
(1986) 10 AHC CK 0043

In the Allahabad High Court

Case No : Civil Misc. Writ petition No. 4861 of 1986

Vijai Kumar Tabeck

APPELLANT

Vs

Uttar Pradesh Financial Corporation and Another

RESPONDENT

Date of Decision : 23-10-1986

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 23

Citation : (1987) 1 AWC 280

Hon'ble Judges : B.D. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Advocate : Markandey Katju, for the Appellant; R.P. Misra, S.C., for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—Heard counsel for the parties who are agreed that the petition be disposed of finally at this stage.

2. Paragraph 16-A of the U.P. Financial Corporation Staff Regulation, 1961 framed by the U.P. Financial Corporation (hereinafter referred to as "the Corporation") reads as under:

The services of a permanent employee of the Corporation may be terminated by the Board without assigning any reason by giving three months notice or on payment of substantive pay for three months in lieu of notice (The regulation shall take effect from 1st December, 1976).

3. The Petitioner was appointed initially as a clerk in the Corporation on April 5, 1972. Gradually in stages he rose to the position of the Superintendent to which post he was appointed on June 20, 1981 by order of the Managing Director dated 26th April, 1984. The period of probation was extended till June 19, 1984. Prior to the appointment as Superintendent, the Petitioner had been confirmed as senior Assistant in the Corporation. Under the impugned order passed on 16th

October, 1985 by the Managing Director, the services of the Petitioner were terminated saying that these were no longer required and three months pay was given in lieu of notice. Reference is made in the order to paragraph 16-A of the Regulations 1961 extracted above.

4. Sri M. Katju, counsel for the Petitioner, challenges the vires of paragraph 16-A of the Regulations on ground that the provision made thereunder suffers from arbitrariness and is hit by Article 14 of the Constitution. A preliminary objection was raised by Sri R.P. Misra Standing Counsel for the Corporation to the effect that the Petitioner may seek remedy before the Public Services Tribunal. We find no force in this plea in a case as the present where the vires of the relevant provision relied for the Corporation is under challenge, the petition was filed about nine months back viz : January 20, 1986 and the affidavits have also been exchanged on both sides. The question moreover is covered as will presently appear by recent authoritative pronouncement of the Supreme Court:

In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, relevant Rule 9(i) provided as follows:

The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The Company may pay the equivalent of three months basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.

5. The Supreme Court found that this rule is void u/s 23 of the Contract Act as being opposed to public policy and also ultravires 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. Paragraph 16-A relied for the Respondent in the case before us is in pari materia with Rule 9(i) which was struck down in the aforementioned decision by the Supreme Court. The power purporting to be exercised by the Corporation under this provision may not, therefore, be sustained. The order impugned it may be noted, was passed without enquiry into the averments contained in the notice to show cause issued by the Management dated March 18, 1985 to which the Petitioner had submitted reply on March 29, 1985. The defence set up by the Petitioner was that of his continuous illness and in support thereof he relied on medical certificates showing that at the relevant time he suffered facial paralysis and colitis ; instead of making enquiry into the accusation against the Petitioner, if any, the appointing authority chose to dispense with his services on payment of three months' salary but without assigning any reason taking recourse to paragraph 16-A of the Regulations even though the Petitioner was a confirmed employee of the Corporation officiating as the Superintendent.

6. In the light of the discussion made in the above, the petition succeeds and is

allowed. The order dated 16th October, 1985 (Annexure 23) is set aside. The appointing authority shall be competent to proceed in the matter afresh in accordance with law. There will be no order as to costs.