

Hari Kishen Dass Jain v. The Life Insurance Corporation of India, etc.
(Mahajan, J.)

in any ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay."

(3) In view of these two decisions, the case of the petitioner is unassailable for wages from 1st October, 1966 to 15th February, 1967.

(4) For the reasons recorded above, I allow these petitions to this extent only that the petitioner will be entitled to his wages for the period beginning from 1st October, 1966, and ending with 15th February, 1967. There will be no order as to costs.

(5) The cases will now go back to the Authority under the Payment of Wages Act to determine the quantum of wages due to the petitioner for this period. The parties are directed to appear before the Authority on 9th of June, 1970.

N.K.S.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Bhopinder Singh Dhillon, JJ

HARI KISHEN DASS JAIN,—Petitioner

versus

THE LIFE INSURANCE CORPORATION OF INDIA AND
OTHERS,—Respondents

Civil Writ No. 1023 of 1969

May 18, 1970

Life Insurance Corporation of India (Staff) Regulation (1960)—Regulation 39(1)(g)—Constitution of India (1950)—Articles 14 and 226—Services of an employee of Life Insurance Corporation terminated—Such employee—Whether can invoke the jurisdiction of the High

Court under Article 226—Employees of Insurance Companies taken over by the Corporation and employees recruited by it—Whether form distinct classes—Different treatment to such classes of employees—Whether hit by Article 14.

Held, that an order of dismissal passed under Regulation 39(1)(g) of Life Insurance Corporation of India (Staff) Regulations (1960) merely terminates a contract of service—a contract which is not specifically enforceable. The rights of the dismissed employee, if any, are to sue for damages for breach of contract. He has no right to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India (1950) to challenge even an invalid order of dismissal. (Para 4)

Held, that the employees of the insurance companies before the Corporation was formed and who were taken over by the Corporation form a distinct and separate class and could thus be differently treated from those who were employed afterwards. The latter were recruited as employees of the Corporation, whereas those who were already serving private companies were merely given option to become the employees of the Corporation on certain terms and conditions. Those who did not exercise the option were given compensation. Hence both sets of employees stand on the different footings and form two different and distinct classes. Different treatment to these two classes of the employees of the Corporation is not hit by Article 14 of the Constitution. (Para 5)

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order of dismissal dated 26th October, 1968 and order of the Chairman, dated 8th March, 1969.

H. L. SIBAL, SENIOR ADVOCATE, WITH S. C. SIBAL, ADVOCATE, for the Petitioner.

JAGDISH SARUP, SOLICITOR-GENERAL OF INDIA, WITH MR. MOHINDERJIT SINGH SETHI, ADVOCATE, for the Respondents.

KULDIP SINGH BAKSHI, ADVOCATE, for the Intervener.

JUDGMENT

The judgment of this Court was delivered by:—

D. K. MAHAJAN, J.—This petition under Articles 226 and 227 of the Constitution of India is directed against the order of dismissal passed by the Zonal Manager, Life Insurance Corporation of India on 26th of October, 1968.

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(2) The petitioner at the relevant time was employed as a Development Officer. He joined service on 25th of April, 1963, at a salary of Rs. 260 per mensem. In the application submitted to the Corporation for employment he did not disclose that he was engaged in private business or trade. The Officiating Divisional Manager served a charge-sheet on the petitioner to the effect that he was engaged in trade inasmuch as he was a partner in three firms, namely (1) Messrs Jain Brothers, Chemists, Giddarbaha, (2) Toofan Mail Naswar Factory and (3) Chanan Ram and Sons, Commission Agents, and that he had been getting profits from these firms. The gravamen of the charge was that he was engaging himself in private business without prior approval of the Corporation and thus contravening Regulation 27(1) of (Staff) Regulations, 1960. The charge-sheet is Annexure 'A' to the petition. The petitioner's case was that he was not a partner in these firms and that the Hindu undivided family, of which he was a member, was the partner. In support of his contention he produced the assessment order passed by the Income-tax Department (Annexure B) wherein the income from Messrs Jain Brothers, Giddarbaha was assessed as income of the Hindu undivided family registered firm. It is the common case now that the petitioner was not a partner in the other two firms. So far as the partnership deed is concerned, it clearly discloses that he alone in his individual name was the partner in Messrs Jain Brothers, Giddarbaha. The partnership deed does not disclose that he was representing the joint Hindu family of which he was a member. To enquire into the charges levelled against the petitioner, Shri B. L. Malhotra, A.S.O. (Machines), Divisional Office, Jullundur, was appointed an Inquiry Officer. The Inquiry Officer held the inquiry and submitted his report. He found the petitioner guilty of the charge of being a partner with Messrs Jain Brothers Giddarbaha to the extent of one-fourth share. Thus, he was held guilty on account of having not disclosed his partnership in the application form. An extract of the Inquiry Officer's report was supplied to the petitioner. In pursuance of the inquiry report a show-cause notice was issued to the petitioner and two punishments were proposed in that notice, namely censure under Regulation 39(1)(a) of the Life Insurance Corporation of India (Staff) Regulations, 1960, and recovery of the amount of wrongful gains received from Messrs Jain Brothers Giddarbaha as his share of the profits from the date of his appointment as a Development Officer. He was, therefore, asked to pay the profits to the Corporation. The petitioner submitted a detailed reply to this demand and refuted his

liability to pay the amount on the ground that the partnership business was of the Hindu undivided family. The Divisional Manager, by his order, dated 6th April, 1968, imposed the punishment of censure under Regulation 39(1)(a) of the Regulations and ordered him to pay a sum of Rs. 21,530.80, the profits earned by the petitioner from Messrs Jain Brothers Giddarbaha. Against this order, the petitioner filed an appeal to the Zonal Manager and the Zonal Manager by his order, dated 5th of September, 1968, set aside the order requiring him to pay Rs. 21,530.80 P., but instead of censure proposed the punishment of dismissal under Regulation 39(1)(g) of the Regulation. Thus, a fresh show-cause notice was issued to the petitioner by the Zonal Manager as to why the punishment of dismissal should not be imposed. The petitioner submitted his reply to that notice and after considering the reply the order of dismissal was passed on 26th October, 1968. The petitioner then filed a memorial against the order to the Chairman and that memorial was ultimately rejected by the Chairman by his order, dated 8th March, 1969. After the rejection of the memorial the petitioner has moved this Court, as already stated, under Articles 226 and 227 of the Constitution.

(3) Mr. Sibal, learned counsel for the petitioner, has advanced two contentions. Firstly, that the order of dismissal has been passed contrary to the rules of natural justice. His contention was that the full report of the Inquiry Officer was not supplied and only the extracts therefrom were supplied. The short answer by the learned Solicitor-General, appearing on behalf of the Life Insurance Corporation, is that no demand was made by the petitioner for the supply of the copy of the full report of the Inquiry Officer and if it had been made undoubtedly he would have been furnished with a detailed copy of that report. In any event, it is alleged that his grounds of appeal clearly show that he was aware of the full enquiry report because in those grounds he has taken the stand that the report of the Inquiry Officer has been based on conjectures and surmises. The learned counsel for the petitioner has been unable to show that any demand was made for the supply of the full report and in view of the stand taken by the Corporation that if a demand had been made they would have supplied the full report, we see no reason to infer that the petitioner was in any manner handicapped in his defence. No grievance has been made that any injustice has been done to him by the non-supply of the full report. In fact, the only basis on which the report has proceeded against him is that he was a partner in Messrs Jain Brothers in his individual capacity. The fact that the

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income of his share was assessed as Hindu undivided family income does not alter the position, particularly in view of the Supreme Court decision in *M/s. Agarwal and Co. v. Commissioner of Income-Tax, U.P.* (1). It has been ruled by their Lordships of the Supreme Court that when a deed of partnership does not on the face of it show that any Hindu undivided family has joined the partnership, it is not open to the Income-tax Officer to go behind the deed and find out, for the purpose of registration of the firm under section 26-A whether the ostensible partner is the representative of someone else. It has been held further that for the purpose of finding out as to who are the partners of a firm, one has only to look to the partnership deed and not to go behind it. It is, therefore, obvious that in view of this weighty pronouncement the assessment order has no meaning. The Department could not go behind the partnership deed and hold that the income attributable to the petitioner's share was in fact the income of the Hindu undivided family. The above decision of the Supreme Court also settles the question that a Joint Hindu family as such cannot enter into a contract of partnership with a person or persons. In view of what has been stated above, it is not necessary to pursue this matter any further for we are of the opinion that the enquiry does not suffer from any vice. It is not the petitioner's case that the Inquiry Officer did not give him proper hearing or did not give an opportunity to lead whatever evidence he wanted to produce. His only grievance has been that the Inquiry Officer's report was not supplied to him in full. As we have already said, if a demand had been made for that purpose he would have been supplied with a copy of the full report. In any event, no prejudice has occurred to him from the non-supply of the full report. Therefore, the first contention of the learned counsel must fail.

(4) Assuming however, that the petitioner is correct in his first contention, the second contention that has been raised in the return of the Corporation, is that no petition under Article 226 of the Constitution is competent to challenge an invalid order of dismissal. The contention is that the order of dismissal has been passed under the regulations and merely terminates a contract of service a contract which is not specifically enforceable. The petitioner's rights, if any, are to sue for damages for breach of contract. He has no right to

(1) C.A. Nos. 2200, 2200A & 2200B of 1968 decided by Supreme Court on 7th April, 1970.

invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution. The learned counsel for the Corporation supports this contention by reference to the Supreme Court decision in *Executive Committee of U.P. State Warehousing Corporation v. Chandra Kiran Tyagi* (2). In our opinion, this decision fully covers the present case. Mr. Sibal, on the other hand, relied upon the decision of the Supreme Court in *Life Insurance Corporation of India v. Sunil Kumar Mukherjee and others* (3), for his contention that this Court could grant the petitioner relief under Article 226 of the Constitution. The decision in *Sunil Kumar's case* (3), was considered by their Lordships of the Supreme Court in *Chandra Kiran's case* (2), and was explained. So far as the present case is concerned, the facts are entirely *pari materia* with *Chandra Kiran's case* (2). In *Chandra Kiran's case* (2), sections 52 and 53 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956, which are practically in the same terms as sections 48 and 49 of the Life Insurance Corporation Act, fell for consideration. In that case also an employee of the Corporation had been dismissed and it had been found by the Allahabad High Court that his dismissal was contrary to the provisions of the Regulations and in spite of that finding, the order of the Allahabad High Court granting him relief under Article 226 of the Constitution was set aside. Therefore, neither on principle nor on authority any distinction can be drawn between the present case and *Chandra Kiran's case* (2).

(5) Faced with this difficulty, Mr. Sibal contended that non-granting of relief to the petitioner under Article 226 of the Constitution would be hit by Article 14 of the Constitution. The argument is that the employees of the private insurance companies, who were taken over by the Life Insurance Corporation, when it was formed, and those employees who had been recruited after the Corporation was formed, would be treated differently inasmuch as those who were taken over at the formation of the Corporation would be entitled to relief under Article 226 of the Constitution in similar circumstances, whereas those recruited thereafter would not be. This argument, though very attractive, has no substance. The employees of the insurance companies before the Corporation was formed and who were taken over form a distinct and separate class and could thus be differently treated. Those who were employed afterwards form

(2) 1969 S.L.R. 799.

(3) (1964) 5 S.C.R. 528.

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a different class because they were recruited as employees of the Corporation, whereas those, who were already serving private companies were merely given option to become the employees of the Corporation on certain terms and conditions and those who did not do so were given compensation. Therefore, it is wrong to suggest that both sets of employees stand on the same footing and do not form two different classes. We are clearly of the view that the provisions of Article 14 are not offended so far as the present case is concerned.

(6) The last contention of Mr. Sibal was that the order of the Zonal Manager whereby he dropped the recovery proceedings is in fact a contradictory order and if correctly read, denotes that the charge which was levelled against the petitioner and on the basis of which he was dismissed was held to be not proved. In our opinion, there is no force in this contention. The order demanding the payment of profits earned as a partner in Jain Brothers Giddarbaha was an illegal order and that order alone was set aside by the Zonal Manager. The Zonal Manager affirmed the finding of the Inquiry Officer that the petitioner had engaged in private business contrary to Regulation 27(1) and it is really the consequence of that breach which has resulted in the order of dismissal.

(7) No other contention has been advanced.

(8) For the reasons recorded above, this petition fails and is dismissed. There will be no order as to costs.

N. K. S.

LETTERS PATENT APPEAL

Before Mehtar Singh, C.J. and Bal Raj Tuli, J.

DARSHAN SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 301 of 1966

May 18, 1970.

Punjab Security of Land Tenures Act (X of 1953)—Sections 5, 5-B(1), 5-B(2) and 10-A(b)—Landowner reserving or selecting permissible area and transferring other area—Such transferred area—Whether can be included in the reserved or selected area—Permissible area not reserved or