M. L. Kamra

Vs

Chairman-cum-Managing Director, New India Assurance Co. Ltd. and Another

Civil Appeal No. 655 of 1986

(A.M. Ahmadi, K. Ramaswamy JJ)

17.01.1992

JUDGEMENT

K. RAMASWAMY, J.:-

1. In this appeal by special leave, by way of additional grounds with leave, the appellant impugnes Rule 5 of the Orissa Insurance Co-operative Society Ltd. Service Rules (for short 'the Rules') as unconstitutional and-void offending Article 14 of the Constitution of India. The material facts relevant to the point are that while the appellant was working as Divisional Manager at Delhi, the general insurance business was nationalised and its management was taken over by the Central Government under General Insurance (Emergency Provisions) Ordinance, 1971 replaced by Act 57 of 1972 (for short 'the Act) and vested in the custodian of the New India Assurance Co. Ltd., the management of Orissa Insurance Cooperative Society Ltd. By operation of S. 7 of the Act, the services of the appellant and others stood transferred and vested with the custodian. Under the Act, the Board of directors was empowered to terminate the service of the officer/ employee of the insurer. The appellant was kept under suspension from August 9, 1973 pending investigation into the embezzlement. Explanation was called for on October 16, 1973. In response thereto the appellant submitted his reply on December 7, 1974. While dropping the proceeding, the appellant was served with termination order dated April 17, 1975 issued by the respondent. The appellant challenged it in a writ petition in Delhi High Court witch was dismissed by a learned single Judge on November 11, 1983 and was confirmed by the Division Bench in Letters Patent Appeal No. 351/1984 dated April 23, 1984.

2. Section 7 of the Act provides that every whole time officer or other employee of an existing insurer employed in connection with his General Insurance business, immediately before the appointed day, shall become an officer/ employee of the Indian Insurance Co. in which the undertaking of the insurer to which the service of the officer relates has vested and would hold his office on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him, if there had been no such vesting and shall continue to do so unless and until his appointment is terminated. Section 16(1) in Chapter V provides that if the Central Govt. is of the opinion that for the more efficient carrying on of General Insurance business, it is necessary to do so, it may by notification, frame one or more schemes providing for all or any of the following matters; (e) the rationalisation or revision of pay-scales and other terms and conditions of service of officers and other employees wherever necessary. Pursuant thereto, the Central Govt. framed the New India Assurance Co. Ltd. Merger Scheme, 1973 with effect from December 31, 1973. Thereunder by Rule 3, the undertaking was transferred to the respondent; under

Rule 5 the existing whole time officer etc. became the officer of the transferee company (New India Assurance Co. Ltd,) and could hold his office on the same terms and conditions as would have been admissible to him if there had been no such transfer, as referred to in paragraph 3. He shall continue to remain as officer unless and until tits employment, in the transferee company is terminated or the terms and conditions are duly altered by any other scheme framed under the Act. By notification dated April 29, 1976 the Central Govt. also framed the scheme called the General Insurance (Rationalisation of Pay-scales and other Conditions of Service of Development Step) Scheme, 1976 which came into force on May 1, 1976, the details of which are not material for the reason that service of the appellant was terminated, in terms of the existing Rule 5 of the Rules. Suffice to state that pursuant to the nationalisation under the Act and the Scheme, the appellant became the officer of the respondent.

3. Rule 5 reads thus:

Termination of Service:

> "An employee whether permanent or temporary shall not leave or discontinue his service in the society without first giving 30 days notice in writing of his intention to do so, to the Principal Officer. Failure to do so will entail forfeiture of the pay of the month. In the event of the Society not having any further need of any employee's service whether permanent or temporary, which shall be decided by the Board, the Principal Officer shall give 30 days' notice in writing for termination of his service or in lieu thereof pay such employee a sum equivalent to his one month pay including allowance up to the termination of the period of notice by way of compensation provided that nothing in these rules shall affect the rights of the society to dismiss an employee under Rule 8 for misconduct etc. without any notice or salary in lieu of notice, in the manner prescribed in these rules.
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> An employee shall ordinarily retire from the society's service on completion of his 55th year unless the Board reserves to continue him in office for such period as may be determined from time to time."

4. is thus manifest that an employee, whether permanent or temporary, has an option to leave or discontinue by giving 30 days'notice in writing of his intention to do so. His failure thereof shall entail forfeiture of the pay of the month. The employee ordinarily would be superannuated on completion of his 55th year unless the Board continues him for an extended period as may be determined from time to time. Equally in the event of the society not having any further need of the employee's service, whether permanent or temporary, which should be decided by the Board, the Principal Officer shall give 30 days' notice in writing for termination of his service or in lieu thereof pay one month's salary including allowances'up to the period of termination. The respondent also has the right to dismiss an employee, under Rule 8, for misconduct in the manner prescribed in the Rules. Admittedly, though action was initiated against the appellant for the charges of embezzlement etc. which are misconduct, the charges were dropped. Taking aid of Rule 5 and without conducting an enquiry or giving an opportunity, the appellant's service was terminated by tendering one month's salary in lieu of notice and also a direction to pay all the allowances up to that date including the period of his suspension. It is not necessary to go into the grounds taken in the High Court assailing the invalidity of the termination order as they are not pressed before us, Sri Ramamurty, the learned senior counsel for the appellant placing reliance on the ratio of the majority view in D. T. C. v. D. T. C. Mazdoor Congress, (1990) 3 JT (SC) 725:(AIR 1991 SC 10 1),

contended that Rule 5 is ultra vires of Article 14 of the Constitution. Smt. Shyamala Pappu, the learned senior counsel for the respondent contended that unlike Rule 9 in D.T.C.'s case Rule 5 provides guidelines. The Board of Directors have to take a decision, whether the need to continue the employee's service subsists which would be based on the relevant material. Thereby, there would be objective consideration before taking a decision, not onl regarding the need to continue the post but also the services of the officer or the employee. Though the rule does not provide for prior notice, post-decisional opportunity would be read into the rule. If so read, the rule is not ultra vires Article 14. In our view the ratio in D.T.C.'s case has no application. Rule 9 of the rules of Delhi Transport Corporation Service Regulation gives naked power to terminate the services of a permanent employee by giving one month's notice or pay in lieu thereof. It was not the contention therein, that the rule was capable of two constructions. It is settled law that there is a presumption of constitutionality of the rule. The court ought not to interpret the statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, since the legislature or the rule making authority is presumed to enact a law which does not contravene or violate the constitutional provisions. Therefore, there is a presumption in favour of constitutionality of a legislation or statutory rule unless ex facie it violates the fundamental rights guaranteed under Part III of the Constitution. If the provision of a law or the rule is construed in, such a way as would make it consistent with the constitution and another interpretation would render the provision or the rule unconstitutional, the court would leanin favour of the former construction. In view of this settled legal position, the question emerges whether the language in Rule 5 would be capable to be construed consistent with the fundamental rights in Part III. As stated earlier, the phrase "in the event of the society not having any further need of any employee's service whether permanent or temporary which shall be decided by the Board" is susceptible of two interpretations. The one interpretation put up by Sri Ramamurty is that the Board may unilaterally and arbitrarily decide that there is no need for the services of a particular employee, in given facts and circumstances, though the post which the employee is occupying may continue and would be put to an end by giving one month's notice or pay in lieu thereof. In that event the rule per se is arbitrary offending Article 14. The other view capable to be construed from the language employed would be that the Board of Management may form an objective opinion, on the basis of the material, that the post which the officer or the employee is occupying no longer is in need. Thereby, the post would be abolished. This would be a policy decision depending on the exigencies. In consequence the service of the employee also would become redundant or surplus. In that event his service would no longer be needed. The officer or employee may be permanent or temporary but the absence of the need for the continuance of the post would necessitate to terminate the service of an employee or officer. It must not be a pretext or a ruse to get rid of the service of an inconvenient officer or of an employee. If that be so, it would become colourable exercise of power and would be liable to be quashed as offending Article 14. Once the Board reaches a decision to abolish the Post, in consequence the service of the officer/ employee occupying the post could be terminated. The language couched in Rule 5 also is capable of that interpretation. In that light we are of the opinion that Rule 5 does not become arbitrary, unreasonable or void offending Article 14. Accordingly, we hold that the rule is valid.

5. But from the facts, it is clear that the Board of Management did not abolish the post but put an end to the service of the appellant. Obviously due to loss of confidence. as, his honesty and integrity became suspicious and his continuance in service was felt inexpedient and not in the interest of the business of the respondents. But Rule 8 was available for taking action for misconduct but was not avalled. Therefore, the impugned order terminating the services of the appellant is illegal, what would be the consequence ? Normally the appellant is entitled to reinstatement but in our view the

ends ofjustice would be met by directing the respondent to pay him Rs. 1,00,000/- as compensation, instead of reinstatement and further continuance in service. The compensation awarded would be staggered between the year 1973 till date for the purpose of income-tax and given the appropriate relief. In this view it is not necessary to deal with other contentions or decisions cited across the bar. Before parting with the case it is necessary to mention that march of service jurisprudence necessitates the respondent to recast the rules in tune with the constitution and the law. The appeal isi allowed but without cost. The intervention application filed by Sri S. S. Onkarmal Harlalka is dismissed. Appeal allowed.

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