
(2012) 03 DEL CK 0418

In the Delhi High Court

Case No : Regular First Appeal No. 294 of 2004

Ge Capital Transportation Financial Services Ltd.

APPELLANT

Vs

Shri Tarun Bhargava

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 12
Contract Act, 1872 — Section 23, 73
Specific Relief Act, 1963 — Section 14(1), 41

Citation : (2012) 6 AD 455 : (2012) 190 DLT 185 : (2012) LLR 608

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Divjyot Singh with Mr. Gurpreet Singh, for the Appellant; Arya Girdhari, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 31.1.2004 decreeing the suit of the respondent/plaintiff/employee against the appellant/defendant/ employer, and by which decree the appellant/defendant was directed to pay the compensation amount of Rs. 10,87,294/- for unlawful termination of services. The amount of damages which were calculated were one month's salary for each year of balance services till the date of retirement of the respondent/plaintiff, and which was found to be 26 years as the respondent/plaintiff was about 34 years of age when his services were terminated and the retirement age was 60 years. The facts of the case are that the respondent/plaintiff was appointed as Business Officer with M/s Shri Ram Fibres Finance Ltd. in the year 1990. After completion of probation, the services of respondent were confirmed on 15.1.1991. The services of the appellant were subsequently governed by the terms and conditions of the appointment letter dated 21.4.1998 issued by the subsequent employer i.e. M/s.

GE Capital Transportation Financial Services Ltd. The respondent/plaintiff claimed that he had to do some interior work in his flat and for which he had no other option but to take leave in November, 2001, and which leave was never refused. It was further pleaded in the plaint that on return from leave to the Ludhiana office on 21.1.2002, he was asked to join at Gurgaon and no work was assigned to him on his joining at Gurgaon. It was pleaded that he was paid salary for January and February, 2002 and his services were terminated by means of the termination letter dated 28.2.2002. It was pleaded that the termination letter was violative of principles of natural justice besides being illegal and an infringement of the terms of the employment. The reliefs claimed in the suit were for declaration and injunction to seek continuation of employment and for salary for the period for which it was not paid and to be continued up to the retirement age of 60 years.

2. The appellant/defendant contested the suit and pleaded that the suit was in fact barred under the Specific Relief Act, 1963. It was pleaded that the services of the respondent/plaintiff were validly terminated. It was contended on behalf of the appellant/defendant that the services of the respondent/plaintiff had to be terminated as he was a delinquent employee who took leave on his own without any sanction.

3. After completion of pleadings, the trial Court framed the following issues:-

1. Whether the suit in the present form is maintainable? OPP
2. Whether the termination of the services of the plaintiff by the defendant is illegal and void? OPP
3. Whether the plaintiff is entitled to the reliefs prayed for? OPP
4. Relief.

4. With regard to issue No. 1 as to the maintainability of the suit, the trial Court held the suit to be maintainable. The trial Court has referred to various judgments of the Supreme Court to hold that there can be a specific performance of a contract for personal service.

In my opinion, the trial court has clearly misdirected itself inasmuch as wherever parties are strictly governed by contractual rights and obligations i.e. the employment is purely a contractual one, i.e. not being under the Government or "State" under Article 12 of the Constitution of India, and also not of an employee covered under the Industrial Disputes Act, 1947 the contractual employment can always be terminated in terms of the contract. Also, even assuming the termination is not as per the contract, at best the entitlement will be to claim damages which naturally flow out of the breach i.e. of the illegal termination of contract.

5. The law in this regard is contained in the judgment of the Supreme Court in the case of S.S. Shetty Vs. Bharat Nidhi, Ltd., Para 12 of this judgment of the

Supreme Court reads as under:-

12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained.

They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages.....No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages.

(Chitty on Contracts, 21st Edn., Vol (2), p. 559 para 1040).

6. I have also had an occasion to consider this very aspect in the recent judgment in the case of Shri Satya Narain Garg through his Legal Heirs Vs. DCM Ltd. and Others, . In this judgment of Sh. Satya Narain Garg (supra) I have referred to the recent judgment of Supreme Court in the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, in support of the proposition that public policy/administrative law principles do not apply to private employment. Paras 7 to 10 of the judgment in the case of Sh. Satya Narain Garg are relevant and the same read as under:-

7. Merely because two views are possible, this Court will not interfere with the conclusion arrived at by the Trial Court, unless the conclusion is illegal or perverse or causes grave injustice. In case of private employment, the employers are fully justified in taking steps for termination of services, if it finds that the employee is not upto the mark. Principles applicable in public law domain do not apply with respect to employees in private employment. Employment in private sector is governed by the terms and conditions of employment, and unless the termination is shown to be violation of the terms and conditions of employment, it cannot be said that the termination is illegal. In the present case, in my opinion, since there was no fixed period of employment so far as the deceased plaintiff is concerned, the deceased plaintiff could have been terminated from services even by a simplicitor notice, assuming even if the services of the deceased plaintiff were upto the mark. Further, even if there is illegal termination of services, it is not possible to grant damages as claimed inasmuch as the principle of mitigation of damages squarely applies. As per this principle of mitigation of damages enshrined in Section 73 of the Contract Act, 1872 even if an employee is illegally terminated from services, he cannot sit at home and he must take sufficient steps to procure alternative employment. The law in this regard is contained in the judgment of the Supreme Court reported as S.S.

Shetty Vs. Bharat Nidhi, Ltd., of this judgment are relevant and the same read as under:

12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained.

They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages... .. No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages.

(Chitty on Contracts, 21st Edition, Vol (2), p. 559 para. 1040).

13. If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured prima facie and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide Collier v. Sunday Referee Publishing Co. Ltd., 1940 4 ALL. E.R. 234 at p.237 (A)). The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment.

7. A reference to the evidence led on behalf of the deceased plaintiff shows that the following is the only evidence which is led to show efforts made for alternative employment:

I did not join any service after termination by defdt No. 1. I am not doing any job since 22.9.93 as I could not find any job despite my efforts.

9. Surely, these types of self-serving averments cannot be held as discharge of onus of proof of mitigation of damages. The statement made by the deceased plaintiff is bereft of any details as to which companies or firms or persons he applied to, and on which dates, and for what position, and for what salary and also the details as to why he could not obtain the alternative employment. I am, therefore, of the opinion that the deceased plaintiff, even assuming he was wrongly terminated from services, failed to prove that he had taken sufficient steps for mitigation of damages.

10. One issue argued before this Court on 17.11.2011 was with regard to a decision of a learned Single Judge of this Court in the case of Tarlochan Singh Mokha Vs. M/s. Shriram Piston and Himalaya House and Others, wherein a learned Single Judge of this Court has, relying upon the decision of the Supreme

Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, held that public policy principles contained and explained in the Brojo Nath Ganguly's case will also apply to private employment. This judgment, however, in my opinion, no longer lays down the correct law inasmuch as the Supreme Court recently in the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, has held that public policy principles cannot apply to private employment. Head note "E of the judgment succinctly brings out the ratio in this regard and the same reads as under:

E. Constitution of India - Art. 226 - Maintainability - Generally - Relief, held, cannot be granted once writ petition is held to be not maintainable

Public-policy principles can be applied to employment in public sector undertakings in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labour activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of the private sector. The service rules and regulations which are applicable to government employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner. (Para 26)

In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the courts have been reluctant to exercise the powers of judicial review and whenever the powers were exercised as against private employers, it was solely done based on the public law element involved therein.(Para 16)

The decision of the employers in the preset cases to terminate the services of their employees cannot be said to have any element of public policy and the remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments, especially in view of the disputed questions involved as regards the status of employees and other matters. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as being opposed to the principles of public policy and thus as void and illegal u/s 23 of the Contract Act, 1872. (Para 31)

7. In the present case, admittedly no evidence at all has been led by the respondent/plaintiff as to steps taken by him to get alternative employment when he was terminated at the age of 34 years. Further, as per the admitted contractual terms contained in the letter of appointment dated 21.4.1998, Ex.P9, the services of the respondent/plaintiff could be terminated by a one month's notice. This para 7 of the letter dated 21.4.1998 reads as under:-

7. One month's notice will be required in writing from either side in case of service termination. Payment of one month's salary will be required in lieu of notice. However, GE Capital TFS Reserves the right to terminate your

employment on grounds of policy misconduct of unsatisfactory job performance.

8. Whatever be the language of the prayer clauses of the plaint, and whatever be the ground of cause of action pleaded, the sum and substance of the cause of action in the plaint is for re-employment and continuation of employment with service benefits till the age of 60 years. In effect, therefore there is sought specific performance of the contractual services and which is impermissible in law. I may note that the contracts of personal service are only enforceable where the employer is a Government company or an arm of the State as per Article 12 of the Constitution of India. As per Section 14(1)(b) of the Specific Relief Act, 1963, a contract for personal service cannot be enforced.

9. In fact, the subject suit was also barred by Section 14(1)(c) of the Specific Relief Act, 1963 which provides that the contract which is in its nature determinable, cannot be specifically enforced. I have referred to the fact that the contract was determinable by a one month's notice as per clause 7 of the terms and conditions of the letter dated 21.4.1998 and therefore the contract which was determinable by one month's notice cannot be specifically enforced. What cannot be done directly cannot be done indirectly i.e. if there cannot be specific performance of the contract, there cannot be declaration and injunction to continue such a service contract. Section 41(e) of the Specific Relief Act, 1963 provides that injunction will not be granted to prevent breach of the contract, performance of which could not be specifically enforced.

10. Therefore, looking at the matter from the point of view of the contract of personal service not being enforceable u/s 14(1)(b) of the Specific Relief Act, 1963, the contract being determinable in nature and hence cannot be enforced as per Section 14(1)(c) of the Specific Relief Act, 1963 or that injunction could not be granted to prevent breach of a contract which cannot be specifically enforced, the suit was clearly barred and not maintainable. The judgment of the trial Court does not refer to the binding provisions of Sections 14(1)(b), (c) and 41(e) of the Specific Relief Act, 1963. To complete the discussion on this aspect, I would once again refer to the recent judgment of the Supreme Court in the case of Binny Ltd. (supra) and which specifically provides that in private contracts i.e. in strict contractual matters, there does not arise the issue of applicability of Administrative Law principles.

11. I have already stated above that even presuming there was breach of contract, at best reasonable damages can be granted and once there is a clause for termination of services by one month's notice, it can only be one month's notice which can be treated as reasonable damages inasmuch as parties understood the period for obtaining of an alternative employment as a one month's notice period-vide SS shetty's case (supra).

12. Learned counsel for the respondent/plaintiff places heavy reliance on two judgments of the two learned Single Judges of this Court. The first judgment is the judgment in the case of D.C.M. Limited and Another Vs. Mahabir Singh Rana,

and the second is S.M. Murray Vs. Fenner (India) Ltd., . It was argued on behalf of the learned counsel for the respondent/plaintiff that since the retirement age is mentioned as 60 years in the letter dated 21.4.1998, it would mean that there is automatically a fixed employment till 60 years.

In my opinion, the arguments which have been urged on behalf of the respondent/plaintiff have no merits. The judgments which have been relied upon on behalf of the respondent/plaintiff also do not apply to the facts of the present case. So far as the judgment in the case of Mahabir Singh Rana (supra) is concerned, I may note that possibly the said judgment is a judgment where the employee was an employee under the Industrial Disputes Act, 1947. The employee in the case of Mahabir Singh Rana (supra) was employed in the mill as a Weaving Apprentice and was working as an Assistant Weaving Master when his services were terminated. The judgment in the case of Mahabir Singh Rana (supra) also possibly cannot be said to lay down a good law inasmuch as the said judgment ignores the binding judgment of the Supreme Court in the case of S.S. Shetty (supra) and which specifically provides that in case of illegal termination of contractual employment, there can only be granted reasonable damages i.e. salary for a few months till an alternative employment is obtained and one month if the services are terminable by one month's notice. I have already noted that in the facts of the present case, the parties had agreed that one month's notice period was a sufficient notice period. So far as the judgment in the case of S.M. Murray (supra) is concerned the same does not apply to the facts of the present case and is distinguishable because in the said case the contract of employment was for a fixed period of five years and the suit which was decreed in the said case was for the amount of salary and consequential benefits which were only for the balance period of five years and services for which period could not be performed because of earlier illegal termination. This is made clear by a reading of para 28 of the said judgment and as per which the salary has been granted from the date of wrongful termination of service agreement i.e. 21.4.1984 till it was to expire in its normal course i.e. 16.2.1986 i.e. the balance period of service of five years.

13. In view of the above, the appeal has to succeed. The impugned judgment granting one month's salary for each of the balance years of 26 years i.e. the salary for 26 months is clearly illegal and violative of the judgment of the Supreme Court in the case of S.S. Shetty (supra) and Binny Ltd. (supra). The suit was also not maintainable in terms of Sections 14(1)(b) and (c) of the Specific Relief Act, 1963 read with Section 41(e) thereof.

14. Appeal is therefore accepted. Impugned judgment and decree dated 31.1.2004 is set aside. Suit of the respondent/plaintiff will stand decreed only for one month's salary alongwith interest thereon @ 9% per annum simple till today. Counsel for the respondent/plaintiff agrees that one month's salary in the present case was Rs. 41,819/-, a figure which is given in para 35 of the impugned judgment. Parties are left to bear their own costs. Decree sheet be

prepared. Trial Court record be sent back.

15. Since the decretal amount of Rs. 10,87,294/- has been deposited in this Court, and which amount has been put in a fixed deposit, it is directed that the respondent/plaintiff be paid the amount due to him as per this judgment out of the amount deposited in this Court and the accrued interest thereon i.e. the amount of Rs. 41,819/- with interest @ 9% simple from 1.3.2002 till date. The balance amount thereafter remaining, be refunded back to the appellant. Registry shall issue the necessary cheques in favour of respective parties within a period of four weeks from today.