

(2008) 12 DEL CK 0160**Delhi High Court****Case No:** Regular First Appeal 206 of 2002

PGF Ltd. and Another

APPELLANT

Vs

Joginder Singh Bedi

RESPONDENT

Date of Decision: Dec. 10, 2008

Acts Referred:

- Constitution of India, 1950 - Article 310, 311
- Specific Relief Act, 1963 - Section 14(1), 41

Hon'ble Judges: Pradeep Nandrajog, J; J.R. Midha, J

Bench: Division Bench

Advocate: Vinay Sabharwal, for the Appellant; Suresh C. Gupta and Balvinder Ralhan, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

Joginder Singh Bedi served successfully under Punjab State Electricity Board and on attaining the age of superannuation i.e. 58 years retired on 31.5.1989. The appellant, a private limited company thought that services of Joginder Singh Bedi could be utilized by it. Vide Ex.P-2, on 21.6.1990, Joginder Singh Bedi was employed by the appellant as a Branch Manager. He was informed that he would be on probation for a period of one year.

2. Joginder Singh Bedi continued to work with the appellant and earned promotions in senior scales on different dates till he started having problem with some senior officers of the appellant. His grievance was that B.K. Kalra, the Vice-President of the appellant and Sh. D.N. Bhardwaj, the Manager Personal and Administration became inimical towards him and conspired to oust him from service. He alleged that the conspiracy was manifest when on behalf of the appellant, B.K. Kalra issued the circular No. 20/95 dated 24.3.1995 informing all employees of the company as under:

Age of retirement:- Every employee shall retire on completing 58 years of age which shall be the age of superannuation. However, the Management reserves its right to extend the service of an employee at its sole discretion beyond the age of 58 years. An employee can be retired/superannuated earlier to his/her attaining the age of retirement, if he/she is not found medically fit to perform the duties efficiently and diligently.

Extension of service after retirement:- After retirement/superannuation the services of an employee may be extended for a period of two years at a time i.e. from 58 years to 60 years. Subsequently, extension of only one year at a time shall be granted for next five years i.e. till attaining the age of 65 years. It will be done only when the Management is satisfied that the employee is fit for extension of service. After completion of 65 years of service no further extension whatsoever shall be granted. In case of employees who have completed 58, 60, 61, 62, 63 or 64 years of age, the issuance of this circular shall be deemed as notice to the concerned employee to retire on last working day of the month i.e. April 1995. However the concerned employees may put up their representation for extension of service. In case they are found to be fit for further extension of service, the extension may be granted accordingly.

Date of retirement:- Date and time of retirement shall be the last date of the month of the 58th year of the age or in case of extended service the last date of the extended month of the period extended. The retirement shall take effect in the afternoon of the last date above mentioned.

3. Joginder Singh Bedi claimed that the circular dated 20/95, Ex.P-20, was followed by a letter terminating his service with immediate effect on 8.4.1995, Ex.P-22, which reads as under:

Mr. J.S. Bedi,

Manager Maturity

Sub: Termination Of Service

Your services are hereby terminated with immediate effect. You are further directed to hand over the charge to Mr. S.K. Sharma. You stand relieved from the duty w.e.f. forenoon of 10th April, 95 and settle your dues with Accounts department.

(B.K. Kalia)

Vice President (C)

4. Narrating the aforesaid facts and alleging that the termination was illegal inasmuch as it was not proceeded by any show cause notice and that the principles enshrined under Article 310 and 311 of the Constitution of India were violated he filed a suit seeking declaration that the letter dated 8.4.1995 terminating his services be declared as illegal. He prayed for a mandatory injunction to compel the appellant

to re-employ him. Rs. 4,99,670/- were claimed as damages towards salary which he would have earned for another 3 years and for being defamed on account of the illegal termination.

5. Joginder Singh Bedi impleaded the appellant as defendant No. 1. Sh. Nirmal Singh Bhango, the Chairman-cum-Managing Director of the appellant was impleaded as defendant No. 2. B.K. Kalia and D.N. Bhardwaj were impleaded as defendants 3 and 4 respectively.

6. In the written statement filed it was pleaded that the company did not have any policy pertaining to retirement of its employees and that a policy decision was taken that employees of the company would retire on completing the age of 58 years and that the services may be extended by two years up to 60 years and thereafter, depending upon the suitability of the employee, the service could be extended on yearly basis, but not beyond the age of 65 years and that it was further decided that all those who were desirous of seeking extension of their service would seek extension in writing failing which it shall be presumed that they were not interested in seeking further extension. It was pleaded that the concept of public service and the employment of the employee attaining the status of a civil servant was not applicable to the appellant which was a private limited company; denying mala fide and pleading that the appellant was not desirous of continuing in service, evidenced by his response to the circular Ex.P-20, vide reply dated 4.4.1995, Ex.P-21, it was pleaded that the company rightly dispensed with the service of Joginder Singh Bedi.

7. The response of the appellant dated 4.4.1995, Ex.P-21, reads as under:

Most humbly draw your kind attention to Circular No. 20/95 dt. 24.03.95 vide which the definition to "Retire" has been written as "to remove from service" which does not seem to be appropriate. To remove from service means, that a person is sacked of his duties on the grounds of misconduct misappropriation or due to some similar allegations and that too after serving a show cause and providing proper opportunity for defending the allegation.

It is humbly requested that an amendment may please be issued to this Circular stating therein "To Retire" means honourably relinquish the charge of officer after superannuation of age limit fixed by the employer.

So far the age limit for retirement is concerned, it may please be viewed from the health status one maintains. In the past, it may please be kept in view, that Sh. Khosla, Chief Executive Officer served the Company upto the age of 70 years and Sh. Verma, Chief Administrator also served the Company upto the age of 67 years and then due to his ill health left the job.

It is mandatory to state that this Circular be put into force for the persons who have entered afresh in service and not to the persons who have already joined the service after retirement i.e. after the age of 58 years. Moreover, no such conditions were

incorporated in the appointment letter issued from time to time and after the completion of probation period, one's lien stands against the existing regular post.

As far as the extension in service is required, this condition of getting extension every year is also not advisable. It should be that on production of medical certificate, the extension be given the age of 65 years to all who have joined after the issue of this Circular, as is generally given in the Government Services as retirement age is 55 years and automatic extension is given upto 58 years.

Last but not the least this point be kept in view that "Old is Gold" and from the old persons the Company can get beneficial services than the new entrants, due to their past service experience and the old can devote more time for the betterment of the Company than the young one, who are generally off by 5 P.M. whereas old sit upto 7 P.M. provided they are physically fit.

I have submitted my views and now it is upto the administration to review the case and order afresh be issued.

8. On the pleadings of the parties on 24.9.1998 following issues were settled:

- i. Whether the suit of the plaintiff is bad for mis-joinder of the parties, if so its effect? OPD.
- ii. Whether the termination of the service of the plaintiff was illegal, malicious and malafide, if so its effect? OPP
- iii. Whether the plaintiff is entitled to consequential relief of mandatory injunction? OPP
- iv. Whether the plaintiff is entitled to the damages if so what amount? OPP
- v. Whether the plaintiff is entitled to the interest, if so at what rate and for which period? OPP
- vi. Relief.

9. On 28.9.2000 additional issue No. 1 was settled as under:

Whether the suit of the plaintiff is barred u/s 14(1) r/w Section 41(e) of Specific Relief Act? OPD

10. The plea of mis-joinder of parties was pleaded in the defence with respect to impleadment of defendants 2 to 4. The finding returned by the Trial Judge is that in view of the allegations of mala vide said persons were rightly impleaded. On issue No. 2 finding returned is that there was no malice but the termination of the service has been held to be illegal.

11. We shall be reverting to the findings of the learned Trial Judge as to the process of reasoning on which it has been held that termination is illegal; we shall do so while discussing the finding returned on issue No. 4 whereunder damages have

been awarded.

12. On issue No. 3 and additional issue No. 1 finding returned is that being private employment, the contract of service could not be specifically enforced and hence it has been held that Joginder Singh Bedi was not entitled to be put back in service and that in so far it claimed a right to join back the suit was not maintainable.

13. Extending the finding pertaining to issue No. 2 that the termination of service was illegal and discussing entitlement of Joginder Singh Bedi to damages, the learned Trial Judge has held that in view of the admissions of the appellant in para 12 of the written statement that Joginder Singh Bedi was due for retirement on 31.12.1995; noting that even a private employee could not be thrown out without a show cause notice or at least a reasonable notice period before services are dispensed with, the learned Trial Judge has held that Joginder Singh Bedi would be entitled to salary from 8.4.1995 to 31.12.1995 @ Rs. 8,000/- per month. Decree in sum of Rs. 72,000/- has been passed against the appellant and in favour of Joginder Singh Bedi. Interest has been awarded to him @ 15% per annum from the date the suit was filed till the said sum was realized.

14. Before discussing the contentions urged in appeal, since learned Trial Judge has found certain admissions by the appellant, in para 12 of the written statement said averments may be noted:

12. That in reply to para No. 12 of the plaint it is stated that the above said circular was sent to plff. as well as to other officers of deft. No. 1 for information and compliance. It is wrong and denied that it was only sent to plff. alone or that it was sent to plff. for his comments. It is also stated that no objection or suggestions about the above said circular was called for by the deft. No. 1. If any objection or suggestion as stated in this para was sent by the plff. to deft. No. 1 which is specifically denied, that those were uncalled for and deserved rejection. Plff. is put to prove all the facts alleged in this para strictly. It is further stated that though it was made clear to all the employees of deft. No. 1 including the plff. that any employee who had crossed the age of sixty years would have to put up representation for extension of his service beyond 31st March of that year for one year. The plff. had already crossed the age of 63 years by that time and even then he was desirous of continuing in service even after 31/12/95. But the plff./applicant did not make any such representation and as such as per terms of the circular the plff./applicant shall be deemed to have retired that is removal from services of the deft. No. 1 on 31/12/95 and no notice was required for that, so far the age mentioned of the other employee mentioned in this para, these are irrelevant.

15. The reasoning of the learned Trial Judge with respect to the averments in para 12 of the written statement and the concept of natural justice applicable in private employment which has formed the basis of the decision against the appellant is in para 16 of the impugned judgment which reads as under:

16. In this back ground, while going through the pleadings and evidence on record, I find that the plaintiff has failed to prove that the circular Ex.P-20 was issued by the deft No. 3 & 4 in collusion with deft No. 2 for the deft No. 1 malaciously, malafidely and illegally to terminate the service of the Plaintiff only; particularly when the plaintiff has failed to show that there was no contract specifying either the age of superannuation or the span of period for which his services were contracted by deft No. 1. He obviously served at the pleasure of the employer/deft No. 1. He had also not applied for its extension as per Ex.P-20. However, to the own admission of the deft as per para 12 of the WS, irrespective of the terms contained in Ex.P-20 his services should have continued upto 31.12.95. This means the notice Ex.P.22 terminating the service of the plaintiff was void ab initio. Particularly, when it had not given any respite notice and his service was sought to be terminated from the date the notice was served. This was violative of the principle of natural justice. He at least deserves to be given a prior notice terminating his service say for a reasonable period from which date his service stood terminated. In either eventuality as per admission of the deft in para 12 of the WS, irrespective of the circular Ex.P-22 and no submission for extension by the plaintiff; the letter of termination of service was void ab initio and nonest.

16. It was urged by Learned Counsel for the appellant that admittedly no period of service was agreed to and that there was no policy of the company pertaining to the retirement of its employees till the policy decision was taken and circulated vide Ex.P-20. Counsel urged that there was nothing wrong in the policy decision that the age of employment under the appellant would be till the age of 58 years and thereafter services would be extended depending upon the discretion of the company initially for a period of two years till the employee attained the age of 60 years and thereafter on yearly basis, but not beyond the age of 65 years. Counsel further urged that the circular made it very clear that employees who had crossed the age of 60 years and sought extension of their service should apply for the same failing which they would be treated as retired in the month of April 1995. With reference to, Ex.P-21, the response of Joginder Singh Bedi to Ex.P-20, Counsel urged that while responding to the circular Joginder Singh Bedi never sought extension of service. Thus, Counsel urged, that the letter written by the company informing Joginder Singh Bedi that he was treating having been retired was correct.

17. Pertaining to the pleadings of the appellant in para 12 of the written statement, Learned Counsel for the appellant urged that the learned Trial Judge misconstrued the purport of the averment which was in the nature of an alternative defence that in any case Joginder Singh Bedi could not continue in service beyond 31.12.1995. Counsel urged that averments in para 12 of the written statement had to be read in light of the averments made in para 12 of the plaint where Joginder Singh Bedi had claimed a right to serve the appellant till the age of 70 years and on said basis had calculated the loss of salary payable to him.

18. Per contra, Learned Counsel for the legal heirs of Joginder Singh Bedi, who we note has since expired, urged that the principle of reasonableness is a facet of private employment and hence urged that the findings returned by the learned Trial Judge are correct.

19. It is settled law that the origin of every employment is a contract and master-servant relationship is governed by the contract. An employee would be entitled to damages on proof thereof if the contract of employment is breached by the employer. The contract of service may result in the service attaining a status where the law interdicts the contract of employment for example civil servants to whom constitutional protections are afforded under the Constitution of India. The second exception would be under the Industrial Disputes Act 1947, where law intervenes and governs the terms of service employment in the form of the provisions of the Industrial Disputes Act 1947 or office orders issued by undertakings to which the Industrial Disputes Act applies, of course, relatable to such category of employees who are covered by the definition of the word "workman".

20. In the aforesaid backdrop of the law, facts of the instant case have to be appreciated.

21. Joginder Singh Bedi had retired from public employment on 31.5.1989. He was employed by the appellant for a period of 1 year vide Ex.P-2. His services were continued without any period being settled. The company had no policy of retirement till one was framed by the Board and circulated to the employees vide Ex.P-20.

22. It was not the case of Joginder Singh Bedi that the company could not formulate a policy pertaining to the retirement age of the employees. It was not the case of Joginder Singh Bedi that he was working under a contract of service for a particular duration. Thus, *ex facie*, Ex.P-20 is legal and valid.

23. Learned Trial Judge has erroneously treated it to be a case of termination of service as conventionally understood.

24. On attaining the age of retirement an employee ceases to be in employment. It cannot be said that the services stand terminated. Of course, the employer-employee relationship ends.

25. Joginder Singh Bedi, as also all other employees of the company who had crossed the age of 58 years were required to submit options whether they were desirous of continuing as employees of the appellant company. Response of Joginder Singh Bedi vide Ex.P-21 shows that he never sought extension of his service.

26. We thus find no infirmity in the action of the appellant. The concept of natural justice which has been referred to by the learned Trial Judge is alien in private

employment.

27. The second reasoning of the learned Trial Judge with respect to the pleadings of the appellant in para 12 of the written statement is based on an erroneous reading of said averments which we note are in response to the claim of Joginder Singh Bedi that he was entitled to serve the appellant company till he attained the age of 70 years. The plea that at best Joginder Singh Bedi could serve till 31.12.1995 is indeed a plea in the alternative.

28. The crux of the matter is that the company took a policy decision to retire employees at the age of 58 years and give extension to those beyond 58 years till 65 years but on an application submitted by the employee; which decision cannot be faulted with. Since Joginder Singh Bedi did not seek extension of his service which he was supposed to do in response to Ex.P-20, the appellant had no option but to inform him that he stood retired.

29. The appeal is allowed. Impugned judgment and decree dated 24.9.2001 is set aside.

30. Suit filed by Joginder Singh Bedi is dismissed. The amount deposited by the appellant which has been invested in a fixed deposit is directed to be refunded to the appellant together with interest which has accrued thereon. Since Joginder Singh Bedi has died we make no order as to cost, neither in the suit nor in the appeal clarifying that in the suit as well as in the appeal the parties shall appear their own cost.