
(1998) 05 DEL CK 0026
In the Delhi High Court
Case No : S.No.2332 of 1985

Tarlochan Singh Mokha

APPELLANT

Vs

M/s. Shriram Piston and Himalaya House and Others

RESPONDENT

Date of Decision : 27-05-1998

Acts Referred:

Citation : (1998) 4 AD 225 : (1998) 74 DLT 455

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. D.D. Singh, for the Appellant; Mr. T.K. Ganju and Ms. Sandhya Kohli, for the Respondent

Judgement

K. Ramamoorthy, J.—The plaintiff has filed the suit for the following reliefs:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court may be pleased to declare that the termination of services of the plaintiff by defendants was illegal, discriminatory, malafide, unconstitutional, arbitrary, unjust, unilateral, unreasonable, wrongful, without authority, in violation of the terms of employment, against the principles of natural justice, fair play and equity and to pass an order for reinstatement with full back wages, and/or to pass a decree for Rs.4,00,000/-(Rupees four lakhs) in favor of the plaintiff and against the defendants jointly and severally with costs, as damages. The plaintiff also prays for award of future interest @ 18% per annum on decretal amount from the date of filing of the suit, to the date of realisation."

2. The case of the plaintiff could be briefly stated in the following terms:

The petitioner obtained a Degree in Graduation from Delhi University and obtained three Post-Graduate Degrees from the United Kingdom in the Disciplines of Management Studies (Business Administration), Personnel Management and Administrative Management, including Organisational Methods. The plaintiff is academically and professionally a highly qualified person. He had worked in M/s.Avery India Limited, M/s.Blue Star Limited and M/s.J.B.F.Printing

Inc Limited etc. He has also a meritorious practical experience. The defendant company is a Government company and its accounts are audited by the Comptroller & Auditor General of India u/s 694 of the Companies Act, 1954. On the 16th of October, 1979, the plaintiff was issued with an appointment letter by the defendant company. At that time, the plaintiff was in a comfortable position in the employment of JBF Printing Inc Limited and, Therefore, was not inclined to accept the offer made by the first defendant. The Chairman of the defendant company was also the Chairman of M/s.Jay Engineering Works Limited. In or about September, 1980, he requested the plaintiff to accept the offer and accept the post of Administrative Manager for the first defendant company.

3. On the 25th of September, 1980, an appointment letter was issued by the Chairman of the first defendant company to the plaintiff as Administrative Manager in a substantive capacity to work for the second defendant (first defendant at Meerut) on a monthly basic salary of Rs.2,700/- besides other perks and a company car with a fixed allowance of Rs.600/- per month. The plaintiff accepted the appointment and worked with all devotion and sincerity. In recognition of the services of the plaintiff, the first defendant gave suitable increase in the salary and other benefits. The two officers in the second defendant, Mr.D.V.Kumar, Senior General Manager and Mr.I.C.Aggarwal, Senior Executive Director, who controlled all its affairs, harassed the plaintiff.

4. On the 21st of March, 1985, a letter was issued terminating the services of the plaintiff. No show-cause notice was given and it was all against the principles of natural justice and the termination is void. Consequently, the plaintiff had to file the suit claiming the reliefs.

5. The first defendant filed its written statement on the 16th of July, 1986. It is signed by Mr.D.V.Kumar. It is stated in paragraph 1 B:-

"Clause 10 of the said letter which deals with the question of the termination of such appointment reads as follows:

10. This appointment is terminable by either side on giving one month's notice for every completed year of service (subject to a minimum of one month's and maximum of three months) or payment in lieu thereof without assignment of any reason on either side. For the purpose of notice period, the payment of salary means only basic salary excluding all other perquisites/benefits whatsoever."

6. In paragraph 2 of the written statement, it is stated:-

"In law the plaintiff cannot ask for a declaration that the termination of his services was illegal or for reinstatement or to claim alleged back wages. The service of the plaintiff was a contract of personal service. It was terminable at notice or on payment of three months salary in lieu of notice. Such service requires continuous supervision which the Court cannot do. Such a contract of personal service cannot be specifically performed and no reinstatement can be granted by a Civil Court, for the termination of such service. The reliefs of

declaration and reinstatement sought for by the plaintiff are barred under the provisions of the Specific Relief Act."

7. It is not necessary to set out other averments in the written statement as the point involves the validity of the notice.

8. The third defendant filed the written statement taking the same stand as the first defendant and it is not necessary to advert to the averments.

9. The following issues were framed for trial on the 23rd of November, 1989:-

"1. Whether suit is not maintainable against defendant No.3?

2. Whether defendant No.2 is a separate legal entity and if not, to what effect?

3. Whether the suit is bad for misguide of parties?

4. Whether the termination of plaintiff's services by defendant No.1 was illegal and if so, to what effect?

5. Whether the plaintiff is stopped from challenging the validity of termination of his services?

6. Whether the claim for declaration is barred under the provisions of the Specific Relief Act?

7. Whether the plaintiff is entitled to damages and if so, to what amount?

8. Whether defendants have paid Rs.57,204.25 and other dues to the plaintiff?

9. To what relief the plaintiff is entitled?"

10. Mr.Tarlochan Singh, the plaintiff, examined himself as PW-1. He would refer to his salary and perquisites in the following terms:-

"I was given a confirmed employment. My basic salary and perquisites, at the time of joining, were as follows:-

Basic salary Rs.2,700/- House Rent 30% Telephone expenses up to 1000 calls Company Car Fixed allowance Rs.600/- Provident Fund, LIC, Medical, one refrigerator, one desert cooler, one geyser.

11. According to the plaintiff, he served for the first defendant from 01.12.1980 to 21.03.1985. He speaks about Ex.P-2, the termination letter dated the 21st of March, 1985. He wrote PW-1/11 to PW-1/17 requesting the first defendant to take him back and that was not accepted. He issued notice, through counsel, on the 22nd of July, 1985, which is marked as PW1/18. According to the witness, he would estimate the loss in the following terms:-

"I would have retired in a normal course on 01.02.1994. Some time extensions are granted up to a person attain the age of 65-66 years. A total loss of Rs.9,53,000/- has been incurred by me. These are detailed in Annexure-I to the plaint."

12. In the cross-examination, clause 10 in the appointment letter, P-1, was put to the witness and, inter alia, the witness would admit the existence of the said clause in the appointment letter. He would state that he received certain payments under protest and he had conveyed the same in PW1/11. It was suggested to him that there was no discrimination that the plaintiff belongs to a particular community and, Therefore, his services were terminated. About the constitution of the first defendant company, witness would state:

"The Central Government holds shares in defendant No.1, as is clear from the annual report filed in this Court. The annual report contains comments of the Comptroller and Auditor General of India, printed on it at page 5 for the year 1981, and page 5 for the year 1982. For this reason, I say that defendant No.1 is a government company. I cannot say whether the annual report filed by me contains the statement that the Central Government is a shareholder in defendant No.1. According to my personal knowledge the U.P.Government holds some share in the company. I cannot say whether it is U.P.Government or the U.P.State Financial Corporation. The State Government has got 52% share in the company. I say so on the basis of my personal knowledge, as also the annual reports."

13. The witness had admitted that he had joined Ansal Properties and Industries Private Limited and the latter of appointment is marked as PW1/2.

14. The witness would admit that the age of superannuation is 58 years. It was suggested to him, "it is incorrect to suggest that extension beyond 58 years of age is not granted by defendant No.1 company". He stated, "after 15 months of my employment, I got a job of only Rs.4,000/- per month whereas my emoluments with defendant No.1 was about Rs.7,000/- per month". 15. The plaintiff examined PW-2, Mr.Gurmukh Singh, to show that because the plaintiff belongs to Sikh Community, his services were terminated. In the cross-examination PW-2 would state, "I do not know whether the defendant company has still on its roll Sikh employees or not but Sikh employees who were there during my period are no longer working with the defendant". He would admit that no written complaint was ever made about this aspect of the matter.

16. The first defendant examined DW-1, Mr.D.K.Kapur, who was the Assistant General Manager of the first defendant company. According to him, he joined company in January, 1973. He would state that there was no discrimination practiced against Sikh employees. He would state. He would state that Mr.I.J.S.Sethi, who was a Sikh by religion, resigned from the services of the company in the year 1987 for better prospects. About the validity of the notice, DW-1 was cross-examined. He would state:

Q.33. "What is this Office order concept prevalent in your Company.?"

A. Office orders are just various systems and guidelines for day to day operations of the company for various departments.

Q.34. Does it include recruitment and the termination policy also?

A. Yes, there is an office order on personnel matters also.

Q.35. The document, Ex.PW-1/5 shows the various authorities of various persons. Whether the office orders notified in this document have been duly passed by the Board of Directors?

A. These are not passed by the Board of Directors.

Q.36. Then what is the basis of this order?

A. These are the operational guidelines given by the management for day to day operations of the company.

Q.37. Does it have the approval of the Board of Directors?

A. No.

Q.38. Is this being complied throughout?

A. Yes.

Q.39 Under the rules, who is the appointing authority of the plaintiff?

A. The appointment order has been signed by Dr.Charat Ram, Chairman of the company.

Q.40. Is there any order delegating the authority to the person who has passed the termination order?

A. The delegation is found in the letter by Mr.D.V.Kumar dated 11th March 1985, Ex.D-21.

Q.41. To whom is this letter addressed by Mr.D.V.Kumar?

A. Ex.D-21, letter is addressed to Mr.I.J.S.Sethi, the then Manager (Administration) at Head Office.

Q.42 Is there any endorsement by Mr.Sethi on the letter of the Chairman?

A. There is no endorsement by Mr.Sethi to the Chairman.

Q.43. Please see the document, Ex.D-20. Who has signed the note on the right-hand side at the end?

A. This is signed by Lala Charat Ramji, Chairman of the company. He has not signed the same in my presence.

Q.44. I put it to you that this signature is not that of the Chairman?

A. It is totally wrong.

Q.45. Please see Ex.P-1. Who has signed this document?

A. This is signed by the Chairman of the company.

Q.46. Please compare both the signature in Ex.P-1 and Ex.D-21 and say whether they are the same?

A. Yes, they are the same.

Q.47. According to you, the Chairman has marked this letter to Mr.Deepak C. Shriram and Mr.Deepak C.Shriram has then marked the same to Mr.I.J.S.Sethi. Is there any signature of Mr.I.J.S.Sethi on that letter confirming that he has acted upon this?

A. Mr.I.J.S.Sethi has not signed this.

Q.48. At the relevant time i.e. on 11th March 1985, was Mr.I.J.S.Sethi in the employment of the company.

A. Yes.

Q.49. I put it to you that this document has been fabricated and that is why the signatures of Mr.I.J.S.Sethi is not there because he was not available on the day when this document was fabricated?

A. It is incorrect to say.

Q.50. Please see the document. Is the reply accompanied by an affidavit dated 20th September 1988 sworn by you?

A. Yes.

Q.51. In this affidavit dated 20th September, 1988, is there any averment that Mr.I.J.S.Sethi was duly empowered to terminate Mr.Mokha?

A. The affidavit does not mention about this.

Q.52. Please see the reply dated 27th August, 1989 in I.A.5103/88. Is this reply and the affidavit given by you?

A. Yes, it has been signed by me.

Q.53. Is there any averment to the effect that Mr.I.J.S.Sethi has been duly empowered to terminate the plaintiff.

A. It is not there.

Q.54. When did Mr.I.J.S.Sethi leave your office?

A. In the year 1987.

Q.55. Mr.Kapur, you are deposing falsely that the Chairman had authorised Mr.I.J.S.Sethi to terminate the service of the plaintiff?

A. I deny the suggestion.

Q.56. I suggest it to you that the Document Ex.D-21 does not bear the signatures of Mr.I.J.S.Sethi because Mr.Sethi was not available in service?

A. It is incorrect."

17. It was suggested to the witness that there was organisational bias against the Sikh employees. The witness would state:

"Q. Mr.Kapur, is there any document to show that the organisation had ever intimated to the plaintiff that his work was not up to the mark?

A. I do not have any file. Without the file I cannot say anything at this time.

18. About the company being a Government company, the witness would state:

"Q.75. Mr.Kapur who is Mr.Patnaik mentioned in the document?

A. I do not know.

Q.76. Mr.Kapur I put it to you that he is the Government nominated Director on your Board?

A. It is incorrect.

Q.77. Mr.Kapur kindly see the next page of this document at bottom where the endorsement is made that it is the comments of the Comptroller of Auditor General of India u/s 619(4) of the Companies Act, 1956 because your Company is Government Company?

A. It is incorrect.

19. The learned counsel for the plaintiff, Mr.D.D.Singh, submitted that the order of termination is illegal and the plaintiff is entitled to a declaration. He submitted that in view of the legal position emerging out of the judgment of the Supreme Court in Central Inland Water Transport Corporation's case 1986 SC 1571 (Judgment was rendered on 6.4.1986) and the plaint in this case was presented on the 7th of December, 1985, the action of the defendant is wholly void in law. Learned counsel referred to the following authorities:-

1. D.N. Vohra Vs. Agya Wanti,
2. West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others,
3. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,
4. Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another, and Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another,
5. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,

20. Clause 10 of the appointment letter reads thus:-

"This appointment is terminable by either side on giving one month's notice for every completed year of service (subject to a minimum of one month's and

maximum of three months) or payment in lieu thereof without assignment of any reason on either side. For the purpose of notice period, the payment of salary means only basic salary excluding all other perquisites/benefits whatsoever."

21. The termination order reads as under:-

"I am directed to inform you that in terms of clause 10 of your appointment letter dated September 25, 1980, your services stand terminated with immediate effect. In terms of the said clause 10, a cheque (bearing No.079893 dated 21.3.1985) for Rs.9600/- (Rs.Nine thousand six hundred only), as regards your payment in lieu of notice, is enclosed.

You are also requested to settle all your outstanding dues with the Accounts Department."

22. Trying to meet the point raised in the written statement by the first defendant that the plaintiff cannot seek to enforce the contract of personnel service, Mr.D.D.Singh, learned counsel for the plaintiff, relied upon the following authorities:-

1. Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others,
2. Supreme General Films Exchange Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others,
3. Machiraju Parthasarathy Vs. The Tobacco Export Promotion Council and Others,
4. Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co., .

23. On the question of damages, Mr.D.D.Singh, learned counsel for plaintiff, relied upon the following two authorities:-

1. S.S. Shetty Vs. Bharat Nidhi, Ltd.,
2. S.M. Murray Vs. Fenner (India) Ltd.,

24. Mr.Ganju, the learned counsel for the defendants relied upon the following authorities:-

1. Indian Airlines Corporation Vs. Sukhdeo Rai,
2. Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others,
3. Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others,
4. Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, ,
5. Dipak Kumar Biswas Vs. Director of Public Instruction and Others,
6. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others,

7. Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, ."

25. Mr.D.D.Singh, the learned counsel for the plaintiff submitted that even while issuing the notice of termination, the first defendant had not followed the procedure prescribed and, Therefore, there was procedural illegality and the defendant company had chosen to ignore the procedure established by it. Mr.Ganju, the learned counsel for the defendant submitted that one of the grounds challenged by the plaintiff was that Mr.Sethi, who had signed the letter of termination, was not authorised to sign in view of the office orders issued by the defendant company. The learned counsel for defendant referred to Ex.D-20, affidavit filed by Mr.D.K.Kapur, and the letter dated 11th of March, 1985, Ex.D-21 and performance appraisal which was marked as Ex.D-22 and, according to the learned counsel, one of the reasons for issuing notice was that the performance of the plaintiff was not up to the satisfaction of the management. According to the learned counsel, the decision to terminate the services of the plaintiff was taken by the Chairman of the first company as evidenced by Ex.D-21. The Endorsement reads as under:-

"We have discussed this case several times. Notwithstanding his efforts, the company needs are not met and we need to make a change. Accordingly, please take steps for relieving Mr.Mokha and appointing a new an."

26. According to the learned counsel, the Managing Director, Mr.Deepak C.Shriram had directed Mr.I.J.S.Sethi:-

"Please arrange to issue termination letter to Mr.Mokha, as per decision of Chairman and statement may be made as per appointment letter terms."

27. According to the learned counsel, the officer orders are purely administrative in nature and assuming there had been any violation, that will not clothe the plaintiff with any rights. He relied upon the judgment of the Supreme Court in Union of India and Others Vs. S.L. Abbas, .

28. Mr.Ganju, the learned counsel for defendants, submitted that the case of the plaintiff that the first defendant company is a Government company is baseless. He submitted that the plaintiff would rely upon Ex.PW-1/3 being the Annual Report, of which comments of the Comptroller & Auditor-General of India u/s 619(4) of the Companies Act, 1956 was asked for. According to the learned counsel, there is absolutely nothing on record to show that the defendant is a Government company. DW-1 had given the shareholdings pattern of the first defendant company in question No.27 and according to the DW-1, 38% of the share holding is with the promoters, 40% is with the banks and financial institutions, including IDBI, National Insurance, LIC, IBP, etc. and about 19% is with foreign collaborators and about 2 to 3% is with the general public. The learned counsel submitted that Section 619(b) of the Companies Act does not apply to the first defendant company. The learned counsel relied upon the statement of law by Ramaiya's commentary on the Companies Act.

"It must be noted that the Companies coming within the provisions of this Section are not Government Companies. Only the provisions relating to audit, applying to Government Companies, will apply to these companies. In respect of all other matters these companies are in the same position and governed by the provisions of the Act in the same manner as other Companies. Section 620 which relates to the modification of the Act in respect of Government companies does not extend to the companies coming under this section. The power of Government under this section does not extend to Companies coming u/s 619B as such companies are not Government Companies. Such companies are, for purpose of audit, to be treated as if they are Government Companies. The expression "as if" means that they are not Government Companies but for purposes of section 619 they are to be treated as Government Companies."

29. About the quantum of damages, the learned counsel for defendants, Mr. Ganju, submitted that in that event, the quantum could be only three months' salary which stated in the appointment letter and the plaintiff cannot claim anything beyond that. He also referred to the judgment of the Supreme Court in *S.S. Shetty Vs. Bharat Nidhi, Ltd.*, which was referred to by Mr. D.D. Singh, the learned counsel for the plaintiff. The learned counsel for the defendants referred to the judgment of the Allahabad High Court in 1981 Labour & Industrial Cases 1009 "*Dayanand Sarup Vs. Smt. Bimla Rani & Others*". The Allahabad High Court held:-

"The contract in the present case provided that the service was terminable on one month's notice. The substance of the matter was that an employee must get one month's pay after he is told that his services are no longer required or that if the employee wants to leave service he must continue to serve the employer for one month more telling the employer that he wants to leave, or pay one month's salary as compensation, inasmuch as the employer did not tender one month's pay in lieu of notice, there was breach of contract on his part but that did not render the termination of service bad. The employee became entitled to sue for damages for breach of contract and the measure of damages was the amount of one month's salary which would have been payable to the employee in case the term of the contract had been complied with. I am, Therefore, of the opinion that the maximum that the plaintiff was entitled to for terminating his services otherwise than by giving him one month's prior notice could be remedied by giving him a decree for one month's salary by way of damages in lieu of notice."

30. The learned counsel referred to the judgment of the Calcutta High Court in "*Balram Chatterjee Vs. Hindustan Steel Ltd.*", 1975 Lab & IC 1311, wherein the Calcutta High Court following the principles laid down by the Supreme Court in *S.S. Shetty Vs. Bharat Nidhi, Ltd.*, held:-

"In view of the law discussed above, I am constrained to hold that in the instant case, the plaintiff cannot get, by way of damages, more than the amount of his salary for the period of his notice. The plaintiff is however entitled to receive by

way of additional benefit another month's salary in lieu of his leave pay and further 15 days salary on account of casual leave."

31. The learned counsel on facts of the present case submitted that the plaintiff had been given an adjustment of 126 1/2 days leave accumulated in his favor and full benefit was given to him. The learned counsel Mr.Ganju referred to the judgment of the Madras High Court in S.M. Mohandas Vs. Esso Standard Eastern Inc., distinguishing from the judgment of the same Court reported in held:-

"However, that decision has no application to the facts of this case, since I have come to the conclusion that the contract between the parties in this case actually stipulated one month's notice for terminating the services, while that case dealt with a contract where no period of notice had been stipulated by or agreed to between the parties. Consequently. my conclusion is that if the plaintiff is entitled only to any damages at all, he is entitled only to one month's salary on the ground that his services were terminated was unlawful, since no notice as required by the contract entered into between the parties was given."

32. The learned counsel also referred to the judgment of the Patna High Court in Nageshwar Prasad and Others Vs. State of Bihar and Others, in which it is held:-

"Where an employee of Government is discharged without a month's notice to which he is entitled under the terms of the contract of service he would at best be entitled to a month's salary in lieu of such notice in a properly constituted suit. The absence of notice will not However render the order of discharge void.

Where the termination of service does not appear to be by way of punishment but is simply based on contractual rights under the terms on which the appointment was made the employee is not entitled to an opportunity to show cause against the action proposed to be taken against him."

33. Learned counsel referred to the judgment of the Supreme Court in Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, which relates to distributorship contract and I do not think that will be relevant.

34. The learned counsel for the defendants, Mr.Ganju, stated that the plaintiff had received Rs.57,204.25 paise. Details given by him could be stated as under:-

17.9.85 PW-1/X-1 Rs.56,803.00 22.4.85 P-4 Rs. 255.00 28.8.85 P-8 Rs. 146.00 Total:- Rs.57,204.25 35. The learned counsel for the plaintiff submitted that the stand of the defendants cannot be sustained in view of the judgment of the Supreme Court. The learned counsel for plaintiff, Mr.D.D.Singh, submitted that Ex.PW-1/13 and Ex.PW-1/14 would show that the plaintiff had clearly challenged the authority of Mr.Sethi to issue the notice of the termination. The plaintiff had objected to the validity of Ex.D-20 to Ex.D-22 and they have not been proved in accordance with law. Therefore, the defendants cannot rely upon those documents. The learned counsel for the plaintiff, Mr.D.D.Singh submitted that in view of the position that 54% of the shareholding is held by financial institutions like LIC, IDBI, etc. and the statement given by DW-1 about the

sharing ratio is not correct.

36. Mr.D.D.Singh, the learned counsel for the plaintiff, also referred to an order passed by this Court on 19th August, 1991 wherein this Court said:-

"IA.5103/1988 & S.2332/85

After some arguments, learned counsel for the defendant states that she would like to produce the documents showing that Mr.Sethi was authorised to terminate the services of the plaintiff. On the next date of hearing she may do so. Adjourned to 19.11.91."

37. Whatever 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. & Another Vs. Brojo Nath Ganguly & Another 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 falls to the ground.

38. 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.

39. The next question that arises is, what is the quantum of damages the plaintiff would be entitled to? The plaintiff had claimed Rs.9 lakhs and odd on the basis of some details scheduled to the plaint. Mr.Ganju, the learned counsel for the defendants vehemently contended that the claim by the plaintiff is very unreasonable and having regard to the principles applicable to awarding of damages, the case of the plaintiff cannot be accepted. Various authorities, relied on by Mr.Ganju, the learned counsel for the defendant, do not apply to the facts of this case. The normal measure of damages in cases like this would be the salary and other perks the employee would have drawn if he had been allowed to continue till the date of superannuation. The claim of the plaintiff that he would have been able to get extension up to the age of 65 or 66 cannot form the basis for calculating the quantum of damages. According to the plaintiff, he was born on the 1st of February, 1936. He would have completed 58 years, the age of superannuation, in 1994. Therefore, he would be entitled to what he would have received from 21.3.1985 to 31.1.1994. The plaintiff had claimed damages on various rates but the principle is what he would have earned if there had been no

order of termination of his services. The plaintiff cannot under the guise of claiming damages try to enrich himself. He would be entitled to @ Rs.2,700/- as basic salary. According to the plaintiff in the plaint, he was drawing on the date of termination remuneration detailed as under:-

Salary Rs.3,200.00 Car allowance Rs. 800.00 House rent allowance Rs. 900.00 Entertainment allowance Rs. 200.00 Total:- Rs.5,100.00 40. In his evidence, as already extracted above, the plaintiff stated that the basic salary was Rs.2,300/-, house rent 13%, telephone expenses up to 1,000 calls, car allowance and other allowances. If the plaintiff had continued in service, he would have been given increase in salary and perks and that would have been very substantial. The plaintiff would have retired from service on the 1st of January, 1994. He would have served, if there had been no notice of termination, for 128 months. The plaintiff fairly stated in his evidence that 15 months after the termination of his services by the first defendant, he was able to get an employment in M/s.Ansal Properties Limited on a monthly salary of Rs.4,000/-. According to the plaintiff, he was getting about Rs.7,000/- per month from defendants 1 & 2 plus other perks. In coming to a decision on the quantum of damages, certain amount of guess work is inimitable. Having regard to the facts and circumstances, the position of the plaintiff, his qualifications and experience, I am of the view that a sum of Rs.5,000/- per month would be reasonable to compensate the plaintiff.

41. There is dispute relating to the payment of Rs.57,204.25 by defendants 1 & 2 to the plaintiff. I accept the case of the defendants 1 & 2 that the sum of Rs.57,204.25 had been paid to the plaintiff. Giving credit to this amount, the total amount payable by defendants 1 & 2 to the plaintiff would be Rs.5,82,795.75.

42. Keeping in view the claim of the plaintiff as an employee of the first defendant, whose services were terminated when he was in prime of his life, defendants 1 & 2 are bound in law to pay the plaintiff interest on the amount fixed above. I fix the rate of interest at 15% per annum from 1.2.1994 till the date of payment.

43. I now turn to give findings on the issues. 43. On Issue No.1, it was contended that the third defendant Mr.Deepak C.qhriram, the Managing Director, cannot be made personally liable. The plaintiff cannot claim any relief against the Managing Director of the Company when his employment was by the company. Therefore the suit against the third defendant is not maintainable.

44. On Issue No.2, the second defendant, the Local Management of the first defendant at Meerut is not a separate entity from the first defendant. The issue is answered accordingly.

45. On Issue No.3, I find that the suit is not bad for misguide of the parties.

46. On Issue No.4, defendants 1 & 2 would state that there is an estoppels against the plaintiff from challenging the notice of termination. That cannot at all

be appreciated. I do not find any difficulty in rejecting the contention on behalf of the defendants 1 & 2 that there is an estoppel against the plaintiff. Therefore, this issue is answered against the defendants.

47. On issue No.6, I find that the suit is not barred under the provisions of the Specific Relief Act, 1963. The first defendant is a corporate body and Therefore, the principle laid down by the Supreme Court in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, would apply. The Madras High Court had occasion to consider the question with reference to a cooperative bank which was a society under the Tamilnadu Cooperative Societies Act, 1961. Srinivasan, J.(as His Leadership then was) in "The Central Cooperative Bank Ltd.,Kumbakonam Vs. M.Parthasarathi" 1988 1 law wee 479, in considering the entire case law on the point held:-

"I am of the opinion that the facts of this case provide the special circumstances contemplated granting the specific relief prayed for by the plaintiff enforcing the contract of service or declaring the termination of service to be ineffective or null and void."

48. With great respect, I agree with the ratio laid down by the Madras High Court and I hold that the suit is not barred under the provisions of the Specific Relief Act, 1963. The Issue is answered in favor of the plaintiff and against the defendants.

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

50. Accordingly, there shall be a decree:-

1. declaring that the notice of termination dated the 21st of March, 1985 (Ex.P-2) as null and void.
2. declaring that the plaintiff is deemed to have been in service of the first defendant till he attained the age of superannuation on 31.1.1994.
3. directing defendants 1 & 2 to pay the plaintiff the sum of Rs.5,82,795.75.
4. 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.
5. directing the defendants 1 & 2 to pay the plaintiff the costs of the suit.
6. directing the dismissal of the suit against the third defendant without costs.