Supreme Court of India
Life Insurance Corporation Of ... vs Shri Raghavendra Seshagiri Rao ... on 14 October, 1997
Bench: M.K. Mukherjee, K.T. Thomas

PETITIONER:
LIFE INSURANCE CORPORATION OF INDIA & ANR.

Vs.

RESPONDENT:
SHRI RAGHAVENDRA SESHAGIRI RAO KULKARNI

DATE OF JUDGMENT: 14/10/1997

BENCH:
M.K. MUKHERJEE, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

THE 23RD DAY OF SEPTEMBER, 1997 Present:

Hon'ble Mr. Justice S. Saghir Ahmad Hon'ble Mr. Justice D.P. Wadwa Harish N. Salve, Sr. Adv., C.K. Sasi, K.K. Sharma, Kailash Vasdev, Advs. with him for the appellants S.S. Javali, Sr. Adv., R.Jaganath Goulay, M.K. Dua, Advs. with him for the Respondent O R D E R The following Order of the Court was delivered: O R D E R Respondent was appointed as Assistant Development Officer or 4th September, 1985. After completion of he period of Apprenticeship, he was placed on probation as Development officer with effect from 4th December 1985. While he was still a probationer. his services were terminated by order dated 22.5.1986 which was challenged in a writ petition before the High Court of Karnataka.

Relying upon the decision of this Court in Central Inland water transport corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. etc. (1986) 3 SCC 156, a learned single judge of the High Court by judgment dated 12.8.1986 allowed the writ petition and quashed the order of termination. The judgment was upheld by the Division Bench in appeal. Now, the matter is in this Court.

We have heard learned counsel for the parties. Reliance placed by the High Court on the decision of this Court in Central Inland Water Transport Corporation Ltd. (Supra) was wholly out o place as that decision related to a permanent employee whose services could be terminated at any time by

giving three months' notice. This Court held that such a provision for terminating the services of a permanent employee was wholly arbitrary and that the services of the permanent employee could not be terminated except by giving him an opportunity of hearing. The High Court was of the view, and in our opinion, wrongly, that the case of the probationer was not different from that of the permanent employee and, therefore, applied the law laid down by this Court in Central Inland Water Transport Corporation Ltd.'s case (supra) to the case of the respondent who was a mere probationer, and held that the termination order was bad.

Clause 2 of the Letter of Appointment issued to respondent reads as under:

> "You shall be on probation initially for a period of twelve months from the date of your joining duties as a probationer, but the extend your probationary period provided that the total probationary period including the extended period shall not exceed 24 months counted from the commencement of the probationary appointment. During the probationary appointment. During the probationary period (which includes extended probationary period , if applicable) you shall be liable to discharge from service of the corporation without any notice and without any cause being assigned."

This Clause clearly stipulates that the respondent could be discharged from service at any time during the period of probation or extended period of probation, without any notice or without assigning any cause.

The period of probation is a period of test during which the work and conduct of an employee is under scrutiny.. If on an assessment of his work and conduct during this period it is found that he was not suitable for the post it would be open to the employer to terminate his services. His services can not be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that post becomes entitled to hold a lien on the post. He gets the right to continue on the post till he attains the age of superannuation or is dismissed or removed from service for misconduct etc. after disciplinary proceedings in accordance with the Rules at which he is given a fair and reasonable opportunity of being heard. He may also come to lose the post on compulsory retirement.

In Moti Ram Deka etc. vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc. 1964 (5) SCR 683, a majority of seven judges held that a permanent employee who substantively holds a permanent post has a right to hold the post till he reaches the age of superannuation or till he is compulsorily retired under the relevant Rule. Termination of his service in any other manner would amount to invasion of his right to hold the post and would amount to penalty of removal. It was for this reason that the Court held Rule 148 (3) or Rule 149(3) of the Railway Establishment code to be violative of the right guaranteed under Article 311(2) of the constitution. It was observed that a permanent employment assures security of tenure which is essential for the efficiency and incorruptibility of public administration.

Similar view was expressed in Gurdev Singh Sidhu vs. State of Punjab & Anr. 1964 (7) SCR 587 = AIR 1964 SC 1585.

Central Inland water Transport Corporation Ltd. & Anr.'s case was not correctly understood either by the single juice or by the Division Bench of the High Court. The High court also did not notice that apart from Central Inland water Transport corporation Ltd. & Anr.'s case, there ware other judgments of this Court in which a similar view was expressed.

In West Bengal State Electricity Board & Ors. Vs. D.B. Ghosh & Ors. 1985 (2) SCR 1014= AIR 1985 SC 722, a similar provision which enabled the Broad to dispense with the services of a permanent employee by a mere notice or pay in lieu thereof was held to be bad. it was held that the offending Regulation which had developed the notoriety as " Henry VIII Clause" was ultra Hindustan Steel Ltd. & Anr. vs. Hindustan Steel Ltd. & Ors. 1985 (2) SCR 428 = AIR 1985 SC 251 as also in O.P. Bhandari vs. Indian Tourist Development Corporation (1984) 4 SCC 337, the Rule based on the doctrine of hire and fire" was held to be bad as being impermissible under the constitutional scheme to sustain the doctrine as a permanent employee could not be removed in that fashion.

This question was re-examined and the entire case law was reviewed by this Court in Delhi Transport Corporation vs. D.T.C Mazdoor Congress and others AIR 1991 SC 101= 1990 Supp. (1) SCR 142 = (1991) SCC Supp. (1) 600 and it was again reiterated by the majority of judges that a Rule which gave unbridled or arbitrary powers to the management to dispense with the services of regular and permanent employees by a mere notice or, pay in lieu thereof, would be bad. The principles laid down in the case of central Inland Water Transport Corporation Ltd. & Anr. were reiterated.

The requirement to hold a regular departmental enquiry before dispensing with the services dispensing with the services of a probationer cannot be invoked in the case of a probationer specially when his services are terminated by an innoduous order which does not case any stigma on him. But it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination is punitive in nature and is brought about on the ground of misconduct.

Article 311(2) would be attracted and in that situation it would be incumbent upon the employer, in the case of Government service, to hold a regular departmental enquiry. In any other case also, specially those relating to statutory corporations or Government instrumentalities, a termination which is punitive in nature cannot be brought about unless an opportunity of hearing is given to the person whose services, even during the period of probation, or extended period, are sought to be terminated. (See: Parshotam Lal Dhingra vs. Union of India (1958) SCR 328 in which it was held that appointment to a permanent post on probation means that the servant is taken on trial, such an appointment comes to an end if during or at the end of the probation, the person so appointed is found to be unsuitable and his services are terminated by notice. An appointment on probation or on an officiating basis is of a transitory character with an implied condition that such an appointment is terminable at any time: see also: Shamsher Singh & Anr. vs. State of Punjab 19756 (1) SCR 814 = (1974) 2 SCC 831).

To bring home the point, we may refer to a few other cases relating to the termination of service of a probationer. They are: State of Maharashtra vs. Veerappa R. Saboji & Another Air 1980 SC 42 = 1980 (1) SCR 551= (1979) 4 SCC 466. In the same volume, another case, namely, oil and Natural Gas commission and others vs. Dr. Md. s. Iskander Ali AIR 1980 SC 1242= 1980 (3) SCR 603 = (1980) 3 SCC 428 is reported in which the same principles have been reitereated. In The Union of India and others vs. P.S. Bhatt AIR 1981 SC 957 = (1981) 2 SCC 761 promotion was made to a higher post on probation which was ultimately terminated. It was held that a person who is placed on probation does not have the right to hold the post and if it is found that he was not suitable for the post, his probation can be terminated at any time and he can be reverted to his original post.

A distinction was drawn again as between a permanent employee and an employee appointed on probation in Bishan Lal Gupta vs. The State of Haryana and others AIR 1978 SC 363= 1978 (20 SCR 513= (1978) 1 SCC 202. In this case, a formal enquiry was held merely to assess the work and conduct of an employee who was appointed on probation. It was held that there was no need either to give notice or to hold the regular departmental enquiry.

In the instant case, the respondent was discharged from service during probation in terms of Regulation 14(4) of the Life Insurance Corporation of India (Staff) Regulation 1960. Such termination has already been upheld been a Three judge Bench of this Court in M. Venugopal vs. Divisional Manager. Life Insurance Corporation of India, Machilipatnam, A.P. & Anr. (1994) 2 SCC 323. This decision also meets the ground raised by the counsel for the respondent that the termination of respondent's services would amount to " RETRENCHMENT" as defined in Section on 2(00) of the Industrial disputes Act and since the requirements of section 25-F of the Act were not complied with, the termination would be bad. It may be pointed out that Life Insurance Corporation (Amendment) Act, 1981 (act 1 of 1981) which came into force on 31st of January, 1981 provided that under Sub-section A of section 48 of the Life Insurance Corporation Act, 1956. the Regulations which were already in force immediately before the commencement of the Amendment Act shall be deemed to be Rules made by the Central Government and they shall be deemed to have effect notwithstanding anything contained in the Industrial Disputes Act, 1947. The validity of the Amendment Act was upheld by this Court in A.V. Nachane and another vs. Union of India and another AIR 1982 SC 1126 = 1982 (2) SCR 246= (1982) 1 SCC 205. For this reason also, the ground that termination would amount to retrenchment within the meaning of section 2(00) of the Industrial Disputes Act cannot be entertained.

For the reasons stated above, the judgment passed by the Single Judge of the High Court and upheld by the Division Bench cannot be sustained. Consequently, the appeal is allowed. the judgments passed by the High Court (by the Single judge as also by the Division Bench ) are set aside and the order of discharge dated 22.5.1986 is upheld. There will be no order as to costs.