

(2011) 02 DEL CK 0034

In the Delhi High Court

Case No : Regular Second Appeal No. 32 of 2011 and C.M. No. 2671 of 2011

Shri Subodh Asthana

APPELLANT

Vs

Skypak Service Specialist Ltd and Another

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0034

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : K.K. Sabharwal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 27.10.2010 which had endorsed the findings of the trial Judge dated 10.02.2010 whereby the suit filed by the plaintiff Subodh Asthana seeking a declaration and permanent injunction to the effect that his termination letter dated 16.01.2002 (whereby his services were terminated) be declared illegal and invalid had been dismissed.

2. The plaintiff was appointed in the management cadre of the Defendant company vide his appointment letter dated 09.08.2000. He was to be on probation initially for a period of six months during which his services were terminable by a 15 days notice. On confirmation, his appointment was terminable by giving him a one month notice or pay in lieu thereof. The case of the plaintiff is that he had rendered his services satisfactorily in the Defendant Company continuously for about 17 months. His services were terminated vide termination letter dated 16.01.2002. The contention of the plaintiff is that this termination was illegal and mala-fide. Suit was filed.

3. The Defendant had contested the suit. It was stated that the plaintiff continued to be on probation. He was negligent in his duty. He was warned on several occasions. In spite of these warnings, he did not improve his behavior.

Termination letter followed.

4. The trial Judge had framed issues. Oral and documentary evidence had been led. The plaintiff had examined himself. It is not in dispute that the plaintiff had earlier filed a suit i.e. Suit No. 639/2006 whereby he had sought recovery of Rs. 42,616/- in respect of emoluments for the period of service w.e.f. 01.12.2000 to 18.01.2002. In this plaint, he had averred that his termination dated 16.01.2002 is illegal; his emoluments had been illegally withheld. The said suit had been decreed in favour of the plaintiff. This was vide judgment dated 02.06.2008. The trial Judge had held that the letter dated 16.01.2002 which was the basis on which the plaintiff had sought his emoluments, had been decided as being illegal; this issue had become res-judicata, the said question could not be re-agitated. The Court had returned a positive finding that the termination of the Appellant was illegal. Emoluments were paid in lieu thereof. Other evidence which included the termination letter dated 16.01.2002 (Ex.PW-1/2) had been adverted to. Prayer of the plaintiff seeking reinstatement was dismissed but he was held entitled to salary in lieu of notice i.e. compensation of Rs. 20,000/- with interest @ 6% per annum.

5. This finding was reaffirmed by the first appellate court.

6. On behalf of the Appellant, it has been submitted that the findings of the two courts below are perverse for the reason that the services of the plaintiff could not have been terminated without giving him an opportunity of being heard. The substantial questions of law have been formulated on page 11. They read as follows:

(a) Whether the probationer employee is entitled for opportunity to defend himself in the matter in his employment when terminated without any cause?

(b) Whether the Ld. Courts below should have in all fairness directed reinstatement to the Appellant with continuity of service specially when the Appellant has not committed any misconduct?

7. Admittedly even as per the case of the Appellant, he was only a probationer. In terms of his appointment letter dated 09.08.2000 (Ex. PW-1/1) (at page 52 of the paper book), the initial period of probation would be six months which could be terminated by giving a 15 day notice. Even after confirmation, the appointment was terminable by giving a one month notice in writing or pay in lieu thereof. This is an admitted document. The Appellant being on probation he could have, in terms of his appointment, be terminated with a 15 days notice. In terms of Clause 6 of Ex.PW-1/1, even after confirmation, the employee could be terminated after giving one month notice or pay in lieu thereof. The said notice had not been given; the Court had arrived at a finding that this termination was illegal but compensation i.e. compensation of Rs. 20,000/- was deemed to be an adequate and proper compensation. This discretion has been exercised fairly and judicially in terms of Ex. PW-1/1.

8. The substantial questions of law formulated in the body of the appeal as aforenoted make an admission that the Appellant was only a probationer. His termination vide letter dated 16.01.2002 had been declared illegal in the judgment dated 02.06.2008 of Suit No. 639/2006. This issue had since attained a finality. It could not be raised again in the present suit. No substantial question of law has arisen. There is no merits in this appeal. Appeal as also pending application are dismissed in limine.