
(2009) 02 DEL CK 0291

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 5 of 1989

Shri R. Sen Gupta

APPELLANT

Vs

May and Baker India Ltd. and Another

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0291

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : R.S. Mathur, for the Appellant; Indranil Ghosh and Sandeep Mahapatra, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The plaintiff/appellant was employed by the respondent company. His services were terminated on 26th March, 1981. He filed a suit for declaration seeking the following reliefs:

- a) That the termination of the plaintiff's services be declared illegal, void and a nullity, and it be declared further that the plaintiff continues in service without any break and is entitled to full back wages and other service benefits;
- b) That a decree for the recovery of sum of Rs. 1,20,000/- together with any other sum as additional damages so determined be passed in favour of the plaintiff and against the defendant company;
- c) That the interest @ 18% per annum on decretal amount from the date of the filing of the suit till the same is paid to the plaintiff may be awarded in favour of the plaintiff;
- d) That the plaintiff be awarded his costs;
- e) That any other relief this Hon'ble Court may deem fit in the circumstances may be awarded.

2. Later on, the appellant dropped his plea for reinstatement and pleaded that the termination of his services be declared to be void and that respondents be directed to pay damages equal to his back wages in addition to his claim for Rs. 1,20,000/- for wrongful dismissal.

3. On the pleadings of the parties the following issues were framed:

1 Whether the suit is not maintainable? (OPD)

2 Whether the plaintiff's services were wrongfully and illegally terminated?(OPP)

3 Whether the order of termination of services was not accepted by him? If so, to what effect on the suit?(OPP)

4 If the issue No. 2 is answered in the affirmative what amount by way of damages or on other accounts the plaintiff is entitled?(OPP)

5 Is the plaintiff entitled to interest? If so, on what amount at what rate and for which period?

6 Relief?

4. On finding that the plaintiff has failed to prove the second issue which was that his services were illegally terminated, the suit was dismissed on 13th January, 1989 leaving the parties to bear their respective costs. The plaintiff appealed.

5. Since the question of assessing damages and interest would only arise if the termination of service was not in accordance with law, the only aspect urged before us is that the finding of the learned Single Judge regarding issue No. 2 in this behalf is erroneous.

6. The services of the appellant were engaged in terms of a letter of appointment dated 5.4.1965. It provided that the appellant would be on probation for a period of 3 to 6 months whereafter the appellant would be confirmed on his work being found to be satisfactory. However, it is not in dispute that the services of the appellant were confirmed and he continued to serve the respondents for over 15 years.

7. The relevant portion of the appointment letter (Ex. P-1) necessary to be considered for the controversy in question is as under:

During the training and probationary period your appointment is subject to one month's notice of termination on either side.

It will be necessary for you to confirm in writing your acceptance of the Company's service Rules which will be made available to you for perusal when you are under training at Bombay.

8. Learned Counsel for the appellant does not dispute that the service rules of the respondent governed the appellant's service and formed a part of the

contract between the parties. The relevant Rule 26 in this case is as under:

Rule 26: TERMINATION OF EMPLOYMENT

NOTICE: Unless specific agreements provide otherwise, the employment of staff falling under the under mentioned categories may be terminated as follows:

PERMANENT OR PROBATIONARY EMPLOYEES:

By thirty days written notice or payment in lieu thereof on either side at any time.

TEMPORARY EMPLOYEES:

By seven days written notice given or received at any time.

9. The aforesaid extract of the Rule has been proved as Ex. P-35 while Rule 30 which prescribes the procedure applicable in case of misconduct is Ex. P-36.

10. The gist of the submission of the learned Counsel for the appellant is that the letter of appointment Ex. P-1 is a special contract between the parties and to that extent those special terms and conditions supersede what is provided in Rule 26. However, it is not disputed that Ex. P1 deals only with the aspect of termination during probation and there is no specific clause dealing with termination after confirmation. It is, however, urged that the effect of reading of Ex. P-1 and Rule 26 together is that while Ex. P-1 would govern the aspect of termination during probation the right to terminate the contract after the appellant's service was confirmed and he became a permanent employee is deemed to have been excluded by implication. It is thus, submitted that the only right to terminate the services of the appellant after his confirmation is in accordance with Rule 30 in case of misconduct and not otherwise.

11. We are unable to accept the plea advanced by learned Counsel for the appellant that his client's services could only be terminated by the respondent only so long as he remained on probation and that once the appellant's services were confirmed, it was not open to the respondents to bring the contract of service entered into with the appellant to an end, except for misconduct, in which case the necessary procedure envisaged under Rule 30 of the Service Rules was required to be followed. On the contrary, in our opinion, since all service rules are undisputedly applicable to the appellant, absence of any provision enabling the respondents to terminate the appellant's services and to bring the contract to an end without any specific cause, such as misconduct, in the contract of employment entered into between the parties (Ex.P1), does not mean that respondents have no power to do so. This is because in the absence of any specific agreement, in this behalf between the parties, the provisions of Rule 26 of the Service Rules becomes applicable and would govern this aspect of the contract between the parties. Relevant portion of Rule 26 which has been extracted above states as follows, "unless specific agreements provide otherwise, ...", the appellant's employment may be terminated by 30 day's written notice or payment in lieu thereof at any time. The word "otherwise" has

been defined in Black's Law Dictionary, 6th Edition, as follows:

Otherwise: In a different manner; in another way, or in other ways.

12. In other words, looking to the letter of appointment as well as the Service Rules, which admittedly formed a part thereof, the true intent of the parties was that the power to bring the contract to an end shall exist with both parties. The circumstances and the manner in which this power can be exercised could either be prescribed by a special contract between the parties but in case each party's right to bring the contract to an end after the employee's services has been confirmed has not been set down in any other way, then, in that case, the method for bringing the same to an end would be as prescribed in Rule 26. We are unable to find any force in the contention of learned Counsel for the appellant that since the employment letter between the parties provided only for termination of the contract during the appellant's probation and was silent with regard to termination after confirmation, therefore, the parties intended to omit the availability of the right to terminate the contract after confirmation to either side. As stated above, the expression "unless specific agreements provide otherwise", in Rule 26, can only mean that the services of permanent employees such as the appellant can be terminated by 30 days' written notice or payment in lieu on either side at any time unless there are some specific agreements, separately entered into between the parties, that have provided for termination of the contract in any other way. This does not mean that if the employment contract between the parties does not provide any other way to terminate the contract between the parties, then the parties intended that after confirmation of the appellant, neither party could terminate the contract of employment and that Rule 26 itself will also somehow become inapplicable. The facts, as also the language of Rule 26, do not bear out any such conclusion.

13. Learned Counsel for the appellant has further urged that in private employment also, any clause in the contract that empowers the employer to terminate the employment after giving adequate notice, or salary in lieu thereof, is ultra vires the constitution and, therefore, all such clauses are void. In support of his contention, he has cited the following authorities:

1. Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr. and Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, 2. O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, 3. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, 4. Videsh Sanchar Nigam Ltd. v. Dipali Bandopadhyay 1994 LLR 703 5. Tilak Raj Chopra v. Alitalia Airlines 1997 LLR 207 6. Uptron India Limited Vs. Shammi Bhan and Another, 7. Tarlochan Singh Mokha v. Shriram Pistons & Rings Ltd. and Ors. 1998 LLR 781 8. Avineshwar Sawhney v. J.K. Industries Ltd. 2009 LLR 110.

14. We have however pointed out to learned Counsel for the appellant that all the above authorities, except one, deal with cases where the employer was

either the State as defined under Article 12 of the Constitution or was bound by the provisions of Industrial Disputes Act, which is a different matter altogether. After some arguments, he did not press this aspect of the matter and instead wished to rely upon decision of a Single Judge of this Court in *Tarlochan Singh Mokha v. Shriram Pistons & Rings Ltd. and Ors.* 1998 LLR 781 (Del). Unfortunately, we find ourselves unable to follow this authority for the reason that whilst it narrates all the facts and arguments of both parties at some length, there is absolutely no reasoning given for the decision arrived at by the Court. The entire reasoning of the Court for its conclusion that the termination order in that case was bad, is contained in the following portion of paragraph 57 of that judgment;

...When the notice of termination order is void, the plaintiff would be entitled to the declaration and as a consequence damages. I have no hesitation in granting a decree declaring that the notice of termination P-2 is void in law and is not enforceable at the instance of the defendants against the plaintiff.

Counsel for the appellant has also failed to draw our attention to any cogent and systematic reasons in the judgment for the conclusions reached therein. We therefore do not consider this to be good precedent for general application and with respect we find ourselves unable to accept the same.

16. Learned Counsel for the appellant has thereafter tried to urge that in fact the appellant's service has been terminated on account of misconduct and, therefore, provisions of Rule 30 should have been followed. In other words, according to counsel for the appellant, a proper enquiry as envisaged under that Rule ought to have been instituted and since this was not done, the termination is bad.

17. If we have a look at letter of termination dated 26.3.1981, the same reads as under:

PERSONAL & CONFIDENTIAL

Dear Mr. Sen Gupta,

Termination of appointment

This is to advise you that your services are not required and stand terminated with immediate effect. We are arranging to pay you a month's salary in lieu of notice.

You have already availed 4 weeks annual leave with L.T.A. for 1981, and therefore no further amount is due to you in this respect.

You have been on sick leave from 3rd March, 1981 to 20 March 1981 and you have been paid for this period. You may submit your medical bills, which we shall settle in accordance with the scheme in force for members of the senior staff.

You will received Gratuity of Rs. 52,500/- representing 15 months gross salary

based on your last drawn salary of Rs. 3,500/- gross per month subject to deduction of tax.

Your accounts will be settled by us on your returning any items of company property in your possession including the Service Rules Booklet.

The Trustees of May & Baker Employee's Retirement Fund (India) and Superannuation Fund are being advised of your termination of services and you may write to them regarding settlement of your dues.

We shall be glad if you will please acknowledge receipt on the duplicate copy of this letter.

18. The aforesaid is a letter of termination simpliciter stating that the services of the appellant were not required. There is no imputation or allegation against the appellant in the letter. Thus the letter is in conformity with Rule 26 as held in the impugned judgment and decree. The question of holding an inquiry and taking steps to terminate the appointment only in pursuance thereof would have arisen only if some misconduct was imputed and not otherwise. Under the circumstances, Rule 30 is not attracted.

19. In this context, counsel for the appellant has sought to rely upon the written statement of the respondent to contend that it was the alleged unsatisfactory performance of the appellant which was in the mind of the respondent while terminating his service. We are afraid this could not give any assistance to the appellant since the letter of termination did not contain any such imputation, and the appellant having filed the suit and the defendant being called upon to defend the same the appellant cannot make use of the averments made in the written statement to turn around and say that there was some misconduct in the mind of the respondent and thus an inquiry ought to have been made. After all, there can be no gainsaying the fact that the decision of either party to bring the contract of service to an end must have been prompted by something. Although, there can be many reasons which might have formed the motive for taking the decision, the same need not necessarily be the foundation thereof. So long as the employer had not made up its mind about the guilt of the employee, it cannot be said that misconduct was the foundation of the termination order or that the order was issued with a view to punish him. In this context, learned Single Judge has relied upon the decision of this Court in *Sunder Grover Vs. Union of India and Others*, for the conclusion that no inference of punishment can be drawn on the basis of allegations made in the written statement by the respondents to traverse the appellant's claim of good performance in the plaint and that the allegations of the respondent in its written statement have not been substantiated at the trial and do not alter the position and no inference of punishment can be drawn on the basis of these allegations.

20. We might only add to one more aspect of the matter which concerns issue No. 3 as to whether the order of termination was not accepted by the appellant. It appears from the record that the plaintiff has been paid a sum of Rs.

1,78,058/- from his retirement fund and a sum of Rs. 43,784.11 in full and final settlement, satisfaction and discharge of all his claims. The appellant does not deny the fact that receipt for this payment was sent in advance to him and he received payment only after he had signed the same and sent it back to the respondent. Certain portions at the end of the receipt which was initially sent to the appellant were scored out by him and some additions or alterations were also made on the same which were not acceptable to the respondent. The respondent thereafter sent another advance receipt for being executed by the appellant which the appellant duly executed and forwarded to the General Manager of the respondent company at Bombay along with a covering letter requesting the General Manager to remit the amounts of that receipt by way of a demand draft. In view of these facts, we do not find any force in the appellant's contention that he was either coerced or in any way compelled to sign the receipt in question. Furthermore, in support of his conclusion, learned Single Judge has also relied on a letter dated 30th March, 1981 (Ex.D7) where the plaintiff/appellant has specifically approbated the decision of the respondents to terminate his services to conclude that the appellant did not wish to question the decision to terminate his services. We are in respectful agreement with the learned Single Judge on this account. The highest that can be said for the appellant's case is that to begin with, he was unwilling to sign the receipt in full and final settlement whilst on the other hand the respondent was unwilling to part with the money unless the appellant was willing to accept it in full and final settlement, satisfaction and discharge of all his claims against the respondents. Ultimately, the plaintiff duly accepted the payment as such by signing the receipt and the respondent paid him the amounts due on that basis. To our mind, all this shows merely some negotiations on the subject by both parties and nothing more. We do not see any reason to overturn the finding of the learned Single Judge in this regard.

21. The learned Single Judge has comprehensively examined each and every argument put forward by the appellant as also the law on the subject. The basic question whether the plaintiff has a right to continue in service upto the age of retirement after he satisfactorily completed the period of probation or whether his employment could be terminated at any time by 30 days' written notice or payment in lieu thereof, has been correctly appreciated and analysed. We are in respectful agreement with the finding of the learned Single Judge that the letter of appointment (Ex.P1) does not contain any terms which could be said to be at variance with the provisions of Rule 26 and that contract of employment between the parties does not exclude the applicability of Rule 26 to the appellant after his services were confirmed by the respondent. We might also note with approval the conclusion reached by the learned Single Judge that it would be unreasonable to attribute any intention to the contracting parties to the effect that the appellant would remain in employment till he attained the age of superannuation irrespective of any supervening compulsion including, but not limited to insufficiency, "disability for reasons of sickness or otherwise," etc.

22. For all the above reasons, we find no merit in the appeal and the same is

dismissed. However, since the appellant has lost his job, parties are left to bear their own costs.