

(2014) 09 DEL CK 0244

In the Delhi High Court

Case No : RFA (OS) Nos. 112 and 120/2011

Akhilesh Kumar Verma

APPELLANT

Vs

Maruti Udyog Ltd.
 Maruti Suzuki India Ltd. Vs
Akhilesh Kumar Verma

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0244

Hon'ble Judges : Sunil Gaur, J;Gita Mittal, J

Bench : Division Bench

Advocate : T.K. Ganju, Sr. Advocate and Aquib Ali, Advocate for the Appellant;
T.K. Ganju, Sr. Adv., Aquib Ali, Advocate and Party-in-Person, Advocate for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By this judgment, we are disposing these appeals whereby the judgment and decree dated 26th September, 2011 passed in CS (OS) No. 1917/1995 has been impugned.

2. For the purposes of convenience, we propose to refer to the parties as per their nomenclature in the suit proceedings. The facts giving rise to the litigation are within a narrow compass and are briefly noticed hereafter.

3. The plaintiff Akhilesh Kumar Verma was appointed on 6th June, 1984 as an executive with the Maruti Udyog Ltd.-defendant no.1. On 17th April, 1990, he was transferred to Mumbai. It is here that we enter the arena of disputes between the parties. According to the defendant no.1, the plaintiff remained unauthorisedly absent for long periods between 24th April, 1990 to 19th November, 1990.

4. The plaintiff, it appears, disputed the order of transfer and made a representation to the defendant no.1 which was not acceded to. The plaintiff then filed CS (OS) No. 539/1990 seeking a declaration and permanent injunction

against the aforesaid transfer order.

5. With regard to the alleged unauthorised absence and disobeying the orders of superiors, the defendant no.1 issued a chargesheet dated 31st December, 1990 (Exh.PW 1/26) to the plaintiff. On 6th January, 1991 and 20th January, 1991, the plaintiff submitted replies thereto. The defendant no.1 contends that the disciplinary action was kept in abeyance in order to give an opportunity to the plaintiff to show sincerity in work.

6. The plaintiff states that after being relieved from Gurgaon on 29th January, 1991, he joined his place of posting on the 30th January, 1991 at Mumbai. The defendant no.1 alleges that thereafter the plaintiff again remained absent unauthorisedly between 12th February, 1991 to 30th March, 1991. During this period, the plaintiff sent various letters of request to defendant no.1 seeking leave on different pretexts.

7. On 6th and 9th April, 1991, the plaintiff was posted to the office of the defendant no.1 at Jawaharlal Nehru Port Trust (JNPT), Raigarh. It is alleged by defendant no.1 that again the plaintiff remained absent unauthorisedly from the 29th April, 1991 to 16th May, 1991 and did not join this place of posting as well. It is asserted by the plaintiff that he, thereafter, joined office at JNPT on 20th July, 1991 and again absented himself unauthorisedly from the 26th July, 1991 onwards. In these circumstances, a second chargesheet dated 5th August, 1991 was issued to the plaintiff and he was given ten days time to file a reply to the second chargesheet. The plaintiff submitted his reply thereto on 13th August, 1991.

8. On the 16th August, 1991, a note was circulated by the defendant no.1 directing a domestic inquiry to be conducted in respect of the chargesheet dated 31st December, 1990 as well as the second chargesheet dated 5th August, 1991.

9. The domestic inquiry commenced its sittings on 21st October, 1991 which continued till the 24th March, 1992. The proceedings of this inquiry have been proved on the suit record as Exh.PW 1/49 (colly.). On a consideration of the material on record, in the report dated 21st May, 1992, the inquiry officer recommended that the plaintiff was guilty of the alleged charges.

10. It is not disputed that the copy of the inquiry report was received by the plaintiff who submitted a representation dated 9th June, 1992. Thereafter, an order dated 27th June, 1992 was passed by the defendant no.1 dismissing the plaintiff from service.

11. The plaintiff challenged the legality of the action of the defendants in initiating the disciplinary proceedings against him and his dismissal. Inter alia, it was his grievance that his absence from duty was not unauthorised. It was the plaintiff's contention that he was a whistle blower in the organization and had exposed and brought to the fore, serious allegations of corruption against the defendants. As a result, the defendants were nursing vengeance and mala fide

intention against the plaintiff and were looking for a way to oust him from service with the organization. The plaintiff contends that the chargesheet issued to him was as a result of the vengeance nursed against him and was illegal, motivated and therefore null and void. The plaintiff claims to have been severely harassed and humiliated and that he was illegally dismissed from service.

12. Aggrieved by the order dated 27th June, 1992 passed by the defendant no.1 dismissing the plaintiff from service in the year 1993, the plaintiff initially filed a suit for declaration and mandatory injunction in the district courts. The suit was contested by the defendant no.1-Maruti Udyog Ltd.; defendant no.2-Shri R.C. Bhargava, Managing Director, Maruti Udyog Ltd. & defendant no.5-Shri A. Nandy, Deputy General Manager, Maruti Udyog Ltd. The defendant nos.3, 4 & 6 were proceeded ex parte.

13. In these proceedings, the plaintiff filed an application seeking amendment of the plaint to incorporate the relief of damages of Rs.27,35,303/-. As a result, the suit was transferred to the original side of this court and renumbered as CS (OS) No. 1917 of 1995. Pleadings were ordered to be completed afresh.

14. On a consideration of the pleadings, by an order passed on 30th July, 1998, the following issues were found arising in the case:-

"1. Whether because of the suspicion of defendant No. 1 that the plaintiff had made revelations of its malpractices, the plaintiff was harassed and illegally dismissed by defendant No. 1? OPP

2. Whether the domestic enquiry report dated 21st May, 1992 is illegal, motivated and liable to be declared null and void? OPP

3. Whether the dismissal order dated 27th June, 1992 is illegal, motivated and liable to be declared null and void? OPP

4. Whether the plaintiff is entitled to any amount of compensation from the defendants? OPP

5. Whether the suit of the plaintiff is not maintainable in the present form and barred under the Specific Relief Act? OPP"

15. The matter proceeded to trial. The plaintiff examined only himself as the sole witness in support of the case. On behalf of the contesting defendants, Shri A.S. Sharma appeared as a witness. On the 14th of September, 2011, arguments were heard in the matter.

16. Our attention is drawn by Mr. Ganju, learned senior counsel appearing for the defendants to the following order dated 14th September, 2011 recorded by the learned Single Judge after closure of arguments:-

"CS (OS) No. 1917/1995

Arguments heard.

Judgment reserved.

The defendant is directed to file within three working days a statement showing the amount which the defendant- company would have paid to the plaintiff as gross emoluments and gratuity, had he remained in service till today in the same rank in which he was placed at the time of his dismissal. The statement will be supported by an affidavit of a responsible officer of defendant-company. The plaintiff is also directed to file within three working days, an affidavit disclosing therein his gross income from the date he was dismissed from service till today."

17. In compliance of the above directions, the plaintiff filed an affidavit in September, 2011 with regard to his income as per the returns filed after the date of his dismissal from service.

18. The learned Single Judge thereafter proceeded to judgment and by the impugned judgment and decree dated 26th September, 2011, granted a decree in favour of the plaintiff and against the defendant no.1 in the total sum of Rs.15,00,000/- with proportionate costs.

Both sides are aggrieved by the findings returned by the learned Single Judge and have assailed the judgment and decree dated 26th September, 2011 by way of the afore-noticed two appeals.

19. We have heard the plaintiff who appears in person as well as Mr. Ganju, learned senior counsel appearing for the defendants. Inasmuch as we propose to remand the case to the learned Single Judge for reconsideration, we are not recording detailed findings on the submissions which have been made before us. However, while the plaintiff challenges the award of compensation of only Rs.15,00,000/- on the ground that the same is based on no reasoning at all and that the plaintiff was entitled to the suit amount, learned senior counsel for the defendants while urging that the learned Single Judge has failed to record any finding on issue no.1, has submitted the award of any amount to the plaintiff was unjustified. Mr. Ganju, learned counsel submits that at the same time, material evidence of the defendants so far as issue nos.1, 2 & 3 are concerned, have been completely ignored. Learned senior counsel for the defendants would also submit that the award of compensation to the tune of Rs.15,00,000/- is based on no evidence and is contrary to law.

20. In support of these submissions, reliance has been placed on the pronouncements of the Supreme Court reported in Indian Airlines Corporation Vs. Sukhdeo Rai, ; Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, ; S.S. Shetty Vs. Bharat Nidhi, Ltd., .; Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another, . & Tilak Raj Chopra Vs. Alitalia Airlines, Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, and the judgment passed by this court on 1st August, 2012 in CS (OS) No. 673/1997 entitled Shri L.M. Khosla Vs. Thai Airways International Public Company Limited & Anr.

21. Learned senior counsel for the defendants has also drawn our attention to

the judgments which have been relied upon by the learned Single Judge and it has been pointed out that these judgments in fact support the case of the defendants and do not support the suit prayer in any manner.

22. So far as issue no.2 is concerned, the same raises a question as to whether the inquiry report dated 21st May, 1992 is illegal, motivated and therefore null and void. It is contended by Mr. Ganju, learned senior counsel for the defendants that the reasoning in support of the finding returned by the learned Single Judge is to be found in paragraph no.6 of the impugned judgment. It is pointed out that the learned Single Judge has noted the statement of the plaintiff to the effect that the Inquiry Officer (defendant no.4) had told him several times that the inquiry was merely an eyewash and that he has to make a report against him. It is submitted that this evidence is in the nature of hearsay and could not have been relied upon. Further discussion in the impugned judgment would show that the learned Single Judge in para 6 has referred to "telephonic conversations were recorded by him and are contained in his representation (Exh.PW 1/51)". The learned Single Judge has noted that the plaintiff has placed on record the tape alleged to be containing the conversation between him and the Inquiry Officer. Mr. Ganju, learned senior counsel submits that there is no tape recording on record. No such recording has been proved before the learned Single Judge.

23. It is not disputed before us by Mr. A.K. Verma as well that no such tape is on the record of the trial court. The findings in the impugned judgment which are premised on such tape recording, therefore, are based on an erroneous consideration of the evidence on record and cannot be sustained.

24. It is submitted by Mr. Verma that apart from the tape recording, there is a substantial evidence on record in support of the his contentions and claims. Mr. Ganju, learned counsel also submits that in the enquiry proceedings, the report provide in evidence established the misconduct of the plaintiff, justifying his dismissal from service. The same, however, finds no consideration in the impugned judgment.

25. So far as the issue no.3 regarding the order dated 27th June, 1992 being illegal, motivated and, therefore, null and void is concerned, our attention is drawn to paras 7 & 9 of the impugned judgment. It is urged that the learned Single Judge has been largely persuaded to hold against the defendants based on a document dated 21st May, 1992 which was in the nature of a "draft for approval". This was an unsigned document on which, the plaintiff, in the admission/denial conducted on 9th August, 1994, has endorsed that this letter was not received by him. It is the submission of learned senior counsel that there was no effective cross-examination of the witness of the defendants and no effort was made by the plaintiff to prove this document in accordance with law on the record.

26. Mr. A.K. Verma would submit that this document has been filed by the defendants and, therefore, the plaintiff was not required to prove the same.

27. Be that as it may, this document does not find mention in the pleadings of either of the parties. When cross-examined, the defendants' witness had stated that this was a draft for approval. The document is unsigned. It is not possible to discern as to the authority or the person who had drafted this document or on whose instructions this was drafted.

28. The above narration would disclose that a detailed disciplinary inquiry was conducted against the plaintiff which proceedings were proved on record. The defendant was relying on the disciplinary proceedings to support the legality of the order of dismissal. The parties were at variance with regard to the legality and validity of the dates and reasons for absence from duty. In order to decide the legality and bona fide of the action against the plaintiff, it was necessary to examine the charges and the orders of the inquiry officer. Adjudication on issue nos.1, 2 & 3 required deliberation on the above. However, there is not a whisper of discussion in the impugned judgment on the merits of the charges on the inquiry which was conducted.

29. Both parties are ad idem on the fact that so far as the award of compensation is concerned, the impugned judgment does not disclose any reasoning or basis thereof. While the plaintiff is seeking enhancement of compensation, the defendants contend that the award is grossly exorbitant. A perusal of para 19 of the judgment and decree dated 26th September, 2011 would show that the learned Single Judge has been persuaded to make the award of all inclusive compensation amounting to Rs.15,00,000/- on the view that ends of justice would be met if it was so awarded on account of wrongful dismissal from service.

30. We have noted above that the findings of wrongful dismissal do not take into account evidence which was placed on record. The award of compensation to meet the ends of justice as well cannot be legally sustained.

31. We may note that so far as Issue no.5 with regard to the maintainability of the suit and the prohibition under the Specific Relief Act is concerned, the learned Single Judge has noted that the plaintiff has abandoned the relief of reinstatement in service. Therefore, there is no prohibition to the maintainability of the suit which remains simpliciter a suit for compensation on a plea that he was wrongfully terminated from service.

32. So far as the affidavit which was directed to be filed on 14th September, 2011 after the arguments were closed in the matter, is concerned, the same could not have been considered by the learned Single Judge without the plaintiff proving the same on record and giving an opportunity to the defendants to cross-examine the plaintiff with regard thereto.

33. In view of the above discussion, we direct as follows:-

(i) The judgment and decree dated 26th September, 2011 is hereby set aside and quashed.

(ii) The matter is remanded for consideration afresh on issue nos.1 to 4 & 6 before the learned Single Judge who shall proceed in the matter uninfluenced by any observation made by us in the present judgment.

(iii) The learned Single Judge shall give opportunity to the plaintiff to prove the affidavit and the documents, if any, enclosed therewith in accordance with law, which has been filed pursuant to the order dated 14th September, 2011 and give the defendants an opportunity to cross-examine the plaintiff with regard thereto before taking the same on record.

(iv) It is made clear that we have not opined on the merits of the case.

(v) In view of the above directions, the Registry is directed to release the amount of Rs.15,00,000/- with all accruals thereon deposited by the defendants in terms of the order.

(vi) The parties shall appear before the learned Single Judge for directions on 16th September, 2014.

The appeals are allowed in the above terms.