

Indian Airlines Corporation

Vs

Sukhdeo Rai

Civil Appeal No. 1171 of 1967

(J. M. Shelat, V. Bhargava, I. D. Dua JJ)

27.04.1971

JUDGMENT

SHELAT, J. -

Prior to August 1953, the respondent was employed as a motor driver in Airways (India) Ltd. On the passing of the Air Corporation Act, XXVII of 1953, and consequent thereupon of the taking over of the existing air companies, including the Airways (India) Ltd., by the appellant-Corporation, he became the employee of the appellant-Corporation. On January 13, 1956, he was suspended on certain charges. On being found guilty of those charges after an enquiry had been held, he was dismissed by an order, dated February 6, 1956.

2. The respondent filed a suit alleging that the enquiry had been conducted in breach of the procedure laid down by the Regulations made by the Corporation under Section 45 of the Act, and that therefore, the dismissal was illegal and void. The trial Court accepted the contention and granted a declaration that his service continued as the order dismissing him was null and void. That decree was upheld by the first appellate court. In a second appeal in the High Court, it was conceded that the Regulations applied to the respondent's case, and that the procedure therein laid down for terminating his service was not complied with. The Corporation's contention, however, was that the only relief to which the respondent was entitled to was damages and that a declaration, such as the one granted by the Trial Court, could not be given. The High Court rejected that contention holding that the Corporation was under a statutory obligation to observe the procedure laid down in the Regulations, and that that not having been done, the order of dismissal was illegal and void, and the respondent continued to be in the employment of the Corporation as if there was no termination of service. This appeal, founded on a certificate granted by the High Court, is directed against its aforesaid judgment and decree.

3. It being an admitted fact that the respondent's service was terminated in breach of the procedural safeguards provided in the Regulations, the question for determination is whether in cases, such as the one before us, a declaration given by the Trial Court and upheld by the High Court could be granted. It is a well settled principle that when there is a purported termination of a contract of service, a declaration, that the contract of service still subsisted, would not be made in the absence of special circumstances because of the principle that courts do not ordinarily grant specific performance of service. This is so, even in cases where the authority appointing an employee was acting in exercise of statutory authority. The relationship between the person appointed and the employer would in such cases be contractual, i.e., as between a master and servant, and the termination of that relationship would not entitle the servant to a declaration that this employment had not been validly determined. (see *A. Francis v. Municipal councilors of Kuala Lumpur* ((1962)

3 All 633) and Barber v. Manchester Regional, Hospital Board).

4. "Cases of dismissal fall into three classes", said Lord Reid in Ridge v. Baldwin, firstly, dismissal of a servant by his master, secondly, dismissal from office held during pleasure, and thirdly, dismissal from office where there must be something against a man to warrant his dismissal. It is in the third category of cases that an employee cannot be dismissed without first letting from know what is alleged against him and hearing his defence or explanation. He added that in a case of purely master and servant relationship, the servant is not entitled to say that he was not heard by his master before his dismissal. Such a question of being heard or not can only arise where the authority employing the servant is under some statutory or other restriction as to the kind of contract which it can make with its servants or the grounds on which it can dismiss them. The question, therefore, would be whether the relationship between the Corporation and the respondent was anything else than that of master and servant, or whether the Corporation was under some statutory limitation or obligation by reason of which it could not terminate his service except by complying with such an obligation. The decision in Vine v. National Dock Labour Board, illustrates a case where the court would grant a declaration of nullity. That was a case of lack of power in the Board to delegate its disciplinary function to a committee which dismissed the employee-an action which was held ultra vires, and therefore, a nullity. A similar consequence also follows where the appointment is to an office or status, such as the vice-chancellorship of a university, as was the case in Bool Chand v. The chancellor, (1968 (1) SCR 434 : AIR 1968 SC 292 : (1968) 1 SCJ 705 : 15 Law Rep 747) where this Court held that the tenure of office held by the appellant could not be terminated without informing him of the allegations made against him and without hearing him or giving him an opportunity to give an explanation.

5. There is, on the other hand, the case of Vidyodaya University v. Salva, where a teacher appointed by the University was found not to be holding such an office or status and where it was held that the University, though established under a statute, was under no statutory obligation or restriction, subject to which only it could terminate the service of the teacher. The service of respondent was brought to an end by a resolution of the University Council set-up under the statute establishing the University. The resolution was admittedly passed without hearing the teacher. Under the statute, the Council was empowered to institute Professorships and every appointment was to be by an agreement in writing between the University and the Professor and was to be for such period and on such terms as the Council might resolve. Under Section 18(e) of the Act, the Council had the power to dismiss an officer or a teacher on grounds of incapacity or conduct which in the opinion of not less than two-thirds of the members of the Council rendered him unfit to be an officer or a teacher of the University. Such a resolution with the requisite majority was passed. The Act gave no right to the teacher of being heard by the Council. The Privy Council held that the mere circumstances that the University was established by the statute and was regulated by statutory enactments continued in the Act did not mean that the contracts of employment made with teachers, though subject to Section 18(e), were other than ordinary contracts of master and servant, and, therefore, the procedure of being heard invoked by the respondent was not available to him and no writ could be issued against the University. (see also Dr. S. B. Dutt v. University of Delhi). The fact, therefore, that the appellant-Corporation was not set up under and was regulated by Act XXVII of 1953 would not take away, without anything more, the relationship between it and its employees from the category of purely master and servant relationship. Are there than in the Act any provisions which impose upon the Corporation any statutory restriction or obligation which limits its power of terminating that relationship ?

6. The Act was passed to facilitate acquisition by the Air Corporation of undertakings belonging to

certain existing air companies and to make further and better provisions for the operation of air transport services. By Section 3, two corporations, the Indian Airlines and Air India International, were set-up as bodies corporate, having perpetual succession. Section 8(1) provides that for purposes of discharging its functions under the Act each of the corporations shall appoint a general manager and subject to such rules as may be prescribed in this behalf may also appoint such number of officers and employees as it may think necessary. Its second sub-section provides that :

"Subject to the provisions of Section 20, every person employed by each of the Corporation shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined by regulations made by the Corporation by which he is employed."

Section 20 provides that :

"Every officer or other employee of an existing air company employed by that company prior to the first of July, 1952, and still in its employment immediately before the appointed date shall become as from the appointed date an officer or other employee, as the case may be, of the Corporation in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pensions and gratuity and other matters as he would have held the same under the existing air company if its undertaking had not vested in the Corporation and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms or conditions are duly altered by the Corporation."

7. Section 44(1) empowers the Central Government to make rules to give effect to the provisions of the Act and sub-section (2) thereof empowers it, in particular and without prejudice to the generally of that power, to make rules, inter alia, providing the terms and conditions of service of the general manager and such other categories of officers as may be specified from time to time under Section 8(1). Section 45 authorises each of the two Corporations with the approval of the Central Government any by notification in the Government Gazette to make regulations not inconsistent with the Act or the rules made under Section 44 "for the administration of the affairs of the Corporation and for carrying out its functions" and in particular providing the terms and conditions of service of officers and other employees of the Corporation other than the general manager and officers of any other categories referred to in Section 44.

8. The effect of these provisions, briefly, is, (1) that Section 8(1) authorises the Corporation to appoint officers and other employees, (2) that under Section 8(2) the Corporation is empowered, subject to Section 20, to lay down the terms and conditions of service of such officers and employees as it may determine by regulations made under Section 45, and (3) that by virtue of Section 20 the officers and employees of the existing air companies, whose undertakings were taken over by the Corporations, became, by the operation of the Act, the employees of the Corporation in whom a particular undertaking was vested. The section ensures that on their so becoming the employees of the Corporation they would be governed by the same terms and conditions of service by which they were governed immediately before the appointed date until the Corporation altered those terms and conditions by regulations. The power to appoint its employees, except to the tent of the employees of the existing air companies becoming by operation of Section 20 its employees, is vested in each of the two Corporation. Each of them has also the power to lay down the terms and conditions of service of its employees by regulations and thereby even alter the terms and

conditions, which, those who became by operation of law its employees had had in their respective existing companies, and which, until such alternation, were ensured to them. Indeed, the power of the Corporation to terminate the employment of its officers and other employees was nowhere disputed; the only dispute raised was as to the manner in which it could be exercised. It is necessary to observe in this connection that neither the Act nor the rules made under Section 44 by the Central Government lay down any obligation or restriction as to the power of the Corporation to terminate the employment of its employees or any procedural safeguards, subject to which only, such power could be exercised. The reason is that under the scheme of the Act such procedural safeguards and other terms and conditions of service were to be provided for in the regulations made by the Corporation under Section 45.

9. The employment of the respondent not being one to an office or status and there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the respondent's employment could be exercised, could the respondent contend that he was entitled to a declaration that the termination of his employment was null and void ?

10. A case of an analogous nature arose in *U. P. State Warehousing Corporation Ltd. v. Tyagi*. (1970 (2) SCR 250 : 1969 (2) SCC 838) The Agricultural Produce (Development and Warehousing) Corporation Act, XXVIII of 1956, with which the Court there was concerned, provided for the incorporation and regulation of corporations for development and warehousing of agricultural produce on co-operative principles. Section 28 empowered State Government to set-up such corporations. Section 52 authorised the appropriate Government to make rules and Sections 53 and 54 gave power to the Board set-up under the Act and the corporations respectively to make regulations consistently with the provisions of the Act and the rules. The respondent there was dismissed from service without following the procedure laid down in Regulation 16(3). There was no question or doubt about the power of the Corporation to terminate his service. The question was, whether a declaration to the effect that the termination was invalid and void on the ground of non-compliance of Regulation 16(3), could be granted in the suit filed by the respondent. This Court, after examining a number of decisions, followed the decision in *S. R. Tewari v. District Board Agra*, (1964 (3) SCR 55 : AIR 1964 SC 1680 : (1964) 2 SCJ 300 : (1964) 1 Lab LJ 1) which laid down that there were only three well recognised exceptions to the general rule under the law of master and servant where such a declaration would be issued, namely : (1) cases of public servants falling under Article 311(2) of the Constitution, (2) cases falling under the industrial law, and (3) cases where acts of statutory bodies are in breach of a mandatory obligation imposed by a statute, and held that the case before it did not fall under any one of the said three exceptions, that the dismissal was wrongful inasmuch as it was in breach of the terms and conditions of employment embodied in the regulations and not one of breach of a statutory restriction or obligation, subject to which only the power to terminate the relationship depended. (see also *Bank of Baroda v. Mehrotra* 1970 (2) LLJ 54)). In *S. R. Tewari's* case, (supra) this Court noticed with approval the decision of the High Court of Allahabad in *Ram Babu Rathaur v. Life Insurance Corporation*, (AIR 1961 All 502) that though the Corporation was a statutory body, the relations between it and its employees were governed by contract and were of master and servant and not subject to any statutory obligation although the Corporation had framed under its power under the Act regulations containing conditions of service in the Corporation. A similar view has recently been taken by the High Court of Calcutta in *Life Insurance Corporation v. N. Banerjee*. ((1971) 1 LLJ 1)

11. Counsel for the respondent, however, sought assistance from the decision in the *Life Insurance Corporation of India v. Mukherjee*. (1964 (5) SCR 528 : AIR 964 SC 847 : (1964) 1 SCJ 272 : (8) Fac LR 158) That decision is clearly distinguishable and can, therefore, give no assistance. Prior to

the passing of the Life Insurance Corporation Act, 1956, the respondent there was an employee of one of the insurance companies taken over under the Act. Under his contract of employment, his service was liable to be terminated without notice if he was found guilty of fraud, misappropriation etc., but was entitled to 30 days notice if it was terminated for any other reason. His service was terminated admittedly without giving him an opportunity to be heard. With the transfer of the controlled business from the insurer to the Corporation, the employees of the former became the employees of the latter and were governed under Section 11(1) of the Act by the same terms and conditions as before. But under Section 11(2), the Central Government had the power to alter those terms and conditions. Under this power, the Government issued an order reducing the remuneration payable to the development officers and revising their other terms and conditions. Clause (10) of this order empowered the Corporation inter alia to terminate the services of such an officer, (a) after giving him an opportunity of showing cause, or (b) without assigning any reason but with the prior approval of the Chairman of the Corporation and after giving three months' notice. Clause (11) of the Order provided that the actual pay admissible to an officer would be determined in accordance with the regulations which the Corporation would make under the power reserved to it by the Act. It is thus clear that, except for the pay and allowances admissible to an officer, the Order was a self-contained code as regards the other terms and conditions of service including disciplinary action. In the meantime, two circulars had been issued by the managing director which provided that in certain circumstances the services of an officer could be terminated. As contemplated by Clause (11) of the said Order, the Corporation framed regulations under Section 49 of the Act. Regulations 4(3) incorporated the said circulars as part of the regulations for purposes of determining the pay admissible to and the fitment of the development officers. Thus, the circulars became part of the regulations though when they were issued they were merely administrative in character and without any sanction of the Act. The Corporation claimed that under Regulation 4(3), which incorporated the said circulars, it had the power to terminate the service of Mukherjee without assigning any reason. Negating that contention, this Court held that Section 11(2) was paramount and would override any provision of the Order passed by Central Government if it was contrary to it. Next would come the Order and lastly the regulations which were subject to the Act and the Order, and therefore, if the regulations were to be inconsistent with the provisions of Section 11(2) or the said Order, the regulations would be to that extent invalid. Therefore, even if the regulations provided for termination of services they would have to be read subject to the Order of the Government, and consequently, the order terminating the service of an officer would have to be in consonance with the provisions of the said Order. Consequently, an order terminating the service of an officer without giving him an opportunity of being heard, as provided by clause (10) of the said Order, would be without power, and therefore, invalid. The Court held the impugned dismissal as invalid also for the reason that Regulation 4(3) provided for determination of pay and allowances and the fitment of officers in accordance with the principle laid down in the said circulars, and therefore, the service of an officer could not be determined under the guise of fitment. That could, therefore, be done only under clause (10) of the Order and in accordance with the procedure laid down in that clause. The order declaring the dismissal invalid thus was based on the ground that the regulations and the Order of the Central Government must be read harmoniously and when so read, the Central Government's Order gave power to terminate the service of an officer after following the procedure there laid down, and consequently, the impugned dismissal made inconsistently with the provisions of the said Order was without jurisdiction, and therefore, a nullity. It is clear that this decision was based on different facts and on different principles and cannot be legitimately invoked by the respondent. But the decision in *Barot v. S. T. Corporation* ((1966) 3 SCR 40 : AIR 1966 SC 1364 : (1967) 2 SCJ 64 : (1966) 1 Lab LJ 437) would seem to support the respondent. There, the order of termination of the appellant's service by the Corporation, a body set-up under the Road Transport Corporations Act,

1950, was held to be bad in law on account of its being in contravention of Clause 4(b) of the regulations containing service conditions framed by the Corporation under the power given to it by the Act. But the question whether the said regulations constituted a statutory obligation subject to which only the power to terminate the employment could be exercised or not, or the question whether they took out the employment out of master and servant relationship was not canvassed. Neither the decision in S. R. Tewari's case (supra) nor any other similar decision was also, it seems, brought to the notice of the Court.

12. Nor can counsel derive any aid from the decision in *Dr. Gupta v. Nathu*, ((1963) 1 SCR 721 : AIR 1963 SC 274 : (1963) 2 SCJ 59) where the Court was dealing with a bye-law made by the Central Government under powers conferred on it by the Forward Contracts (Regulation) Act, 1952, which compulsorily amended the bye-laws of the association recognised under the Act and which vested certain powers on authorities external to the association. The bye-law in question was not limited in its application to the members of the association but to all those who entered into forward contracts and were governed by its bye-laws. But all rules and regulations made by authorities in pursuance of a power under a statute do not necessarily have the force of law. In *Kruse v. Johnson*, ((1898) 2 QB 91 at 96) while considering the validity of a bye-law made by a county council, Lord Russell described a bye-law having the force of law as one affecting the public or some section of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. If validity made such a bye-law has the force of law within the sphere of its legitimate operation. The function of such bye-laws is to supplement the general law by which the Legislature delegates its own power to make them. In *Rajasthan State Electricity Board v. Mohan Lal* ((1967) 3 SCR 377 : AIR 1967 SC 1857 : (1968) 1 SCJ 461) where this Court held the Board, set-up under the Electricity (Supply) Act, 54 of 1948, as a State within the meaning of Article 12 of the Constitution against which mandamus could issue under Article 226, emphasis the fact that the Act contained provisions which empowered the Board to issue directions, the disobedience of which was punishable as a penal offence. As observed earlier, under Sections 8(2) and 20, the appellant-Corporation has been given the power to employ its own officers and other employees to the extent it thinks necessary on terms and conditions provided by it in regulations made under Section 45. The regulations contain the terms and conditions which govern the relationship between the Corporation and its employees. Though made under the power conferred by the statute, they merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly the power to dismiss its employees, the dismissal of the respondent was within jurisdiction, and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent, it did subsist. The present case, therefore, did not fall under any of the three well recognized exceptions, and therefore, the respondent was only entitled to damages and not to the declarations that his dismissal was null and void.

13. In our view, the High Court was in error in upholding the declaration granted by the Trial Court. The appeal by the Corporation, therefore, succeeds and is allowed with the result that the judgment and decree passed by the High Court is set aside. In the circumstances of the case, however, there will be no order as to costs.

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