
AIR 1960 Mad 333 : (1960) ILR (Mad) 472 : (1960) 2 LLJ 424 : (1960) 73 LW 117

Madras High Court

Case No: Writ Petition No. 1014 of 1957

K.P.C. Menon

APPELLANT

Vs

Divisional Manager,
Life Insurance
Corporation of India,
Coimbatore

RESPONDENT

Date of Decision: Oct. 1, 1959

Acts Referred:

Constitution of India, 1950 " Article 191(1), 226, 311#Life Insurance Corporation (Staff)
Regulations, 1960 " Regulation 17, 20, 21, 41, 41(1)#Life Insurance Corporation Act, 1956
" Section 11(1), 49, 49(2)

Citation: AIR 1960 Mad 333 : (1960) ILR (Mad) 472 : (1960) 2 LLJ 424 : (1960) 73 LW 117

Hon'ble Judges: Rajagopala Ayyangar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

(1) The petitioner was formerly an Inspector employed in the Life Insurance Corporation of India. His services having been terminated by the

Divisional Manager of this Corporation, he has filed this writ petition for the issue of a writ of certiorari to quash this order of termination.

(2) Before the Life Insurance Corporation was set up by Act of Parliament, the petitioner was a Branch Manager in an insurance concern, known

as Geeneral Assurance Society. He was in charge of the Coimbatore branch of this society and was drawing a salary of Rs. 575 a month. With the

coming into force of the Life Insurance Corporation by Act 36 of 1956, the business of the General Assurance Society was taken over by the

Government and vested in the Corporation and the petitioner became an employee of the Corporation.

By an order dated 16-8-1956, the petitioner was appointed as the Inspector at the Coimbatore branch office of the Corporation. By a notice

served on him on 13-7-1957 by the respondent, the Divisional Manager of the Corporation at Coimbatore, the services of the petitioner were

terminated, he being given a month's notice. It is the validity of this order of termination that is challenged in this petition.

(3) This order of termination is impugned on the ground that the same was passed in violation of the conditions of the petitioner's appointment. As

regards this, two points were urged by Mr. Mohan Kumaramangalam, learned counsel for the petitioner. The first was that the termination of the

petitioner's appointment was in substance under Regulation 41 of the Staff Regulations of the Corporation under which the termination had to be

preceded by the framing of a charge, the holding of an enquiry and a finding of the guilt.

It is common ground that no charges were framed against the petitioner and no enquiry was held before the petitioner's appointment was

terminated. In doing so, the Corporation proceeded on the basis that the termination was one under Regulation 20 of the Staff Regulation under

which the services of an employee could be terminated on a month's notice.

(4) The first question raised therefore is whether the termination of the petitioner's appointment was really under Regulation 41 or under Regulation

20. Before, however, those regulations are referred to, it is necessary to advert to the provisions of the Life Insurance Corporation Act bearing

upon the employment of persons previously employed in Insurance Companies whose business were taken over. Under S. 11(1) of the Life

Insurance Corporation Act, Act 31 of 1956,

every whole time employee of an insurer whose controlled business has been transferred and vested in the corporation and who was employed by

the insurer wholly or mainly in connection with his controlled business immediately before the appointed day shall, as and from the appointed day,

become the employee of the Corporation, and shall hold his office therein by the same tenure at the same remuneration and upon the same terms

and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the

appointed day if this Act had not been passed and shall continue to do so unless and until his employment in the Corporation is terminated or until

his remuneration, terms and conditions are duly altered by the Corporation.

(5) Sub-section (2) of this section gives power to the Central Government for varying contracts of service in order to rationalise the pay scales.

Section 49 of the Act vested in the Corporation power, with the previous approval of the Central Government, to make regulations not

inconsistent with the Act to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. In

particular the Corporation was enabled to make regulations providing for the method of recruitment of employees and agents of the Corporation

and the terms and conditions of such employees or agents.

(6) In conformity with the terms of S. 49(2), the Life Insurance Corporation framed regulations inter alia entitled ""The Life Insurance Corporation

of India (Staff) Regulations, 1956"", which c applied to every whole time employee of the Corporation. Section 3 of Chapter II of these Regulations

contains provisions relating to the termination of service. This section contained to regulations, 20 and 21, and regulation 20 provides for the

termination of the services of the employees by notice.

Paragraph 1 of this regulation enables employees to leave or discontinue their services in the Corporation after service of notice in writing, and the

further portions of this paragraph prescribe the duration of the notice which varied with the class to which the employee belonged. Paragraph 2

made provision for the determination of service of the employees by the Corporation, and as this is the provision under which the respondent acted

in the present case, I shall set out the relevant portions of this regulation:

20(2). The Corporation may determine the service of any employee at any time after the expiry of the period of his probation on giving him--(a)

three months" notice or pay in lieu thereof if he is an employee in class I; and (b) one month"s notice or salary in lieu thereof if he is an employee in

any other class;

Provided, however, that the period of notice will be doubled in the case of employees who have served for ten years or more. The power to

determine the services of an employee shall be exercised by the authorities empowered under Regulation 9.

Paragraph (3) is also relevant and it ran:

20(3) Nothing in sub-regulation (2) shall affect the right of the Corporation--(a) to retire or dismiss an employee without notice of pay in lieu

thereof in accordance with the provisions of Regulations 17 and 41;

The other portions of the sub-regulation are not relevant and I am not quoting them.

(7) Regulation 41 which is referred to above ran:

""41. (1) Without prejudice to the provisions of other Regulations, an employee who commits a breach of the Regulation of the Corporation, or

who displays negligence, inefficiency or indolence, or who knowingly does anything detrimental to the interests of the Corporation or in conflict

with its instructions, or who commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to the following penalties:

(a) reprimand; or censure;

(b) delay or stoppage of increment or promotion;

(c) degradation to a lower post or grade or to a lower stage in his incremental scale;

(d) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by the employee;

(e) dismissal.

(2) No employee shall be subjected to the penalties (b), (c), (d) or (e) of sub-regulation (1) above except by an order in writing signed by the

appointing authority and no such order shall be passed without the charge or charges being formulated in writing and given to the said employee so

that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence shall be taken

down in writing and read to him:

Provided that the requirements of this sub-regulation may be waived in the case of employees belonging to classes II and IV if action under cl. (b)

or (c) or sub-regulation (1) is taken on account of low business production.....

(3) The inquiry under this regulation and the procedure with the exception of the final order may be delegated to the competent authority.

(8) In the order served upon the petitioner by the respondent dated 13-7-1957 by which notice was given, it was stated:

We regret to inform that in view of the poor progress made by you with regard to organisation and business of the area entrusted to you, we have

to terminate your appointment. Please note that your appointment will terminate at the end of one month from the day you receive the notice.

If by reason of this notice the termination of the employment was really one under regulation 20, there could be no question about its validity. No

reasons were required to be adduced to justify the termination and the only requisite of the regulation was the giving of the prescribed period of

notice. There was no dispute either that the duration of one month specified in the communication dated 13-7-1957 satisfied the terms of

Regulation 20.

(9) The contention, however, urged by Mr. Mohan Kumaramangalam was that though purporting to be under Regulation 20, the termination of

employment was really for misconduct under regulation 41, with the consequence that the Corporation was bound to have framed charges against

the petitioner and afforded him an opportunity to show cause and that in their absence the termination was invalid. In this connection, the learned

counsel relied upon the reference to "the poor progress made by the petitioner in regard to the organisation and business of the area entrusted to

him", and urged that this was really the sort of inefficiency referred to in regulation 41(1) read in the light of the first proviso to sub-regulation 2

thereof--"Low business production". I feel unable to accept this contention urged on behalf of the petitioner.

The terms of the petitioner's employment were such that the employment could be terminated either by notice of a fixed duration or after proof of

misconduct or inefficiency. This would appear to correspond to the normal rules that govern contracts of employment at common law whereunder

in the absence of any contract to the contrary, the master is entitled to terminate the service of an employee either on giving a reasonable notice or

without notice on the ground of misconduct. Of course at common law, the master is not bound to institute an inquiry and afford the servant an

opportunity of proving his innocence but misconduct of the employee could be pleaded as a defence to an action for damages, and when

established would afford the employer complete immunity from any claims on the employee's part.

If however in case where misconduct is suspected, the master serves the requisite notice, he is not thereafter bound to prove misconduct and

establish it if subsequently the servant disputes the propriety or legality of the dismissal. Regulations 20 and 41 appear to bear a close analogy to

these provisions of the common law. Even if an employee was guilty of misconduct or inefficiency such as would enable the Corporation or its

authorised competent official to terminate the services of an employee without notice but after inquiry, it was open to the Corporation to terminate

his service by giving the requisite notice under Regulation 20 and the Corporation is not compelled to take action under Regulation 41.

The argument of the learned counsel for the petitioner proceeded on the basis that there was a complete dichotomy between Regulation 20 and

Regulation 41 and that to any case of suspected misconduct or inefficiency it was regulation 41 that applied and that the service of such an

employee could not be terminated on notice under regulation 20. I find no basis for such an argument. In my judgment, as the requisite notice under regulation 20 was given and the termination of employment was effected by an official competent to do so, the termination of employment was in accordance with the terms of the employment and cannot therefore be complained of as invalid.

(10) A contention was urged in the petition that employment under the Life Insurance Corporation was an employment in the service of

Government which attracted Art. 311, but the learned counsel however did not urge this before me in view of the decision of the Bench of this

Court in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, .

(11) In the view I have taken of these regulations, it is not necessary for me to express any opinion about a contention urged by the learned

Advocate General who appeared for the respondent that even if there was a violation of the regulations under which the termination of the

employment took place, it was not justifiable and would not be subject to the jurisdiction of this court under Art. 226. He likened the employment

under the Life Insurance Corporation to that under a private employer and urged that failure to observe the regulations might enable the employee

to seek relief by way of damages in an ordinary civil action but that the latter could not move this court to set aside the order of termination of

employment by the issue of a writ of certiorari.

I should not be taken to assent to the proposition in such wide terms. In the decision in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and*

Another, , this court has held that a disqualification provided for by the Regulation of the Corporation was a disqualification under a law made by

Parliament under Art. 191(1)(e) of the Constitution. If a regulation were such a law, and there is no doubt either that the Life Insurance

Corporation is a public authority and if there was a violation on the part of such public authority to observe a law, I would be inclined to hold that a

violation of the law contained in such a regulation could be the subject matter of proceedings in this court under Art. 226 of the Constitution and

that a suitable remedy could be afforded to the person who had been injuriously affected by a violation of such a statutory provision.

But as I have stated earlier, the question does not arise for consideration in this case in the view which I have taken that the termination of the

petitioner"s employment was in accordance with the provisions of the Regulations which govern the conditions of his service.

(12) The petition fails and is dismissed and the rule nisi discharged. There will be no order as to costs.

(13) Petition dismissed.