact and energy,

(iii) intelligence and aptitude and,

(iv) experience and satisfactory record of service of the last five years,

(v) performance of employees in the existing post.

(4) An employee's name may be removed by the Board or the Managing Director from the select list at any time if the Board

or the Managing Director is satisfied with regard to his unsuitability for promotion:

Resignation from service of Corporation.-An employee of the Corporation shall not resign, or otherwise quit the service of the Corporation, without first giving a clear three months notice if he has put in two years or more of continuous service, and one month's notice in other cases or without depositing with the Corporation three months or one month's pay and allowances, as the case may be, in line of such notice. In case the employee fails to give the required notice, or deposit the requisite amount of pay and allowances in line of notice, the amount payable to him by the Corporation will be adjusted towards these dues; and the balance if any will be recovered.

Termination of services-The Corporation shall not terminate the service of an employee without giving three months notice if he has put in more than two years of continuous service or one month's notice in other cases or without paying him three months or one month's pay and allowances, as the case may be, in lieu of such notice.

No portion of leave can be converted into notice period and no leave except casual leave will be permissible during notice period.

The appointing authority may for special reasons, waive the condition of giving

three months or one month's notice or any portion thereof or depositing three month's or one month's pay and allowances in lieu of such notice, by the employee.

In *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, it has been held as under:

Rule 31 (v) of the I. T. D. C. Rules, the constitutional validity of which is questioned from the platform of Articles 14 and 16 (1) of the Constitution of India, Provides:- "31, Termination of services

The services of an employee may be terminated by giving such notice or notice pay as may be prescribed in the contract of service in the following manner:-

(i) to (iv).....

(v) of an employee who has completed his probationary period and who has been confirmed or deemed to be confirmed by giving him 90 days notice or pay in lieu thereof.

This rule cannot co-exist with Articles 14 and 16 (1) of the Constitution of India. The said rule must therefore die, so that the fundamental rights guaranteed by the aforesaid constitutional provisions remain alive. For, otherwise, the guarantee enshrined in Articles 14 and 16 of the Constitution can be set at naught simply by framing a rule authorising termination of an employee by merely giving a notice. In order to uphold the validity of the rule in question it will have to be held that the tenure of service of a citizen who takes up employment with the State will depend on the pleasure or whim of the competent authority unguided by any principle or policy. And that the services of an employee can be terminated even though there is no rational ground for doing so, even arbitrarily or capriciously. To uphold this right is to accord a "magna carta" to the authorities invested with these powers to practise uncontrolled discrimination at their pleasure and caprice on considerations not necessarily based on the welfare of the organisation but possibly based on personal likes and dislikes, personal preferences and prejudices. An employee may be retained solely on the ground that he is a sycophant and indulges in flattery, where as the services of one who is meritorious (but who is wanting in the art of sycophancy and temperamentally incapable of indulging in flattery) may be terminated. The power may be exercised even on the unarticulated ground that the former belongs to the case religious faith or is the disciple of the same religious teacher or holds opinions congenial to him. The power may be exercised depending on whether or not the concerned employee belongs to the same region, (religion) or to the same caste as that of the authority exercising the power, of course without saying up. Such power may be exercised even in order to make way for another employee who is a favourite of the concerned authority. Provincialism, casteism, nepotism, religious fanaticism, and several other obnoxious factors may in that case freely operate on the mind of the competent authority in deciding whom to retain and whom to get rid of, And these dangers are not imaginary ones. They are very

much real in organisations where there is a confluence of employees streaming in from different states. Such a rule is capable of robbing an employee of his dignity, and making him a supine person whose destiny is at the mercy of the concerned authority (whom he must humour) notwithstanding the constitutional guarantee enshrined in Articles 14 and 16 of the Constitution of India. To hold otherwise is to hold that the fundamental right embodied in Articles 14 and 16(1) is a mere paper tiger and that it is so ethereal that it can be nullified or eschewed by a simple device of framing a rule which authorizes termination of the service of an employee by merely giving a notice of termination. Under the circumstances the rule in question must be held to be unconstitutional and void. This Court has struck down similar rules in similar situations. In *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, , *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, speaking for a three Judge Bench of this Court has observe that a (similar) regulation authorising the termination of the service of a permanent employee, by serving three month's notice or on payment of salary for the corresponding period in lieu thereof, was ex facie "totally arbitrary" and "capable of vicious discrimination". And that it was a naked "hire and fire" rule and parallel of which was to be found only in the "Henry VIII clause" which deserved to be banished altogether from employer-employee relationship. The regulation thus offended Article 14 of the Constitution of India and deserved to be struck down on that account. In *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly and Central Inland Water and Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, Division Bench of this Court has struck down a similiar rule in so far as it authorized termination of employment by serving a notice the reunder as being violative of Article 14 of the Constitution of India, inter alia, inasmuch as it was capable of being selectively applied in a vicious manner by recourse to "pick and choose" formula.

5. There is, under the circumstances, no escape from the conclusion that R. 31 (v) of the aforesaid ITDC rules which provides for termination of the services of the employees of the Respondent corporation simply by giving 90 days" notice or by payment of salary for the notices period in lieu of such notice, deserves to be quashed.....

Yet in another case of *Delhi Transport Corporation v. D. T. C. Mazdoor Congress* 1986 SC 1571, validity of Delhi Road Transport Authority (Conditions of appointment and Service) Regulations (1952), the validity of Regulation 9 (b) empowering removal of a permanent employee without assigning any reasons under Regulations 9 (b) was held to be arbitrary, unfair, unjust, unreasonable, and opposed to public policy. The rival submissions and various rulings were considered in this case and it was held as under

201. In the case of *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, para 93. (supra), Mathew, J. Pointed out that:- "The governing power wherever located must be subject to the fundamental constitutional limitations.

202. This has been referred to and relied upon in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, (supra) and a similar Rule 9 (i) was termed as "henry VIII clause" as it confers arbitrary and absolute power upon the Corporation to terminate the service of a permanent employee by simply issuing a notice or pay in lieu thereof without recording any reason in the order and without giving any opportunity of hearing to the employee. Thus, the Rule 9 (i) of the Services Discipline and Appeal Rules, 1979 was held void u/s 23 of the Indian Contract Act. 1872, as being opposed to public policy and is also ultra vires of Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months" notice in writing or by paying him the equivalent of three months" basic pay and dearness allowance in lieu of such notice.

Regulation 9 (b) of the impugned Regulation framed under the Delhi Transport Corporation Act which is in pari materia with the said Rule 9 (i) is void u/s 23 of the Contract Act as being opposed to public policy and is also ultra vires Article 14 of the Constitution.

This Court in Samarendranath v. N. N. P. Mills 1989 MPLJ 346, has also dealt with the constitutional validity of Rule 41 of the Service Rule of the National Newsprint and Paper Mills Ltd, Neapanagar, providing that "the Company may at any time terminate the service of an employee by giving him three months" previous written notice or by payment of salary for the period of notice, in lieu of such notice", was held to be ultra vires Article 14 of the Constitution to the extent it is applicable to the permanent employee of the company and was held to be violative u/s 23 of the Contract Act. Rule 41 is reproduced in that case is as under: -

Termination of service at the instance of the company.

(1) The company may at any time terminate the services of an employee by giving him one months previous written notice of such termination if the employee has been in continuous employment of the Company for a period of less than 5 years, and 3 months" previous written notice if he has been in-continuous employment of the Company for a period of 5 years or more or by payment of salary for the period of notice, in lieu of such notice. Such notice shall begin to run from the day next after the day of service of the notice.

(2) If an employee leaves service during the period covered by the notice, he is entitled to pay only the period during which he worked.

(3) Probationers or temporary employees shall not be entitled to any notice of termination of service.

In this case reliance was also placed on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, wherein Rule 9 (1) which confers power upon the Corporation to terminate the service of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him the equivalent of three months' basic pay and dearness allowance, was held to be ".....a naked" "hire and fire rule". This

Court relying on the aforesaid ruling held that the matter, thus squarely stands covered by the aforesaid decision of the Supreme Court and Rule 41 was declared to be void u/s 23 of the Contract Act and ultra vires Article 14 of the Constitution as well as contrary to Directive principles of State Policy contained in Clause (a) of Article 39 and Article 41 of the Constitution of India, to the extent it is applicable to the permanent employee of the Respondent/Company.

Here it was argued on behalf of the Respondents that the Petitioner was not permanent employee but was appointed purely on temporary basis. It is surprising that even after completing seven years service, the Petitioner has not been confirmed or made permanent so far. There is no bylaw in the Service Bylaws 1979 making an employee permanent or confirmed except Bylaw No. 12 which deals with promotion and the said by law has already been quoted above. On this learned Counsel for the Petitioner has relied on the principles laid down in M. K. Agarwal v. Gurgaon Gramin Bank AIR 1988 SC 286, which Regulation No. 10 of the Services Regulations of Gurgaon Gramin Bank (Staff) Services Regulations 1980 were dealt with. In case of an employee appointed on probation which provided maximum period of probation to be 18 months and there was no statutory indication in the regulation as to what should follow thereafter in such cases. It was held that there was implied confirmation.

In view of the facts that the Service Bylaws, 1979 do not provide for confirmation or making the employee permanent. It gives very wide latitude and power to the authorities to promote the employee to suit their convenience. Till then it seems that the employee remained of the same category. No one is permanent. It gives arbitrary power of pick and choose" and/or "hire and fire rule" in such cases.

We are, therefore, of the opinion that Bylaw No. 14 is arbitrary, unfair, unjust, unreasonable and opposed to public policy. It is held void u/s 23 of the Contract Act being against the public policy and ultra vires Article 14 of the Constitution.

The order of termination is also defective on the ground that the juniors of the Petitioner have been retained in service and the Petitioner has been chosen to be shunted for no reasons. In The Manager, Government Branch Press and Another Vs. D.B. Belliappa, it has been held that even in administrative orders, terminating the service of temporary Government servant, it is necessary to disclose the reasons. The executive, no less than the judiciary is under a general duty to Act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Arts. 14 and 16 (1) of the Constitution of India. In a

case of services of temporary Government servant were terminated without giving any reason while some other employees junior to him were retained in service. It was held that the termination of service was made arbitrarily and not on ground of unsuitability or other reason. In *Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla* and another, it has been held that in case of termination order of an employee stating that the Petitioner's services are no longer required and the persons junior to the Petitioner were however retained in service, the order of termination was held to be violative, of Articles 14 and 16 of the Constitution.

In this case the additional ground raised and the additional document Annexure P-11 filed in this case is not opposed by the Respondents. It is not denied by the Respondents that the persons junior to the Petitioner are in the service. We are, therefore, satisfied that the juniors to the Petitioner are retained. Therefore, on this ground also the termination order is liable to be quashed.

In view of the finding given above, we allow the petition and quash the termination order dated 23rd June, 1989 (Annexure-P/1) and order Petitioner's reinstatement. But so far as the payment of backwages is concerned, the question being based on disputed facts we leave the matter open to the parties to get it determined the same in the competent Civil Court of law as it is not known as to whether during this period the Petitioner was not earning something or gainfully employed somewhere. Counsel's fee Rs. 750/-, if certified.