

(2012) 01 DEL CK 0075

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 3 of 1999

Shriram Pistons and Rings Ltd. and Another

APPELLANT

Vs

Shri T.S. Mokha

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0075

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : T.K. Ganju, with Mr. Sayeed Aqib and Mr. Aditya Ganju, for the Appellant; Rajinder Dhawan with Mr. D.D. Singh and Mr. B.S. Rana, with respondent in person, for the Respondent

Final Decision : Allowed

Judgement

Pratibha Rani, J.—The appellant-company M/s. Shriram Pistons & Rings Ltd. impugned the judgment and decree dated 27th May, 1998, passed by the learned Single Judge, in a suit filed by the respondent herein, (plaintiff in the suit), who was their ex-employee in managerial capacity, seeking declaration that his termination was unconstitutional, illegal and mala fide and without authority. In addition, respondent also sought the relief of damages for Rs. 4 lacs and/or reinstatement with full back wages and benefit.

2. The facts are not in dispute. Most of the documents produced during evidence by the parties are also not in dispute. So instead of mentioning the case of the respondent and the appellant separately, as averred in the plaint or defence taken in the written statement, succinctly stated the facts are that the appellant company employed the respondent as Administration Manager. He was issued an appointment letter dated 25th September, 1980 Exhibit P-1, containing the terms and conditions of employment, as per Clause 10 whereof, the respondent could serve the master servant relationship i.e. resign after giving three months" notice or the appellant could sever the master-servant relationship by terminating service of the respondent after giving three months" notice or salary

in lieu thereof. The respondent continued to serve the appellant till his services were terminated vide termination order Exhibit P-2 dated 21st March, 1985, invoking Clause 10 of the appointment letter, referred to above. It is not in dispute that respondent was paid the notice pay by his employer i.e., appellant company, as required under Clause 10 of the terms and conditions of the appointment, contained in Exhibit P-1. Subsequently other dues, after necessary adjustments, were also paid to the respondent.(N.B. in the appeal and at few other places a confusion has been created with reference to Ex.PW-1/1, which is an appointment letter dated 16th October 1979, appointing respondent as an "Officer" in J.Engineering Works Ltd., probably a sister concern of the appellant)

3. After completing the pleadings, following issues were settled by learned Single Judge:

(i) Whether suit is not maintainable against Defendant No. 3" (ii) Whether Defendant No.2 is a separate legal entity and if not to what effect" (iii) Whether the suit is bad for misjoinder of parties" (iv) Whether the termination of respondent's services by Defendant No.1 was illegal and if so, to what effect" (v) Whether the plaintiff is stopped from challenging the validity of termination of his service" (vi) Whether the claim for declaration is barred under the provisions of the Specific Relief Act" (vii) Whether the plaintiff is entitled to damages and if so, to what amount" (viii) Whether Defendants have paid Rs. 57,204.25 and other dues to the plaintiff" (ix) To what relief the plaintiff is entitled"

4. The learned Single Judge, in view of discussion in para 36 and 37 of the impugned judgment, while declaring Clause 10 of the appointment letter and termination to be void, in para 49 of the impugned judgment, granted the reliefs, which are extracted below :

36. Whatsoever may be the contentions of the parties, the sole question for determination is "Whether the first defendant could invoke clause 10 and terminate the services of the plaintiff"" In the light of the law laid down by the Supreme Court in Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. AND Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, which is followed by the Supreme Court 1991 in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , the clause relied on by the defendants is void in law and consequently, the notice of termination fails to the ground.

37. The first defendant is a company registered under the Companies Act, 1956. The question whether the first defendant is a Government Company or not and whether the services of the plaintiff were terminated because he belongs to a particular community, would not at all be relevant and I do not deem it proper and necessary to decide those questions. 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.

49. On issue No.7, I find that the plaintiff would be entitled to the sum of Rs. 5,82,785.75 :

(i) declaring that the notice of termination dated the 21st of March, 1985 (Ex.P2) as null and void.

(ii) declaring that the plaintiff is deemed to have been in service of the first defendant till he attained the age of superannuation on 31.01.1994.

(iii) directing defendants 1 & 2 to pay the plaintiff the sum of Rs. 5,82,795.75.

(iv) directing defendants 1 & 2 to pay the interest to the plaintiff @ 15% p.a. on the sum of Rs. 5,82,795.75 w.e.f. 1.2.1994 till the date of payment.

(v) directing the defendants 1 & 2 to pay the plaintiff the costs of the suit.

(vi) directing the dismissal of the suit against the third defendant without costs.

5. As is to be noted from para 37 of the impugned decision, the learned Single Judge has held that it was irrelevant whether the appellant company was a government company and without deciding the private character or otherwise of the appellant, has rendered a verdict against the appellant. The contentions of the appellant company in appeal, is that it is a private company and since the respondent was serving the company in managerial capacity, provisions of Industrial Dispute Act were not applicable to him and he was not covered under any of the exceptions recognized by law pertaining to service i.e. (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.

6. Learned counsel for the appellant has relied upon Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, ; S.B. Dutt Vs. University of Delhi, ; S.R. Tewari Vs. District Board Agra and Another, ; Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, ; Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, ; S.S. Shetty Vs. Bharat Nidhi, Ltd., ; 1981 Lab IC 1009 HC titled as Dayanand Sarup Vs. Smt. Bimla Rani; Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, and; State Bank of India and Others Vs. S.N. Goyal, in support of his contentions.

7. On behalf of respondent, in addition to oral submissions, written submissions alongwith citations have also been filed on 20.01.2012. In the written submissions, after mentioning the facts of the case, the following submissions have been made :

(i) Performance appraisal Ex.D22 was made basis of the termination with nothing to suggest that it was a usual practice in case of all the employees. The

performance appraisal Ex.D22 is vague and lack in specific particulars. The signatures of Chairman have been forged on Ex.D21 (noting and directions of the Chairman).

(ii) In a suit challenging the validity and legality of termination of service, two aspects are involved i.e. (a) the justification and legality of termination of service; and (2) relief which is to be granted to employee concerned. As far as aspect (a) is concerned, there is no bar on the jurisdiction of the Court. The nature of employment viz. whether he was employed in a statutory corporation or he was a workman as defined in Section 2 (s) of I.D. Act or he was in private employment is relevant. Such declaration have been granted by the Courts and in this connection, reliance have been placed on AIR 1980 SC 60 titled as Sitaram Kanshi Ram Konda Vs. Pigment Cakes & Chemical Manufacturing Co., Indian Airlines Corporation Vs. Sukhdeo Rai, , and AIR 1986 Del 427 titled as S.M.Murray Vs. M/s. Fenner India Ltd.

(iii) Placing reliance on judgment of Apex Court in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, , this Court has jurisdiction to go into the validity of justification of termination of services of the respondent.

(iv) The respondent being Sikh, victimized post 1984 riots.

(v) In view of admission of the appellant that 54% of the shares are held by financial institutions, it has rightly been held to be a Government Company within the meaning of Section 617 of Companies Act and the relief of declaration and damages have rightly been granted to the respondent and he was also entitled to get the relief of reinstatement.

(vi) Referring to Section 21 IPC clause 12, it has been submitted that the employees of Government company cannot be said to be employee of a private employer even if such a Government Company may not be a State or other Government authority. Clause 10 of the appointment letter being punitive in nature would not be applicable in such a case which has also been declared void and not enforceable by learned Single Judge as the same is opposed to public policy and void as per Section 23 of the Contract Act.

(vii) On the basis of judgment of Apex Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, wherein the regulations similar to Clause 10 of the appointment letter of the respondent was held to be void being violative of Article 14 of the Constitution of India and Section 23 of the Contract Act, which is applicable to both Government as well as private concerns, the suit has been rightly decreed.

8. We have carefully considered the contentions raised at the bar and also gone through the impugned judgment and the Trial Court Record.

9. The questions of law which thus arise for consideration before us relate to the applicability of law declared in the decisions reported as Central Inland Water

Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , to private companies substantial shares whereof are held by financial institutions.

10. In para 47 of the impugned judgment, the learned Single Judge held the appellant company to be a corporate body and that principles laid down by Supreme Court in AIR 1976 SC 888 titled as Executive Committee of Vaish Degree College, Shamli & Ors. Vs. Lakshmi Narain & Ors. and 1988 1 law weekly 479 titled as The Central Co-operative Bank Ltd. Kumbakonam Vs. M. Parthasarathi of Madras High Court, would apply.

11. There is clear enunciation of law by this Court on this aspect in the case P.B. Ghayalod Vs. M/s. Maruti Udyog Ltd. and others, (The date of decision is 11.09.1991). The instant case has been decided much thereafter on 27.05.1998. In the case P.B.Ghayalod Vs. M/s Maruti Udyog Ltd. & Ors., (Supra), the question that arose for decision was whether respondent No.1 i.e. M/s Maruti Udyog Ltd. is an "authority" under the control of Government of India and as such an "instrumentality" within the domain of Article 12 of the Constitution of India.

12. In the above noted case, the case of the petitioner was that respondent No.1 was a Government Company as defined under the Companies Act and became a deemed public company. The joint venture agreement was signed with Suzuki Motor Company with equity participation in between Government of India and Suzuki Motor Company in the ratio of 60 : 40. The petitioner claimed that the respondent No.1 company is completely under the control of respondent No.2 under the Ministry of Industries and thus a "State" being an "authority" within the territory of India and under the control of the Government of India within the meaning of Article 12 of the Constitution of India.

13. The petitioner P.B.Ghayalod was appointed as General Manager (Marketing & Sales) vide appointment letter dated 07.05.1985 which contained condition No.6 to the effect that his services would be terminated by a three months notice without assigning any reason. The services of the petitioner were terminated on 14.09.1990 in terms of Clause 6 of the appointment letter which was challenged on the ground of being void, illegal and in contravention of provisions of Article 14 of the Constitution of India and opposed to public policy and also void under Sec.23 of the Contract Act. While answering the question referred to above, in para 8 and 9 of the judgment, it was observed as under :

8. The above question came up for decision before their Lordships of the Supreme Court in a case entitled Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, wherein their Lordships cited with approval the observations in their own earlier judgment reported in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . When does such a corporation become an instrumentality or agency of Government" Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control

exercised by Government and, if so, what should be the nature of such control Should the functions which the corporation is charged to carry out possesses any particular characteristic or feature or is the nature of the functions immaterial Now, one thing is clear that if the entire share capital of the Corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by Statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a Board of Directors appointed by Government though this consideration also may not be determinative, because even where the Directors are appointed by government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government. It is not possible to formulate an inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporation into those which are instrumentalities or agencies of Government and those which are not.

9. Their Lordships after considering the entire case law laid down the following principles in order to determine as to whether a particular corporation is an instrumentality or agency of Government within the meaning of Article 12 of the Constitution of India in the above said case: *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government;

(2) Where financial assistance of the State is so much as to meet the almost entire expenditure of the corporation it would afford same indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor, whether the corporation enjoys monopoly status which is the State conferred or State protected;

(4) Existence of "deep and pervasive State control" may afford an indication that the corporation is a State agency or instrumentality;

(5) If the functions of the corporation are of public importance and closely related to governmental functions it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government;

(6) Specifically, if a department of a Government is transferred to a corporation it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

14. This Court held that *M/s Maruti Udyog Ltd.* is not an instrumentality of State or an "authority" for purpose of Article 12 of the constitution. From the judgment

referred to above, it is clear that mere share holding is not the determining criteria to hold any company to be a Government Company for purpose of Article 12 of the Constitution and termination invoking clause 6 of appointment letter was held to be valid.

15. Reverting to the facts of the present case, the appellant company by no means satisfy the criteria laid down in para 9 of the judgment of P.B.Ghayalod Vs. M/s Maruti Udyog Ltd. & Ors., (Supra), and cannot be termed as "instrumentality" of State or "authority" nor termination invoking clause 10 of appointment letter could be declared void. Unlike the statutory corporation/bodies whose activities are strictly governed by various statutory enactments and rules and regulations framed thereunder, a company incorporated under the Companies Act is not a creation of Statute. Rather this is formed in accordance with the Statute i.e. Companies Act. Thus, such company cannot be treated as statutory body, none of the beneficiary or employee of such company enjoy the statutory status or protection of Article 311 of the Constitution. A company registered under the Companies Act and carrying on trading business is a private enterprise to make profit through its business activities. Respondent was appointed as Manager (Administration) and was in the private employment. He was not enjoying any statutory status and not entitled to be proceeded against after setting up inquiry before invoking clause 10 of the terms and conditions of appointment letter Ex.P1.

16. It needs to be highlighted that in Central Inland Water Transport Ltd. case (supra) the Supreme Court did not hold that a Government company per se would be an instrumentality of the State and thus would be bound, in its actions, whether contractual or not, to act within the confines of Article 14 of the Constitution of India. The Supreme Court held that where a corporation, including a company, acquires the status of an "authority" within the meaning of Article 12 of the Constitution of India, only then the said company would be an instrumentality of the State and thus Article 14 of the Constitution of India would apply. The test on which it had to be determined: Whether the Government company was an instrumentality of the State were the well known principles culled out in the decision reported as *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

17. We find that case law *Sitaram Kanshi Ram Konda Vs. Pigment Cakes & Chemical Manufacturing Co.*, (Supra) relied upon the respondent has no application to the facts of the present case for the reason that in a case pertaining to industrial dispute, a suit was filed before the Civil Court in respect of certain unjustifiable and illegal actions on the part of employer which were in the nature of industrial dispute and apart from that, in the alternative, he also prayed for awarding compensation for wrongful dismissal and the Apex Court held that to this limited extent, the matter could be examined by Civil Court. Here, in the given case, the appellant being appointed in managerial capacity, services being terminated as per contract, the jurisdiction of Civil Court to deal

with the matter is not in question.

18. Case law S.M.Murray Vs. M/s. Fenner India Ltd. (Supra) relied upon by learned counsel for the respondent pertains to the suit for damages and injunction against dispossession from the premises allotted to the employee during the course of employment, thus, having no applicability to the facts of the present case.

19. The applicability of other three judgments Indian Airlines Corporation Vs. Sukhdeo Rai (Supra); Central Inland Water Transport Ltd & Anr. Vs. Brozo Nath Ganguli & Anr. (Supra), and Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain (Supra) shall be considered hereinafter at the appropriate stage.

20. Reliance on judgment Executive Committee of Vaish Degree College Shamli & Ors. Vs. Lakshmi Narain & Ors. (Supra), does not promote the case of the respondent. Rather in that case in para 18, it was held as under :

18. On a consideration of the authorities mentioned above, it is, therefore, clear 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 recognized 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 or violation of the mandatory provisions of the statute.

21. This view of ours is further fortified by observation made by Justice Bhagwati (as his Lordship then was) in the concurring judgment in Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain (Supra) in para 31, which is extracted below :

31. ...There are two distinct classes of cases which might arise when we are considering the relationship between employer and employee. The relationship may be governed by contract or it may be governed by statute or statutory regulations. When it is governed by contract, the question arises whether the general principles of the law of contract are applicable to the contract of employment or the law governing the contract of employment is a separate and sui generis body of rules. The crucial question then is as to what is the effect of repudiation of the contract of employment by the employer. If an employer repudiates the contract of employment by dismissing his employee, can the employee refuse to accept the dismissal as terminating the contract and seek to treat the contract as still subsisting" The answer to this question given by general contract principles would seem to be that the repudiation is of no effect unless accepted, in other words, the contracting party faced with a wrongful repudiation may opt to refuse to accept the repudiation and may hold the repudiation to a

continuance of his contractual obligation. But does this rule apply to wrongful repudiation of the contract of employment" The trend of the decisions seems to be that it does not. It seems to be generally recognized that wrongful repudiation of the contract of employment by the employer effectively terminates the employment : the termination being wrongful entitles the employee to claim damages, but the employee cannot refuse to accept the repudiation and seek to treat the contract of employment as continuing. What is the principle behind this departure from the general rule of law of contract" The reason seems to be that a contract of employment is not ordinarily one which is specifically enforced. If it cannot be specifically enforced, it would be futile to contend that the unaccepted repudiation is of no effect and the contract continues to subsist between the parties. The law in such a case, therefore, adopts a more realistic posture and holds that the repudiation effectively terminates the contract and the employee can only claim damages for wrongful breach of the contract. Now a contract of employment is not specifically enforced because ordinarily it is a contract of personal service and, as pointed out in the first illustration to clause (b) of Section 21 of the Specific Relief Act, 1877, a contract of personal service cannot be specifically enforced. Of course this illustration has not been omitted in the new Specific Relief Act, 1963 and what would be the effect of such omission may be a point which may require consideration someday by this Court. But for the purpose of this case, I will proceed on the assumption that even under the new Act, the law is the same and it frowns on specific enforcement of a contract of personal service.

22. The legal position in this regard was again cleared in the case, State Bank of India and Others Vs. S.N. Goyal, . Relevant para 17 of the judgment is extracted below :

17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief -damages or reinstatement with consequential reliefs -is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts.

23. Here the case of the respondent was not covered under any of the exceptions referred to in the cases noted above. It is settled legal position that contract of personal services cannot be specifically enforced either by the Master or the Servant. The legal remedy in such relationship is only by way of claiming damages unless the case of such employee falls under any of the exceptions referred to above. Whether in the relationship of Master and Servant, the termination can be declared as nullity, was answered by the Apex Court in *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, . The relevant paras 15 to 18 are extracted below :

15. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the

provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant. the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

24. Since the respondent was not a workman, the appellant company could in exercise of powers conferred by Clause 10 of the terms and conditions of appointment, have terminated the services of respondent by giving notice or paying in lieu of such notice. Termination of service on the basis of adverse finding do carry a stigma, but in the instant case, the performance appraisals are internal process to assess the efficiency, utility and administrative as well managerial skill of the employee placed at managerial level. The termination order Ex.P2 did not contain any adverse finding. It was a termination simplicitor under clause 10 of terms and conditions of appointment of respondent.

25. In case of private employee, a contract of personal services cannot ordinarily be specifically enforced. The Court would not be imposing an employee on the employer and enforce contract of personal services. An employer cannot be forced to take an employee when there is complete loss of faith between the two or can be inferred from the averments made in this case. The claim of damages i.e. salary, till respondent would have attained the age of superannuation by learned Single Judge is not sustainable in law. This is for the reason that if a contract expressly provides that it is termination upon serving a particular period of notice e.g. three months notice, the damages will ordinarily be wages for that period. He cannot claim compensation in respect of the injuries to his feelings by such termination or the problems faced in finding another job.

26. On the issue of award of damages till the date of attaining superannuation, the respondent was an employee of a private company appointed in managerial capacity and their mutual rights and obligations were governed by the terms and conditions of the appointment letter Ex.P1. The case of the respondent was covered under the first category i.e. Master and Servant relationship, in the nature of private employment. Since under Clause 10 of Ex.P1 respondent's services could be terminated on three months? notice or pay in lieu thereof, all that he was entitled was notice pay and other legitimate dues.

27. Learned Single Judge while declaring clause 10 of the appointment letter as void relying on pronouncements Executive Committee of Vaish Degree College, Shamli & Ors. Vs. Lakshmi Narain & Ors. (supra) and The Central Co-operative Bank Ltd. Kumbakonam Vs. M. Parthasarathi (supra), failed to appreciate that those reports applied to undertakings, corporations or Government bodies but not private companies. Clause 10 of appointment letter Ex.P1 permitted the appellant to terminate the services of the respondent by giving three months' notice or notice pay in lieu without assigning any reason. Thus, termination simplicitor is not violation of the terms and conditions of the appointment letter nor in violation of principle of natural justice.

28. A feeble attempt has been made by the respondent to make it a case of victimization post 1984 riots. It is a matter of record and admission by respondent that so long as he remained in the employment or even thereafter in various communications, there was no mention of victimization on account of religion. It was for the first time made while serving legal notice. Learned Single Judge while dealing with this aspect, in para 37 of the judgment has considered it to be not relevant and did not deem it proper and necessary to decide this question. In order to deal with this contention, suffice it to refer that as per para 9 of the written statement, Manager (Administration) Head Office of the appellant Mr. I.J.S. Sethi himself is a Sikh and serving the appellant. The contention of appellant that he was appointed by the Chairman but termination order has been issued by the Manager or forgery of signature on Ex.P21 is without any substance in view of his own admission that his services have been terminated after the approval of the Chairman.

29. The learned Single Judge had granted the relief of declaration that clause 10 of the agreement Ex.P1 is void and consequently notice of termination also fails relying on the case law Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. AND Central Inland Water Transport Corporation Ltd. & Anr. Vs. Tarun Kanti Sengupta & Anr. and "Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors".(Supra). (Para 36 of the impugned judgment). Learned Single Judge has preferred not to enter into discussion on the issue about the constitution of the Appellant company and to consider whether the judgment of Supreme Court in Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. (Supra) and Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors." (Supra), could be made applicable to the facts of this case where the relationship was purely contractual.

30. To support our view that cases Executive Committee of Vaish Degree College, Shamli & Ors. Vs. Lakshmi Narain & Ors. (supra) and The Central Co-operative Bank Ltd. Kumbakonam Vs. M. Parthasarathi (supra) could not have been relied upon in case of private employer terminating the services of its employee invoking the terms of the contract, it would be advantageous to refer to the judgment of Apex Court in Binny Ltd. and Another Vs. V. Sadasivan and Others, In Binny Ltd."s case (Supra), the termination was challenged by employees and apart from other judgments, applicability of Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. (Supra) and Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors." (Supra), was also discussed in detail in case of private employment where specific performance of the contract was sought to be enforced challenging clause 9 which was similar to clause 10 in the present case. In para 25 to 28 and 31 of the judgment, the Apex Court has held as under :-

25. Two other decisions relied upon by the appellant to argue that the writ petition was maintainable are the decisions reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

and in Delhi Transport Corporation v. PTC Mazdoor Congress and Ors. The Central Inland case was extensively relied on. In this case, the appellant corporation was a Govt. company incorporated under the Companies Act and the majority of the shares were held by the Union of India and remaining shares were held by the State of West Bengal. Each of the respondents in the two appeals was in the service of the said company. A notice under Rule 9(1) was served on them and their services were terminated with immediate effect by paying three months pay. They filed writ petitions before the High Court and the Division Bench allowed the same. The appellant corporation filed an appeal before this Court. The main thrust of the argument of the respondents was that Rule 9(1) of Central Inland Water Transport Corporation Limited (Service, Discipline and Appeal) Rules, 1979 was void and illegal and violative of Article 14 of the Constitution and it was also void in view Section 23 of the Contract Act. This Court held that Rule 9(1) was violative of Article 14 as it was against the public policy as the employer had absolute power to terminate the service of an employee giving three months notice. This Court held that this was an absolute arbitrary power given to the corporation and termination of the respondent employees by invoking Rule 9(1) was illegal.

26. It is important to understand the real dicta laid down in the background of the facts involved therein. The appellant was a public sector undertaking and in that view of the matter it was held that the contract of employment and the service rules which gave absolute and arbitrary power to terminate the service of the employees were illegal. It may be also noticed that the termination clause was referred to in the context of the contract read as a whole and no enquiry was contemplated under the rules even in the case of allegation of misconduct and it was held to be violative of the principles of natural justice. It was also held to be violative of Section 23 of the Contract Act as it was opposed to public policy to terminate the services of the employee without conducting an enquiry even on the ground of misconduct. The public policy principles can be applied to the employment in public sector undertaking in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labor activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of private sector. The service rules and regulations which are applicable to govt. employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner. Therefore, the decision rendered by this Court in Central Inland case is of no assistance to the respondents in Civil Appeal No. 1976 of 1988 or to the appellants in the civil appeal arising out of SLP(Civil) No. 6016 of 2002.

27. In the second case also, namely, the Delhi Transport Corporation v. DTC Mazdoor Congress and Ors., the appellant was a public sector undertaking and the main controversy was about the term "other authorities" under Article 12 of the Constitution. Both in Central Inland and DTC cases, the decision of the public

sector undertaking was under challenge and the question raised was whether the principles of natural justice and fairness are to be applied. It was held that this Court has got jurisdiction to consider this question by invoking the principles of judicial review. But it would be noticed that in both the cases, it was a public sector undertaking coming within the purview of "other authorities" under Article 12 of the Constitution.

28. In this context, it must be noted that the High Court purported to apply the ratio in the above two decisions on the assumption that all termination simplicitor clauses providing for termination on giving notice will be per se invalid. But the High Court has not examined Clauses (8) & (9) of the Agreement between Management and the Staff of Binny Limited in their entirety. Clause (9) contemplates an inquiry in a case of termination for misconduct. Thus there is a provision for natural justice in case of termination involving misconduct and stigma. In such a case, whether the ratio of the decisions in DTC and Central Inland cases would apply or not, was not examined by the High Court. This is an additional reason why the declaration by the High Court should not be allowed to stand.

29. ...

30. ...

31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal u/s 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application.

31. In view of the ratio laid down by the Apex court in Binny Ltd. & Anr. Vs. V.Sadasivan & Ors. (Supra), no doubt is left regarding the applicability of Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. (Supra) and Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors." (Supra), only on the undertakings, corporations and Government companies and not a private company.

32. We are of the considered view that the law as enunciated by the Apex court and this Court on the issue requiring determination in this case, has not only been ignored but also misinterpreted and misapplied by learned Single Judge. Thus, the impugned judgment and decree dated 27.05.1998 passed by learned Single Judge is liable to be set aside. Consequently, the appeal is allowed. The parties shall bear their own costs.