

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 03.02.2011
Judgment delivered on: 22.07.2011

RFA 360/2006

J.K.Shah Appellant
Through: In person.

Versus

M/s. Birla Cotton Spinning and Weaving
Mills Ltd. & Anr. Respondents
Through: Mr.Atul Shankar Mathur with Ms.Shruti
Verma and Mr.Ankur Sangal, Advocates.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908 the appellant seeks modification of the judgment and decree dated 28.02.2006 passed by the learned Trial Court in the suit filed by the appellant to challenge his illegal termination of service by the Respondent no. 1, which was decreed in favour of the appellant along with special damages to the tune of Rs.60,000/- in lieu of his reinstatement, salary, leave pay and notice alongwith the amount of gratuity of Rs.54,000/- for 18 years of service and also entitlement to a no objection certificate to enable him to get released all his dues in provident fund as per rules.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant was appointed by the respondent company on 18.7.63 on probation for three months at a monthly salary of Rs. 250/- per month where he served in various capacities such as Accountant, Commercial Law Officer, Assistant Finance and Management etc. and on 24.8.1976 he was appointed as the Company Secretary of the respondent Company. The appellant claims that in November, 1976 he got an offer for a job with a Malaysian Co. on a salary

of M. Dollars 1700 which was approved by the Govt. of India but the Chairman of the respondent Company did not relieve him. The case of the appellant is that in April 1981, he gave an opinion that on shares received from a "Birla Trust" for transfer, adequate stamp duty was not paid to have the shares transferred which was ignored by the Chairman of the Company and as a result, the shares could not be transferred up to the date of closing of the share transfer books due to which Sh. R.C. Maheshwari, part time Director of the respondent Company asked the appellant to tender his resignation. That on refusal by the appellant to give his resignation, the respondent communicated to the appellant vide its communication dated 06.01.1982, the termination of his service with immediate effect and also vide notice dated 20.08.1982 required the appellant to quit and vacate Quarter No.7184, Mandelia Road, Kamla Nagar, Delhi -110007 which was allotted to the appellant at a monthly license fee of Rs. 15. The appellant replied to this notice challenging his termination on the grounds that the termination of his service was made arbitrarily, with malafide intention and contrary to

the principles of natural justice. Consequently the appellant filed a suit seeking declaration that the termination of his service as Secretary is void ab-initio and inoperative and also sought consequential reliefs claiming payment of salary, contribution to P.F., leave with pay, gratuity, annual increment and other benefits, facilities and perks from 6th January 1982 upto the date of decree being the Secretary of the respondent company. In addition, the appellant sought exemplary damages and also all retirement benefits such as pension for life on the same basis on which the respondent company paid pension to the Secretaries appointed before the appellant in the respondent company. The appellant also sought leave with pay of Rs. 17,200/- for the period of 171 and half days relating to unavailed leave along with interest on all claims. The learned Trial Court in the judgment dated 28.2.2006 held that the termination of the appellant is invalid and unlawful and the appellant was entitled to payment of wages in lieu of notice of one year and as there was no possibility of his being reinstated in service due to the passage of long time of 24 years, therefore the appellant was entitled to be compensated

by way of payment of special damages of Rs.60,000/- in lieu of his reinstatement in service, salary, leave pay and notice pay and the amount of gratuity of Rs.54,000/- for 18 years of service. In addition, the appellant was also held entitled for no objection certificate to enable him to seek release of all his dues in provident fund as per rules. In respect of the issue of awarding interest to the appellant, the Ld. Trial Court held that although the respondent company had withheld the legal dues of the appellant, but the appellant had also retained quarter no. 7184 after his license to occupy the flat had come to an end after termination of his service and hence it was held that the appellant was liable to lose interest on his dues. Feeling aggrieved, the appellant has preferred the present appeal seeking modification of the impugned judgment and decree dated 28.02.2006.

3. Assailing the judgment and decree, the appellant appearing in person contended that since the learned trial court had held that no resolution was passed by the Board of the respondent company for terminating the service of the

appellant, hence the appellant as per law continued as the Secretary of the respondent company upto 28.02.2006 and was thus legally entitled to salary and all benefits from 6.1.1982 to 28.02.2006. The appellant further claimed that the learned Trial Court erred in awarding a paltry sum of Rs.60,000/- as special damages towards all his claims. As per the appellant, he was entitled to notice pay for 12 months amounting to Rs. 36,000/- plus leave with pay amounting to Rs. 17,200/- and thus out of Rs.60,000 , only Rs. 6,800/- was actually awarded as special damages. The appellant claims that there should be adjustment for inflation as due to fall in value of rupee for the time consumed in final disposal of litigation makes the compensation demanded years ago insufficient and hence the quantum must be liberal. The appellant also claims that had his service not been terminated, he would have been getting lacs of rupees per annum which are being paid to the appellant's juniors and hence he claims suitable compensation for loss of promotional opportunities. The appellant further submitted that despite the fact the learned Trial Court held that the Agenda of retirement of

Company Secretary in the meeting of Board of directors was converted into termination of service because the respondent could not retire the appellant before 30 years of service or before attaining the retirement age of 55 years but still denied the claim of the appellant towards his pensionary dues on the same basis as were payable to Sh. M.C. Bagaria and Sh. M.D. Dalmia, who had previously worked as Secretaries of the respondent. The appellant also claimed interest @ 15% p.a. from 6.1.1982 to the date of payment as he stated that the learned Trial Court wrongly held that the appellant was liable to lose interest as he retained the said quarter allotted to him beyond his tenure of service. The appellant also claimed that the counter claim of the respondent company for recovery of the said quarter is not admissible due to the fact that an individual director cannot without a specific resolution of the Board of Directors institute a suit, which fact has been overlooked by the learned trial court.

4. On the other hand, the claim set up by the respondent company before the Trial Court was that the appellant on being appointed as Secretary had become

quarrelsome, dictatorial and had started working according to his whims and fancies and that it became extremely difficult for others to work with him due to which the management of the respondent company lost confidence in the appellant and terminated his services.

5. Opposing the present appeal, Mr. Atul Shanker Mathur, learned counsel appearing for the respondent company submitted that the appellant had challenged the findings of the learned Trial Court on the ground that it had not reinstated the appellant despite holding the termination of the appellant as illegal. Counsel for the respondent however claims that the Supreme Court in its judgment in *Sirsi Municipality by its President, Sirsi vs. Cecelia Kom Francis Tellis AIR1973SC855* has clearly held that a contract of employment if breached is not capable of specific performance and can only be enforced by a suit for damages and therefore such a declaration is not permissible under the Specific Relief Act as a result of which the appellant cannot be granted any reinstatement with back wages. Counsel also submitted that that the only relief which could be granted was the award of

compensation for the period of notice i.e. 30 days and not for a period of 12 months which was claimed by the appellant and granted by the learned Trial Court. In support of his argument, counsel relied upon the decision of the Supreme Court in *M/s Indian Oil Corporation Ltd. vs. Amritsar Gas Service & Ors.* JT 1990(4)SC601 where it was held that on the wrongful termination of distributorship, as the agreement was revocable by either party by giving 30 days notice, the compensation could be awarded only for that period of 30 days and not more. The counsel further argued that the appellant had wrongfully claimed to be a statutory employee under the provisions of Section 383A of the Companies Act as the section does not provide for the mode and manner of appointment of a Company Secretary and/or his relationship with the Company and/or his salary and terms of service etc and in the absence of such a stipulation, the relationship between the Company Secretary and the Company is governed by the terms of his employment contract with the company and the provisions of Section 383A of the Companies Act will have no application. In support of his argument, counsel relied upon the judgment of

the Supreme Court in *Sukhdev Singh & Ors vs. Bhagatram Sardar Singh Raghuvanshi & Anr. (1975)1SCC421*. The counsel thus urged that the appellant has been granted much more than what was sought in his amended plaint and the entire decretal amount has been paid, on this ground alone, the appeal is liable to be dismissed.

6. I have heard learned counsel for the parties and given my thoughtful consideration to the pleas raised by them.

7. The suit for declaration and consequential relief was filed by the appellant against the respondent company to claim the following reliefs:

“18. It is, therefore, prayed that a declaratory decree be passed in favour of the plaintiff and against the defendant declaring that the determination by the defendant-company of the services of the plaintiff as Secretary of the defendant-company is ab-initio void and inoperative and contrary to the terms of appointment and the plaintiff continues to be in the service of the defendant-company as Secretary of the defendant-company. The plaintiff is also entitled to the following consequential relief's, which follow the declaratory decree to be passed in favour of the plaintiff.

- (a) The payment of salary, contribution to PF, leave with pay, gratuity, annual increments and other benefits facilities and perks, from 6th Jan 1982 upto the date of the decree during which period the plaintiff was/is entitled to the benefits being the Secretary of the defendant-company.

In case the Hon'ble Court comes to the conclusion that it is not possible to grant the prayer as contained in clause No.(a) above, then in the alternative, the plaintiff prays that having

regard to contumacious conduct of defendant-company, exemplary damages as the court deems fit may be awarded and the plaintiff may be held entitled to all the retirement benefits such as pension for life on the same basis on which the defendant-company has paid pension to Shri M.C. Bagaria and Shri M.D. Dalmia who worked as Secretary to the defendant-company before the present plaintiff and right to continue to use the accommodation in his possession till his life on the same basis on which it was allowed to Shri M.C. Bagaria, Secretary of the defendant-company who retired in 1956.

AND/OR

- (b) That in case this Hon'ble Court comes to the conclusion that it is not possible to accept the prayer for the reliefs as aforesaid, and the court holds that there has been valid determination of service by the defendant-company, then in the alternative, the plaintiff claims the following reliefs:-

(i) Rs.500/- on account of salary from 1st January, 1982 to 5th January, 1982.

(ii) Salary Rs.36,000/- for 12 months on account of notice pay.

(iii) Rs.54,000/- on account of gratuity equal to 18 months salary for services rendered from 18th July, 1963 to 6th Jan, 1982 as per Gratuity Rules of the defendant-company, which were approved in the Meeting of the Board of Directors of the defendant-company held on 19th October, 1974 and on the basis of which the defendant-company has arranged actuarial valuation of gratuity liability from Mr.K.A.pandit, an approved Actuary of Bombay and claimed deduction in respect thereof in its income tax Returns. A copy of the Gratuity Rules is annexed with the plaint marked.

Annexure -3.

Leave with pay Rs.17,200/- for the period of 17 1 ½ days relating to unavailed leave.

Directions to the defendant-company to issue No Objection Certificate to Birla Brothers Pvt. Ltd., Provident Fund Institution for paying accumulations along with interest."

8. The said suit was contested by the respondent company and besides refuting the case of the appellant on

merits, the respondent also raised a counter claim to seek recovery of possession of the Quarter bearing No.7184, Mandelia Road, Kamla Nagar, Delhi -110007 granted by the respondent company to the appellant during the course of his employment besides seeking money decree for a sum of Rs.3,60,000/- and also mesne profits @Rs.10,000/- p.m. w.e.f date of filing of the counter claim. Based on the pleadings of the parties the learned trial court framed the following issues.

“1. Whether the suit has been properly valued for the purpose of court fee?

2. Whether no resolution dated 6th January, 1982 was passed by the Board of Directors of the plaintiff for terminating the services of the plaintiff.

3. If issue No.2 is affirmed was the resolution invalid?

4. Whether the services of the plaintiff as company secretary were validly terminated by the defendants?

5. On account about his pay, gratuity and leave etc, is the plaintiff entitled from the defendants?

6. Is the plaintiff entitled to the issuance of no objection certificate from the defendants in respect of the provident fund claimed by the plaintiff as prayed for in the prayer clause of the plaint?

7. Whether the plaintiff is entitled for exemplary damages? If so, to what extent?

8. Whether the plaintiff is entitled to interest. If so, at what rate?

Thereafter, on 20.5.86, the following additional issue No.9 was framed:

Issue No.9: Whether the suit is not maintainable in view of the provisions of law contained in Section 14(1) (b) of Specific Relief Act, 1963?

Thereafter, on 22.02.2006 on the following additional issues were framed:

I.A. Whether the defendant No.1 is entitled to possession of the premises presently in occupation of the plaintiff.

1.B. Whether the defendant No.1 is entitled to damage/mense profit? If so, at what rate and for what period?

1.C. If issues 1-A and 1-B are decided against defendant no.1, whether defendant No.2 is entitled to both or any of the aforesaid two reliefs?"

9. The grievance raised by the appellant in the present appeal primarily is that he was not granted full relief by the learned trial court in lieu of reinstatement and for compensation and other consequential reliefs claimed by him in terms of payment of his unpaid salary, contribution to provident fund, leave encashment, gratuity, annual increments and other benefits etc. The appellant also felt aggrieved on account of the fact that although the learned trial court has decided all the issues in his favour but still denied the appropriate relief to him. The appellant also argued that once

the trial court found his termination illegal then it ought to have allowed his reinstatement with all consequential benefits and reliefs arising therefrom. The appellant also argued that the burden is on the employer to establish the circumstances which would permit a departure from the normal rule of payment of full back wages. The appellant also submitted that with the said finding of the learned trial court holding the termination of the appellant as illegal and void, the appellant should have been treated as in deemed service till completion of 30 years of service or on attaining the age of 55 years which was the age of retirement for the said post of the appellant. The appellant also argued that he had served the respondent company with a most unblemished record for a period of almost 20 years but the learned trial court has not granted adequate damages by not only ignoring the clean service record of the appellant but also by not exercising its discretion in a judicious manner. The appellant also argued that the learned trial court has illegally deprived the appellant of the interest amount @15% p.a. on all his over dues w.e.f. 6.1.82 till the date of actual payment. The appellant also

argued that the learned trial court has wrongly equated the said amount of interest payable to the appellant with the license fee of the premises under the occupation of the petitioner as it was the right of the appellant to retain the said accommodation till the completion of his tenure and at the least till all the terminal benefits were paid by the respondents.

10. It is a settled legal position that the contract of personal service cannot be specifically enforced either by the master or the servant. The legal remedy in a contractual relationship between the master and servant is only by way of claiming the damages unless the case of such a dismissed employee falls under any of the three exceptions i.e (i) where such an employee is a public servant and he has been dismissed from service in contravention of Article 311 of the Constitution of India; (ii) such an employee is protected under the Industrial and Labour Laws and is entitled to claim his reinstatement under the Statutes; (iii) where a statutory body has acted in breach of statutory obligation imposed by a Statute. The Hon'ble Apex Court in the case of ***Sirsi***

Municipality by its President, Sirsi vs. Cecelia Kom

Francis Tellis AIR1973SC855 while dealing with a case of a dismissed employee of municipality enunciated the legal principles concerning the said different kinds of employment in terms of following paras:

“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 available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

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 eon-tract 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 the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

19. The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant."

Thus it is clear from the aforesaid that the nature of employment of the appellant is not by virtue of any statute and thus is in the realm of private employment.

11. The appellant laid much stress on his argument that he was appointed as Secretary of the respondent company in terms of Section 383A of the Companies Act by the Board of Directors of the company and therefore the said Office of Secretary being a creation of the Statute, therefore the appellant had acquired a statutory status from which he could not be removed without following the mandate of Article 311 of the Constitution of India. The appellant also placed strong reliance on the judgment of the Allahabad High Court in ***Prem Narain Srivastava vs. Kanpur Chemical Works (WPC 4947/1972)*** where the Hon'ble High Court while dealing with a case of a Labour Welfare Officer appointed in a private company was held to be enjoying a

statutory status and his termination by the employer company was held to be in utter disregard of the statutory status. The said argument taken by the appellant is wholly fallacious due to a total misreading of the said judgment. The following paras of the said judgment would make the distinction between a private employment and a public employment amply clear.

"15. The relevant criterion for determining whether a writ of mandamus can issue or an order of termination of service can be quashed are not whether the employing authority is a statutory body or not. The proper tests to be applied are whether in a particular case there is an element of public employment and the petitioner holds an office or enjoys a statutory status which is capable of protection. Where the relationship between the parties is that of master and servant, certainly the remedy would be a suit for damages and not a petition under Article 226 of the Constitution. The substance the same proposition were also emphasized in a Division Bench decision of this Court in Synthetics & Chemicals Ltd. Vs. G.C. Kumar (10) Speaking for the Court Dwivedi,J, after reviewing all the English and Indian Authorities held that the following principles emerged:-

(1) Mandamus may issue to a trading corporation to compel it to do its duty which is of a public nature.

(2) A duty is of a public nature if it is imposed by charter, common law or statute.

(3) Mandamus may issue to restore a person to a corporate office if the office is of a public nature.

(4) The office is of a public nature if it is created by a statute and the duties of the office effect the general public or a section thereof.

(5) Article 226 empowers the High Court to issue a writ in the nature of mandamus. The power may be exercised, keeping in regard the broad and fundamental principles which guide the issue of mandamus."

16. Applying the above proposition to the facts of the present case there appears to be no doubt that the petitioner enjoyed a statutory status

and his employment was of a public nature. The conditions of service of Labour Welfare Officers are governed by the Factories Act, 1948 and the rules framed thereunder. Section 49 of the Act reads as under:-

"Sec.59. Welfare Officers. (1) every factory wherein five hundred or more workers are ordinarily employed the occupiers shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-Section (1)".

The State Government has framed the U.P. Factories Welfare Officers' Rules, 1955, in exercise of the powers conferred by Sections 49,50 and 112 of the Factories Act, 1948. The rules therefore have the force of a statute and are to be deemed a part of the Act. Rule 8 provides that the Welfare Officer "shall have the status of an officer of the factory". His appointment must be on permanent basis vide rule 10. His probation and confirmation are strictly governed by the provisions in the rules 10 and 11. Various punishments and penalties are prescribed by rule 15 and the duties of a Welfare Officer are also defined by rule 17. Evidently a Welfare Officer cannot be made to perform any duties according to the choice of the management but he can be assigned only those duties which are expressly provided by the rules. A list of his duties is contained in rule 17. The said rule says that the duties of a Welfare Officer shall be:

(a) to promote harmonious relations and act a liason officer between the workers and the management;

(b) to get the grievances and complaints of workers with regard to their working conditions redressed as expeditiously as possible;

(c) to bring the breaches of Labour Laws and orders and statutory obligations concerning the health, safety and welfare of the workers to the notice of the manager or occupier, and to take suitable steps for the provision of amenities, such as canteens, shelters for rest, creaches, adequate latrine facillities, drinking water etc.;

(d) to study the temper of the workers by friendly contact with them (inside and outside the precincts of the establishment) and bring the cases of discontent likely to result in dispute or strained relations, to the notice management, with a view to maintaining harmonious relations:

(e) to encourage the formation of :-

(i) Joint Production Works Committees,

(ii) Works Committees,

(iii) Co-operatives,

(iv) Safety-First Committees, and

(v) Welfare Committees

and to assist the management in the proper maintenance of discipline, and in the promotion of all measures designed to improve the lot of workers.

(f) To organize and supervise labour welfare work and to see that statutory requirements with regard to working conditions are enforced;

(g) To advise the management in matters requiring special knowledge of labour conditions and labour welfare and to take suitable steps to improve the living conditions of workers;

(h) To maintain a natural attitude during legal strikes or lock-outs;

(i) To exercise a restraining influence over workers in going in illegal strike and over management in declaring illegal lock-out, to help in preventing sabotage and other illegal activities;

(j) To detect and check bribery and corruption and to bring such cases to the notice of the management of the factory;

(k) To make representation to the authorities concerned to regard to conditions of roads, bridges etc. used by labour in proceedings to and from their work; and

(l) To look after the implementation and due enforcement of the provisions of-

(i) The Employees State Insurance Act, 1948;

(ii) The Employees State Insurance Act, 1952 and the scheme framed thereunder;

(iii) The U.P. Industrial Housing Act, 1955;

(iv) The National Small Savings Scheme;

(v) The National Small Savings Scheme framed by the Central Board of workers Education."

The above catalogue of the duties of a Welfare Officer leaves no room for doubt that not only he holds an office but that it is a public office and his functions are replete with all the elements of a public employment. In fact, his duties embody a High concept of a social justice. He has to act as the Liaison Officer between the workers and the management. He has to endeavour to secure real welfare and amenities to the workers in

the modern industrial setup and in so discharging his functions he has certainly in a measure to act as a curb on the management which has to be kept within bounds. In these circumstances it cannot be contended with force that a Labour Welfare Officer functions on the will of the employer. On the contrary, his office is created by the Act. It is of a permanent nature and it is a public office. If, therefore, a Labour Welfare Officer has a right to continue in his post until he attains the age of superannuation and the management or the private company chooses to terminate his service prior to that contingency or without complying with the statutory procedure, the officer is entitled to ask for a writ of mandamus. He has a legal right to the office and the management is under an statutory obligation to retain him in office."

As it would be evident from the aforesaid paragraphs of the said judgment the Labour Welfare Officer was held to be enjoying his statutory protection because of the fact that his service conditions were governed by the Factories' Act and Rules framed thereunder.

12. So far the position of the Company Secretary appointed under Section 383A of the Companies Act is concerned, no such statutory rules and regulations have been framed under the Companies Act which governs the service conditions of a Company Secretary. A fine distinction between the Rules and Regulations framed by the statutory corporations and by the companies incorporated under the Companies Act has been enunciated in the Constitutional Bench judgment of the Apex Court in ***Sukhdev Singh and***

others vs. Bhagatram Sardar Singh Raghuvanshi,

1975(1)SCC421. The relevant paras are reproduced as under:

“25. The Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act. The fallacy lies in equating rules and regulation of a company with rules and regulations framed by a statutory body. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the Statutes creating such bodies. Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement. A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise powers unless the company follows the statutory provisions. The provision in the Registration Act requires registration of instruments. The provisions in the Stamp Act contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. The source of the power for making rules and regulations in the case of Corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

.....
33. There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such

contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service, and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

.....

39. A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit. (See Halsbury's Laws of England 3rd. Ed. Vol. 30 paragraph 1317 at p.682)."

13. It would be thus seen that unlike the statutory corporations 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 the statute itself but comes into existence in accordance with the provisions of a Statute i.e. the Companies Act. Such a company incorporated under the Companies Act therefore cannot be treated as a statutory body and any beneficiary of such a company be it Director, Managing Director or Company Secretary cannot be treated to be in the nature of public employment enjoying the protection of the Article 311 of the Constitution of India. None

of the employees of such an incorporated company can be taken to be enjoying the statutory status where any action of removal for dismissal can only be undertaken by following any statutory rules and regulations when none such exists.

14. Applying the aforesaid legal principles, it would be quite manifest that the appellant who was appointed as a Secretary with the respondent company did not enjoy any statutory status and his post of Company Secretary cannot be treated to be in the nature of public employment and therefore he was not entitled to be proceeded against after setting up a proper enquiry before terminating his services. Therefore the following judgments cited by the appellant in this regard will not be applicable to the case at hand:

1. Roshan Lal v. Union of India, AIR 1967 SC 1889
2. Union of India v. Kewal Krishna Mittal, 25 (1984) DLT 24
3. Tarlochan Singh v. Shriram Priston, 1998 IV AD (Delhi) 225
4. M/s Muni Lal Talwar v. Chemo Pharma Laboratories Ltd.(Suit no.352/75 decided on 8.5.1987, Delhi High Court)
5. Indian Railway Construction Co. Ltd. v. Ajay Kumar, JT 2003 (2) SC 295

The appellant being a Company Secretary is not covered under the definition of 'workmen' nor was any such case set up by the appellant and therefore, the case of the appellant is

also not covered under the Industrial Disputes Act. The following judgments cited by the appellant in this context would therefore not be applicable to the case:

1. Gammon India Ltd. v. Niranjan Das, (1984 1SCC 509
2. Workmen of Hindustan Levers Limited v. Hindustan Levers Ltd. AIR 1984 SC 1683
- 3.S.K. Verma v. Industrial Tribunal, AIR 1981 SC 422
- 4.Hindustan Tin Works v. Its employers, AIR 1979 SC 75

Thus the case of the appellant is covered only in the 3rd category i.e. master and servant relationship, in the nature of private employment and his wrongful termination could have entitled him only for the grant of suitable damages and undeniably to all his legitimate claims arising out of his illegal termination.

15. So far the question of illegal termination of the appellant is concerned, the learned trial court clearly took a view that the appellant had succeeded in establishing that his services were terminated illegally on 6.1.1982. So far the award of damages and grant of consequential reliefs in favour of the appellant is concerned, this court does not find any infirmity in the final reliefs granted by the learned trial court. The learned trial court has allowed payment of wages

in lieu of notice of one year. The trial court has also awarded special damages of Rs.60,000/- in lieu of reinstatement in service. The trial court has also allowed an amount of Rs. 54,000/- towards the gratuity for 18 years of service rendered by the appellant. The trial court also found the appellant entitled to a no objection certificate by the respondent company to claim his provident fund dues. I am not inclined to interfere with the said findings of the learned trial court.

16. As would be evident from the order dated 26.2.2008 passed by this court, during the course of the present appeal, a decretal amount of Rs.1,14,000/- was paid by the respondent to the appellant alongwith costs of Rs.6068/- to be paid by the respondent to the appellant within one week. The record of the proceeding sheets further shows that the appellant was also paid a sum of Rs.1,59,261.60 towards his provident fund dues along with interest, which can be seen from the order dated 23.10.2008 which was claimed as insufficient by the appellant . There is some dispute between the parties with regard to the payment of interest on the amount of provident fund dues and this matter was also sent

for mediation but to no avail. Due to the said dispute with regard to interest, the appellant perhaps is still retaining the possession of the quarter bearing no.7184, Mandelia Road, Kamla Nagar, Delhi allotted in his favour by the respondent company. So far the finding of the learned trial court on the Issue No. 8 with regard to entitlement of interest is concerned, this court is not inclined to interfere with the findings of the learned trial court as the trial court has granted adjustment of the amount of license fee/damages paid by the appellant for his illegally occupying the said premises after cessation of his employment vis-à-vis the amount of interest payable by the respondent on the amount of Rs.60,000/- awarded by the trial court towards the damages and the gratuity amount of Rs.54,000/-.

17. It has been clearly held by the learned trial court while deciding issue no.8 that there is no dispute with regard to the fact that the appellant had applied to the Provident Fund Institution for Payment of his dues. It is also apparent from the various letters placed on record by the appellant, written to him by the Provident Fund Institution, that the

respondent company was not giving the necessary clearance, which is a necessary formality for payment of the Provident Fund dues. Admittedly, the respondent paid an amount of Rs.1,59,261.60 on 16.10.08 towards Provident Fund dues to the appellant pursuant to the orders of this court. It is a settled legal position that Provident fund is not a bounty or grace by the employer but is the legitimate right of the employee who renders years of selfless service to any company. It is a social security measure which has been introduced so that the employees have something to fall back on after retirement. Withholding of the said amount by the employer would lead to rendering the object of such a scheme nugatory and a setback to the concept of social justice engrafted in the Constitution. Therefore, the employee cannot be deprived of the provident fund amount in any circumstance and it is the duty of the employer that the said amount is released at the earliest after the cessation of the service of the employee so that the employee can at least cherish the fruit of his labour and does not have to run from pillar to post for his rightful claim . In the present case, it is clearly the respondent

company which has caused enormous delay in giving the necessary clearance for the release of the dues because of which the payment of the dues could not be made and therefore this court is not inclined to accept the contention of the counsel for the respondent that the controversy relating to the provident fund dues can be settled by the appellant directly with the provident fund institution.

18. In the light of the above, the appellant is entitled to the amount of interest @8% p.a. on the principal amount of his provident fund due from October 1982 to October, 2008 . The respondent company is hereby directed to pay the said amount of interest to the appellant within one month from the date of this order.

19. In the aforesaid terms, the appeal stands disposed off.

July 22 ,2011

KAILASH GAMBHIR, J