

West Bengal State Electricity Board and Others

Vs

Desh Bandhu Ghosh and Others

Civil Appeal No. 562 of 1985

(O, Chinnappa Reddy, E. S. Venkataramiah, R. B. Misra JJ)

26.02.1985

JUDGMENT

1. Special leave granted.

2. The West Bengal State Electricity Board is the principal appellant in this appeal by special leave which we have just now granted. The first respondent, a permanent employee of the West Bengal State Electricity Board, filed the writ petition out of which the appeal arises in the Calcutta High Court to quash an order dated March 22, 1984 of the Secretary, West Bengal State Electricity Board terminating his services as Deputy Secretary with immediate effect on payment of three months' salary in lieu of three months' notice. The order gave no reasons for terminating the services of the respondent and there was nothing in the order which could possibly be said to attach any stigma to the respondent. Apparently the order was made under Regulation 34 of the Board's Regulations which enables the Board to terminate the services of any permanent employee "by serving three months' notice or on payment of salary for the corresponding period in lieu thereof". The High Court contrasted Regulation 34 with Regulation 33 which provides for the termination of services of both permanent and temporary employees of the Board on attaining the age of superannuation, as a result of the disciplinary action etc. For the sake of convenience we extract below Regulation 33 and the first paragraph (which alone is relevant) of Regulation 34 :

33(1) Unless otherwise specified in the appointment order in any particular case, the services of a permanent employee of the Board may be terminated without notice -

(i) on his attaining the age of retirement or by reason of a declaration by the competent medical authority that he is unfit for further service; or

(ii) as a result of disciplinary action;

(iii) if he remains absent from duty, on leave or otherwise, for a continuous period exceeding 2 years.

(2) In the case of a temporary employee, his service may be terminated by serving of -

(a) one month's notice on either side or on payment of a month's salary in lieu thereof; or

(b) notice on either side for the period specified in the appointment order or contract

or on payment of salary in lieu thereof, as the case may be;

(c) the service of a temporary employee shall also be deemed to have been terminated automatically if the period of extraordinary leave without pay and/or of unauthorised absence from duties exceeding(s) a maximum period of 90 days.

34. In case of a permanent employee, his services may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof.

Contrasting Regulations 33 and 34 the High Court came to the conclusion that Regulation 34 was arbitrary in nature and suffered from the vice of enabling discrimination. The High Court, therefore, struck down the first paragraph of Regulation 34 and as a consequence quashed the order terminating the services of the first respondent.

3. The learned counsel for the West Bengal State Electricity Board submitted that Regulation 34 did not offend Article 14 of the Constitution, that Sections 18-A and 19 of the Electricity Supply Act laid down sufficient guidelines for the exercise of the power under Regulation 34 and in any case the power to terminate the services of a permanent employee was vested in higher ranking officials and might be expected to be exercised in a reasonable way.

4. We are not impressed with the submission of the learned counsel for the Board. On the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers. In *Moti Ram Deka v. North East Frontier Railway* (AIR 1964 SC 600 : (1965) 5 SCR 683 : (1964) 2 LLJ 467) Rules 148(3) and 149(3) of the Indian Railway Establishment Code were challenged on the ground that they were contrary to Article 311(2) of the Constitution. The challenge was upheld though no opinion was expressed on the question whether the rule offended Article 14 of the Constitution. Since then Article 14 has been interpreted in several decisions of this Court and conferments and exercise of arbitrary power on and by the State or its instrumentalities have been frowned upon and struck down by this Court as offending Article 14. In *S. S. Muley v. J. R. D. Tata* ((1979) 2 SLR 438 (Bom HC) : 1980 Lab IC 11) P. B. Sawant, J. of the Bombay High Court considered at great length Regulation 48(a) of the Air India Employees' Service Regulations which conferred similar power on the Corporation as Regulation 34 confers on the Board in the present case. The learned Judge struck down Regulation 48(a) and we agree with his reasoning and conclusion. In *Workmen v. Hindustan Steel Ltd.* (AIR 1985 SC 251 : 1984 Supp SCC 554 : 1985 SCC (L&S) 260), this Court had occasion to hold that a Standing Order which conferred such arbitrary, uncanalised and drastic power to enable the employer to dispense with an inquiry and to dismiss an employee, without assigning any reason, by merely stating that it was expedient and against the interest of the security to continue to employ the workman was violative of the basic requirement of natural justice.

5. The learned counsel for the appellant relied upon *Manohar P. Kharkhar v. Raghuraj* ((1981) 2 LLJ 459 (Bom HC) : 1983 Lab IC 350) to contend that Regulation 48 of the Air India Employees' Service Regulations was valid. It is difficult to agree with the reasoning of the Delhi High Court that because of the complexities of modern administration and the unpredictable exigencies arising in the course of such administration it is necessary for an employer to be vested with such powers as those under Regulation 48. We prefer the reasoning of Sawant, J. of the Bombay High Court and that of the Calcutta High Court in the judgment under appeal to the reasoning of the Delhi High Court. In

the result the appeal is dismissed with costs.

</html