

Supreme Court of India

State Bank Of Patiala & Ors vs Vinesh Kumar Bhasin on 22 January, 2010

Bench: R.V. Raveendran, K.S. Radhakrishnan

STATE BANK OF PATIALA & ORS.

v.

VINESH KUMAR BHASIN

(Civil Appeal No. 1718 of 2010)

JANUARY 22, 2010

[R.V. Raveendran and K.S. Radhakrishnan, JJ.]

2010 (2) SCR 6

The Order of the Court was delivered by

ORDER

R. V. RAVEENDRAN J. 1. Leave granted. Heard.

2. The respondent was an employee of the State Bank of Patiala ('Bank' for short). Regulation 19 of the State Bank of Patiala (Officers) Service Regulations, 1979 provides that an officer shall retire from the service of the Bank on attaining the age of 58 years or upon the completion of thirty years service whichever occurs first. It also provides that an officer will retire on the last day of the month in which he completes the stipulated service or age of retirement. As respondent completed thirty years of service on 17.11.2006, the Bank made an order dated 17.11.2006 retiring the respondent with effect from 30.11.2006 under Regulation 19 of the said Regulations.

3. The Bank had formulated an 'Exit Option Scheme' on 1.12.2005 with the object of bringing down the staff strength of the Bank by providing an exit route to eligible officers who may be demotivated due to lack of career prospects. The release of an officer from service under the said scheme becomes effective only after the approval of the request of an employee by the designated authority, is communicated to such officer. The respondent who joined the Bank's service on 18.11.1976, and due to retirement on 17.11.2006, made an application dated 14.11.2006 for being relieved under the said scheme. As the said application was made hardly three days before the completion of thirty years of service, there was obviously no time to process it, and before it could be processed, he retired from service. According to the Bank, accepting such a request a few days before the due date of retirement does not arise, as there is no question of an employee feeling demotivated at that stage due to lack of career prospects.

4. Alleging that the non-acceptance of his request for being relieved under the 'Exit Option Scheme' was illegal, the respondent made two complaints the first dated 17.11.2006 to the Commissioner for Persons with Disabilities, Dehradun, and a second dated 20.11.2006 to the Chief Commissioner for Persons with Disabilities, New Delhi ('Chief Commissioner' for short) seeking a direction to the Bank to grant him relief under the 'Exit Option Scheme' of the Bank. He claimed in the said application that he was involved in a road accident on 26.5.1997 and as a result, became a person with disability; and that the Bank, by not accepting his application for retirement under the Exit Policy Scheme, discriminated him on account of his disability.

5. The Deputy Chief Commissioner, New Delhi issued a show-cause notice dated 22.11.2006 to the Bank stating that the Chief Commissioner had directed issue of a show-cause notice under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, ('Disabilities Act' for short) calling upon the Bank to show cause why it should not be directed to accept the respondent's request under 'Exit Option Scheme', instead of being retired under Regulation 19, with a further direction that the decision of the Bank to retire the respondent from service should not be implemented until further orders.

6. The Bank filed objections dated 23.12.2006 contending that the complaint was not maintainable and did not have any merit. The Bank also pointed out that the show cause notice dated 22.11.2006 sent by the Dy. Chief Commissioner, was not accompanied by either a copy of the complaint or a copy of the order said to have been made by the Chief Commissioner. We are informed that the Chief Commissioner has not passed any further order in the matter.

7. On the ground that the Bank did not comply with the interim direction of Chief Commissioner, the respondent approached the Allahabad High Court on 10.1.2007 (by filing WP No. 40 (SB) of 2007) seeking a direction to the Bank to obey the order of the Chief Commissioner and a mandamus commanding the Bank and its officers (that is the Dy. General Manager, Delhi Zone, Additional General Manager, III (D) Lucknow, and Branch Manager, Dehradun who are appellants 2 to 4 herein), to pay him salary and allow him to work. The High Court on 12.1.2007 ordered notice to the appellants and also issued an ex parte interim order that the direction of the Chief Commissioner be complied with, with an observation that the question of jurisdiction, if raised by the Bank, will be considered when the matter is next listed. No date was fixed for compliance with the said interim order.

8. On the ground that the said ex parte order dated 12.1.2007 was not complied, the respondent again rushed to the High Court with a Contempt Petition. In that petition, the High Court made an ex parte order dated 13.2.2007 directing the Branch Manager of the Dehradun Branch of the Bank to appear in person on 3.4.2007 if the interim order dated 12.1.2007 issued in the writ petition was not by then complied with.

9. Aggrieved by the order dated 12.1.2007, the Bank and its officers have filed SLP (C) No. 6124 of 2007. Aggrieved by the order of the High Court in the Contempt Proceedings, the two officers of the Bank to whom notice has been issued filed SLP (Crl.) No.1870 of 2007. This Court on 23.4.2007 directed issue of notice in both the special leave petitions. As respondent appeared through counsel at the time of preliminary hearing, this Court also noted that the respondent had retired on completion of 30 years of service in November, 2006 and recorded the submission of the respondent that he was prepared to accept the retiral benefits without prejudice to his rights. Accordingly, the retiral benefits have been released to the respondent and the contempt proceedings were stayed on 18.8.2008.

10. Ordinarily this Court would not interfere with an ex parte interim order of the High Court, as the respondent in a writ or contempt proceedings can appear and seek vacation, or discontinuance, or modification of such ex parte order. But where there are special and exceptional features or

circumstances resulting in or leading to abuse of process of court, this Court, may interfere. This case falls under such special and rare category. The respondent, though retired in accordance with the rules of the Bank, using the tag of 'person with disability', has attempted to virtually terrorise the Bank and its senior officers by initiating a series of proceedings and securing ex parte interim orders by misrepresenting the facts. The Chief Commissioner acting under the Disabilities Act, the High Court in its writ jurisdiction and the High Court in its contempt jurisdiction, have passed ex parte interim orders, requiring the Bank and its officers to act contrary to the Bank's Rules when no prima facie was made out. Let us deal with each of these successive ex parte interim orders.

Interim direction of the Chief Commissioner

11. Under the Rules, an officer of the Bank, shall retire on completion of 30 years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the Exit Policy Scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability. Prima facie neither section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17.11.2006; and that when an employee was retired in accordance with the regulations, no interim order can be issued to continue him in service beyond the age of retirement. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

12. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:-

- (a) coordinate the work of the Commissioners;
- (b) monitor the utilisation of funds disbursed by the Central Government;
- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.

Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights

of persons with disabilities; and (b) non- implementation of laws, rules, bye- laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters: (a) summoning and enforcing the attendance for witnesses; (b) requiring the discovery and production of any document; (c) requisitioning any public record or copy thereof from any court or officer; (d) receiving evidence on affidavits; and (e) issuing commissions for the examination of witnesses or documents. Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

13. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Association vs. Union of India 1996 (6) SCC 606, this Court, dealing with Article 338 (8) of the Constitution of India (similar to section 63 of the Disabilities Act), observed as follows :

"It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to i sub-clause (b) of clause (5) of Article 338 of the Constitution. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do no inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution."

The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction.

The interim order in the writ proceedings.

14. The principles relating to grant of interim ex parte orders by the High Court in writ jurisdiction are well settled. Courts should not grant interim orders in a mechanical manner, on the assumption that the aggrieved party can always seek vacation. Grant of ex parte interim orders, that too mandatory orders, routinely or merely for the asking, on ground of sympathy or otherwise, will interfere with justice leading to administrative chaos, rather than serving the interests of justice. Where the writ petition does not make out a prima facie case or where there is any doubt about the maintainability of the writ petition or the jurisdiction of the court or the tenability of the claim, the High Court will not issue any interim order, that too when there is no irreparable loss or injury. At

all events, the High Court will desist from issuing an ex parte mandatory injunction or direction which virtually has the effect of allowing the petition ex parte without hearing the respondents. Mandatory interim orders are issued in exceptional cases, only where failure to do so will lead to an irreversible or irretrievable situation. In service matters relating to retirement, there is no such need to issue ex parte mandatory directions. When the writ petition disclosed that the respondent was retired after 30 years of service in accordance with the Bank's regulations, there was no question of any irreparable injury or urgency.

15. On the facts and circumstances we are of the view that the High Court while directing notice on the writ petition filed by the respondent for implementation of the interim direction of the Chief Commissioner for Persons with Disabilities ought not to have issued an ex parte order which virtually amounts to allowing the writ petition without hearing the Bank. The appropriate course would have been to give an opportunity to the Bank to explain its stand, particularly because the court itself felt a doubt about the jurisdiction of the Chief Commissioner and its own jurisdiction. The Chief Commissioner issued the order at New Delhi. The respondent was working at Dehradun and was retired from service at Dehradun. Apparently no part of cause of action arose in the State of Uttar Pradesh. Be that as it may. We therefore held that the order dated 12.1.2007 is unsustainable.

The interim order in the contempt proceedings.

16. The respondent's complaint in the contempt petition was that the Bank had disobeyed the ex parte interim order granted by the High Court on 12.1.2007. No period was prescribed by the High Court for compliance with its interim order. The show cause notice in the writ petition was issued on 22.1.2007 returnable on 15.2.2007. But even before that date, the respondent filed the contempt petition complaining of non-compliance. Instead of issuing notice and giving an opportunity to the Bank or the Bank's officers, the High Court passed the following orders on 13.2.2007 :

"Issue notice to Opposite Party No.2 (Branch Manager of the Bank) to show cause as to why he may not be punished under section 2 of the Contempt of Courts Act for disobeying the order passed by this Court on 12.1.2007, which has so far not been complied with in letter and spirit. In case the order is not complied with, he shall appear on 3rd April, 2007 along with record."

Before issuing any interim direction in contempt proceedings, or proposing to hold anyone guilty of contempt, the High Court should at least satisfy itself that person to whom the notice is issued is the person responsible to implement the order. The order retiring the respondent was not passed by the Branch Manager and obviously he was not the officer who could implement the interim direction of the Chief Commissioner or the High Court.

17. We are of the view that the contempt petition was premature. We are also of the view that the High Court at the stage of issuing notice, could not have assumed that there was wilful disobedience. At all events, as a consequence of our decision that the order dated 12.1.2007 was unwarranted, the direction for personal appearance on failure to comply with the order dated 12.1.2007 cannot be sustained.

Remarks warranted by the conduct of the respondent

18. The conduct of the respondent requires to be commented upon. He was retired with effect from 30.11.2006, by order dated 17.11.2006 after 30 years of service. He gave a complaint to the Commissioner for Persons with Disabilities at Dehradun, Uttarakhand, on 17.11.2006. He made another complaint to Chief Commissioner, New Delhi, on 20.11.2006. Though he retired at Dehradun, he filed a writ petition in Allahabad High Court to enforce an interim order issued at New Delhi. He filed successive complaints, writ petition and contempt petition within a span of less than three months, without giving opportunity to the Bank to appear and show cause. He succeeded in evoking sympathy and securing ex parte interim orders repeatedly by highlighting his position as a person with disability, but failed to disclose full or correct facts.

19. The grievances and complaints of persons with disabilities have to be considered by courts and Authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

Illustration :

Let us assume a case where the age of retirement in an organisation is 58 years for all class II officers and 60 years for all class I officers. When a class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination.

Persons with disabilities are no less afflicted by human frailties like ego, pride, jealousy, hate or misunderstanding, when compared with persons without disabilities. Many of their grievances and disputes may have nothing to do with disability. The fact that respondent claimed to be person with disability appears to have swayed the Chief Commissioner and the High Court, to ignore the absence of any legal right and grant an interim remedy which in the normal course would not have been considered. Issuing interim orders when not warranted, merely because the petitioner is a person with disability, is as insidious as failing to issue interim orders when warranted.

Conclusion

20. We therefore allow these appeals and set aside the interim directions contained in the order dated 12.1.2007 of the High Court in WP No. 40(SB) of 2007 and the order dated 13.2.2007 in Crl.

Misc. Case No.420(C) of 2007. We request the High Court to hear the appellants herein (Bank and its officers) and then dispose of the WP No. 40 (SB) of 2007 and Crl. Mis. Case No.420(C) of 2007 in accordance with law.

21. It is made clear that acceptance of retiral benefits by the respondent during the pendency before this court will not come in the way of his pursuing any remedy, in accordance with law by establishing that he is a person with disability and that he was discriminated, before a forum competent to consider his grievance/complaint.