

(2000) 10 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1366 of 1995

Haryana Land Reclamation and Development Corporation
Limited

APPELLANT

Vs

Rajbir Singh

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35

Constitution of India, 1950 — Article 12, 311

Food Corporation of India Staff Regulations, 1971 — Regulation 15, 15(3), 7

Citation : (2000) 10 P&H CK 0126

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. Gobind Goel, for the Appellant; Mr. R.K. Malik, for the Respondent

Judgement

M.L. Singhal, J.—Vide order Ex.P 1 dated 9.5.86, respondent-plaintiff was appointed to the post of Accounts Clerk in the Haryana Land Reclamation and Development Corporation Limited, Chandigarh (hereinafter referred as Corporation). Vide order dated 22.5.87, his services were terminated by the Managing Director of the Corporation. He challenged order Ex.P2 terminating his services saying that it is illegal, void and not binding on him and that he was entitled to reinstatement with full backwages. It was alleged in the plaint that the termination of his services was not in accordance with the terms and conditions of his appointment. As per clause 7 of letter Ex.P1, his services could be terminated during the period of probation only after notice of one month or one month's salary in lieu thereof had been given to him. Similarly, subject to Clause 12 of the letter of appointment Ex.P1, he was at liberty to resign from service after giving one month's notice or payment in lieu thereof. His services were terminated in terms of Clause 2 of letter Ex.P1 during the period of probation but without tendering him one month's salary and, therefore, termination of his service is illegal, against law, facts, procedure and is null and void having no effect on his rights and is liable to be treated as non-est that he is entitled to

reinstatement with full backwages and other consequential benefits.

2. Defendants contested the suit of the plaintiff urging that this Corporation is a corporate body. Its management is run by Board of Directors. It is not "State" within the meaning of Article 12 of the Constitution of India and as such he cannot ask for declaration claiming reinstatement in service. It was further urged that his services were terminated purely in accordance with the terms and conditions of his employment detailed in letter Ex.P1 through an innocuous order, which is not stigmatic.

3. On the pleadings of the parties, the following issues were framed by the trial Court :-

1. Whether the order bearing No. HLRDC/PF/3644-46 dated 22.5.1987, is null and void and not binding on the rights of the plaintiff ? OPP

2. Whether the plaintiff is entitled to the relief of declaration with consequential relief of granting of pay etc. ? OPP

3. Whether the suit of the plaintiff is false and frivolous and the defendants No. 2 and 3 are entitled to special costs as provided u/s 35-A CPC ? OPD

4. Relief.

4. Vide order dated 15.9.93, plaintiffs suit was dismissed by Sub Judge 1st Class, Charkhi Dadri, in view of his finding, that order terminating his services is perfectly legal inasmuch as Clause 2 which governs his appointment authorised the termination of his services without any notice and without assigning any reason during the period of probation and his services were terminated during the period of probation through an order, which was an innocuous order attaching no stigma.

5. Plaintiff went in appeal, which was allowed by Additional District Judge, Bhiwani vide order dated 22.4.95.

6. Not satisfied with the order of Addl. District Judge, Bhiwani dated 22.9.95 setting aside that of Sub Judge 1st Class, Charkhi Dadri dated 15.9.93, Corporation has come up in appeal to this Court.

7. Clause 2 of letter Ex.P1 appointing him to the post of Accounts Clerk reads as follows :-

"2. Your services will be on probation for (i.e. upto.....). After completion of one year if your work, conduct etc., are found to be satisfactory and the Management finds it necessary to retain your services, you will be confirmed. If on completion of the probationary period, your services are not confirmed by a separate letter, it shall be assumed that your probationary period has been extended, pending decision by the management. Your appointment is on purely temporary basis till such time you are confirmed in writing. The probation period may be extended at the sole discretion of the Management. In case your work is not found to be

satisfactory your services will be liable to be terminated without any notice and without assigning any reason during the probationary period.

8. It is clear from this Clause that he was on probation. After completion of one year if his work and conduct etc. were found to be satisfactory, he could be confirmed. If on completion of the probationary period, his services were not confirmed by a separate letter, it could be assumed that his probationary period had been extended, pending decision by the Management. His appointment was on purely temporary basis till such time he was confirmed in writing. The probation period could be extended at the sole discretion of the Management. In case his work was not found to be satisfactory his services were liable to be terminated without any notice and without assigning any reason during the probationary period."

9. It may be mentioned here that his services were terminated during the period of probation and his services could be terminated without any notice and without assigning any reason during the period of probation as per Clause 2 *ibid*.

10. Learned counsel for the appellant-Corporation submitted that the very object of putting an employee on probation is to test his suitability and if the appointing authority finds that the candidate is not suitable and is not coming to the required measure of efficiency, it certainly has power to terminate the services of the employee. In support of this submission, he drew my attention to *K.V. Krishnamani Vs. Lalit Kala Academy*, .

11. Learned counsel for the respondents, on the other hand, submitted that order Ex.P2 terminating his services could not be sustained as it does not conduce to the terms and conditions governing his appointment embodied in letter Ex.P1. He submitted that clause 7 of letter Ex.P1 clearly lays down that "notwithstanding any of the clauses of this letter of appointment the Management reserves the right in its sole discretion of terminating this appointment after giving you notice of one month or one month's pay in lieu thereof. Similarly, subject to clause No. 12 of the appointment letter you shall be at liberty to resign from service after giving one month's notice or payment in lieu thereof." It was submitted that he was shown the door without tender of one month's salary, which act was unwarranted and illegal. In support of this submission, he drew my attention to *Chavanapuzha Sasindran v. Indian Council of Medical Research and others* 1991(7) SLR 27 where it was held that "where appointment was on temporary basis, services were liable to termination on one month's notice, termination of services without any notice was invalid."

12. In this case, in my opinion, the respondent would not be able to claim any protection of Clause 7 incorporated in letter Ex.P1, when Clause 2 governing his appointment is quite clear and categorical which provides in quite certain and unambiguous terms that his services could be terminated during the probationary period without assigning any reason and without any notice in case his work was not found satisfactory by the Management." It would bear

repetition that so long as he was on probation, he was on trial. His suitability for retention in service was being overseen by the Management and after overseeing his performance during the probationary period, the Management found him unsuitable for retention in service. An employer has the right to say good bye to his employee and show him the door if during the period of probation he feels that he does not have the necessary potential for being retained in service. It would be too much to say that if one's services are terminated during the period of probation, he is entitled to one month's notice or one month's salary in lieu thereof. Order terminating one's service or retaining one's service is arrived at after the employer has overseen his performance during the period of probation and has felt this way or that way. Learned counsel for the respondent relying upon *Parveen Chander, Junior Engineer (Electrical) v. The Food Corporation of India and others* 1984(3) SLR 13 submitted that if the services of a probationer are terminated without giving one month's notice or pay in lieu thereof, that would be bad.

13. In *Parveen Chander's* case (*supra*), he was Junior Engineer, Electrical in the Food Corporation of India. Amongst the terms and conditions for offer of the said post, it was provided that he will be on probation for a period of one year from the date of his appointment, which may be extended for a further period not exceeding one year. On completion of the period of probation, he was to be considered for confirmation to that post. During the period of probation the petitioner was liable to be discharged from service without any notice or without assigning any reason. This seemingly was in spirit of Regulation 15 of the Food Corporation of India (Staff) Regulation, 1971 framed under Food Corporation of India Act, 1964. The said Regulation provided that every person regularly appointed to any post in the Corporation under sub clause (a) of clause (1) of Regulation 7 shall be required to be on probation for a period of one year from the date of appointment and the appointing authority could in its discretion extend the period of probation by a further period not exceeding one year. Further, during the period of probation, an employee directly recruited was liable to be discharged from service without assigning any reason by giving him a notice of 30 days or pay in lieu thereof. However, an employee who had satisfactorily completed his period of probation in any post, had thereafter to be confirmed. While terminating the services of *Parveen Chander*, the Senior Regional Manager of the FCI acted under Regulation 15(3) of Food Corporation of India Staff Regulation Act, 1971, the termination of his services was found to be bad as it was not in strict compliance with the mandatory requirement of the Regulation, according to which, during the period of probation, an employee directly recruited was liable to be discharged from service without assigning any reason by giving him notice of 30 days or pay in lieu thereof.

14. In the case in hand, learned counsel for the respondent could not draw my attention to any such provision in the Act or rules on which his appointment could be said to rest during the period of probation. In my opinion, it was a simple order of termination of services of a probationer during the period of

probation, which could be brought about without any tender of salary to him or without tender of any prior notice. We have to read each clause of the letter of appointment conjunctively and put harmonious construction on them on their conjoint reading, so that the result arrived at is not absurd but rational.

15. Learned counsel for the appellant submitted that this Corporation is a company constituted under the Companies Act. It is not a "State" within the meaning of Article 12 of the Constitution of India and, therefore, he is not entitled to protection of Article 311 of the Constitution, he could not claim reinstatement. All that, he could claim was damages and that too if the termination of his services was found unlawful. In support of this submission, he drew my attention to Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and others, where it was held that "a contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages. There are certain exceptions to rule such as in the case of a public servant dismissed from service in contravention of Article 311 of the Constitution; reinstatement of a dismissed worker under the Industrial Law, a statutory body acting in breach of statutory obligations, and the like. The plaintiff instituted the suit for mandatory injunction to enforce a contract alleged to have been entered into between the plaintiff and a sugar company for appointment of the plaintiff to a certain post. The case of the plaintiff was that he had been sponsored by the Chairman and Managing Director of the holding company in terms of a scheme formulated by the Government of India, but such appointment was not made by the subsidiary sugar company. The subsidiary sugar company, the defendant, denied the existence of any contract or any other relationship which gives the plaintiff any cause of action against the defendants. There was no specific plea or evidence as regards the particulars of the alleged scheme of the Government of India in terms of which the plaintiff seeks relief. Whether it is a statutory scheme, and if so what are the provisions relied on by the plaintiff, and whether a duty is cast on the defendants and a benefit conferred on persons like the plaintiff was neither pleaded nor spoken to in evidence. Neither from the plaint nor from the evidence was it possible to identify any concluded contract to which the plaintiff was a party or which the plaintiff could enforce. The suit for specific performance filed by the plaintiff was therefore liable to be dismissed. Even if there was a contract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific performance." It was submitted that respondent could not ask for reinstatement in service with back-wages and other consequential benefits. All that, he could claim was damages and that too if his termination was wrongful. It was submitted that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions - (i) where a public servant is sought to be removed from service in

contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute."

16. In my opinion, plaintiff could not ask for declaration and claim reinstatement as he is an employee of a Company constituted under the Companies Act. His remedy was to claim only backwages if termination was unlawful. In this case, there was no unlawfulness in the termination of the services of plaintiff as the same was in tune with the terms and conditions governing his appointment.

17. For the reasons given above, this appeal succeeds and is accepted. Judgment and decree of learned Additional District Judge, Bhiwani is set aside and that of the learned trial Court is restored dismissing the suit of the plaintiff. No costs.

18. Appeal allowed.