

WEST BENGAL STATE ELECTRICITY BOARD & ORS.

v.

DESH BANDHU GHOSH AND ORS.

February 26, 1985

O. CHINNAPPA REDDY, E. S. VENKATARAMIAH AND
R. B. MISRA, JJ.

Administrative Law—

West Bengal State Electricity Board Regulations, Regulation 34—Regulation conferred full power on employer to terminate services of permanent employee by serving 3 months notice or salary in lieu thereof—No guidelines provided for the exercise of such power—Held, Regulation is arbitrary and offends Art. 14.

First Paragraph of Regulation 34 of West Bengal State Electricity Board Regulations provides that in case of a permanent employee his services may be terminated by serving 3 months notice or on payment of salary for the corresponding period in lieu thereof.

The Secretary of the appellant-Board terminated the services of first respondent, a permanent employee with immediate effect on payment of three months' salary in lieu of three months notice without giving any reasons under Regulation 34 of the Board's Regulations. There was nothing in the order which could possibly be said to attach any stigma to the respondent. The respondent filed a writ petition in the High Court for quashing the impugned order. The High Court came to the conclusion that Regulation 34 was arbitrary in nature and suffered from the vice of enabling discrimination and therefore it struck down the first paragraph of Regulation 34 and as a consequence quashed the order terminating the services of the first respondent.

In an appeal to this Court, the appellant contended that section 18A 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 and therefore Regulation 34 did not offend Article 14 of the Constitution.

Dismissing the appeal,

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HELD : Article 14 has been interpreted in several decisions of this Court and conferment 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. [1017G]

In the instant case, 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.

[1017E-F]

B

Workman, Hindustan Steel Ltd. v. Hindustan Steel Ltd., AIR 1985 SC 251, followed.

C

S. S. Muley v. J. R. D. Tata and Ors., [1979] 2 S. L. R. 438, approved.

Moti Ram Deka v. North East Frontier Railway, AIR 1964, SC 600, referred to.

D

Manohar P. Kharkhar v. Raghuraj, [1981] II L. L. J. 459, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 562 of 1985.

E

From the Judgment and Order dated the 28th January, 1985 of the Calcutta High Court in F. M. A. T. No. 970 of 1984.

Somnath Chatterjee, H. K. Puri for the Appellants.

S. N. Kacker, A. K. Ganguli for the Respondents.

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The Judgment of the Court was delivered by :

CHINNAPPA REDDY, J. Special leave granted.

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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

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A Board terminating his services as Deputy Secretary with immediate effect on payment of three month's salary in lieu of three month's 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 :

D "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

E (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.

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

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

G (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.

H (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 employees, 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.

The learned counsel for the West Bengal State Electricity Board submitted that Regulation 34 did not offend Art. 14 of the Constitution, that sec. 18A 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.

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*⁽¹⁾ Rules 148 (3) and 149 (3) of the Indian Railway Establishment Code were challenged on the ground that they were contrary to Art. 311 (2) of the Constitution. The challenge was upheld though no opinion was expressed on the question whether the rule offended art. 14 of the Constitution. Since then Art. 14 has been interpreted in several decisions of this Court and conferment 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 Art. 14. In *S. S. Muley v. J. R. D. Tata and Ors.*⁽²⁾ P. B. Sawant, J. of the Bombay High Court considered at great length Regulation 48 (a) of the Air India Employee's Service Regulations which conferred similar power on the Corporation

(1) AIR 1964, S.C. 600.

(2) [1979] 2 S.L.R. 438.

A 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 *Workman, Hindustan Steel Ltd. v.*
B *Hindustan Steel Ltd.*⁽¹⁾ this Court had occasioned 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.

C The learned counsel for the appellant relied upon *Manohar*
P. Kharkhar v. Raghuraj⁽²⁾ to contend that Regulation 48 of the
Air India Employee's Service Regulations was valid. It is difficult
to agree with the reasoning of the Delhi High Court that because of
D 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 Bom-
bay High Court and that of the Calcutta High Court in the judg-
ment under appeal to the reasoning of the Delhi High Court. In
E the result the appeal is dismissed with costs.

M. L. A.

Appeal dismissed.

(1) A.I.R. 1985 S.C. 251.

(2) [1981] II L.L.J. 459.