
(1994) 09 CAL CK 0007

In the Calcutta High Court

Case No : Appeal from Original Order No. 936 of 1994

The United India Insurance Co. Ltd.

APPELLANT

Vs

Partha Sarathi Banerjee and Others

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (1996) 1 CALLT 200

Hon'ble Judges : Satyabrata Sinha, J; Basudeva Panigrahi, J

Bench : Division Bench

Advocate : Tapas Banerjee and Dipak Ghosh, for the Appellant;

Final Decision : Allowed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgement and order dated 10th March, 1994, passed by a learned single Judge of this Court in C. O. No. 8215 (W) of 1994, whereby and whereunder the writ petition filed by the writ petitioner/respondent No. 1 questioning an order of discharge dated 23rd February 1990, as contained in Annexure "C to the writ petition was allowed and the appellant company was directed to allow the writ petitioner to Join his services forthwith and confirm the petitioner as he had fulfilled the pre-condition for getting confirmation. It was further directed that the writ petitioner would be entitled to be paid full salary during the intervening period.

2. The fact of the matter lies in a very narrow compass.

3. The writ petitioner/respondent No. 1 was appointed as a Probationary Development Officer at Chandil attached to Jamshedpur Branch under Ranchi Divisional Office, by an offer of appointment dated 18/22-2-88. In the said letter of appointment, it was inter alia, provided as follows:

"Initially, you will be on probation for a period of 12 months which the Company may at its discretion extend by a further period not exceeding 12 months.

Confirmation in the services shall not be automatic, on fulfilment of the above conditions, unless a letter of confirmation is specifically issued by the Company.

Unless letter of confirmation or extension of probationary period is issued to you, your services shall stand automatically terminated after expiry of the period of probation.

During the probationary/extended probationary period you are liable to be discharged without notice and without assigning any reason whatsoever for such discharge."

In the said letter, it was further stated:

"In view of the revision of the scheme you will have to satisfy the new conditions relating to premium target."

4. Admittedly, during the initial period of probation, the petitioner produced a premium of Rs. 82,006/- against a target of Rs. 2,00,000/-. The probation period was, therefore, extended for a further period of 3. months by the appellant company in terms of its letter dated 30th March 1989, wherein it was stated:

"We refer to our letter No. CR:DEV; STAFF (PROB) dated 18/22.2.88 appointing you as a Probationary Development Officer with effect from 25.2.88. During the probationary period from 25.2.88 to 24.2.89, you have produced a premium of Rs. 82,006/- against the target set for Rs. 2.00 lacs. We find that you have not fulfilled the said target. On a reference to Head Office, they have advised us to extend your probationary period for a further period of six months from 25.2.89 to 24.8.89.

We do hope that during the extension period you will generate more business to reach the target and come out to our expectation. The other terms and conditions of our letter of appointment will remain unaltered."

5. The probationary period of the writ petitioner was further extended by the appellant by a letter dated 1.1.90 for a further period of 6 months by way of last extension. It is an admitted case that during the aforementioned period, the petitioner had procured business to the extent of Rs. 1,19,043/-, thus totalling a sum of Rs. 2,01,049/-. The service of the writ petitioner was discharged by the impugned letter dated 23rd February 1990, which is contained in Annexure "C to the writ application, which is Annexure "B" to the petitioner for stay. In the said letter it was stated:

"You have been working as a Probationary Development Officer since 25.2.88. As per Clause 4 of the Letter of Appointment dt. 18/22.2.88 you are required to procure a premium of Rs. 2 lacs during the probation.

Since you have not completed the required target during the initial period of probation, the probationary period was extended up to 24.2.90.

Despite repeated reminders sent from office you have not improved your

performance. Therefore, in terms of Rule 5(4) of the Letter of Appointment you are hereby discharged from the services of the Company from the date of receipt of this letter."

6. As indicated hereinbefore, the writ petitioner questioned the aforementioned order of discharge.

7. The learned trial Judge, inter alia, following the decisions of the Supreme Court of India in the case of *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, as also the decision in the case of *Debdas Ganguly v. Director, Zoological Garden*, reported in 1991 (2) Calcutta Law Times, 353, held that the petitioner was entitled to protection under Article 311(2) of the Constitution of India, and thus allowed the writ application holding:

"Moreover, in the facts and circumstances of the present case, the respondent Insurance Company having extended the probationary period of the petitioner for two terms and having given opportunity to the petitioner to fulfil the target of procuring premium of Rs. 2 lacs and admittedly Rs. 2 lacs having been procured by the petitioner before issuance of the discharge letter dated February 23, 1990, the respondent Insurance Company was not justified in issuing the said letter of discharge, as it has been done on February 23, 1990."

8. Dr. Tapas Banerjee, learned counsel appearing on behalf of the appellant submitted that a bare perusal of the letter of appointment dated 18/2.88 would show that use of the stroke in between the words "probationary" and "extended Probationary", mean that the writ petitioner was to reach the target of Rs. 2,00,000/- either during the initial period of probation or extended period of probation. In other words, according to Dr. Banerjee, the writ petitioner could not have contended that he was to achieve the target of Rs. 2,00,000/- during the initial period of probation as also the extended period of probation. It was further submitted that the learned trial Judge has committed a grave error in applying the principles laid down by the Supreme Court in *Beliappa's case* (supra) keeping in view the latest Supreme Court decision which has laid down the law that in the matter of discharge of service of a probationer, the principles of natural Justice are not to be followed. Learned counsel has relied upon the decisions in the case of *Unit Trust of India and Others Vs. T. Bijaya Kumar and Another*, *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, and *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another*,

9. The respondent No. 1, who appeared in person, however, submitted that he had all along been given to understand by the concerned authorities that he was to achieve the target of Rs. 2,00,000/- during the extended period of probation. He submitted that had the appellant company any other intention, the same would have been reflected in the letters of extension dated 30.3.89 and 11.1.90. He further drew our attention that even the learned trial Judge had held that in

the letter of discharge dated 23rd February 1990, the Assistant General Manager himself admitted that the petitioner was required to procure a premium of Rs. 2 lacs, during the period of probation, but unfortunately, according to the petitioner, he remained silent regarding the petitioner's procurement of the said target during the extended probationary period and by the said letter the said Assistant General Manager advised the petitioner to surrender all unused cover notes, stationery, to the office.

He further drew our attention to the impugned letter of discharge dated 23.2.90 and submitted that even therein, it had not been contended that the petitioner's period of probation could not be extended as he had failed to achieve the target of Rs. 4,00,000/-.

10. It is now well known that the court while interpreting a statute or a document should give effect to the intention of its maker. Reference in this connection may be made to the decision reported in (1994) 5 SCC 16. The intention of the author of the document can, therefore, not only has to be gathered from the wordings employed therein, but also from the circumstances attending thereto.

Paragraph 4 of the letter dated 18/22-2-88 starts with the words "During the probationary/extended probationary period". Dr. Banerjee has suggested that the use of stroke between the words "probationary" and extended probationary period" should be read as disjunctive and not conjunctive. We do not think so. Dr. Banerjee suggested that as per Stroud's Dictionary, "premium" denotes annual premium and thus, the said sum of Rs. 2,00,000/- should denote annual premium for keeping up an insurance. Had that been the intention of the maker, the letter of extension dated 30.3.89 would not have stated that the head office has advised to extend the petitioner's probationary period for a further period of 6 months from 25.2.89 to 24.8.89, and then again by a letter dated 11.1.90 for a further period of 6 months from 25.8.89 to 24.2.90. If the contention of Dr. Banerjee is to be accepted, the letters of extension would lose all its significance, inasmuch as, the writ petitioner was not expected to achieve the target of Rs. 2,00, 000/- during the first 6 months of extension or thereafter. In such an event, in our opinion, the extension of probationary period could not have been for a period of 6 months at all. Moreover, the very fact that paragraph 3 of the said letter suggests that the initial period of probation would be 12 months, which at the discretion of the company may be extended by a further period, which of course, was not to exceed 12 months. In this view of the matter, in our opinion, the reasonable construction would be that the writ petitioner was to achieve the target of Rs. 2,00,000/- during the entire period of probation, that is including the extended period. Even assuming that there exists some ambiguity, we are of the view that the authorities of the appellant company also thought in the same manner as is indicative from the phraseology used in the letters of extension. Had that not been so, the concerned authorities of the appellant company would have clearly stated that during the period of extension, he was to

achieve the target of Rs. 2,00,000/- and the premium which he had procured during the initial period of probation would not be taken into account therefore. Dr. Banerjee, however, is right in his submission that while issuing the order of discharge, it was not necessary for the appellant company to comply with the principles of natural justice. It is now well known in view of catena of decisions of the Supreme Court that principles of natural justice are to be complied with where an order of punishment is inflicted. In *Unit Trust of India and Others Vs. T. Bijaya Kumar and Another*, the Supreme Court held that: "It is settled law that an order of discharge is not an order of punishment and, therefore, there is no question of giving a hearing before termination of service." The Supreme Court again in the said decision held: "Having perused the record carefully, we do not think that the order of termination suffers from any bias as alleged by the first respondent. In the *The State of Orissa and Another Vs. Ram Narayan Das*, this Court held that the services of a probationer can be terminated in accordance with the rules because a probationer has no right to the post held by him." Yet again, in *M. Venugopal v. Life Insurance Corporation of India (supra)*, the Supreme Court held:

"Even under general law, the service of a probationer can be terminated after making overall assessment of his performance during the period of probation and no notice is required to be given before termination of such service. This aspect has been examined by this Court in the case of *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, wherein it has been pointed out that if the performance of the employee concerned during the period of probation is not found to be satisfactory on overall assessment, then it is open to the competent authority to terminate his service."

11. In *Governing Council of Kidwai Memorial Institution v. Dr. Pandurang Gadwalkar (supra)*, the Supreme Court held:

"Even if such employee while questioning the validity of an order of termination simpliciter brings on the record that some preliminary enquiry or examination of some allegations had been made, that will not vitiate the order of termination. Reference in this connection may be made to the case of *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, where it was pointed out that a temporary employee is appointed on probation for a particular period "only in order to test whether his conduct is good and satisfactory so that he may be retained". It was also said that even if misconduct, negligence, inefficiency may be the motive or the influencing factor which induced the employer to terminate the service of the employee which such employer admittedly had under the terms of the appointment, such termination cannot be held to be penalty or punishment. Same view has been reiterated in connection with appointment on temporary or ad hoc basis in the cases of *Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another*, *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, and *Triveni Shankar Saxena Vs. State of U.P. and others*,

On behalf of the respondent reliance was placed on the case of Anoop Jaiswal Vs. Government of India and Another, In that case the service of the appellant had been terminated during the period of probation. On the materials on record it was held by this Court that the order of termination really amounted to punishment because the real foundation of the action against the appellant was the act of misconduct on June 22, 1981. The aforesaid judgment is of no help to the respondent because in that case a clear finding was recorded by this Court that the service of the appellant had been terminated because of a particular misconduct alleged against him which had never been enquired into. So far the facts of the present case are concerned, the Governing Council examined the different reports in respect of the respondent during the period of probation and considered the question as to whether he should be allowed to continue in the service of the Institute. The Decision appears to have been taken by the Governing Council on the total and overall assessment of the performance of the respondent, in terms of the condition of the appointment and Rule 4 aforesaid."

12. In the aforementioned decisions, the Supreme Court made the following statement of law. The principle of hearing for finding out the real nature of the word shall be applicable only in case where the court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment.

13. Yet recently, the Supreme Court in Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another, categorically stated that even in case of termination of service of a temporary employee, the employer is free to discharge the employee in terms of the condition of service for which the principles of natural justice are not required to be followed.

14. In view of our findings aforementioned, it must, however, be held that the services of the respondent No. 1 have been discharged on an irrelevant consideration. Having held so, are we free to affirm the directions issued by the learned single Judge? We are afraid, we are not.

15. The appointment letter issued in favour of the writ petitioner clearly suggests that confirmation in the service shall not be automatic on fulfilment of the above conditions, unless a letter of confirmation is specifically issued by the company. The said offer of appointment further suggests that unless letter of confirmation or extension of probationary period is issued to him, his service shall automatically stand terminated after the expiry of the period of probation. Keeping the aforementioned condition of service in view, we are of the considered opinion that the directions issued by the learned trial Judge cannot be sustained and must be set aside. It is now well known that an employee who is on probation, has no legal right to be confirmed. No employee can be confirmed,

as the Apex Court has stated times without number, only upon completion of the period of probation, unless a statute or the offer of appointment otherwise suggests. For obtaining a Writ of or in the nature of Mandamus, the writ petitioner has to show the existence of a legal right in himself. As in terms of the offer of appointment, the writ petitioner/ respondent No. 1 did not have any legal right to be confirmed in the service automatically, he, in our opinion, is not entitled to obtain a Writ of or in the nature of Mandamus as had been directed to be issued by the learned trial Judge. This aspect of the matter has also been considered by the Supreme Court of India in Union of India (UOI) and Others Vs. Arun Kumar Roy,

16. In this view of the matter, in our opinion, the matter should require reconsideration at the hands of the competent authority. It would now be for the competent authority to consider as to whether despite fulfilment of target, a letter of confirmation should be issued in favour of the writ petitioner, or not. We, therefore, direct the competent authority of the appellant company to consider the matter afresh and pass an appropriate order strictly in accordance with law at an early date, and not later than 6 weeks from the date of communication of this order.

17. We, however, may observe that keeping in view of the fact that according to the petitioner he has already crossed the age of 35 years his chance of obtaining a fresh employment is grim. The writ petitioner has further contended that he had achieved the target of Rs. 2,00,000/- as per the direction of his higher authorities. We have, therefore, no doubt in our mind that the competent authority while passing an order shall consider these aspects of the matter too, as also the fact that the impugned order of discharge has been passed as far back as on 23.2.90 and the litigation is pending in this Court for about 4 years. We may further note that in terms of the interim order passed by a division Bench of this Court, the writ petitioner has been paid certain amounts by way of 50% of his wages. The writ petitioner/respondent No. 1 need not refund that amount.

18. For the reasons aforementioned, this appeal is allowed, the Judgment and order passed by the learned single Judge is set aside with the aforementioned directions and observations. However," keeping in view the facts and circumstances of the case the parties are directed to pay and bear their costs throughout.

19. Let xerox copy of this order be supplied to the parties on usual undertaking.

Basudeva Panigrahi J.

20. I agree