

PETITIONER:
PRABHUDAYAL BIRARI

Vs.

RESPONDENT:
M.P. RAJYA NAGRIK AAPURTI NIGAM LTD

DATE OF JUDGMENT: 22/08/2000

BENCH:
S. Rajendra Babu J. & Shivaraj V. Patil J.

JUDGMENT:

Shivaraj V. Patil J.
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Delay condoned.

Leave granted.

The facts that are not in dispute are that the appellant was appointed as Assistant District Manager in M.P.State Commodities Trading Corporation Limited, Indore (the respondent herein) by order no. 4383 dated 10.9.1980. As per the terms of the appointment, the services of the appellant could be terminated on one month's notice or on payment of one month's salary in lieu of notice by either side. The respondent is a Government company within the meaning of Section 617 of the Companies Act, 1956. The respondent by order dated 11.5.1981 terminated the services of the appellant with effect from 11.6.1981. The notice of termination was served on the appellant on 8.6.1981 and he was relieved on 10.6.1981. The appellant was not paid one month's salary also.

Faced with the situation, the appellant filed a suit for declaration that the order terminating his services was illegal and that he be treated as continuing in the service of the respondent contending that the order of termination of services was in contravention of the terms of employment.

The respondent resisted this suit on the ground that the relationship between the parties was contractual of 'master and servant' and as such the appellant could not claim specific performance of the contract; the respondent was under no statutory obligations to keep the appellant in service.

The trial court decreed the suit of the appellant holding that neither the appellant was given one month's notice nor one month's salary as per condition no. 5 of Exbt. P1 - the appointment order dated 10.9.1980. According to the trial court, the order of termination of services was one passed without complying with the condition precedent. It was void. Hence the suit was decreed.

The respondent, aggrieved with the judgment and decree of the trial court, filed appeal in the court of the District Judge, Bhopal. The learned District Judge allowed

the appeal, set aside the judgment and decree passed by the trial court and declared that the appellant was only entitled to one month's salary in lieu of notice from the respondent-employer. According to the learned District Judge, the only question that arose for determination in the appeal was whether the appellant was entitled to a declaration that termination of his services was void ab initio and he could be treated still to be in service. He referred to the decision of this Court in *Kusum Gupta vs. Haryana State Small Scale Industries Corporation* (1986 Pt.II M.P.W.N. 108) in which it is held that the Corporation was bound to pay one month's salary to the employee while terminating her services but did not pay the same and as such the order of termination of the services was void. The learned District Judge however took the view that no statutory restriction existed in the case of the appellant and there was only contractual liability arising out of 'master and servant' relationship. Hence he was not entitled for re-instatement in service. He preferred to rely upon a full bench decision of the High Court in *Central Co-operative Bank Limited vs. Shibulal & Others* (1988 J.L.J. 20) to state that a discharged employee was only entitled to one month's salary in lieu of notice; but on the ground of non-payment of one month's salary, the order of termination of service would not be illegal.

The appellant filed second appeal in the High Court of Madhya Pradesh at Jabalpur. In the said appeal, the appellant urged that the order of termination of his services was against the principles of natural justice as well as against the Rules relating to his services. According to him, the Rules that govern the service conditions of the State Government Servants were adopted by the respondent-corporation; since the Rules were not produced by the respondent, he produced them before the first appellate court with an application under Order 41 Rule 27 of the CPC. But the said application was not at all considered by the first appellate court. The learned Single Judge in the impugned judgment has stated that the only question to be considered was whether the order of termination of services of the appellant was illegal. He referred the judgment of *Kusum Gupta* (supra) of this Court but simply observed that the said judgment did not help the appellant without saying why. He relied on the full bench decision of the High Court in *Central Co-operative Bank Limited* aforementioned and dismissed the appeal.

The appellant filed an application for review of the impugned judgment dated 28.10.1994 passed by the learned Single Judge in the second appeal raising the grounds that application filed under Order 41 Rule 27 CPC filed before the first appellate court was not at all considered. Consequently the judgment and decree of the first appellate court were vitiated. Along with the said application, the appellant produced documents to establish that his services were governed by the service Rules which were applicable to the employees of the Madhya Pradesh Government; it was not a mere case of contractual relationship of master and servant. The review application was dismissed by the High Court on 11.8.1999. It is thereafter the appellant filed these Special Leave Petitions challenging the judgment and decree passed in the second appeal and the order made in the review application.

The learned counsel for the appellant urged that the

first appellate court as well as the High Court were not justified in law and on facts of the case in disturbing the judgment and decree passed by the trial court; admittedly the order terminating the services of the appellant was made without complying with a condition mentioned in the very appointment order, i.e., he was neither given one month's notice nor one month's salary in lieu of such notice; when the order of termination of services was made in violation of the condition governing the services, it was void and consequently the appellant is entitled for reinstatement in service. He submitted that the appellant would be satisfied if only he is reinstated in service and he would not insist for payment of back wages.

The learned counsel for the respondent submitted that the appellant remained unauthorisedly absent; he at best was entitled to only one month's salary on the ground that the appellant was only a temporary employee.

As already noticed above, it is not disputed that the order of termination of services of the appellant was made without giving one month's notice or one month's salary. The order of termination of services of the appellant dated 11.5.1981 was served on the appellant on 8.6.1981 and made to be effective from 10.6.1981. The trial court on the basis of the evidence, recorded finding that the order of termination of services was made in violation of the conditions mentioned in the order of appointment itself. As such the said order was void and illegal. Consequently, it granted decree in favour of the appellant. The first appellate court did not consider the application made under Order 41 Rule 27 CPC under which Rules governing the services of the appellant were sought to be produced to show that the respondent adopted the Rules of the State Government governing its employees. The learned District Judge refers to Kusum Gupta's case but states that the said case did not help the appellant as there was no statutory restriction. Had he only considered the application made under Order 41 Rule 27 CPC, perhaps the position would have been different. He relied on the full bench decision of the High Court and held that the discharged employee was only entitled to one month's salary in lieu of notice. Unfortunately the learned Single Judge did not consider the respective contentions of the parties touching the question of law but has simply referred to the judgments in the cases of Kusum Gupta and Central Co-operative Bank Limited aforementioned and concluded that the lower appellate court did not commit any mistake in reversing the judgment and decree passed by the trial court. The learned Judge did not consider the effect of non-consideration of application made under Order 41 Rule 27 CPC by the first appellate court. Without examining the facts of the case, he has simply stated that the case of Kusum Gupta aforementioned did not help the appellant. When admittedly the order of termination of services of the appellant was made in contravention of the specific condition mentioned in the very appointment order, in our view, the trial court was right and justified in decreeing the suit of the appellant. As the application filed under Order 41 Rule 27, CPC was not considered by the first appellate court, the case could have been remanded. But we do not propose to do so for two reasons (1) the order of termination of services is of the year 1981, and (2) admitted facts and circumstances of the case also do not warrant such a remand. The facts being

almost identical, the judgment of this court in the case of Kusum Gupta (supra) supports the appellant, having regard to the admitted facts and the circumstances of the case in hand. Further the learned counsel for the appellant has fairly submitted that the appellant would not insist for payment of back wages and he would be satisfied if he is reinstated in service.

Having regard to the facts stated and reasons given above, the judgments and decrees of the first appellate court as well as the High Court are set aside and the judgment and decree of the trial court are restored with the modification that the appellant shall not be entitled for any back wages. In other words, the judgment and decree of the trial court except to the extent of modification stated above, shall stand restored. Appeals are allowed to the extent indicated. Parties to bear their own costs.