

(1968) 08 KAR CK 0012

In the Karnataka High Court

Case No : Regular Second Appeal No. 514 of 1964

Hindustan Aircraft, Ltd., Bangalore

APPELLANT

Vs

Sambandham (G.)

RESPONDENT

Date of Decision : 07-08-1968

Acts Referred:

Constitution of India, 1950 — Article 311
Specific Relief Act, 1963 — Section 21 (b)

Citation : (1969) 18 FLR 92 : (1969) 2 LLJ 451

Hon'ble Judges : K.R. Gopivallabha Ayyangar, J

Bench : Single Bench

Judgement

1. This appeal is directed against the judgment and decree of the Civil Judge, Bangalore, in Regular Appeal No. 219 of 1960, reversing those of the Second Munsif, Bangalore, in Original Suit No. 467 of 1947. The plaintiff was an employee of the defendant since the year 1951 as a painter working in the bus-body section of the Hindustan Aircraft (Private), Ltd. (the defendant). It is alleged that the plaintiff was getting Rs. 2-7-0 per day plus dearness allowance of Rs. 41 per month and thus, was getting as average salary of Rs. 110 per month. The plaintiff was, therefore, a daily-rated workman. His services were terminated, as could be seen from the termination notice Ex. p-1 dated 1/3 May, 1957, with effect from 4 p.m. on 6 May, 1957. The reason set out in Ex. P. 1 is that the termination enquiry committee which considered the explanation offered by the plaintiff declined to accept the plaintiff's explanation and decided to terminate his service on grounds of misconduct. The misconduct alleged against the plaintiff can be gathered from Ex. P. 2 dated 10/11 July, 1956, which reads as follows :

"Dear Sir,

It was been reported to us that at about 7-35 a.m. on 1 July, 1956, when you were going out of the rail-coach main gate you were checked and found to be in possession of five new letter brushes concealed in your raincoat.

You are, therefore, hereby called upon to show cause why your services should not be terminated on account of "theft." Please note your written explanation should reach the undersigned within 16 July, 1956.

Yours faithfully, (Sd.) -."

2. The plaintiff submitted his explanation as per Ex. P. 3 on 14 July, 1956. In brief, his stand is that he was keeping the brushes with many other materials concerning his pre-treatment and pre-painting duties. He admitted that the five letter brushes were found as alleged by the defendant; that the removal of the five letter brushes was attributable to his carelessness and that he did not intend to take these articles. He also expressed his regret for his mistake and prayed to be excused. He assures the management that he will not commit such mistake of carelessness in future. Enquiry in connexion with this misconduct appears to have been held on two days, viz., 31 December, 1956 and 9 April, 1957. After enquiry, the committee decided to terminate his services on grounds of misconduct. The plaintiff alleges that there has been no misconduct whatsoever on his part and that the termination of his services is not proper. He contends that the enquiry held by the termination enquiry committee is not an enquiry worth the name and that he had no opportunity whatsoever to rebut the allegation of misconduct, and, therefore, the proceedings of the enquiry committee is opposed to law, equity and natural justice. Therefore, Original Suit No. 464 of 1957 was filed for a decree

(a) declaring that there has been no "misconduct" on the part of the plaintiff; and

(b)(i) directing the defendant to continue the plaintiff in service as from 7 May, 1957, and to pay him the salary as from that date, or, in the alternative;

(ii) pay him a sum of Rs. 1,655.34 by way of damages for wrongful termination, items being :

RS. (1) Equivalent to six months" salary at Rs. 110 a month ...	660.00
(2) Payment of provident fund amount (Rs. 497.67) sub-scribed by the plaintiff together with defendant"s equal contribution ...	995.34
----- Total ...	1,655.34

3. He also asked for payment of gratuity after ascertaining the same.

4. The defendant contended that the plaintiff was "B" grade painter in 1951 on a daily wages of Rs. 1-8-0 per day, and by way of annual increments that he got in the usual course, in 1957, his pay was Rs. 68-4-0 and he was a "A" grade painter. It is admitted that the plaintiff"s services were terminated with effect from 6 May, 1957, on account of his misconduct, i.e., theft of factory property. The defendant refutes the contention that there was no proper enquiry and asserts that the termination enquiry committee which enquired into the matter did so formally and found him guilty and decided to terminate his services. It is submitted that the plaintiff has confessed his guilt. They further contend that the termination of the plaintiff"s services is not wrongful and it is justified, proper

and valid. In connexion with his claim for provident fund, the defendant states that a sum of Rs. 497.67 of is to the credit of his provident fund, in addition to a sum of Rs. 105.69 which is to his credit in the pay-roll account. The defendant-company expressed its unwillingness to take back the employee, who has been dismissed from service for misconduct like theft. The defendant also raised a contention that the suit is not maintainable as the dismissal questioned by him gives rise to an industrial dispute and that the plaintiff is not entitled to either of the reliefs claimed.

5. The trial Court framed several issues and it is necessary to consider following issues only :

(1) Whether the termination of the services of the plaintiff by the defendant-company was improper and wrongful ?

(2) Whether the defendant-company terminated the services of the plaintiff on account of misconduct after due enquiry and after giving opportunity to the plaintiff to defend himself ?

(3) * * * (4) If it is found that the plaintiff's services were terminated wrongfully, whether the plaintiff is entitled for the relief claimed in Para. 9(b)(i) of the plaint, viz., to direct the defendant to continue the plaintiff in service ?

6. The other question that has been raised before me by the respondent's counsel is the one that relates to the gratuity which, according to the plaintiff, he is entitled. The learned Munsif held that the plaintiff's action, viz., the removal of five letter painting brushes from the factory premises, amounts to misconduct as laid down in the company rules. It is contended by Sri Vijayarangam, the learned counsel for the respondent, that the first issue in the case does not cover the question as to whether the plaintiff was guilty of any misconduct. I am unable to accede to this contention. The first issue is wide enough to include in it the question as to whether the plaintiff was guilty of the attributed to him and that the act was wrongful. It is only if the plaintiff's conduct is not wrongful and does not amount to misconduct that the defendant's action in terminating the services of the plaintiff becomes improper or wrongful. Therefore, the question as to whether the plaintiff was guilty of the wrongful act alleged against him is a matter that arises for consideration. The learned Munsif was correct in considering this matter. On this question, whether the plaintiff was guilty of misconduct or not, the learned appellate Judge has given no finding. But, the documentary evidence produced in the case supported by the oral evidence on record, leads to an irresistible conclusion that the plaintiff is guilty of misconduct (theft) alleged against him. The learned Munsif has considered all the document in detail. I may also refer to them briefly, as the learned Judge has not dealt with this aspect of the case. The plaintiff was on only in the third shift on 30 June, 1956. On the morning of 1 July, 1956, when he was leaving the factory, it was found that he had in his raincoat 5 Nos. letter brushes which he had removed from the bus-body room of the factory. The plaintiff does not dispute that these

five letter brushes were found in his raincoat when he opened it. Immediately after this was discovered, he was taken to the security officer, watch and ward of the factory. He gave a statement which is marked Ex. P. 4. It is in the following terms :

"On 30 June, 1956, I came for work at railcoach during III shift. When I left the factory I took 5 Nos. letter brushes from bus-body room table and kept in my raincoat and tied in the cycle.

This was found by the watch and ward personnel in the main gate when I was checked."

7. A chargesheet was served on him on 10/11 July, 1956. It was already been extracted above as per Ex. P. 2. On 14 July, 1956, the plaintiff submitted his explanation, Ex. P. 3. The relevant portion of it is as follow :

"When I went to the gate at about 7-35 on 1 July, 1956 (Sunday) the watch and ward who was on duty checked me, I myself voluntarily removed the raincoat from cycle, opened it, where I found 5 Nos. letter brushes. Then only watch and ward took me to havildar in charge. I explained the same to the havildar. It has happened due to carelessness. With all that I was forced to give in writing as dictated by them, which I did accordingly ...

On 9 July, 1956, I was asked to appear before assistant personnel manager for enquiry where I explained the same.

I have worked in Army as civilian trade inspector for a period of 6 1/2 years and about five years in Hindustan Aircraft, Ltd., where I have not committed such mistakes which will prove in my previous records and may please be enquired with present department too; with all those excuses I regret my mistake this time too for my carelessness; I beg your pardon, and I may please be excused this time. I will assure you Sir, I will not commit such mistakes of carelessness in future."

8. It is evident that Ex. P. 3 is at variance with what has been mentioned in Ex. P. 4. In his evidence before Court, he states :

"... as a leading hand railcoach pre-painting section ... I had in the store-room brushes entrusted to me for the railcoach painting. I took them to the workspot. I removed the brushes that were in the drawer and put them on the raincoat and selected from them the brushes that were necessary for the work and went to the workspot on that day. I also actually worked almost to the time when my out ticket and had to be punched. Hence I rushed into the store-room and put back the brushes that I worked with and went to the punch clock and by the time my card was punched it was 5 minutes late. I took my cycle and kept it leaning on the tree. As is usual with me I shook the raincoat as a matter of precaution. The said spot is at a distance of 10 yards from the watch and ward post. Five letter brushes fell down when I shook the raincoat. I took the brushes and was proceeding to the store-room to replace them there. At that time watch and ward

called me and told me that if I wanted to get into the store-room again I should obtain the permission of the havildar. I kept the raincoat and brushes at the spot there and went to the havildar's room to take his permission and told him what happened and asked him permission to keep them in the store-room and also told him that I was responsible for the brushes. Havildar had talk with the watch and ward people and then told me that I should not get into the store-room and he would treat the brushes having been brought by me and I should accordingly give it in writing. I refused to comply with his request. Then he threatened me saying that he would hand me over to the police on different grounds. Then the havildar asked me to write to his dictation and I accordingly wrote Ex. P. 4 (produced by the defendant). He assured me that nothing would happen and I might go home one week after I received the show-cause notice."

9. It is clear from Exs. P. 4 and P. 3 and the deposition of the plaintiff that he changes his version stage. If, as is contended by his counsel here, Ex. P. 4 was given not voluntarily but due to any threat, he would have complained about it much earlier. Further, in Ex. P. 3 he says that he was forced to give it in writing as dictated by them, perhaps referring to Ex. P. 4, which he did accordingly. It is significant that in Ex. P. 3, he does not say what force was used; even in his deposition there is no clear statement as to what kind of threat was held out against him. He says that he was threatened that he would be handed over to police on different grounds. What these different grounds are, he does not disclose. The plaintiff did not complain of the use of any force when he gave Ex. P. 4. The non-mention of the nature of the force in his explanation Ex. P. 3, taken together with the absence of any earlier complaint relating to the alleged use of force indicates that the statement Ex. P. 4 was given by the plaintiff on his own volition and that immediately after the discovery by the watch and ward. He also admits that there is no ill-will between him and the staff of the watch and ward or the havildar. There could be no reason for threatening the plaintiff to give statement Ex. P. 4. The plaintiff is an Army officer worked as a civilian trade inspector for 6 1/4 years and has worked in the factory for over five years. He is not an illiterate person. He knows the implications of the letter like Ex. P. 4, but does not complain about it till he submits Ex. P. 3 and even there not specifically. Hence Ex. P. 4 must be given full value. His inconsistent statement in regard to the discovery of the five paint brushes with him when he was about to leave the factory, clearly indicate a dishonest intention on his part in carrying the brushes. It is also clear from his evidence that after the brushes were used, he is bound to replace them in the place where they are to be placed. He stated that he has engaged in letter painting work. This itself is a matter of great doubt. Sri Vijayarangam invited my attention to the statement of witnesses examined by him to probalize that five letter paint brushes were being used by the plaintiff for the purpose of his work. Plaintiff's witnesses 1 and 2, to whose evidence my attention has been drawn, do not speak about the plaintiff being engaged in letter painting work, in examination-in-chief. It is only in re-examination that they say that the plaintiff was engaged as a letter painter. P.W. 1 in his evidence

states that in July 1956, the plaintiff was doing pre-painting and pre-treatment of bus-body parts. He does not speak about the plaintiff being engaged in letter painting. Similarly, the second witness states that the plaintiff was working in pre-treatment and pre-painting in the rail-coach. It is also found in his evidence that there is a difference between the brushes used for pre-painting and those used for letter painting. It is only in the re-examination of this witness that he states that the plaintiff was doing letter painting work also. If really the case of the plaintiff was, as is now contended here, that he was engaged in letter painting, we would have found the witness speaking about it in examination-in-chief. Therefore, it appears to me that this case of the painting being engaged in letter painting, cannot be believed, and it is only as an attempt to support the case of the plaintiff he says, that he would be handing letter painting brushes in the course of his duties. There is no reason as mentioned before to discard Ex. P. 4. It is quite clear from the said exhibit that he took five letter brushes from the body-building room table-drawer and kept it in his raincoat. It is clear from Ex. P. 3, that he removes the raincoat from the cycle, opens it, and finds the 5 Nos. letters brushes. He attributes this to his carelessness, which cannot be accepted. These circumstances lend full support to the finding of the learned Munsif that the plaintiff was guilty of misconduct as laid down in the company's rules. I may refer at this stage to the standing orders of the company which form part of the terms and conditions of services of the plaintiff. In Clause 19 relating to disciplinary action for misconduct, it is provided that :

"(2) A workman may be ... dismissed without notice, or any compensation in lieu of notice, if he is found to be guilty of misconduct.

(3) The following acts and omission shall be treated as misconduct :

(h) theft, fraud, dishonesty in connexion with the employer's business or property."

10. As mentioned already, the plaintiff had no business to remove the letter painting brushes from the bus-body room of the factory and takes it out of the factory building. The removal of the articles from the premises and putting them in his raincoat and attempting to go out of the factory indicate that he was trying to go out of the factory with the property of the employers, dishonestly. If the watch and ward had not checked the plaintiff as admitted by the plaintiff in Ex. P. 3, this dishonest act on the part of the plaintiff would have gone undiscovered. I have no hesitation in holding that the plaintiff has been guilty of misconduct as provided in Clause 19(3) of the standing orders entailing punishment as provided by Clause 19(2) Sri Vijayarangam's complaint in regard to this particular act of theft attributed to plaintiff is that no officer of the company has been examined. It appears to me unnecessary to do so in this case, in the face of the admissions of the plaintiff himself. It should also be borne in mind that in cases of this kind we cannot import the principles of criminal jurisprudence which require absolute proof of guilt.

11. The next contention of Sri S. G. Sundaraswami, the learned counsel for the appellant, is that the learned appellate Judge erred in holding that the enquiry made by the termination enquiry committee is opposed to the principles of natural justice. It is the submission of the appellant's counsel that the enquiry is as contemplated in the standing order which contains some of the terms of employment. The constitution of the termination enquiry committee is provided for in the standing orders. It is provided that in cases where an employee is to be dismissed, such cases are to be examined by a committee designated as the termination enquiry committee. The committee is to be constituted according to the standing orders. The first contention of Sri Vijayarangam in this regard is that the termination enquiry committee has not been duly constituted. Sri Vijayarangam pointed out several factors which probalize the correctness of his catenation. But, it must be pointed out that no specific plea regarding the constitution of the termination enquiry committee, being not in accordance with the standing orders, has been raised in the plaint. If such objection had been raised, the defendant would have been in a position to establish that the committee was duly constituted. Therefore, the only complaint that requires consideration is whether the proceedings before the termination enquiry committee is in accordance with the principles of natural justice or not. In considering this aspect of the matter, the learned Judge has referred to the decision in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, , where it is laid down as follows at p. 369] :

"... An enquiry cannot be said to have been properly held unless,

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined - ordinarily in the presence of the employee - in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(v) the enquiry officer records his findings with reasons for the same in his report."

12. Referring to the facts of the case, I may mention that the Supreme Court has stated that in that case, the persons whose reports were used by the enquiry officers were not made available for cross-examination and they were not even present at the enquiry. These reports were not made available to the workmen at any time before the enquiry was held. It is in these circumstances that the Supreme Court held that the enquiry was not in accordance with law. Adverting to the plaintiff's evidence, it is found that he was informed about the charge levelled against him. No witnesses were examined by the enquiry committee. It cannot be said that the plaintiff had no opportunity to cross-examine Kalyana

Sundaram whose report has been taken into consideration by the termination enquiry committee. The plaintiff states that he did not ask the members of the committee to allow him to question Kalyana Sundaram. He does not take any witnesses before the committee, nor does he seek to adduce any evidence. His complaint is that he was not given any chance to make a full statement. He does not make a grievance of this in his appeal to the General Manager. It appears to me that the plaintiff was content with whatever opportunity was given to him by the termination enquiry committee when they were examining the matter. A further complaint was made that the defendant has not made available the log-book and the indent-book maintained in the factory. It is not the case of the plaintiff that entries are made in the log-book in regard to the brushes given to the plaintiff. Therefore, the indent-book would not be of any assistance to the plaintiff; and the plaintiff cannot have any reason for the complaint. Sri Sundaraswami, the learned counsel for the appellant, invites my attention to a decision in *State of Mysore Vs. S.S. Makapur*, . The principles enunciated in it govern a body like the termination enquiry committee, as in this case. The relevant observation is as follows at p. 26 :

"... tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

13. I have already held that the plaintiff had opportunity to place his case and also seek to cross-examine any witness whom he desired to cross-examine. It cannot be said that he had no opportunity. Therefore, the Civil Judge was not correct in characterizing the enquiry held by the termination enquiry committee as being opposed to the principles of natural justice.

14. Sri Sundaraswami next submitted that in regard to the question as to the consideration of the legality or otherwise of the proceedings of the termination enquiry committee, the principles that govern the scope of interference by an industrial tribunal with the decision of a domestic tribunal equally apply to civil Courts. If the principles governing the interference by an industrial tribunal with the decision of the domestic tribunal is to be applied to this case, in the absence of any mala fides or bias on the part of the employers, or the principles of natural justice being violated in the conduct of the enquiry, the decision of the domestic tribunal, in this case the termination enquiry committee, should not be

interfered with. In support of this contention two decisions have been cited. The first is the decision in *Tharyan Mathews v. Nestle's Products (India), Ltd.* 1964 I LJ 500. In this case, it is a dispute between a master and a servant. The Madras High Court in the above quoted decision, after referring to *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, ; *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, and *Express Newspapers (Private), Ltd. Vs. Industrial Tribunal and Others*, , states as follows :

"No doubt, all these cases arose under the Industrial Disputes Act (14 of 1947). But the principles laid down in these cases are equally applicable to the relationship of master and servant."

15. The next decision is the one in *T.P. Daver Vs. Lodge Victoria No. 363*, S.C. Belgaum, . While dealing with the jurisdiction of the civil Courts, when they are concerned with the regularity or validity of the proceedings before the domestic tribunals, the Supreme Court lays down that (at p. 1147) :

"The jurisdiction of a civil Court is rather limited; it cannot obviously sit as a Court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice ..."

16. As I have held that none of these grounds exists in this case, the finding of the learned Judge that the decision of the termination enquiry committee holding the employee guilty of misconduct is opposed to the principles of natural justice, cannot be justified.

17. The next contention of Sri Sundaraswami relates to the question of relief relating to reinstatement. This does not present much difficulty, in view of the fact that the dispute in this case is one of termination of the services of a servant by a master. This contention is based on the provisions of S. 21(b) of the Specific Relief Act. In *S.B. Dutt Vs. University of Delhi*, , the Supreme Court observes :

"As the award in this case directs specific enforcement of a contract of personal service, if involves a legal proposition which is clearly erroneous," meaning thereby that the direction for specific enforcement of a contract of personal service is not sustainable in law. In the above case, the appeal before the Supreme Court arose out of a proceeding for finding an award in Court and obtaining a judgment thereon. The contention was that the award disclosed an error patent on the face of the award as it had directed reinstatement of the appellant who was a Professor in the University of Delhi. The next decision is of our High Court in *St. Aloysius Higher Elementary School and Another Vs. Regina alias Rosy Menezes*, arising out of an original suit. In this case, this Court has held that in view of S. 21(b) of the Specific Relief Act, the Court cannot direct the management to reinstate a dismissed teacher. In the course of the judgment reference is made to the decision of the Supreme Court case in *S.R. Tewari Vs. District Board Agra and Another*, where observation are made with regard to the powers of Courts under the common law. The Supreme Court observes as follows

at p. 4 :

"... Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well-recognized exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Art. 311 continues to remain in service even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act, the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

18. As observed in *St. Aloysius Higher Elementary School and Another Vs. Regina alias Rosy Menezes*, the present case is not also one which falls under any of the three exceptions referred to above.

19. The same view has been taken by this Court in the decision in *Baburao Fakria Lohat of Belgaum v. State of Mysore (R.A. 245 OF 1962-63)*, wherein his lordship the Chief Justice observes as follows holding that the decision in *S.R. Tewari Vs. District Board Agra and Another*, does not apply to the facts of the case. The learned Chief Justice holds :

"... I am clear in my mind that the relationship between the appellant and respondent 2 who employed him as a conductor was clearly that of a master and a servant. If it be so, when the master terminates the services of a servant on the ground of misconduct, it is not open to any civil Court to force the master to take back the servant on duty. All that the civil Court can do in such a case is, if the suit is filed by the employee claiming damages on the ground of wrongful and illegal dismissal, to decree the suit filed by him ..."

20. This relationship between the appellant and the respondent in this case is admittedly one between master and servant. In view of the above decisions and the specific provisions of S. 21(b) of the Specific Relief Act, reinstatement which involves rendering of personal service, cannot be granted.

21. *Sri Vijayarangam* referred to the decision in *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, , in which a dismissal was set aside as not being sustainable under Art. 311 of the Constitution. This case clearly comes under one of the exceptions to the principles laid down in *S.R. Tewari Vs. District Board Agra and Another*, referred to earlier. It is not necessary for me to deal with the other cases, viz., *The Punjab National Bank Ltd. Vs. Its Workmen*, , and *The Provincial Government of Madras Vs. J.S. Basappa*, , cited by *Sri Vijayarangam*.

22. The next question relates to gratuity and provident fund. This is covered by issue (3). Several decisions have been cited before me by Sri Vijayarangam in support of the proposition that gratuity should not be treated as a gift, but it must be considered as what is earned by the employee. All the decisions cited before me, viz., The Garment Cleaning Works Vs. Its Workmen, ; The Hindustan Times Ltd., New Delhi Vs. Their Workmen, and All India Reserve Bank Employees Association Vs. Reserve Bank of India, , relate to industrial disputes and awards passed by the industrial tribunals. While framing gratuity rules, it is quite open to the tribunal to frame rules in such a manner as to entitle an employee to gratuity if he puts in the requisite length of service, and is dismissed thereafter for misconduct or any other reason. The periods may vary. These decisions have no bearing on the circumstances of this case. As long as the standing orders stand, as they are in this case, and the provisions of the rules governing provident fund and gratuity also stand, they must be given effect to. No material is placed by the plaintiff to substantiate his claim that he is entitled to a contribution by the company equal to the amount that he has contributed towards the provident fund and to controvert the allegations of the defendant in this behalf. Similarly, he has not placed any material to indicate that under the gratuity rules, he is entitled to the gratuity amount. The plaintiff is entitled, as the Munsif has found, to the provident fund which he has contributed and in so far as that amount is concerned, a decree has been passed. The defendant further says in his written statement that a sum of Rs. 105.69 is to the credit of the plaintiff on the pay-roll. The defendant is bound to pay the same to the plaintiff and in fact, the defendant appears to have sent a voucher to be signed by the plaintiff before receiving the amount. The plaintiff may sign the relevant voucher. If he has not already done so, and get the amount. No decree in so far as the amount to his credit in the pay-roll can be granted in this case, as no relief has been asked for in that regard.

23. For the reasons mentioned above, I reverse the judgment and decree passed by the Civil Judge and restore those made by the Second Munsif at Bangalore in Original Suit No. 464 of 1957.

24. In the circumstances of this case, I direct each party to bear his own costs.