Dr. S. L. Agarwal

Vs

The General Manager, Hindustan Steel Ltd.

Civil Appeal No. 524 of 1967

(CJI M. Hidayatullah, A.N. Grover, A.N. Ray, P. Jagmohan Reddy, I.D. Dua JJ)

19.12.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. The appellant, who appeals by certificate granted by the High Court of Madhya Pradesh, was appointed as Assistant Surgeon on probation for one year by the Board of Directors, Hindustan Steel Ltd., Ranchi, with effect from October 22, 1959. After completing his period of probation he was employed on a contract for 5 years. Ex. P-3 is the contract of service which he entered into with the Company. Under the terms of the contract there was a further period of probation. During the period of probation the Company could terminate his service without notice and without assigning any reason. The Company could also terminate the employment by giving in lieu of notice, three months' salary. This terms was applicable till three months immediately before the end of the period of 5 years. If a notice terminating the service was not given three months before the close of the end of 5 years the contract was automatically extended till the incumbent became superannuated on reaching the age of 55 years.

2. The appellant passed the probation period and he was entitled to the months' notice if his services were to be terminated. The Company maintains certain set of Rules governing the employment of its workmen, in addition to the Standing Orders of the Company. Ex. P-4 represents the procedure for imposing major penalties and for punishment and appeal. These are extracts from the Disciplinary and Appeal Rules.

3. On September 17, 1964 the appellant was on duty in the Medical Out-Patients Department. He examined one Mrs. Holey who complained of could, headache and weakness. It appears that Mrs. Holey complained of some misbehaviour on the part of the appellant and her husband reported the matter to the Chief Medical Officer of the Bhilai Steel Plant where the appellant was then posted. The Chief Medical Officer asked for the explanation of the appellant on September 21, 1964, but the appellant denied the allegation. Some enquiry was then held. The appellant in his appeal submits that he was not given a copy of the written complaint received from Mr. and Mrs. Holey. On October 5, 1964 some witnesses were examined in the presence of the appellant. Two days previously the statements of Mr. and Mrs. Holey were also recorded. The enquiry was being held by the Commercial Manager. The appellant then sent a notice to Mr. and Mrs. Holey charging them with defamation and actually filed a suit on November 17, 1964 demanding damages. On December 15, 1964 the General Manager terminated his services with effect from March 15, 1965, the that is to say, after the expiry of three months' notice under the contract. It was stated in the order that the services were being terminated in terms of his employment.

4. The appellant thereupon filed a petition under Article 226 of the Constitution in the High Court of Madhya Pradesh claiming inter-alia that his services were wrongly terminated without giving him the protection granted by Article 311 of the Constitution. He also complained of breach of the principles of natural justice inasmuch as the enquiry was not proper. His contention was that although the action was ostensibly taken according to the terms of the contract of employment, he was really punished and he was entitled, therefore, to the protection of Article 311 of the Constitution. The Company resisted the ground by saying that Article 311 was not applicable to the appellant inasmuch as he was employed by a Corporation and neither belonged to the civil service of the Union nor held a civil post under the Union. The High Court in its judgment ruled that the protection of Article 311 of the Constitution was not available in the case because the appellant was not entitled to it.

5. It appears that this was the only point urged in the High Court. In the Appeal before us attempt was made to enlarge the case by arguing other points, namely, that the enquiry was not properly conducted, that the principles of natural justice were violated and that the appellant had no opportunity of defending himself. None of these points is touched upon in the High Court's judgment and it appears that in the High Court only the constitutional question was raised. Otherwise, one would expect the High Court to have said something about it, or the appellant to have said so in the application for certificate or in the proposed grounds filed with that application. We decline to allow these fresh grounds to be urged.

6. The question that arise in this case is : whether the employees of a Corporation such as the Hindustan Steel Ltd., are entitle to the protection of Article 311 ? This question can only be answered in favour of the appellant if we hold that the appellant held a civil post under the Union. It was conceded before us that the appellant could not be said to belong to the civil service of the Union or the State. Article 311, on which this contention is based, reads as follows :

> "311. Dismissal, removal, or reduction in rank of persons employed in civil capacities under the Union or a State.
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> (1) No person who is a member of a civil service of the Union or an all-India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
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> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :
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> Provided that this clause shall not apply -
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> (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;
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> (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or
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> (c) where the President or Governor, as the case may be, is satisfied that in the interest of security of the State it is not expedient to give to that person such an

opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing case under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

7. Clause (2) of the article, which gives the protection opens with the words "no such person as aforesaid" and these words take one back to clause (1) which describes the person or persons to whom the protection is intended to go. Clause (1) speaks of (i) persons who are members of (a) a Civil Service of the Union, or (b) an all-India Service or (c) a Civil Service of a State or (ii) hold a civil post under the Union or a State. (a), (b) and (c) refer to the standing services which have been created in the Union and the States and which are permanently maintained in strength. In addition to the standing services there are certain posts which are outside the permanent services. The last category in Article 311(1) therefore speaks of such posts on the civil side as opposed to the military side. Incumbents of such posts also receive protection.

8. In the present case the appellant did not belong to any of the permanent services. He held a post which was not borne on any of the standing services. It was, however, a civil post as opposed to a military post. So far the appellant's case is clear but the clause speaks further that such posts must be under the Union or a State. The question thus is whether the servant employed here can be said to have held the post under the Union or a State ? The appellant contends that since Hindustan Steel Limited is entirely financed by the Government and its management is directly the responsibility of the President, the post is virtually under the Government of India.

9. This argument ignores some fundamental concepts in relation to incorporated companies. In support of the contention that the post must be regarded as one under the Union the appellant relies on some obiter observations of a single judge in M. Verghese v. Union of India and Others. (AIR 1963 Cal 421) In that Case the petitioners were drivers working for the Durgapur Project under Hindustan Steel Limited. The learned single Judge considered the question by analysing the set up of Hindustan Steel Limited. He found that it was a Government company and a private limited company, although it did not include in its name any notice that it was a private company. He referred in detail to the various provisions in the Articles of Association as also in the Indian Companies Act which rendered the ordinary company law inapplicable in certain respects and conferred unlimited powers of management on the President of India and his nominees. He also found that Hindustan Steel Limited was entirely owned by the Union of India. From this the learned Judge wished to infer that Hindustan Steel limited was really a department of the Government but he did not express this opinion and decided the case on another point. The appellant contends that the conclusion which the learned single Judge did not draw in the Calcutta case is the conclusion to draw in this appeal We must, according to him, hold that there is no difference between Hindustan Steel Limited and a Department of the Government and that the service under Hindustan Steel Limited is a service under the Union.

10. On the other hand, in State of Bihar v. Union of India and Another. (1970 (1) SCC 67) Hindustan Steel Limited was not held to be a "State" for purposes of Article 131. The question whether Hindustan Steel Limited was subject to the jurisdiction of the High Court under Articles 226 and 227 was left open. In dealing with the above conclusion, reference was made to the incorporation of Hindustan Steel Limited as an independent company and thus a distinct entity. In Praga Tools Corporation v. C. V. Imanual and Others (1969 (1) SCC 585) it was pointed out that a

company in which 88% of the capital was subscribed by the Union and the State Governments could not be regarded as equivalent to Government because being registered under the Companies Act it had a separate legal existence and could not be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. Similar views were also expressed in the High Courts. In Lachmi and Others v. Military Secretary to the Government of Bihar (AIR 1956 Pat 398) the expression "civil post under the Union or the State" was held to mean that the civil post must be in the control of the State and that it must be open to the State to abolish the post or regulate the conditions of service. Although the case concerned a Mali employed in Raj Bhavan, it was held that it was not a post under the State even though the funds of the State were made available for paying his salary. In a later case Subodh Ranjan Ghosh v. Sindhri Fertilizers and Chemicals Ltd., (AIR 1957 Pat 10) the employees of the Sindhri Fertilizers were held not entitled to the protection of Article 311. Our brother Ramaswami (then Chief Justice) noticed that the corporation was completely owned by the Union Government; that the Directors were to be appointed by the President of India who could also issue directions. He nevertheless held that in the eye of law the company was a separate entity and had a separate legal existence. In our judgment the decision in the Patna case is correct. It has also support of a decision reported in Ram Babu Rathaur v. Divisional Manager, Life Insurance Corporation of India (AIR 1961 All 502) and another in Damodar Valley Corporation v. Provat Roy. (LX CWN 1023) Our brother Ramaswami relied in particular upon an English case Tamlin v. Hennaford. ((1950) 1 KBD 18) In that case it was held in relation to a business that although the minister was really incharge, the corporation was different from the Crown and the services of the corporation were not civil services. Justice P. B. Mukherjee of the Calcutta High Court, to whose judgment we referred earlier distinguished the English case by pointing out certain differences between the Corporation in that case and Hindustan Steel Limited. He pointed out that (a) in the English Corporation no shareholders were required to subscribe the capital or to have a voice in the affair, (b) the capital was raised by borrowing and not by issuance of shares, (c) the loss fell upon the consolidated fund and (d) the corporation was non-profit making. In our judgment these differences rather accentuate than diminish the applicability of the principle laid down in the English case to our case. The existence of shareholders, of capital raised by the issuance of shares, the lack of connection between the finances of the corporation and the consolidated fund of the Union rather make out a greater independent existence than that of the corporation in the English case. We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of 'a civil post under the Union' as stated in the Article. The appellant was not entitled to the protection of Article 311. The High Court was therefore right in not affording him the protection. The appeal fails and is dismissed but in the circumstances of the case we make no order about costs.

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