Satish Chandra Anand

Vs

The Union of India

Petition (No. 201 of 1952)

(CJI M. Patanjali Sastri, B. K. Mukherjea, Vivian Bose, Ghulam Hasan, N. H. Bhagwati JJ)

13.03.1953

JUDGMENT

BOSE J. -

This is a petition under article 32 of the Constitution in which the petitioner seeks redress for what, according to him, is a breach of his fundamental rights under articles 14 and 16(1) of the constitution. It was argued at considerable length by the petitioner in person. Then, when our judgment was nearly ready, he put in a petition asking for a rehearing and for permission to file some fresh papers. When that was refused he came again on another day and asked for leave to engage an agent and appear through counsel as he felt he had not been able to do justice to his case in person. (It may be mentioned that though he had originally engaged an agent he dismissed him before the hearing when he appeared in person.) We granted his request and counsel reargued the case for him but has not carried the matter any further. The facts are these.

In October, 1945, the petitioner was employed by the government of India on a five year contract in the Directorate General of Resettlement and Employment of the Ministry of Labour. This was after selection by the Federal Public Service Commission. After a short period of practical training, he was posted in January, 1946, at Jabalpur as the Manager of the Sub-Regional Employment Exchange and was later confirmed in this appointment.

This contract of service was due to expire in 1950. Shortly before its expiration the Government of India made him a new offer, embodied in its letter dated the 30th June, 1950, to continue him in service on the expiry of his contract on the terms specified in that letter. Among them were the following :

> "(3) Other conditions of service :- on the termination of your contract you will be allowed to continue in your post temporarily for the period of the Resettlement and Employment Organisation and will be governed by the Central Civil Services (Temporary Service) Rules, 1949, unless you are a permanent Government servant."

He was asked in the letter to intimate to the Ministry of Labour whether he was willing to continue in service on those terms and he admits that he accepted the offer and continued in service. He was not a permanent Government servant though it was contended in argument that he was, for he was on a five year contract and the work for which he was employed, namely Resettlement and Employment, was itself only of a temporary character. Therefore, the Temporary Service Rules applied.

On those rules, rule 5 is material. It runs as follows :

> "5. (a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.
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> (b) The period of such notice shall be one month, unless otherwise agreed to by the Government and by the Government servant."

Quasi-permanent service is defined in the rules and it is clear that the petitioner does not come within that class. It is also an undisputed fact that there was no agreement between the petitioner and Government regarding the period of the notice. Therefore, according to this rule, which was a term in the petitioner's contract of further service, his services were liable to termination at any time by one month's notice in writing. This notice was given on 25th November, 1950, and he was told that his services would terminate on the expiry of one month from 1st December, 1950.

A large field was covered in the course of the arguments, and had the matter not been re-argued we would, for the petitioner's satisfaction, have dealt with the contentions raised more fully than will be necessary now that counsel has appeared.

The petition is under article 32(1) of the Constitution and so it must be shown that a fundamental right has been infringed. It was argued that the rights infringed are the ones conferred by article 14 and 16(1).

Taking article 14 first, it must be shown that the petitioner has been discriminated against in the exercise or enjoyment of some legal right which is open to others who are similarly situated. The rights which he says have been infringed are those conferred by article 311. He says he has either been dismissed or removed from service without the safeguards which that article confers. In our opinion, article 311 has no application because this is neither a dismissal nor a removal from service, nor is it a reduction in rank. It is an ordinary case of a contract being terminated by notice under one of its clauses.

The services in India have long been afforded certain statutory guarantees and safeguards against arbitrary dismissal or reduction in rank. Under section 240 of the Government of India act, 1935, the safeguards were limited to those two cases. Under the present Constitution, a third was added, namely removal from service. In order to understand the difference between "dismissal" and "removal" from service, it will be necessary to turn to the Rules which governed, and with modifications still govern, the "services" in India because of article 313 of the Constitution.

Part XII of the Civil Services (Classification, Control and Appeal) Rules relating to Conduct and Discipline includes rule 49 which sets out the various penalties to which a member of the services can be subjected for indiscipline and misconduct. They are seven in number and include censure, suspension, reduction in rank, removal from service and dismissal from service. The Act of 1935 selected only two of these possible penalties as serious enough to merit statutory safeguards, namely reduction in rank and dismissal from service. The Constitution has added a third to the list. The distinction which is drawn between the two is explained in Rule 49. There is first removal from service "which does not disqualify from future employment" and there is next dismissal from service "which ordinarily disqualifies from future employment."

Then follows an Explanation :

> "The discharge -
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> (c) of a person engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule."

These terms are used in the same sense in article 311. It follows that the article has no application here and so no question of discrimination arises, for the "law" whose protection the petitioner seeks has no application to him.

There was no compulsion on the petitioner to enter into the contract he did. he was as free under the law as any other person to accept or to reject the offer which was made to him. Having accepted, he still has open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived.

Article 16(1) is equally inapplicable. The whole matter rests in contract. When the petitioner's first contract (the five year one) came to an end, he was not a permanent Government servant and Government was not bound either to re-employ him or to continue him in service. On the other hand, it was open to Government to make him the offer it did of a continuation of his employment on a temporary and contractual basis. Though the employment was continued, it was in point of fact, and in the eyes of the law, under a new and fresh contract which was quite separate and distinct from the old even though many of its terms were the same. Article 16(1) deals with equality of opportunity in all matters relating to employment or appointment to any office under the State. The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person top whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound. When the employment is permanent there are certain statutory guarantees but in the absence of any such limitations Government is, subject to the qualification mentioned above, as free to make special contracts of service with temporary employees, engaged in works of a temporary nature, as any other employer.

Various matters relating to the merits of the case were referred to but we express no opinion about whether the petitioner has other rights which he can enforce in other ways. We are dealing here with a writ under article 32 to enforce a fundamental right and the only point we decide is that no fundamental right has been infringed.

When the matter was first argued we had decided not to make any order about costs but now that the petitioner has persisted in reopening the case and calling the learned Attorney-General here for a second time, we have no alternative but to dismiss the petition with costs.

Petition dismissed.

Agent for the petitioner : Rajinder Narain.

Agent for the respondent : G. H. Rajadhyaksha.

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