

## ALLAHABAD HIGH COURT

Ram Babu Rarthaur

Vs.

Divisional Manager

Civil Misc. Writ No. 1976 of 1960

(Jagdish Sahai, J.)

10.08.1960

### ORDER

#### **Jagdish Sahai, J.**

1. The petitioner has come to this Court on the allegation that he was appointed to the post of Organizer of Agencies by the New India Assurance Company Limited, Agra. After the State took over the insurance business by passing the Life Insurance Corporation Ordinance the services of the petitioner were transferred to the Life Insurance Corporation with, effect from 1-9-1956 upon the same terms and conditions on which he was employed in the New India Assurance Company, Agra and was given the appointment of Zonal Manager, Life Insurance Corporation of India, Central Zone, Kanpur. His designation was changed from 1-1-1957 to that of a Field Officer. One Sri C.P. Ambesh who, according to the petitioner's allegation, is inimical to him filed a complaint against the petitioner to the Divisional Manager, Life Insurance Corporation of India, Agra, respondent No. 1, alleging that the petitioner had misappropriated an amount of Rs. 460 alleged to have been handed over by him to the petitioner. According to the petitioner no such cheque was given to him by Sri Ambesh. The respondent No. 1 made over the matter to the police and the petitioner is being prosecuted under Sections 406/420/467, I.P.C. at the instance of the police in a criminal court on 22-9-1958 the respondent No. 1 issued a notice to the petitioner calling upon him to show cause as to why he should not be suspended under clauses 40 and 41 of the Staff Regulations, 1956. The petitioner sent a reply to the show cause notice. On 27-1-1959 the petitioner was suspended under clause 41 of the Staff Regulations, 1956. In the suspension order it was mentioned that there were certain fresh complaints of misappropriation also but the same were not specified. On 20-2-1959 the petitioner filed an appeal to the Executive Committee of the Life Insurance Corporation of India, Central Office, Bombay against the suspension order under clause 42 of the Staff Regulations, 1956. On 11-3-1959 the petitioner received a letter dated 18-2-1959 from respondent No. 1 in which new charges were leveled against him and he was asked to submit his explanation. By a separate letter

dated 3-3-1959 which the petitioner also received on 11-3-1959 some more allegations were made against him and he was also called upon to show cause why he should not be dismissed from service. On 17-3-1959 the petitioner wrote to the respondent No. 1 inviting his attention to the letters issued by him and requesting for copies, of complaints forming the basis of the charges and other materials in order to furnish his explanation. On 9-4-1959 the respondent No. 4 issued a letter to the petitioner which was received by him on 11-4-1959 stating therein that it had been concluded that the petitioner had no explanation to submit. The petitioner again sent a telegram to respondent No. 1 requesting for the copies of the documents immediately. On 13-3-1959 while the petitioner was under suspension the respondent No. 1 referred the various complaints for investigation to the police and a case was registered against the petitioner in terms of that report. The respondent No. 1 terminated the services of the petitioner by a notice published in a local daily 'Amar Ujala' of 9th May, 1959. On 21-5-1959 the petitioner received a copy of the formal order of dismissal dated 7-5-1959. The petitioner filed an appeal before the Executive Committee of the Life Insurance Corporation of India, Central Office, Bombay, which was dismissed on 29-4-1960. On these facts the petitioner has come to this Court and prays for the issue of a writ of certiorari quashing the dismissal order dated 7-5-1959 and the appellate order communicated to him through the letter dated 29-4-1960. There is also a prayer for the issue of a writ of mandamus commanding the respondents to treat the petitioner as in service and to pay him all his arrears, of salary and other amounts due to him. In addition there is the usual prayer for the issue of any other suitable writ, order or direction as the circumstances of the case may justify.

2. It may be stated that the order of the appellate authority dismissing his appeal has not been filed by the petitioner and that order is not before me. I have heard Mr. Brij Lal Gupta in support of this petition. His contention has been that the petitioner has been illegally dismissed I do not wish to express any opinion on this contention because I am of the opinion that the petitioner has an alternative remedy of filing a suit which in the circumstances of the present case I consider not only adequate but more suitable, and also because in my judgment the reliefs claimed by the petitioner in this writ petition cannot be granted to him. That the petitioner has an alternative remedy of filing a suit has not been denied even by Mr. Brij Lal Gupta, learned counsel for the petitioner. The petitioner was charge-sheeted for gross misconduct and there were allegations against him for misappropriating money he longed either to the policy-holders or to the Life Insurance Corporation. Whether or not the petitioner is guilty of the charges framed against him would require detailed examination of evidence and it is obvious that the summary proceedings of a writ which are concluded ordinarily on the basis of affidavits alone cannot be appropriate for the same. There are also allegations that the petitioner had not a reasonable opportunity of defending himself, that the witnesses were examined at his back and he was not allowed to cross-examine them and that copies of the complaints and statements were not furnished to him. These are all questions of fact, which in my opinion can be better investigated by a civil court of original jurisdiction. The reason why I have come to the conclusion that the reliefs claimed by the petitioner in this petition cannot be granted to him is that as the law stands the proper remedy of the petitioner would be to file a suit for the damages for wrong-full dismissal, even assuming

that he had been wrongfully dismissed. Admittedly the petitioner is not a Government servant. The Life Insurance Corporation of India not being a department of the Government but an autonomous body, the provisions of Article 311 of the Constitution of India would, therefore, not be applicable to his case. There is good authority for the proposition that a servant is always at the pleasure of the master.

3. Section 21 of the Specific Relief Act runs as follows :

"21. The following contracts cannot be specifically enforced :

(a) .....

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

Illustration to clause (b) A contracts to render personal service to B; "A contracts to employ B on personal service; A, an author, contracts with B, a publisher, to complete a literary work, B cannot enforce specific performance of these contracts".

It is not denied that the relationship between the petitioner and the Life Insurance Corporation of India is entirely that of a servant and a master. It is therefore obvious that if the mandamus claimed by the petitioner were to be granted the order of this Court would be in the teeth of the provisions of Section 21 (b) of, the Specific Relief Act. In the case of *Dr. S. Dutta v. University of Delhi*<sup>1</sup>, a question arose whether an award made in respect of the dispute between Dr. S. Dutt, a professor in the Delhi University, and the said University, which declared the dismissal of Dr. Dutt to have no effect on his status and further declared that he still, continued to be a Professor in the University was valid or not the Supreme Court held that the said award disclosed a legal error on the face of the record because it was in violation of the provisions of Section 21 (b) of the Specific Relief Act.

4. In the case of *Municipal Board, Shahjahanpur v. Sardar Sukha Singh*<sup>2</sup>, it was held by a Division Bench of this Court that the Courts had no jurisdiction to force an employer of labour to retain the services of a servant he no longer wishes to employ. Every employer is entitled to discharge a servant for whose services he has no further need. If his discharge amounts in the circumstances to wrongful dismissal, then no doubt the employee is entitled to damages. He is not however entitled to a declaration that he is still in the employment of this master, nor is he entitled to claim the continuance of his salary from his employer. In the case of *Prabhu Lal Upadhyaya v. District Board, Asra*<sup>3</sup>, another. Bench of this Court observed that where a Secretary of the Board is dismissed from service by the Board without a vote of not less than two-thirds of the total number of members of the Board upon a special resolution as required by Section 71 the Secretary has a cause of action against the Board and is entitled to sue it for damages, for his illegal and wrongful dismissal. They further held that the Secretary is not however entitled to a declaration that the resolution purporting to dismiss him was null and void or to an injunction restraining the Board from giving effect to the resolution because the duties of the plaintiff as

Secretary of the Board being of a personal and confidential character, it would be impossible for any Court to ensure that, in the vent of an injunction being granted, its terms would be carried out by the parties. It was also held that inasmuch as the case of the plaintiff fell under Sections 56 and 21 of the Specific Relief Act no injunction can be granted to the plaintiff, the declaration sought for by him would, even if granted not be effective. It was further

<sup>1</sup> AIR 1958 SC 1050

<sup>3</sup> AIR 1938 All 276

<sup>2</sup> AIR 1937 All 264

held that according to Section 42, Specific Relief Act, the plaintiff not being a person entitled to any legal character or to a right in any property, his case was not one in which a declaration under Section 42 can be granted. Their Lordships in the end said as follows :

"As I have stated previously, the Court can not grant an injunction in this case and that being so, even if the plaintiff was legally entitled to a declaration I would not be prepared to grant one because the mere granting of a declaration without an injunction would not be an effective remedy. In any event relief by way of damages is in my view adequate in cases of this kind and that being so a Court can in its discretion, refuse a declaration or injunction".

"The only relief to which the plaintiff is entitled is relief by way of damages and to such damages only as would compensate him for the actual loss caused to him by his wrongful dismissal. He is not entitled to any damages for the trouble and inconvenience caused to him in having to bring the suit and conduct it. In assessing the damages the Court is entitled to take into consideration all that happened and is likely to happen to increase or mitigate the plaintiff's loss and a salary for three months is an adequate compensation to be awarded in such case."

5. In the case of *B. Roshan Lal Goswala v. District Board, Aligarh*<sup>4</sup>, a Division Bench of this Court held as follows :

"All offices are held either "at pleasure" "or during good behaviour". Where an office is held at pleasure, the holder thereof is subject to dismissal at any time without any cause being assigned. No notice or framing of any charge is necessary; and the holder is removable at the sole discretion of the appointing authority. Where an office is held during good behavior, the holder thereof is appointed to all intents and purposes for life and has what is called a free-hold office for his life. He can be removed from office only for want of good behavior. In this case notice of dismissal should be given and a charge framed and proved.

A District Board servant is under the general disability of other public servants in that he holds his office during the pleasure, and he cannot sue the District Board or the Secretary of State in a Court of law for wrongful dismissal; nor can he sue for a declaration that a resolution removing him is null and void as such a declaration would not come under Section 42, Specific Relief

Act". These cases would show that a servant is ordinarily at the pleasure of the master unless that pleasure is curtailed either by any contract or by statutory provisions and that the remedy of a servant who has been dismissed illegally lies not in filing a suit for reinstatement or for a declaration or for an injunction because such relief cannot be granted to him because of the provisions of Section 21 (1)(b), Section 42 and Section 58 of the Specific Relief Act, and his only remedy lies in filing a suit for damages. There are observations in the judgment of their Lordships of the Supreme Court in the case of *Parshotam Lal Dhingra v. Union of India*<sup>5</sup> where their

<sup>4</sup> AIR 1935 All 802    <sup>5</sup> AIR 1958 SC 36

Lordships held that in a case where the provisions of Article 311 of the Constitution did not apply the remedy of the dismissed servant was only by way of a suit for wrongful dismissal. The exact words in which their Lordships had expressed themselves are as follows :

"In other words and broadly speaking Article 311(2) will apply to those cases where the Government servant had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank".

6. The position might be different in a case where the dismissal order has been passed in violation of the constitutional provisions. The reason being that the Constitution is supreme and the other laws are subordinate to it. In a case where Article 311 of the Constitution is infringed a dismissed servant may obtain relief of declaration that the dismissal is illegal and void and he, still continues in service. The cases of the High *Commr. for India v. I.M. Lall*,<sup>6</sup> and that of North West Frontier; *Province v. Suraj Narain*<sup>7</sup>, are illustrative of this principle but it must be borne in mind that those cases proceed on the assumption that the right of the master to terminate the services of the servant at pleasure stands curtailed by constitutional provisions. Another example of cases where the general law of master and servant stand modified are those which are covered by the Industrial Disputes Act. (See *Western India Automobile Association v. Industrial Tribunal, Bombay*<sup>8</sup>). In that case it was held by the Federal Court that an industrial tribunal is not lettered like ordinary courts to enforce a contract and may create obligations or modify contracts in the interest of the workmen to protect and prevent the unfair practice of victimization and those courts can direct reinstatement of dismissed employees because the discretion is not fettered in any way by the limitations which are placed on regular courts to direct the reinstatement of at dismissed employee. In other words the general law of master and servant to the effect that the servant is at the pleasure of the master will stand in every case except in those where the same has been abrogated either by a statutory provision or by special contract. In the case of Government servants to whom Article 311 of the Constitution is applicable and in those cases where the provisions of the Industrial Disputes Act are applicable the general law that a servant is at the pleasure of the master stands abrogated to the extent to which the provisions of the Constitution or the Industrial Disputes Act provide. The petitioner's case as I have already said above cannot be governed by the provisions of the Constitution and Article 311 would not apply to his case. It is also clear that the provisions of the Industrial Disputes Act will not apply to his

case and it is equally clear, that neither there is any statutory provision nor a contract which curtails, modifies or takes away the power of the Corporation to dismiss the petitioner at pleasure and the petitioner cannot claim for himself a tenure of "good behavior". For these reasons I am of the opinion that no writ of mandamus can be issued, in the circumstances of the present case.

7. Learned counsel for the petitioner contended that even though a writ of mandamus may not be issued, a writ of certiorari may be issued and then the question of Section

<sup>6</sup> IR 1948 PC 121

<sup>8</sup> AIR 1949 FC 111

<sup>7</sup> AIR 1949 PC 112

21 of the 'Specific Relief Act will not arise. This submission is, in the first place, fully answered by the fact that it is well established that you cannot do that indirectly which you are prohibited from doing directly. See *Madden v. Nelson and Fort Sheppard Ry. Co.*<sup>9</sup>, and the *Attorney-General of Saskatchewan v. Attorney General of Canada*<sup>10</sup>. Therefore if because of the provisions of Section 21 (b) of the Specific Relief Act it is not possible to order the reinstatement of an employee or to specifically enforce the contract of employment, it is not possible to achieve the same result by the expedient of quashing the order of dismissal and thus force the employer to reinstate the petitioner under threat of proceedings for contempt of court if effect is not given to the order of this Court by the employer. Secondly, this Court will assume that the orders passed by it will be obeyed in substance whatever be the form of the order. The logical result of quashing the order of dismissal would be that the petitioner should be reinstated to his office by the respondent. In the case of *R. v. Speyer*<sup>11</sup>, it was observed as follows :

"This is the King's Court; we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority it will be followed by the Crown".

In the case of *Manick Chand Mahata v. Corporation of Calcutta*<sup>12</sup>, the same view was taken. On the basis of these authorities it can quite reasonably be assumed that once this Court declares the dismissal of the petitioner to be illegal and quashes that order by means of a writ of certiorari, the respondents will not try to avoid that order on the pretext that it is only a certiorari and not a mandamus and inasmuch as the Court has not said expressly that the petitioner be restored back to his office until legal and proper proceedings are taken against him, they would be free to ignore the writ of certiorari and keep the petitioner one of office and take no action to comply with the orders of the Court.

To my mind, therefore, it will make no difference whether the order is quashed by means of a writ of certiorari and a declaration is given that the petitioner's dismissal is illegal or a writ of mandamus be issued commanding the respondents to treat the petitioner as in service. The practical effect of the two writs would be the same and by issuing a writ of certiorari it would again be a case of doing indirectly what the law prohibits from being done directly.

8. If, however, the effect of issuing a writ of certiorari would only be as was contended by the learned counsel for the petitioner that the order dismissing him would stand quashed but the

respondent would not be bound to treat him in service and to ignore the order of this Court it is obvious that the writ of this Court would be in fruituous and this Court should never issue it.

9. The ground on which the order of dismissal is challenged is that there has been a disregard of the rules of Staff Regulations, specially Staff Regulations, 1956. There is good authority for the proposition that a mere disregard of a rule even though the same may have been framed under the provisions of the Constitution would not

<sup>9</sup>1899 AC 626 at p. 627

<sup>11</sup>1916-1-KB 595

<sup>10</sup> AIR 1949 PC 190 at p. 193    <sup>12</sup> ILR 48 Cal 916 : ( AIR 1921 Cal 159)

confer on the dismissed employee a right of action, his remedy being only by way of departmental appeals and representations. See *Venkata Rao v. Secy. of State*<sup>13</sup>, where their Lordships observed as follows :

"Sec. 96-B and the rules make careful provision for redress of grievances by administrative process and it is to be observed that Sub-Section (5) in conclusion re-affirms the Supreme authority of the Secretary of State in Council over the Civil Service. These considerations have irresistibly led their Lordships to the conclusion that no such right of action as is contended for by the appellant exists. It is said that this is to treat the words "subject to the rules" appearing in the section as superfluous and ineffective. Their Lordships cannot accept this view and have already referred to this matter in their judgment in *R.T. Rangachari v. Secy. of State*<sup>14</sup>, They regard the terms of the section as containing a statutory and solemn assurance that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down".

In the case of AIR 1937 PC 27 their Lordships observed as follows :

"It was urged that unless the rights of the appellant could be enforced by action, the provisions of Section 96-B and of the rules to which force was thereby given would be nugatory and useless. Their Lordships cannot take that view. They cannot doubt that the Charter and the pledge contained in the Statute and in the consequential rules are generally observed and fulfilled, and though in this instance for reasons which are comprehensible but as now appears are insufficient this has so far unfortunately not proved to be the case, there is yet both time and opportunity for the appropriate action to be taken by the executive now that the important questions of principle are disposed of.

It would be remembered that though in Section 96-B of the Government of India Act, 1919 the words were "subject to the provisions of this Act and the rules framed thereunder", it was held in the cases mentioned above by their Lordships of the Privy Council that a disregard of the rules even though framed under Section 96-B of the Government of India Act cannot be actionable and the right of the Crown to treat the services at its pleasure was not affected by those rules. In

the case of *Shyam Lal v. State of U.P.*<sup>15</sup>, a Division Bench of this Court observed as follows :

"The other view was that these rules and regulations did not limit the power of the Crown to dismiss a servant at pleasure but were merely rules of administration which would ordinarily be observed by the Executive Government, but if not observed itself conferred no right which could be enforced in a Court of law by a dismissed servant.

The matter went up to the Privy Council in two cases - AIR 1937 PC 31, to which a

<sup>13</sup> AIR 1937 PC 31

<sup>15</sup> AIR 1954 All 235

<sup>14</sup> AIR 1937 PC 27

reference has already been made and AIR 1937 PC 27. In both these cases the Privy Council upheld the latter view .... " In *S. Pramji v. Union of India*<sup>16</sup>, Chief Justice Chagla took the view following the decision of the Privy Council mentioned above that the disregard of a rule even though it be statutory did not confer on a Government servant in the railways a right of action and the right of the Government to treat the services of an employee at pleasure remained unaffected by the rules framed.

10. In view of the authorities mentioned above it appears to me that it is well established law in this country that a disregard of a rule would not be actionable and as the Privy Council said in the cases mentioned above the remedy is by way of departmental appeals and representations and not by an action in a court of law.

11. For the reasons given above I am of the opinion that it is not proper to admit the present petition and the petitioner should be left to file a regular suit for damages or for any other such relief to which he may under the law be entitled. The petition is accordingly rejected.

Petition rejected.

<sup>16</sup> AIR 1960 Bom 14