M. Venugopal vs Divisional Manager on 31 January, 1994

Equivalent citations: 1994 AIR 1343, 1994 SCR (1) 433

Author: N.P Singh

Bench: N.P Singh, A.M. Ahmadi, M.M. Punchhi

PETITIONER:
M. VENUGOPAL

Vs.

RESPONDENT:
DIVISIONAL MANAGER

DATE OF JUDGMENT31/01/1994

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMADI, A.M. (J)
PUNCHHI, M.M.

CITATION:
1994 AIR 1343 1994 SCR (1) 433
1994 SCC (2) 323 JT 1994 (1) 281
1994 SCALE (1)264

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- This appeal has been filed against the judgment of the High Court dismissing the writ application filed on behalf of the appellant for quashing the order of termination of his services during the period of probation.

2. The appellant was appointed as Development Officer by the respondent Life Insurance Corporation (hereinafter referred to as "the Corporation"), on probation for a period of one year from May 23, 1984 to May 22, 1985. The period of probation of the appellant was extended for a

further period of one year from May 23, 1985 to May 22, 1986. Clauses 3 to 5 of the order of appointment deal with the code of conduct to be followed; clauses 6 to 9 deal with tours, advance deposits, record of work and collection of premiums; clause 10 deals with the minimum business that the appellant was expected to do during the period specified, clause 11 deals with confirmation and is as follows :

> "11. Confirmation and Increments.- (i) On your satisfactorily completing the period of probation and your observation and compliance with all conditions set out in this letter of appointment, you will be confirmed in the services of the Corporation in Class-11. Your confirmation will depend inter alia upon the fulfilment of the minimum business guarantee set out in para 10 above and upon your record of posts and service to the Corporation's policyholders and other functions performed by you in the area allotted to you to the satisfaction of the competent authority."

3. As the appellant was required to do a minimum business mentioned in the order and as he failed to achieve the target so fixed, the Divisional Manager of the Corporation, by a communication dated February 1, 1986, advised the appellant to comply with the said term during the extended period of probation. Yet another communication was issued to the appellant on April 5, 1986, saying that he had failed to fulfil the norm prescribed to earn confirmation. He was asked to improve his performance, failing which his service was likely to be terminated. Before the expiry of the extended period of probation, the service of the appellant was terminated on May 9, 1986.

4. A writ application was filed by the appellant before the High Court, questioning the legality of the aforesaid order of termination. A learned Single Judge quashed the said order holding that as the appellant shall be deemed to be "workman" within the meaning of the Industrial Disputes Act, the termination of his service will amount to "retrenchment" within the meaning of Section 2(oo) of the Act which was null and void in view of noncompliance of the requirement of Section 25-F of the Act.

5. On an appeal being filed on behalf of the Corporation, a Division Bench of the High Court took the view that because of clause (bb) which has been introduced in Section 2(oo) of the Act with effect from August 1 8, 1984, by the Industrial Disputes (Amendment) Act, 1984 (Act 49 of 1984), the termination of the appellant by the Corporation within the period of probation shall not amount to retrenchment within the meaning of Section 2(oo).

6. Section 2(oo) of the Act says that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. A new clause (bb) has been introduced apart from the three exceptions mentioned in Section 2(oo) which shall not be deemed to be retrenchment within the meaning of Section 2(oo) of the Act. Clause (bb), which has been introduced by the aforesaid Amendig Act says:

> "(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;

or"

(emphasis supplied)

7. Clause 11 of the order of appointment specifically said that on appellant's satisfactorily completing the period of probation and on his observance and compliance with all the conditions set out in the said letter of appointment, he "will be confirmed in the services of the Corporation..... III that very clause, it was further said that the confirmation of the appellant was dependent inter alia upon the fulfilment of the minimum business guarantee set out in para 10 of the said order of appointment. According to the Corporation, as admittedly the appellant did not reach the minimum target fixed in clause 10 of the order of appointment and his service was found not to the satisfaction of the competent authority, the contract of employment was "terminated under a stipulation in that behalf, contained" in the order of appointment itself and as such covered by clause (bb) of Section 2(oo) of the Act.

8. Regulation 14 of the Life Insurance Corporation of India (Stiff) Regulations, 1960 which shall now be deemed to be Rules framed under Section 48(2)(cc) of the Life Insurance Corporation Act (hereinafter referred to as "Corporation Act") provides :

> "14. (1) Persons appointed to posts belonging to Classes 1 and 11 shall, on the first appointment in the Corporation service, be required to be on probation for a period of one year from the date of appointment.
>
> (3) Subject to the provisions of any law for the time being in force the appointing authority may, at its discretion, dispense with, reduce or extend the probationary period, but in no case shall the total period of probation exceed :
>
> (a) In case of employees belonging to Classes I & II two years
>
> (b) In other cases one year (4) During the period of probation an employee shall be liable to be discharged from service without any notice."

9. Regulation 14 aforesaid has to be read as a statutory term of the contract of employment between the Corporation and the appellant. The order of appointment had fixed a target in respect of the performance of the appellant which admittedly the appellant failed to achieve within the period of probation which was extended up to two years. As such the Corporation was entitled not to confirm the appellant in terms of the order of appointment and to terminate his service during the period of probation without any notice in terms of Regulation 14(4) aforesaid. Clauses 10 and 11 of the order of appointment along with Regulation 14 shall be deemed to be stipulations of the contract of employment under which the service of the appellant has been terminated. Any such termination, even if the provisions of the Industrial Disputes Act were applicable in the case of the appellant, shall not be deemed to be "retrenchment" within the meaning of Section 2(oo), having been covered by exception (bb). Before the introduction of clause (bb) in Section 2(oo), there were only three exceptions so far as termination of the service of the workman was concerned, which had been

excluded from the ambit of retrenchment (a) voluntary retirement; (b) retirement on reaching the age of superannuation; and (c) on ground of continued 111-health. This Court from time to time held that the definition of "retrenchment" being very wide and comprehensive in nature shall cover, within its ambit termination of service in any manner and for any reason, otherwise than as a punishment inflicted by way of disciplinary action. The result was that even discharge simpliciter was held to fall within the purview of the definition of "retrenchment". (State Bank of India v. N. Sundara Money', Santosh Gupta v. State Bank of Patiala2.) Now with introduction of one more exception to Section 2(oo), under clause (bb) the legislature has excluded from the purview of "retrenchment" (i) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry; (ii) such contract being terminated under a stipulation in that behalf contained in contract of employment. It need not be impressed that if in the contract of employment no such stipulation is provided or prescribed, then such contract shall not be covered by clause (bb) of Section 2(oo). In the present case, the termination of service of the appellant is as a result of the contract of employment having 1 (1976) 1 SCC 822: 1976 SCC (L & S) 132: AIR 1976 SC 1111 2 (1980) 3 SCC 340: 1980 SCC (L & S) 409: AIR 1980 SC 1219 been terminated under the stipulations specifically provided under Regulation 14 and the order of the appointment of the appellant. In this background, the non-compliance of the requirement of Section 25-F shall not vitiate or nullify the order of termination of the appellant.

10. There is yet another aspect of the matter. The Corporation Act vests power in the Central Government to make rules in order to carry out the purposes of the Act. By Life Insurance Corporation (Amendment) Act, 1981 (Act 1 of 198 1), clause (cc) was added to sub-section (2) of Section 48 with effect from January 31, 198 1. Clause (cc) provides "(cc) the terms and conditions of service of the employees and agents of the Corporation, including those who became employees and agents of the Corporation on the appointed day under this Act;"

> With introduction of clause (cc), the Central Government can by notification in Official Gazette, make rules in respect of the terms and conditions of the service of the employees and agents of the Corporation. By the aforesaid Amending Act, three new sub-sections were also introduced, which are relevant for the present case :
>
> "(2-A) The regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act, shall be deemed to be rules made under clause (cc) of sub- section (2) and shall, subject to the other provisions of this section, have effect accordingly.
>
> (2-B) The power to make rules conferred by clause (cc) of subsection (2) shall include
>
> (i) the power to give retrospective effect to such rules; and

(ii) the power to amend by way of addition, variation or repeal, the regulations and other provisions referred to in sub-section (2-A), with retrospective effect, from a date not earlier than the twentieth day of June, 1979.

(2-C) The provisions of clause (cc) of sub-

section (2) and subsection (2-B) and any rules made under the said clause (cc) shall have effect, and any such rule made with retrospective effect from any date shall also be deemed to have had effect from the date, notwithstanding any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or any other law or any agreement, settlement, award or other instrument for the time being in force."

Sub-section (2-A) provided that regulations and other provisions in force immediately before the commencement of the aforesaid Amending Act with respect to the terms and conditions of service of employees and agents of the Corporation shall be deemed to be rules made under clause (cc) of sub-

section (2) of Section 48. Sub-section (2-B) empowered the Central Government to make rules under power conferred by clause (cc) of subsection (2), which power includes to give retrospective effect to such rules. It also authorised the Central Government to add, vary or repeal the regulations already framed and in existence. Sub-section (2-C) contains a non obstante clause saying that notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law or any agreement, settlement, award or other instrument for the time being in force, the provisions of clause (cc) of sub-section (2) aforesaid and any rules made under the said clause (cc) shall have effect. In view of the introduction of clause (cc) in Section 48(2) and sub-section (2-A) in Section 48 of the Corporation Act, it shall be deemed that Regulation 14 aforesaid, which had been originally framed under Section 49 of the Corporation Act, will be a rule framed under clause (cc) of sub-section (2) and shall have overriding effect because of sub-section (2- C) over the provisions of the Industrial Disputes Act in respect of terms and conditions of an employee of the Corporation, who is covered by the definition of "workman" under the Industrial Disputes Act. It may be pointed out that by the same Amending Act clause (bb) of sub-section (2) of Section 49 which authorised the Corporation with the previous approval of the Central Government to make regulations in respect of the terms and conditions of the services of the employees and agents of the Corporation was deleted. By a statutory fiction, the regulations relating to the terms and conditions of the employees and agents of the Corporation framed under Section 49(2)(bb) shall be deemed to be now the rules framed under Section 48(2)(cc) of the Corporation Act, and such rules shall have overriding effect over the provisions contained in the Industrial Disputes Act, so far as the terms and conditions of the employment of such employees who also conform to the requirement of the definition of "workman" under the Industrial Disputes Act, are concerned.

11. The effect of a deeming clause is well-known. Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council3 that when one is bidden to treat an imaginary state

of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs. In view of the amendments aforesaid introduced in Section 48 it has to be held that Regulation 14 referred to above in respect of termination of the service of an employee of the Corporation within the period of probation shall be deemed to be a rule framed under Section 48(2)(cc) having overriding effect over Section 2(oo) and Section 25-F of the Industrial Disputes Act.

3 (1952) AC 109 B: (1951) 2 All ER 587

12. The Industrial Disputes Act as well as the Corporation Act both have been framed by the Parliament. But the amendments aforesaid have been introduced in the Corporation Act in Section 48 with effect from January 3 1, 1981 with a non-obstante clause. In sub-section (2-C), the intention of the Parliament has been made apparent and obvious. It was pointed out in Aswini Kumar Ghose v. Arabinda Bose 4 , A. V. Fernandez v. State of Kerala 5 and South India Corporation (P) Ltd. v. Secretary, Board of' Revenue, TrivandruM6 that the effect of non obstante clause is to obliterate in regard thereto the provisions which were earlier applicable. The framers of the Corporation Act through the amendments aforesaid have given the provisions of tile Corporation Act an overriding effect over tile provisions of the Industrial Disputes Act, so far as the provisions relating to the terms and conditions of employment, which are in conflict with the provisions of the Industrial Disputes Act are concerned. Unless the said attempt is held to be ultra vires being in conflict with any of the provisions of the Constitution it was open to the Parliament to treat the employees and agents of the Corporation as a separate class for purpose of fixing their terms and conditions of service.

13. Earlier such employees used to be governed by the regulations framed by the Corporation under Section 49 of the Corporation Act as well as by the provisions of the Industrial Disputes Act, being "workman" within the meaning of that Act. It was up to them to enforce the rights or remedies in terms of the regulation so framed under the Corporation Act or in accordance with the provisions of the Industrial Disputes Act. But after the amendment introduced by the Parliament in Section 48, the employees of the Corporation shall not be entitled to protections to which they were entitled before the coming into force of the amendment aforesaid. The amendments cannot be held to be violative of Article 14 of the Constitution merely on the ground that a section of the employees of the Corporation had the benefit or protection of the provisions of tile Industrial Disputes Act which now they have been deprived of. The wisdom of the legislature in extending the protection of the provisions of the Industrial Disputes Act or denying the same cannot be judged by the courts unless any such step is held to be violative of any of the provisions of the Constitution. This Court has considered the validity of the aforesaid Life Insurance Corporation (Amendment) Act, 1981 in the case of A. V. Nachane v. Union of India7 and it has been held that the said Amending Act shall operate but prospectively insofar it seeks to nullify the terms of 1974 Settlement in regard to payment of bonus in that case. It was said in the said case that Section 48(2-C) read with Section 48(2)(cc) authorises the Central Government to make rules to carry out the purposes of the Act notwithstanding the Industrial Disputes Act 4 AIR 1952 SC 369: 1953 SCR 1 5 AIR 1957 SC 657: 1957 SCR 837: 8 STC 561 6 AIR 1964 SC 207: (1964) 4 SCR 280: (1964)15 STC 74 7 (1982) 1 SCC 205: 1982 SCC (L & S) 53: (1982) 2 SCR 246 or any other law, which meant that in respect of the matters

covered by the rules, the provisions of the Industrial Disputes Act or any other law will not be operating. It was pointed out that it was not really the rules framed by the Central Government that override the Industrial Disputes Act or any existing law but the power of abrogating the existing laws was in sub-section (2-C) of Section 48 enacted by Parliament itself and as such there was no question of any excessive delegation. The grievance that excluding the employees of the Corporation from the purview of the Industrial Disputes Act amounted to discrimination against them and as such the provisions of the Amending Act were violative of Article 14 of the Constitution, was also rejected.

14. The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a "retrenchment" within the meaning of Section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2(oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with I Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act.

15. Even under general law, the service of a probationer can be terminated after making an 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 The Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr Pandurang Godwalka8 where 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.

16. Accordingly, the appeal falls. But in the facts and circumstances of the case, there shall be no order as to costs.