

(2018) 08 DEL CK 0315

In the Delhi High Court

Case No : Regular First Appeal No. 122 Of 2015

M/S G4s Security Services (I) Pvt Ltd

APPELLANT

Vs

Dhiraj Negi

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96
Indian Contract Act, 1872 — Section 2(d)

Citation : (2018) 08 DEL CK 0315

Hon'ble Judges : VALMIKI J. MEHTA, J

Bench : Single Bench

Final Decision : Allowed

Judgement

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment

of the Trial Court dated 4.12.2014 by which the trial court has decreed the suit filed by the respondent/plaintiff/employee against the

appellant/defendant/ employer and the trial court has directed reinstatement of the respondent/plaintiff/employee besides ordering the

appellant/defendant/employer to pay salary from September, 2011 till August, 2012 including increments for the period.

2. I do not have to narrate the facts in detail because admittedly it is not disputed, and it could not have been disputed, that the employment of the

respondent/plaintiff with the appellant/defendant is a private employment i.e. not an employment under a State/Government or an arm of the

State/Government and which latter employment being a public employment which is only protected under the provisions of the Constitution.

3. Admittedly, the employment of the respondent/plaintiff with the appellant/defendant was in terms of the Employment Letter dated 18.5.1996

(Ex.PW1/2), and which contained Clause 4 providing for termination by giving two month's notice. This Clause 4 reads as under:-

4. That your appointment shall be subject to termination on either side by giving one month's notice or payment of salary in lieu thereof in the first 6 months and 2 months thereafter. In the event of your resignation, the Management may accept the same with immediate effect notwithstanding the one month's notice period.

4. Therefore, once the contract is a private employment, and the same is terminable by two month's notice, the ratio of the judgment of the

Supreme Court in the case of S.C. Shetty Vs. Bharat Nidhi Limited AIR 1958 SC 12 applies, and which provides that a contract of private

employment ceases on the period of notice being served out or pay being given in lieu of the notice period. I have had an occasion to refer to the ratio

of the judgment of the Supreme Court in the case of S.C. Shetty (supra) in various cases, and the last of such case is the judgment in the case of Mrs.

Malini Rajendran Vs. Federation of Hotel & Restaurant Association of India & Others, 2017 (242) DLT 167. The relevant paragraph of the judgment

in the case of Mrs. Malini Rajendran (supra) is paragraph 5, and the same reads as under:-

5.(i) Though the appellant/plaintiff pleads before this Court that the appellant/plaintiff had claimed the relief of restitution of services as also damages

by alleging violation of Clause 11 of the appointment letter dated 3.10.2006, however, I have not found any cause of action specifically pleaded in the

plaint by making reference to Clause 11 of the appointment letter dated 3.10.2006, that the appellant/plaintiff has not been given three months notice or

that the appellant/plaintiff has not being given three months salary in lieu of notice terminating services.

(ii) For the sake of arguments and assuming that the appellant/plaintiff had pleaded a cause of action of illegal termination of services by not being

given three months notice or three months salary in lieu thereof, however, the law is well settled in view of the judgment of the Supreme Court in the

case of S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12 and in which judgment the Supreme Court has held that even if there is illegal termination

of contractual services of an employee, the maximum damages which an employee as a grievance of illegal termination of services is entitled to is the salary for notice period. The relevant para of the judgment of the Supreme Court in the case of S.S. Shetty (supra) is para 12 and which para 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.

5. The earlier judgments passed by this Court which have dealt with this issue in detail are the judgments in the cases of Shri Naresh Kumar Vs. Shri

Hiroshi Maniwa & Ors. 2015 (224) DLT 586, Vinod Pathak Vs. American Express Bank Ltd. 2015 (153) DRJ 172 and GE Capital Transportation

Financial Services Ltd. Vs. Shri Tarun Bhargava, 2012 (190) DLT 185.

6. It is in no manner disputed before this Court that the respondent's/plaintiff's services were terminated with effect from 17.8.2011 and the

respondent/plaintiff has received salary for 17.8.2011 to 16.10.2011 in terms of Ex.PW1/D-3.

7(i) Learned counsel for the respondent/plaintiff argued that the respondent/plaintiff was in fact after his employment with the appellant/defendant,

subsequently employed with the sister concern of the appellant/defendant, namely, M/s International British Garments Company Limited, and

therefore, it cannot be held that the termination of service by giving two month's notice in terms of Ex.PW1/2 would be valid.

(ii) This argument urged on behalf of the respondent/plaintiff is meaningless

because if the case of the respondent/plaintiff was that he was the employee of M/s International British Garments Company Limited, and not the appellant/defendant, then the suit would have been filed against M/s International British Garments Company Limited, whereas admittedly the suit has been filed against the appellant/defendant-M/s G4S Security Services (India) Pvt. Ltd. Even in the entire plaint there is no case set up by the respondent/plaintiff that the employment of the respondent/plaintiff originally was with the appellant/defendant and thereafter the employer of the respondent/plaintiff was M/s International British Garments Company Limited. May be that termination notice period pay was given by M/s International British Garments Company Limited, but that would only be for and on behalf of the appellant/defendant, and which company is admittedly the employer of the respondent/plaintiff as per the plaint. Consideration to a contract need not flow only between parties to a contract as per Section 2(d) of the Indian Contract Act, 1872, because consideration can always be paid by a third person to a contract.

9. In view of the aforesaid discussion, this appeal is allowed and the impugned Judgment of the Trial Court dated 4.12.2014 is set aside. Suit of the respondent/plaintiff will stand dismissed. Parties are left to bear their own costs.