(1985) 08 CAL CK 0022

Calcutta High Court

Case No: F.M.A.T. No"s. 649 and 1604 of 1983

Central Inland Water Transport Corpn. and Others		APPELLANT
	Vs	
Tarun Kanti Sengupta and Others		RESPONDENT

Date of Decision: Aug. 9, 1985

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 34

Citation: 90 CWN 35

Hon'ble Judges: P.K. Mukherjee, J; M.M. Dutt, J

Bench: Division Bench

Advocate: Subrata Kumar Roy, Amalendu Mitra and Prabir Kumar Ghosh, for the Appellant;Saktinath Mukherjee, Madhusudan Banerjee, Sundarananda Pal, Bikash Chandra Chatterjee, Samir Ghosh and Pranab Chatterjee, for the Respondent

Judgement

M.M. Dutt, J.

In these two writ petitions, one preferred by Tarun Kumar Sengupta and the other by Brojonath Ganguly, the orders dated February 26, 1983 of the Chairman cum Managing Director of the Central Inland Water Transport Corporation Limited, hereinafter referred to as "the Corporation", terminating the services of the petitioners have been challenged as illegal, ultra virus and void. Further the writ petitioners have challenged Rule 9(1) of the Service, Discipline and Appeal Rules, 1979, hereinafter referred to as the Rules, as volatile of Article 14 of the Constitution and, as such, illegal and void. The petitioner Tarun Kumar Sengupta is the General Manager (Technical) of the Corporation. He was first appointed in the River Steam Navigation Company Limited and, thereafter, in the Corporation. After about 22 years of permanent service, he was served with the impugned order of termination dated February 26,-1983 with immediate effect upon payment of three months basic pay and allowance.

2. Similarly, the petitioner, Brojonath Ganguly, the Manager (Finance) of the Corporation was appointed in the River Steam Navigation Company Limited and, thereafter, in the Corporation. After 34 years of permanent service, his service was sought to be terminated by the impugned order dated February 26, 1983 with immediate effect on payment of three months basic pay and allowances.

3. Both the orders of termination have been passed under Rule 9(1) of the Rules which provides as follows:

9(1). The employment of a permanent employee shall be subject to termination on three months notice on either side. The company may pay the equivalent of three months basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.

4. Thus under Rule 9(1)of the rules, the service of a permanent employee of the Corporation can be terminated without any reason whatsoever. Indeed, in the instant case the orders of termination of the petitioners do not contain any reason for such termination.

5. In this connection, we may refer to Regulation 34 framed by the West Bengal State Electricity Board. Regulation 34 provided as follows:

34. In case of permanent employee, his services may be terminated by serving three months notice or on payment of salary for the corresponding period in lieu thereof.

6. The State Electricity Board terminated the services of some of its permanent employees in exercise of its power under Regulation 34. This Court struck down Regulation 34 as volatile of Article 14 of the Constitution. On a SLP before the Supreme Court, the Supreme Court has upheld the judgment of this Court holding, inter alia, that on the face Of it. Regulation 34 is totally arbitrary and conferred on the Board a power which is capable of vicious discrimination. Further, it has been observed that it is naked a hire and fire Rule, the time for banishing which altogether from employer-employee relationship is fast approaching See West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, . Rule 9(1) of the Rules and Regulation 34 are somewhat similar. In view of the Bench decision of this Court as upheld by the Supreme Court in West Bengal State Electricity Board''s case (Supra) it cannot but be held that Rule 9(1) is arbitrary and should be struck down as volatile of Article 14 of the Constitution.

7. Mr. Subrata Roy, learned Counsel appearing on behalf of the Corporation, submits that the said Bench decision of this Court or the said Supreme Court decision has no manner of application to the facts and circumstances of the present case. It is contended that the -distinction between the two cases, that is, one before the Supreme Court and the other in the instant case, is that in the former the Rule was framed under a statute, that is Electricity (Supply) Act 1948, in the latter. Rule 9(1) has not been framed under any

statute, but has been framed by the Board of Directors themselves. It is submitted by him that when a power is conferred by a statute or by a statutory rule, such power, if violates the provision of Article 34 of the Constitution, the statute or the statutory rule conferring such power can be struck down as void. But when the power is not so conferred by a statute but framed by the authorities who are responsible for the exercise of such power, it does not come within the purview of the provision of Article 14 of the Constitution with which we are concerned in the present case. It is further submitted that Rule 9(1) of the Rules is in the nature of a contractual rule which constitutes one of the conditions of service and, accordingly, it is not amenable to the provision of Article 14 of the Constitution.

8. We are unable to accept the above contentions of the learned Counsel for the Corporation. Article 14 of the Constitution will apply to any Governmental action either in the shape of any Rule or otherwise. In other words, if there be any arbitrary exercise of power or assumption of any arbitrary power either by virtue of a statute or statutory rule or without such statute or statutory rule, such exercise of power or assumption of power, if contravenes Article 14 of the Constitution, the statute or the statutory rule concerned will be struck down as void. It matters very little that any arbitrary rule or regulation forms one of the conditions of service. Our attention has been drawn by the learned Counsel for the Corporation to a number of decisions in which the Rules or Regulations or statutory provisions were struck down as violative of Article 14 of the Constitution. It is submitted that it is only when the powers conferred by as statute or under the statutory rule are violative of Article 14 of the Constitution, then and then only it will be amenable to the provision of Article 14 of the Constitution. In our view such a contention is unsound and is difficult be accept.

9. It is next contended on behalf of the Corporation that the Corporation does not come within the expression other authorities under Article 12 of the Constitution and, as such it is not a State. It is not disputed that the Corporation is fully owned by the. Central Government. It is also not disputed that the finance of the Corporation wholly comes from and is fully controlled by the Central Government. Accordingly, there cannot be any room for doubt that the Corporation is an authority within the meaning of Article 12 of the Constitution and hence a State. The contention of the learned Counsel is overruled. No other point has been urged in these two writ petitions. In the circumstances, we declare Rule 9(1) as ultra virus Article 14 of the Constitution and strike down the same as void. We also quash the two impugned orders, both dated February 26, 1983 terminating the services of the petitioners, Tarun Kumar Sengupta and Brojonath Ganguly. The Corporation is directed to reinstate the two petitioners in service within four weeks from date with all arrears of salary. Let appropriate writs issue in regard to the above. Both the Rules are made absolute. There will however, be no order as to costs in either of the Rules. In view of the fact that both the writ petitions are disposed of, no order need be made on the two appeals from interlocutory orders, which shall be deemed to have been disposed of by this judgment.

Paritosh Kumar Mukherjee, J.

I agree.