# Ruby General Insurance Co. Ltd. vs Shri P.P. Chopra on 12 September, 1969

## Equivalent citations: [1970(20)FLR59], (1970)ILLJ63SC, (1969)3SCC653, AIRONLINE 1969 SC 160

## Author: J.M. Shelat

## Bench: C.A. Vaidialingam, I.D.Dua, J.M. Shelat

JUDGMENT

MR. J.M. Shelat, J.

1. The appellant-company is carrying on business in general insurance and has its registered office in Calcutta. It has a branch office in Delhi. On 18 July 1960, its Delhi branch appointed the respondent as a stenographer on a salary of Rs. 307 a month. No letter of appointment was then issued to the respondent, but on being asked to sign a pro forma Ex. M. 1, which contained certain terms and conditions of service, he filled it and signed the same on 21 July 1966. Presumably thinking that this was sufficient, the company did not issue a formal letter of appointment. On 2 April 1967 the respondent wrote to the company demanding a letter of appointment. In its reply dated 17 April 1967, Ex. M. 5, the company informed the respondent that his appointment was as a probationer lor one year with effect from 18 July 1966. In the meantime, the respondent had approached the Labour Commissioner with a request that the management should be directed to issue, as required by the Delhi Shops and Eatablishment Act, 1954, and the rules thereunder, the said letter of appointment. On being so required, the company issued on 26 Jane 1967 a letter of appointment, Ex. W.4. On 17 July 1967 the company terminated the respondent's service stating that his services were no longer required.

2. The company's case was that its staff rules required that all appointments in the company were, in the first instance, to be on probation for one year, that accordingly the respondent's appointment was as a probationer for one year, and that period having expired, it was competent to and did in fact terminate his services as they were no longer required. In the alternative, its case was that even if the respondent's appointment was not proved to be one as a probationer, the said staff rules as also the terms and conditions contained in the said pro forma, signed by the respondent, empowered the company to terminate the services of its employees on giving one month's notice or a month's salary in lieu thereof, and that therefore, the company was entitled to terminate his services and such termination could not be challenged. The respondent's case, on the other hand, was that at the very first interview, he had with the company's regional manager in response to the

company's advertisement for the post of a stenographer, he had made It clear that he was not interested in any appointment for a year, that if he was to be considered for the post bis appointment should be & permanent one, that on that it was agreed between him and the regional manager of the company that he would be appointed as a permanent employes, that though the staff rules of the company may have provided that all appointments must, in the first instance, be on probation, there was nothing to prevent the company from making permanent appointment, and that in any event he was never shown those staff rules, nor informed that he was being appointed AS a probationer subject to those staff rules. According to him, the company's claim that he was appointed as a probationer was not true and the company's stand to that affect was only an afterthought to justify termination of his services. As against the company's case that this was, in any event, a case of termination of service simpliciter, his case was that the order terminating his services was in truth a punitive order dismissing him and was not in bona fide exercise of the company's power of termination and was there-fore not ft valid order.

3. A dispute having thus arisen, the respondent moved the Central Government who referred the question to the tribunal under Section 10(1) read with Section 2A of the Industrial Disputes Act, 1947. The tribunal, on evidence adduced by the parties, held

(a) that the company had failed to prove that the respondent was appointed as a probationer for one year ;

(b) that the order of terminating his services was not one of termination simpliciter, but was an order punishing the respondent and thus amounted to dismissal ; and

(c) that such an order of dismissal, having been passed without holding any enquiry, was invalid and had, therefore, to be set aside.

It directed reinstatement of the respondent and payment of half of his salary from the date of termination of his services till reinstatement.

4. In reaching this conclusion the tribunal was impressed by two allegations made by the respondent: firstly, that the management felt resentful against him for his having complained to too authorities against their failure to issue the letter of appointment, and secondly, that they were annoyed with him for his having demanded extra payment in respect of work he was made to do in relation to certain concerns in which the company was interested. As evidence for having done such work he had retained with him copies of letters dictated to him and which he produced as Exs. W. 10 to W. 42 before the tribunal. From this evidence the tribunal found that the management had made the respondent do work in respect of concerns other than the company, that his demand for extra payment must have annoyed the management, and that that coupled with the resentment against his having approached the authorities in the matter of the letter of appointment made them terminate his services. The company obtained special leave from this Court and filed this appeal against the said order of the tribunal.

5. Counsel for the company at first raised several contentions against the tribunal's conclusions, but after some arguments gave up all of them except the contention that in the circumstances of the case the tribunal ought not to have directed the respondent's reinstatement. On this concession we proceed on the assumption that the respondent's appointment was not as a probationer and that the company's order discharging him from service was not termination simpliciter, but dismissal which was not valid.

The only question, therefore, which survives is whether the order of reinstatement can be said to be improper as urged by counsel.

6. The normal rule is that in oases of invalid orders of dismissal industrial adjudication would direct reinstatement of a dismissed employee. Nevertheless, there would be cases when it would not be expedient to adopt such a course. Where, for instance, the office of the employer was comparatively a small one and the dismissed employee held the position of the secretary, a position of confidence and trust, and the employer had lost confidence in the concerned employee, reinstatement was hold to be not fair to either party, See Assam Oil Company, Ltd. v. Us workmen 1980-I L.L.J. 687. Similarly, in Utkal Machinery, Ltd. v. Miss Santi Patnaik 1966-I L.L. J. 398 the employee, held to have boon wrongfully dismissed, was the secretary to the general manager of the appellant-company. The management alleged, as has been done in the instant case, that she was appointed on probation for six months, that her work was found unsatisfactory and was, therefore, discharged in terms of the contract of service. The tribunal did not accept the company's case and held that its order of discharge amounted to dismissal which was wrongful an no enquiry giving her the opportunity of being heard wan hold. But, considering her employment as the secretary, the tribunal did not order reinstatement and instead directed the company to pay compensation equivalent to two years' salary. On a contention that the compensation was exorbitant, this Court, on appeal, reduced the amount of compensation to one year's salary on the ground that there were no special circumstances to warrant the award of two years' salary as compensation. Explaining the case of Assam Oil Company 1960-I L L. J. 687 (vide supra), where the Court had awarded compensation of Rs. 12,500, which was equivalent to two years' salary, the Court observed at p. 401 as follows:

> ...The labour court has relied upon the decision of this Court in Assam Oil Company, Ltd. v. its workmen 1960-I L.L. J. 587 (vide supra) but the material facts of that case were different from those in the present case. In that case the aggrieved employee, Miss Scott, was in the employment of the Assam Oil Company, Ltd., for about two years before the termination of her services. It also appears that MISS Scott was in the service of Burmah-Shell as a lady secretary before she entered the service of Assam Oil Company in October 1954. It la also important to notice that the amount of compensation in that case was fixed on a concession of the Solicitor-General who appeared on behalf of the Assam Oil Company. In the present case, the respondent did not give up any previous job in order to take service under the appellant. She had worked for a period of about five months with the appellant. Her appointment with the appellant also was somewhat unusual, because it was made on the recommendation of Sri B. Patnaik, the then Chief Minister of Orissa. There are no

special circumstances for awarding compensation equal to two years' salary.

In Workmen of Charottar Gramodhar Sahakari Mandal, Ltd. v. Charottar Gramodhar Sahakari Mandal, Ltd. [Civil Appeal No. 382 of 1966, dated 14 August 1967] this Court refused to interfere with the order of the tribunal declining reinstatement though the order of dismissal on the ground that the concerned workmen hud resorted to illegal strike was not aside as the disciplinary enquiry was not held properly and considered compensation equivalent to 71/2 months' salary sufficient. These decisions clearly show that though industrial adjudication may not regard a wrongful dismissal as amounting to termination of service resulting only in a right to damages as under the law of master and servant and would ordinarily order reinstatement, it can refuse to order such reinstatement where such a course, in the circumstances of the case, la not fair or proper. The tribunal has to examine, therefore, the circumstances of each case to see whether reinstatement of the dismissed employee la not inexpedient or improper.

7. In the present case, we are of the view that reinstatement directed by the tribunal was inexpedient. The respondent had served the company in all for a period of twelve months. It was not as if he had been induced to give up any employment he was engaged in for joining the service of the appellant-company. The company's establishment in Delhi was comparatively a small establishment. There can be no doubt that the position of a stenographer in such an establishment would be one of confidence and trust as he would be taking down dictation and typing out all kinds of matters including sometimes confidential and even secret matters. For example, a report of the working of this branch to the company's headquarters by the branch manager, or a report as regards the working of other rival insurance companies in Delhi area, or a report regarding promotion and even demotion of some of the members of the staff of the branch office, and such other matters would be of a highly confidential nature. If the branch manager were, for one reason or the other, to loss confidence and trust in a stenographer working under him, it would obviously be impossible for him to give dictation on such matters to such a stenographer. On the assumption that the respondent was made to take dictation and type out letters in connexion with other concerns in which the appellant-company was interested and the respondent was not paid any extra remuneration for each work, the respondent was on his admission, retaining with him surreptitiously copies of those communications. As the tribunal has remarked, the respondent did so in order to preserve evidence that he was made to take down letters relating to concerns other than the appellant-company. Whether in terms of his employment as a stenographer the regional manager could take such work or not is a matter in which we need not go, but he did admittedly retain with Mm copies of as many as 32 such Communications which he exhibited as Exs. W. 10 to W. 42. These copies were clearly the property of the company which the respondent in no event could retain in his possession without the consent of his employers. If the regional manager were to entertain a feeling that, if reinstated, the respondent would in future also retain with him copies of documents of a confidential nature whenever the respondent felt that such retention would be of use or advantage to him, such a fueling on the part of the regional manage? that he can no longer trust the respondent with any confidential matter cannot be regarded as altogether unjustified. The regional manager might well feel that if the respondent was capable of collecting evidence against

the company, he might in future collect perhaps evidence of a more dangerous and harmful nature. Obviously, if he cannot repose confidence in the respondent, if reinstated, he cannot make any use of Ms services as a stenographer. In the circumstances, we think that the tribunal ought not to have directed his reinstatement despite its conclusion that the termination of his services was wrongfully made, but ought to have awarded suitable compensation instead.

8. As to the suitable compensation, considering the fact that the respondent had served the company only for a year and that it is not too difficult nowadays for competent stenographers to obtain suitable employment, we think it fair to direct the company to pay to him compensation equivalent to one year's salary at the rate of Rs. 307 per month. This was what was done in the case of Utkal Machinery, Ltd. 1966-I L L.J. 398 (vide supra).

9. In the result, we net aside the order of reinstatement passed by the tribunal and order the appellant-company to pay to the respondent compensation equivalent to twelve months' salary at the rate of Rs. 307 per month with interest thereon at the rate of 6 per cent per annum from 17 July 1967 till payment. The appeal is to this extent partially allowed. As each of the two parties has partially succeeded, the fair order of costs is that each party will bear his own coats except that the appellant-company will pay to Sri Pillai, who has at the instance of the Court appeared amicus curiae for the respondent, Rs. 300 as agreed to by its counsel.