LIFE INSURANCE CORPORATION OF INDIA AND ANR. A

v.

SHRI RAGHAVENDRA SESHAGIRI RAO KULKARNI

SEPTEMBER 23, 1997

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.] B

Life Insurance Corporation of India (Staff) Regulations, 1960 .

Regulation 14 (4)—Probationer—Termination of service—Writ Petition—High Court quashed the order relying on a judgment of this Court— Held, High Court erred in taking the view that case of probationer was not different from that of the permanent employee; and it wrongly applied the law laid down by this Court*—Services of a probationer cannot be equated with that of a permanent employee—Appointment letter issued to the probationer clearly stipulates that he could be discharged from service at any time during the period of probation or extended period of probation, without any notice or without assigning any cause—The requirement to hold a regular departmental inquiry before dispensing with the services of a person cannot be invoked in the case of a probationer especially when his services are terminated by an innocuous order which does not cast any stigma on him— However, if the termination is punitive in nature and is brought about on the ground of misconduct. Article 311 (2) of the Constitution would be attracted and in that situation it would be incumbent upon the employer to hold a regular departmental inquiry—Termination would not amount to retrenchment within the meaning of s.2 (oo) of the Industrial Disputes Act. The Regulations would be deemed to be Rules made by the Central Government and shall be deemed to have effect notwithstanding anything contained in the Industrial Disputes Act—Constitution of India, 1950—Article 311 (2)—Life Insurance Corporation Act, 1956—S. 48—Industrial Disputes Act, 1947—S. 2(oo)— Retrenchment.* C D E F

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Central Inland Water Transport Corporation Ltd. & Anr.* **v. *Brojo Nath Ganguly & Anr. etc.,* **[1986] 3 SCC 156, explained and held inapplicable.**

A.V. Nachane and Anr. **v.** *Union of India and Anr.,* **AIR (1982) SC 1126 = [1982] 2 SCR 246 = [1982] 1 SCC 205;** *Moti Ram Deka etc.* **v.** *General* H

A *Manager N.E.F. Railways, Maligaon, Pandu etc.,* **[1964] 5 SCR 683;** *Gurdev Singh Sidhu* **v.** *State of Punjab and Anr.,* **[1964] 7 SCR 587 = AIR (1964) SC 1585;** *West Bengal State Electricity Board & Ors.* **v.** *D.B. Ghosh & Ors.,* **[1985[2 SCR 1014 = AIR (1985) SC 722;** *Workmen of Hindustan Steel Ltd., & Anr.* **v.** *Hindustan Steel Ltd. & Ors.,* **[1985] 2 SCR 428 = AIR (1985) SC**
B **251;** *O.P. Bhandari* **v.** *Indian Tourist Development Corporation,* **[1984] 4 SCC 337;** *Delhi Transport Corporation* **v.** *D.T.C. Mazdoor Congress and Ors.,* **AIR (1991) SC = 10 [1990] Supp. 1 SCR 142 = [1991] SCC Supp. 1 600;** *Parshotam Lal Dhingra* **v.** *Union of India,* **[1958] SCR 828;** *Shamsher Singh & Anr.* **v.** *State of Punjab,* **[1975] 1 SCR 814 = [1974] 2 SCC 831;** *State of Maharashtra* **v.** *Veerappa R.. Sacoji & Anr.,* **AIR (1980) SC 42 = [1980]**
C **1 SCR 551 = [1979] 4 SCC 466;** *Oil & Natural Gas Commission and Ors.* **v.** *Dr. Md. S. Iskander Ali,* **AIR [1980] SC 1242 = [1980] 3 SCR 603 = [1980] 3 SCC 428;** *The Union of India and Ors.* **v.** *P.S. Bhatt,* **AIR [1981] SC 957 = [1981] 2 SCC 761;** *Bishan Lal Gupta* **v.** *The State of Haryana and Ors.,* **AIR, [1978] SC 363 = [1978] 2 SCR 513 = [1978] 1 SCC 202 and** *M. Venugopal*
D **v.** *Divisional Manager, Life Insurance Corporation of India Machilipatnam A.P. & Anr.,* **[1994] 2 SCC 323, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1345 of 1988.

From the Judgment and Order dated 5.2.87 of the Karnataka High Court
E in W.A. No 3141 of 1986.

Harish N. Salve, C.K. Sasi, K.K. Sharma and Kailash Vasdev for the Appellants.

S.S. Javali, R. Jaganath Goulay and M.K. Dua for the Respondent.
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The following Order of the Court was delivered :

Respondent was appointed as Assistant Development Officer on 4th September, 1985. After completion of the period of Apprenticeship, he was
G placed on probation as Development Officer with effect from 4th December, 1985. While he was still a probationer, his services were terminated by order dated 22.5.1986 which was challenged in a writ petition before the High Court of Karnataka.

Relying upon the decision of this Court in *Central Inland Water*
H *Transport Corporation Ltd., & Anr.* v. *Brojo Nath Ganguly & Anr. etc.,* [1986]

3 SCC 156, a learned Single Judge of the High Court by judgment dated 12.8.1986 allowed the writ petition and quashed the order of termination. The judgment was upheld by the Division Bench in appeal. Now, the matter is in this Court.

We have heard learned counsel for the parties.

Reliance placed by the High Court on the decision of this Court in *Central Inland Water Transport Corporation Ltd.*, (supra) was wholly out of place as that decision related to a permanent employee whose services could be terminated at any time by giving three months notice. This Court held that such a provision for terminating the services of a permanent employee was wholly arbitrary and that the services of the permanent employee could not be terminated except by giving him an opportunity of hearing. The High Court was of the view, and in our opinion, wrongly, that the case of the probationer was not different from that of the permanent employee and, therefore, applied the law laid down by this Court in *Central Inland Water Transport Corporation Ltd.'s* Case (supra) to the case of the respondent who was a mere probationer, and held that the termination order was bad.

Clause 2 of the Letter of Appointment issued to respondent reads as under :

> "You shall be on probation initially for a period of twelve months from the date of your joining duties as a probationer, but the Corporation may, in its sole discretion, extend your probationary period provided that the total probationary period including the extended period shall not exceed 24 months counted from the commencement of the probationary appointment. During the probationary period (which includes extended probationary period, if applicable) you shall be liable to discharge from service of the Corporation without any notice and without any cause being assigned."

This Clause clearly stipulates that the respondent could be discharged from service at any time during the period of probation or extended period of probation, without any notice or without assigning any cause.

The period of probation is a period of test during which the work and conduct of an employee is under scrutiny. If on an assessment of his work and conduct during this period it is found that he was not suitable for the

A post it would be open to the employer to terminate his services. His services cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. This is based on the principle that a substantive appointment to a permanent post in a public service B confers substantive right to the post and the person appointed on that post becomes entitled to hold a lien on the post. He gets the right to continue on the post till he attains the age of superannuation or is dismissed or removed from service for misconduct etc. after disciplinary proceedings in accordance with the Rules at which he is given a fair and reasonable opportunity of being heard. He may also come to lose the post on compulsory retirement. C

In *Moti Ram Deka Etc.* v. *General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, [1964] 5 SCR 683, a majority of Seven Judges held that a permanent employee who substantively holds a permanent post has a right to hold the post till he reaches the age of superannuation or till he is compulsorily retired D under the relevant Rule. Termination of his service in any other manner would amount to invasion of his right to hold the post and would amount to penalty of removal. It was for this reason that the Court held Rule 148(3) or Rule 149(3) of the Railway Establishment Code to be violative of the right guaranteed under Article 311(2) of the Constitution. It was observed that a permanent employment assures security of tenure which is essential for the efficiency E and incorruptibility of public administration.

Similar view was expressed in *Gurdev Singh Sidhu* v. *State of Punjab & Anr.*, [1964] 7 SCR 587 = AIR (1964) SC 1585.

Central Inland Water Transport Corporation Ltd. & Anr.'s, case was F not correctly understood either by the Single Judge or by the Division Bench of the High Court. The High Court also did not notice that apart from *Central Inland Water Transport Corporation Ltd. & Anr.'s*, case there were other Judgments of this Court in which a similar view was expressed.

In *West Bengal State Electricity Board & Ors.* v. *D.B. Ghosh & Ors.*, G [1985] 2 SCR 1014 = AIR (1985) SC 722, a similar provision which enabled the Board to dispense with the services of a permanent employee by a mere notice or pay in lieu thereof was held to be bad. It was held that the offending Regulation which had developed the notoriety as "Henry VIII Clause" was ultra vires the Article 14 of the Constitution. In *Workmen of Hindustan Steel* H *Ltd. & Anr.* v. *Hindustan Steel Ltd. & Ors.*, [1985] 2 SCR 428 = AIR (1985)

SC 251, as also in *O.P. Bhandari* v. *Indian Tourist Development Corporation*, [1984] 4 SCC 337, the Rule based on the doctrine of "hire and fire" was held to be bad as being impermissible under the constitutional scheme to sustain the doctrine as a permanent employee could not be removed in that fashion.

This question was re-examined and the entire case law was reviewed by this Court in *Delhi Transport Corporation* v. *D.T.C. Mazdoor Congress and others*, AIR (1991) SC 101 = (1990) Supp. 1 SCR 142 = [1991] SCC Supp. (1) 600 and it was again reiterated by the majority of Judges that a Rule which gave unbridled or arbitrary powers to the management to dispense with the services of regular and permanent employees by a mere notice or, pay in lieu thereof, would be bad. The principles laid down in the case of *Central Inland Water Transport Corporation Ltd. & Anr.*, were reiterated.

The requirement to hold a regular departmental enquiry before dispensing with the services of a probationer cannot be invoked in the case of a probationer especially when his services are terminated by an innocuous order which does not cast any stigma on him. But it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination is punitive in nature and is brought about on the ground of misconduct, Article 311 (2) would be attracted and in that situation it would be incumbent upon the employer, in the case of Government Service, to hold a regular departmental enquiry. In any other case also, specially those relating to statutory corporations or Government instrumentalities, a termination which is punitive in nature cannot be brought about unless an opportunity of hearing is given to the person whose services, even during the period of probation, or extended period, are sought to be terminated. (See : *Parshotam Lal Dhingra* v. *Union Of India*, [1958] SCR 828 in which it was held that appointment to a permanent post on probation means that the servant is taken on trial. Such an appointment comes to an end if during or at the end of the probation, the person so appointed is found to be unsuitable and his services are terminated by notice. An appointment on probation or on an officiating basis is of a transitory character with an implied condition that such an appointment is terminable at any time; See also : *Shamsher Singh & Anr.* v. *State of Punjab*, [1975] 1 SCR 814 = [1974] 2 SCC 831).

To bring home the point, we may refer to a few other cases relating to the termination of service of a probationer. They are : *State of Maharashtra* v. *Veerappa R. Saboji & Another*, AIR (1980) SC 42 = [1980] 1 SCR 551 =

A [1979] 4 SCC 466. In the same volume, another case, namely, *Oil and Natural Gas Commission and Others* v. *Dr. Md. S. Iskander Ali,* AIR (1980) SC 1242 = [1980] 3 SCR 603 = [1980] 3 SCC 428, is reported in which the same principles have been reiterated. In *The Union of India and others* v. *P.S. Bhatt,* AIR (1981) SC 957 = [1981] 2 SCC 761, promotion was made to a higher post on
B probation which was ultimately terminated. It was held that a person who is placed on probation does not have the right to hold the post and if it is found that he was not suitable for the post, his probation can be terminated at any time and he can be reverted to his original post.

A distinction was drawn again as between a permanent employee and
C an employee appointed on probation in *Bishan Lal Gupta* v. *The State of Haryana and others,* AIR (1973) SC 363 = [1978] 2 SCR 513 = [1978] 1 SCC 202. In this case, a formal enquiry was held merely to assess the work and conduct of an employee who was appointed on probation. It was held that there was no need either to give notice or to hold the regular departmental
D enquiry.

In the instant case; the respondent was discharged from service during probation in terms of Regulation 14 (4) of the Life Insurance Corporation of India (Staff) Regulations, 1960. Such termination has already been upheld by a Three Judge Bench of this Court in *M. Venugopal* v. *Divisional Manager,*
E *Life Insurance Corporation of India, Machilipatnam, A.P. & Anr.,* [1994] 2 SCC 323. This decision also meets the ground raised by the counsel for the respondent that the termination of respondent's services would amount to "RETRENCHMENT" as defined in Section 2(oo) of the Industrial Disputes Act and since the requirements of section 25-F of that Act were not complied
F with, the termination would be bad. It may be pointed out that Life Insurance Corporation (Amendment) Act, 1981 (Act 1 of 1981) which came into force on 31st of January, 1981 provided that under Sub-section (2A) of Section 48 of the Life Insurance Corporation Act, 1956, the Regulations which were already in force immediately before the commencement of the Amendment Act shall
G be deemed to be Rules made by the Central Government and they shall be deemed to have effect notwithstanding anything contained in the Industrial Disputes Act, 1947. The validity of the Amendment Act was upheld by this Court in *A.V. Nachane and another* v. *Union of India and another*, AIR (1982) SC 1126 = 1982 (2) SCR 246 = [1982] 1 SCC 205. For this reason also, the ground that termination would amount to retrenchment within the meaning of
H Section 2(oo) of the Industrial Disputes Act cannot be entertained.

For the reasons stated above, the judgment passed by the Single Judge of the High Court and upheld by the Division Bench cannot be sustained. Consequently, the appeal is allowed, the judgments passed by the High Court (by the Single Judge as also by the Division Bench) are set aside and the order of discharge dated 22.5.1986 is upheld. There will be no order as to costs.

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R.P. Appeal allowed.