

(1966) 11 DEL CK 0009

In the Delhi High Court

Case No : First Appeal No. 88-D of 1956

Bharat Fire and General Insurance Ltd.

APPELLANT

Vs

Parameshwari Prasad Gupta

RESPONDENT

Date of Decision : 25-11-1966

Acts Referred:

Citation : (1966) 11 DEL CK 0009

Hon'ble Judges : K.S. Hedge, C.J.; S.K. Kapur, J

Bench : Division Bench

Advocate : K.C. Jain with R.M. Gupta, for the Appellant; G.B. Agarwala with K. Dayal and Miss Uma Mehta, for the Respondent

Final Decision : Allowed

Judgement

1. This judgment will dispose of three regular first appeals, being R. F. A. Nos. 88-D of 1956. 89-D of 1956 and 104-D of 1956.

2. Parmeshwari Parshad Gupta (hereafter referred to as Gupta) filed a suit against Bharat Fire and General Insurance Limited (hereafter referred to as the company) for a declaration that he continues to be the General Manager of the company and recovery of Rs. 31,152/13/-. In the alternative, he asked for a decree for Rs. 1,63,820 as money due to him from the company as detailed in the plaint. This suit was registered as suit No. 282 of 1954. The Trial Court declined the decree for declaration but awarded to Gupta a decree for Rs. 73,936/15/9 as under:

(1) Rs. 1, 480/10/3 as salary for 17 days from 1st December, 1953 to 17th December, 1953, at the rate of Rs. 2700 per month;

(2) Rs. 52/4/3 as the pay of the chauffeur for that period;

(3) Rs. 2,700 on account of one month's salary in lieu of notice.

(4) Rs. 16,200 on account of gratuity for six months at the rate of Rs 2,700 per month;

(5) Rs. 5,100 as bonus for the years 1951 and 1952; and

(6) Rs. 48,404/1/3 on account of provident fund.

The company also filed a suit against Gupta for the recovery of Rs. 1,10,000, being suit No. 306 of 1954 in which the company was granted a decree for Rs. 5,759/9/6 with proportionate costs. This amount consists of-

(a) Rs. 2,443/8/- on account of income tax and super-tax on bonus;

(b) Rs. 2,975/-/6 on account of income tax and super-tax on cash received in lieu of leave;

(c) Rs. 90/- on account of telephone charges;

(d) Rs. 32/5/- being the amount spent on petrol; and

(e) Rs. 218/12/- on account of the excess amount in the hands of Gupta out of the advance obtained by him for his trip to Bombay.

Regular First Appeal No. 88-D of 1956 is the appeal by the company against the rejection of its claim in suit No. 306 of 1954. Regular First Appeal No. 89-D of 1956 is also company's appeal against the award of a decree for Rs. 73,936/15/9 passed in favour of Gupta and Regular First Appeal No. 104-D of 1956 is Gupta's appeal against the rejection of his other claims in his suit.

3. I will first take up Regular First Appeal No. 88-D of 1956 and deal with only those items which have been disputed at the bar. Before doing so I may point out a few salient facts having a bearing on the matter. Gupta was appointed on 16th October, 1942, as Secretary of the Company. At the relevant time in the year 1953 he was working as General Manager of the Company and claim of Gupta is that his salary at that time was Rs. 2,700 per month, while the company maintains that it was Rs. 2,000 per month and that is one of the controversies which will have to be resolved. The company's case is that an anonymous complaint had been received showing various irregularities by Gupta and as a result thereof the Chairman had a discussion with Gupta in which the latter agreed to leave the company. On 23rd December, 1953, a letter was written by the company to Gupta (Exhibit D. 9) calling upon him inter alia to hand over all papers and books of the company in his possession as various irregularities committed by him had come to the notice of the company. Before that an emergent meeting of the Board of Directors of the company had been convened on 16th December, 1953, whereat four Directors, namely Shri Shriyans Prasad, Shri Rajendra Kumar Jain, Brij Mohan Lal and Shri Ravi Parkash Jain, were present. It is alleged by the company that at that time there was another Director also but since he was at Calcutta he could not be contacted and admittedly no notice of the meeting had been given to him. The proceedings of the said meeting are Exhibit D. 95. The minutes of the meeting show that the Chairman placed an anonymous typed letter dated 10th October, 1953, before the meeting and pointed out the result of his discussion with Gupta on the

subject. It was inter alia resolved that Gupta be relieved of his office with immediate effect and the powers of attorney granted to him on 12th November, 1942, and 16th January, 1947, be cancelled. On the same date, that is, 16th December, 1953, Gupta wrote a letter to the company (Exhibit D. 6) asking for leave for eight months. On 17th December, 1953, the Chairman of the company sent a telegram to Gupta (Exhibit D. 8) intimating that his services had been terminated by the Board of Directors with immediate effect. On the same date the Chairman of the Company also wrote a letter to Gupta (Exhibit D. 89) dealing with his leave application. In the said letter it was inter alia pointed out:

(1) "It looks obvious that having known the decision regarding the severance of your connection with the company, you have sent this application;" and

(2) "...It has come to light that you have drawn your remuneration in excess. According to the resolution of the Board of Directors your remuneration was fixed, only free of income tax, while you have drawn free of all taxes. Extra receipts of the amounts on this account be please refunded."

On 22nd December, 1953, Gupta wrote to the Chief Accountant of the company asking for up-to-date accounts and this letter was replied to vide Exhibit D. 9 which has already been mentioned above. On 23rd December, 1953, another meeting of the Board of Directors of the company was convened after proper notice to all the Directors. The proceedings of the said meeting are Exhibit D. 96. In this meeting the following four Directors were present:

1. Shri Shriyans Prasad.
2. Shri R.K. Jain.
3. Shri B.P. Khaitan.
4. Shri Brijmohan Lal Raizada.

The proceedings of the meeting of the 16th December, 1953 were read and confirmed and the action taken in terminating the services of Gupta was also approved. On 12th May 1954 a letter was addressed by Mr. K. C. Jain, Advocate for the company, to Gupta pointing out that promissory note for Rs. 15,000 was taken from one Shri M. M. Bhatt Branch Manager of the company at Bhavnagar, although no amount was paid to him and comments of Gupta were invited in this behalf. Again on 19th May, 1954, Mr. K. C. Jain, Advocate for the company, wrote to Gupta a letter (Exhibit D. 11) enumerating various irregularities alleged to have been committed by Gupta and asking him to show cause why the order of termination of services be not reviewed and converted into an order of dismissal. On 26th July, 1954, Shri L. N. Modi sent a telegram to Gupta saying that no explanation regarding the allegations contained in Mr. K. C. Jain's letter had been received and the committee referred to in the letter dated 19th will hold its sitting on 28th July at 4 p.m. to go into the matter and report their views to the Board for its decision. Gupta was asked to send his written explanation if he so desired and even if he did not want to do so he could be present at the

deliberations of the committee. This telegram was subsequently confirmed by a letter (Exhibit D. 26) and on 14th June, 1954 Gupta wrote to Mr. K. C. Jain a letter (Exhibit D. 14) broadly denying all the charges against him on 27th July, 1954 Gupta instituted the suit for declaration, being suit No. 284 of 1954 as already mentioned.

4. In Regular First Appeal No. 88-D of 1956 the first point urged by Mr. K. C. Jain, the learned counsel for the company relates to the payment of super-tax on Gupta's salary by the company. The contention of Mr. Jain is that the company was only obliged to pay income tax on the salary of Gupta and not the super-tax and consequently Gupta is liable to refund the benefit received by him on this account. The relevant documents in this connection are three resolutions dated 16th May, 1944, 29th June, 1945, and 3rd June, 1946. They have been marked as Exhibits D. 5/A to D/5/C. In the resolution dated 16th May, 1944, it was decided that Gupta will get his salary free of income tax from 16th October, 1942 onwards. By the resolution dated 29th June, 1945, it was resolved that the remuneration of Gupta at the rate of Rs. 1,500 per month, free of income tax, with retrospective effect from 1st January, 1944 to 31st December, 1944 and at the rate of Rs. 1,600 per month, free of income tax, with effect from 1st January, 1945 onwards be confirmed. By the third resolution dated 3rd June, 1946, Gupta's salary at the rate of Rs. 2,000 per month, free of income tax, with effect from 1st January, 1946, onwards was confirmed. The company's claim was that Gupta was allowed salary free of only income tax but he during the period 1st April, 1946, to 30th November, 1953, drew his salary not only free of income tax but also free of supertax and thereby overdrew Rs. 25,790/6/-. Refund of this amount was claimed by the company. The decision on the question, therefore, turns on the interpretation to be placed on the words "free of income tax". The meaning of the term has to be ascertained not only having regard to the language used but also the surrounding circumstances. I must, however, confess that even on the basis of the plain language used my opinion is that Gupta was entitled to salary free of super-tax as well. I base this opinion on the ground that the words "free of income tax" clearly imply free of taxes on income and there is no; ambiguity about the same. I am not unmindful of the well accepted principle that if the contract is wholly in writing the parties are confined within the four corners of the document in which they have chosen to enshrine their agreement and neither of them can adduce evidence to say that his intention has been misstated in the document or that some essential feature of the transaction has been omitted. But, at the same time, in cases where it is considered that the language of the contract is susceptible of two interpretations, it is not unknown that the Courts do resort to the surrounding circumstances to find out the intention of the parties and it is for this reason that I mentioned "the surrounding circumstances" a little while ago. What then is the meaning to be given to the words "free of income tax". Persual of section 55 of the Indian income tax Act, 1922, would show that super-tax is nothing but "an additional duty of income tax..." "I am conscious of the distinction sought to be pressed on us by the

learned counsel for the company between the two expressions as used the Act. The argument on behalf of the company is that when the law has chosen to use two different expressions, the agreement referring to only one of them must be held confined to that alone. Apart from the fact that in the choice of words the contracting parties cannot be attributed the same wisdom as is attributed to the Legislature I find that in every essential feature super tax and income tax are the same. I feel myself, therefore, unable to recognise any distinction between "income tax" and super-tax when construing the word "income tax" as used in the resolutions. This conclusion of mine is supported by *In re Reckitt, Reckitt v. Reckitt*, (1932) 2 Ch. 144. Mr. K.C. Jain has referred us to a decision of their Lordships of the Supreme Court in *State of Madhya Pradesh and Others Vs. Sirajuddin Khan*, . That decision is of no assistance to Mr. Jain for every case has to be decided on the facts and circumstances thereof and the words cannot be put into a straight jacket of a definition judicially evolved. In *State of Madhya Pradesh and Others Vs. Sirajuddin Khan*, rule 2(2) (c) of Schedule I to the Madhya Pradesh Abolition of Proprietary Rights (Estates. Mahals Alienated Lands) Act, 1950 fell for consideration and the question was whether for computing the compensation super-tax had to be deducted besides the income tax from the gross income under rule 2(2)(c) of the said Schedule. Two reasons were given by their Lordships of the Supreme Court in coming to the conclusion that the expression "income tax" in rule 2(2) (c) of Schedule I excluded super-tax -

(i) It was not legally possible to disintegrate and allocate a portion of the super-tax to the income attributable to the forest and the rules made under the Act did not provide for any machinery for allocating the super-tax payable on the total income in the different sources; and (ii) the mention of one of the two well understood expressions was an indication that only income tax was intended to be deducted.

It would thus appear that the decision was based on the construction of the rule itself having regard to, and in the light of, the various provisions of the Act under consideration. In the result, my conclusion on this point is that Gupta was entitled to salary free of super-tax as well and this is further strengthened by the fact that for several years super-tax was paid by the company without objection. I am not prepared to accept the suggestion by the learned counsel for the company that its Directors may not have noticed this irregularity for all these years.

5. The second contention of Mr. K. C Jain on behalf of the company is regarding issue No. 2, which reads -

Did the defendant make any alteration in the minute book in respect of the resolution passed on 27th March, 1952 regarding the increase in his salary and did he thereby draw additional sum of Rs. 1,100/-besides income tax, super-tax and contribution towards provident fund and to what extent? O.P.

The claim of the company is that under the resolution dated 27th March. 1952

(Exhibit D. 5/E) Gupta was allowed an increment only for one year from 1st January, 1951 and not from year to year and the words "annual" and "in each subsequent year thereafter" were surreptitiously got introduced by Gupta. The company has claimed Rs. 1,100/- on account of the amount thus overdrawn; Rs. 361/- as income tax and super-tax which the company had to pay on this amount; and Rs. 103/2/- as excess contribution of the company towards the provident fund of Gupta. Shri R. K. Jain a Director of the company, appeared as D. W. 5 and deposed that the decision in Exhibit D. 50/C was recorded by him and Gupta was given an increment of Rs. 100/-. He affirmed that the increment was on for one year and not for any subsequent year. He further said that the words "and in each subsequent year" were not there when the proceedings were confirmed in the meeting held on 20th June, 1952 and that the word "annual" did not come to his notice. The contention on behalf of the company is that Gupta got the word "annual" written in the resolution Exhibit D. 5/E, from Shri J. K. Jain D. W. 10 who was his subordinate and initialled the same. Shri J. K. Jain appearing as D. W. 10 disclosed. *"I have seen just now Exhibit D. 5/E. The word "annual" in the second line was got added by the plaintiff in the draft of the minutes prepared by me although the word "annual" did not arise out of the decisions, D. 50/C recorded in the Agenda Book. I added this word at the instance of the plaintiff. Next year at the time of the increment I asked the plaintiff If the matter should be brought before the Board. The plaintiff asked me to bring the minute book, which I did. He asked me to add the following words "and in each subsequent year thereafter" in the original resolution. I hesitated. Thereupon he told me that he would initial the addition and my responsibility for addition would cease. Thereupon I made the desired addition and the plaintiff initialled."

The learned counsel for the company seeks to further support his argument by reference to the document, Exhibit D. 50, which is an extract from the Agenda Book of the Board's meeting held on 27th March, 1952. Item 9 of the agenda before the meeting was-----"to consider question of the increments to be allowed to Shri P. P. Gupta, General Manager, and also question of his free use of furnished residence". The decision of the Directors recorded in the opposite column reads.....". Rs. 100/- increment from 1st January, 1952 and free furnished house from 1st April 1951 with retrospective effect". Having considered the evidence on this aspect I am of the opinion that the resolution, Exhibit. D./5/ E, correctly represents the increment granted and, therefore, there is no merit in the company's contention. It appears that Gupta is right when he says, while appearing as his own witness, that he was to get an annual increment at the rate of Rs. 100/- and the words "annual" and "and in each subsequent year thereafter" were not interpolations as alleged by the company. No doubt the document Exhibit D. 50, that is, the Agenda Book of the Board's meeting dated 27th March, 1952 does not show that the increment of Rs. 100/- was from year to year but as is obvious from the perusal of other items of the same minute this was only record of proceedings in a summary manner and had necessarily to be

elaborated at the time of incorporation in the minute book. The learned counsel for Gupta also laid considerable emphasis on the word "increments" in the 8th item of agenda, but apart from that the very look and the language of the resolution shows that the company's contention cannot stand. The case as put forth by the company in the evidence of Shri J. K. Jain (D. W. 10) is that the words "and in each subsequent year thereafter" were added a year later. I see no point why these words should have been added because the resolution would carry the same meaning with the word "annual" there as it would carry in spite of the addition of the last words. If the word "Annual" was there in the resolution there could be no object of adding the last words as these would not enlarge the scope of the resolution, and, if they were added, they would at the most clarify the existing position and not add to the same. So far as the word annual is concerned, Shri J. K. Jain (D. W. 10) stated that this was got added, by Gupta in the draft of the minutes prepared by him although it did not arise out of the decision of the Directors. Later he stated that he never brought this addition to the notice of the Directors till after the exit of Gupta from the company. We have seen the original resolution dated 27th March, 1952, as recorded in the minute book and I have no doubt in my mind that the word "annual" could not have been an interpolation. The said resolution is signed by Shri Shriyans Prasad, Chairman, on 20th June, 1952. There is also a presumption under the statute of the correctness of this resolution. It is impossible to accept that if the resolution did not correctly represent the decision of the Directors the Chairman would have signed it. Mr. K.C. Jain appearing for the company contended that the said resolution is signed by Shri Shriyans Prasad Chairman, who was not present in the meeting dated 27th March, 1952, and, therefore, he may not have noticed the change. It, however, appears that Shri R. K. Jain and Raizada Brijmohan Lal were present, in the meeting and they were also present in the meeting dated 20th June, 1952. In the meeting dated 20th June, 1952, the minutes of the meeting dated 27th March, 1952, were confirmed without any objection. This lends further support to the argument on behalf of Gupta that word "annual" correctly represented the position. It was for the company to disprove that something properly recorded in the resolution did not represent the correct position. On reading of the evidence my conclusion is that the company has failed to do so. Once it is held that the word "annual" properly existed in the resolution the question of alleged interpolation of the last few words loses all significance. I may also point out that much reliance cannot be placed on the evidence of Shri J.K. Jain who, on his own saying was a party to the illegality alleged to have been committed by Gupta. This contention of the company also, therefore, fails.

6. This takes me to issues Nos. 10 and 11 which read-

Issue No. 10

Did the defendant make use of electrical materials purchased from the company's funds in the premises in Delhi Cloth Market, Delhi? If so, of what

value? O.P.

Issue No. 11

If issue No. 10 is proved, whether the defendant is not liable to pay this amount?

The amounts claimed are Rs. 92/2/- and Rs. 50/11/-. The allegation of the company is that on 23rd October, 1952, and 8th December, 1953, Gupta got some electrical materials of the above-mentioned value fitted in the premises in Delhi Cloth Market in which Gupta was interested and got the payment of these materials from the company's funds. After going through the evidence the trial Court has come to the conclusion that the company has failed to prove that the electrical materials in dispute were used at the private house of Gupta in the Cloth Market. We have ourselves considered the evidence and I am of the opinion that the conclusion of the trial Court is right.

7. The next controversy is regarding issue No. 13, namely-

Is the defendant guilty of negligence and breach of duty in respect of the payment of income tax which led to the imposition of a penalty of Rs. 5,830/-? O.P.

The case of the company is that it received a letter (Exhibit D. 111) dated 1st December, 1951, from the income tax Officer intimating that the next instalment of tax payable u/s 18-A fell due on 15th December, 1951. By the said letter the income tax Officer required the company to pay the December instalment on or before 15th December, 1951. On the said letter there is a note by Shri J. K. Jain reading-

As per verbal instructions of the General Manager on 6th December, 1951 please put up this letter after 14 days.

This note is dated 7th December, 1951. The next document having bearing on the matter is Exhibit D. 47, a letter written by Gupta to the income tax Officer saying that the company was closing its annual accounts on 31st December, 1951, and it will therefore, deposit the amount of the instalment in the 1st week of January, 1952. Again, a letter dated 29th December, 1951 (Exhibit D. 48) from Gupta to the income tax Officer shows that a cheque for the amount was sent to the income tax Officer on that date. The last in the series under this head is a letter dated 31st December, 1951 (Exhibit D. 49) from Gupta to the income tax Officer wherein Gupta pointed out that-

(i) on 27th December, 1951 there was a talk between the income tax Officer and an Assistant in the office of Shri A.K. Sarkar on telephone during which the income tax Officer informed the Assistant that the company could make the payment latest by 31st December, 1951;

(ii) it was in accordance with the said instructions that a cheque was sent to the income tax Officer on 29th December, 1951 but the letter enclosing the cheque was not taken delivery of by the Assistant in the income tax Officer's office with

the result that the company had to deliver the letter and the cheque on 31st December 1951: and

(iii) a peon from the office of the income tax Officer went to the company's office on 31st December, 1951 at 12 noon and delivered to the company an order dated 28th December, 1951, imposing a penalty on the company of Rs. 5,830/-. Shri J. K. Jain (D. W. 10) also spoke about this alleged default in his evidence and stated that Gupta had verbally ordered him to put up the letter. Exhibit D. 111 after 14 days and he made a note to that effect on the said letter. The argument on behalf of the company is that this penalty was imposed as a result of gross neglect by Gupta and the amount was not paid in spite of the fact that the company had Rs. 1,33,000/- available in its bank account. Apart from everything else, there is no evidence to show that funds were available with the company. If the funds were really available it was very easy for the company to adduce evidence about the same. Neither Gupta nor Shri R. K. Jain, a Director of the company, was asked to testify in this behalf. In this state of evidence Mr. K. C. Jain, the learned counsel for the company, had to fall back upon the allegations made in paragraph 15 of the plaint. His argument is that a specific averment has been made in paragraph 15 of the plaint that this amount was available and though paragraph 15 has been denied in the written statement, in the absence of any specific denial we should treat it as an admission. I am not prepared to construe the pleadings so strictly and, in any case, on this solitary fact, to come to the conclusion that Gupta was guilty of gross negligence in not making the payment. The only evidence is of Shri J. K. Jain (D. W. 10) on whom, as I have already said, I am not prepared to place an implicit faith. May be, the payment was not made because there were no funds, or may be that there were other compelling circumstances which deterred the company from making the payment. It is equally possible that Shri J. K. Jain forgot about the letter and appended the note later. Mr. K. C. Jain, the learned counsel for the company, argued that non-payment must have been due to the fact that Gupta was wanting to show higher profits in the company. That argument does not carry Mr. Jain any further for the income tax liability would have in any case, to be accounted for in the balance-sheet and, therefore, even without payment the company's account position would not have improved. There is no written proof of any fact having been done by Gupta in this behalf. I am not prepared to hold that the company has established gross negligence on the part of Gupta this plea of the company also, therefore, fails.

8. The next item in dispute in this appeal is covered by issues Nos. 15 and 17 which read as under-

Issue No. 15.

Was the defendant's action in advancing a loan of Rs. 15,000/- to Shri M. M. Bhatt consistent with proper management of the company's affairs? If not, with what effect: O. D. Onus objected to.

Issue No. 17.

Was not a sum of Rs. 15,000/- advanced to Shri M. M. Bhatt? O. P.

The allegation of the company in this behalf is that Shri M. M. Bhatt, a Branch Manager of the company was called to the head office by Gupta when the former executed a promissory note for Rs. 15,000/- on 27th May. 1952. The allegation is that Rs. 15,000/- were taken from the company's funds in cash but when Mr. Bhatt was called upon to pay the amount he wrote back saying that he took no cash from the company and the promissory note was executed by him in respect of the outstanding of the previous promissory note and of the premiums. One of the witnesses on this subject is Shri P. N. Sharma (D. W. 4), Officer Incharge General Department and Branches in the company. He stated-

(1) Mr. Bhatt was personally responsible for all outstanding premiums of his Branch.

(2) In December, 1950 Mr. Bhatt came to Delhi and he executed a promissory note for about Rs. 6,000/- for outstanding premiums of his Branch.

(3) In 1952 also premiums were outstanding against him and a substantial amount on the basis of the promissory note was also due from him then.

(4) As a result of talk it was agreed that Mr. Bhatt should execute a promissory note for Rs. 15,00,0/- for the outstanding premiums and the amount of the previous promissory note for Rs. 6,000/-, which was done.

The company mainly relied on the evidence of Mr. Bhatt who was examined on interrogatories. He admitted having made an application for the loan of Rs. 15,000/- and stated that this application was, made with a view to reconcile his debts to the company. He further stated -

I did not receive the amount of Rupees 15,000/-. The said amount was to be credited to my Branch's outstanding premium account. This was at the request of the General Manager Mr. P. P. Gupta.

I do not see how Mr. Bhatt's evidence supports the company. If that evidence is taken at its face value all that it shows is that the promissory note was executed because of certain outstanding amounts against Mr. Bhatt on account of an earlier promissory note and premiums. What appears to have happened is that these amounts were outstanding and with a view to wipe out the premiums' liability the promissory note for Rs. 15,000/- was taken from Mr. Bhatt so that the premiums outstanding were adjusted and the amounts shown as due from Mr. Bhatt. That destroys rather than supports the case of the company. Had the company's allegation been correct that Rs. 15,000/- were actually drawn from the coffers of the company it was very easy for the company to prove it from its books yet no effect seems to have been made to show that Rs. 15,000/- or any amount, were actually drawn from the till of the company. In this view the company's claim under this head must also fall.

9. The last issue is the issue of limitation the contention on behalf of the company is that it could sue even for a period beyond three years because the facts were kept back from it on account of fraud by Gupta. However the discussion on each one of the items, above shows that no fraud was practised by Gupta. Apart from that, the company's claim on all these items having failed on merits the issue of limitation loses all significance.

10. This takes me to Regular First Appeal No. 89-D of 1956 by the company regarding the decree granted in favour of Gupta for Rs. 73,936/15/9. I have already given the break up of this amount earlier. The only items contested by Mr. Jain are-

(1) An amount of Rs. 100/- in the salary allowed to Gupta in lieu of notice;

(2) Rs 16,200/- on account of gratuity;

(3) Rs. 48,404/1/3 on account of provident fund the contest regarding provident fund is on two grounds-

(a) Gupta was entitled only to his contribution and not the company's contribution; and

(b) even if Gupta be held entitled to the company's contribution the total amount comes to Rs. 30,000 and not Rs. 48,404/1/3, as allowed by the trial Court; and

(4) the company maintains that salary for 17 days from 1st December, 1953 to 17th December, 1953 should have also been calculated at the rate of Rs. 2600/- and not Rs. 2700/-.

11. So far as points Nos. (1) and (4) are concerned I have already discussed them above and come to the conclusion that Gupta was given an annual increment of Rs 100/- per month. For that reason this part of the company's claim must fail.

12. So far as the gratuity is concerned the company's claim is based on the last part of the office note Exhibit D/127 which was confirmed by the Board of Directors. The said part reads-"Any member of the staff who is dismissed from his services will not be entitled to any gratuity."

Mr. K.C. Jain's contention on behalf of the company is that though originally Gupta's services were terminated but later on the order of termination was converted into an order of dismissal and, in any case, the object of providing that a member of the staff dismissed from services will not get gratuity was to disentitle dishonest members of the staff from taking benefit thereof and when the substance of the matter is looked at it follows that Gupta's dishonesty established on the record would disentitle him to the benefit of gratuity. On behalf of Gupta it is contended that on the termination of his services the relationship of master and servant came to an end and the company had thereafter no authority to convert the termination order into one of dismissal

order with the result that Gupta's case would not fall within the above-quoted last part of the office note Exhibit D/127. I need not consider the last contention as I am satisfied that no dishonesty on the part of Gupta has been proved. Mr. Jain's main reliance in proof of the alleged dishonesty is that Gupta illegally made the company to pay tax on bonus and leave encashment though on no interpretation he was entitled to anything except the tax-free salary, that he wrongly charged Rs. 90 on account of telephone charges; and that he wrongly withdrew Rs. 32/5/- on account of petrol consumed by his family. So far as the payment of tax is concerned, Gupta was entitled to the tax-free salary and it is not inconsistent with his having bona fide believed that he was entitled to similar benefits regarding bonus and leave encashment. In any case, on the evidence I am unable to come to the conclusion that he did so fraudulently or dishonestly. So far as the telephone charges of Rs. 90/- are concerned, Gupta's case is that before shifting to the company's flat he had a telephone at his residence and was, after shifting, provided with a telephone in his new residence as well. Gupta sought to explain this amount by saying that he used the other premises also for his residence sometimes and therefore, he thought that it would be in the interest of the company to have the extension there Gupta, was by the trial Court ordered to refund this amount, to the company but I am unable to hold that he charged this amount fraudulently or dishonestly. So far as the petrol expenses are concerned, Gupta was allowed free use of the car. His case is that free use implied payment for the petrol charges also. Rightly or wrongly he may have bona fide believed that and I am unable to hold that it was dishonest.

13. Coming now to the provident fund, the company has placed reliance on rule 15 of the Provident Fund Rules (Exhibit D. 124). It is said that Gupta having been dismissed for misconduct he was not entitled to the company's contribution. The earlier discussion on various items shows that no misconduct on the part of Gupta has been established. It must, therefore, be held that Gupta was entitled to the company's contribution. So far as the amount of provident fund is concerned Exhibit P. 51 shows that Gupta had taken an advance of Rs. 15,880/14/-. This evidence has not been rebutted. Consequently it must be held that the total amount due to Gupta was not Rs. 48,404/1/3 as decreed by the trial Court but the said amount minus Rs. 15,880/14/-, that is, Rs. 31,523/3/3. The decree of the trial Court will have to be modified to that extent and the company's appeal partially allowed.

14. This takes me to Regular First Appeal No. 104-D of 1956. The first contention of Mr. C. B. Aggarwal, the learned counsel for Gupta, is that Gupta should have been allowed salary in lieu of notice for a much longer period than one month. There are two sets of Service Rules on the record, being Exhibits D. 3 and D. 4. Rules Exhibit D. 4 commenced from 1st January, 1949, and Exhibit D. 3 from 1st January, 1952. Rule 6 of Exhibit D. 3 provides for determination of service of all employees by 30 days' notice in writing or pay in lieu thereof. These Rules were admittedly framed by Gupta himself and expressly provided that all employees of the company would be governed thereby. Having framed these Rules, which were

applicable to all employees, Gupta continued in the service of the company and Mr. Aggarwal frankly told us that he took certain benefits thereunder. Apart from the benefits, if an employee continues to work after full knowledge of the Rules made applicable to all employees including the employee concerned, it has to be assumed that he agreed to be bound by the same. Mr. Aggarwal pointed out that the Rules must be taken to apply only to those persons whom Gupta was competent to employ. The intrinsic evidence put forth by the Rules, however, counters that argument. It was, therefore, rightly held that Gupta was not entitled to more than one month's salary in lieu of notice.

15. The last contention of Mr. Aggarwal is that the resolution terminating Gupta's employment was not valid as no notice of the meeting dated 16th December, 1953, had been given to all the Directors of the company. Even if that be so, the proceedings of the meeting and action taken in terminating the services of Gupta were ratified. In this view the termination of services of Gupta must be treated as valid.

16. In the result, Regular First Appeals Nos. 88-D of 1956 and 104-D of 1956 fail and are dismissed with costs, but Regular First Appeal No. 89-D of 1956 is partially allowed to the extent indicated above with proportionate costs.

Hegde, C.J.

17. I agree.