

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 2nd July, 2013

+ **RFA 622/2004**

SATPAL YADAV

..... Appellant

Through: Mr. Arun Bhardwaj, Adv.

Versus

M/S. CAMBATA AVIATION PVT. LTD.

...Respondent

Through: Mr. Davinder Singh, Sr. Adv. with
Mr. Saurabh Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

% **02.07.2013**

1. The appeal impugns the judgment dated 20th August, 2004 of the learned Additional District Judge dismissing the suit filed by the appellant, (i) for declaration that the letter dated 8th October, 1991 of the then respondent No.2 Mr. K.K. Aggarwal, General Manager of the respondent No.1 Company terminating the services of the appellant is illegal, *mala fide*, wrongful, arbitrary, unconstitutional, unreasonable, without authority and in violation of the terms of employment and against the principles of natural justice and thus null and void; (ii) for recovery of Rs.16 lakhs as damages for wrongful termination of services of the appellant; and, (iii) for interest.

2. Notice of the appeal was issued and the Trial Court record requisitioned. The appeal was admitted for hearing vide order dated 6th July, 2006. Vide subsequent order dated 21st November, 2007, the name of the then respondent No.2 Mr. K.K. Aggarwal was struck off from the array of parties. The counsels have been heard and the records perused.

3. The appellant had filed the suit pleading that the respondent Company was engaged in the business of Ground Handling Agent of airlines at the Airport; that the appellant was appointed in the respondent No.1 Company as an Office Boy with effect from 1st October, 1973 initially on probation and his services were confirmed with effect from 30th November, 1973; that the appellant was promoted and given increments from time to time; that the appellant was promoted with effect from 28th May, 1974 as Office Clerk, with effect from 21st September, 1981 as Supervisor, with effect from 8th September, 1990 as Duty Officer and with effect from 30th November, 1990 as Assistant Airport Manager; that there is no age of superannuation in the respondent No.1 Company and employees have continued till the age of 70 years; that the respondent No.1 Company vide letter dated 8th October, 1991, with reference to para 3 of the appointment letter dated 1st October, 1973 terminated the services of the appellant with immediate effect. It was

the plea of the appellant that para 3 of the appointment letter under which his services had been terminated was not applicable to this kind of arbitrary, illegal, *mala fide* and wrongful termination that the power thereunder could be used only in exceptional circumstances against misconduct. Alternatively, it was the plea of the appellant that the said paragraph was to be applicable only as long as the appellant was an Office Boy and after confirmation and promotion from the post of Office Boy to a higher post, the terms of the said appointment letter would not be applicable and the appellant would have to be governed by the general, reasonable and fair common employment conditions which would include termination of employment only on good grounds, after due notice and charge sheet followed by enquiry. The appellant thus contended that the termination without charge sheet and enquiry was illegal. It was further the plea of the appellant that his appointment was by the Director, Delhi Operations of the respondent Company, the termination was affected by the then respondent No.2 Mr. K.K. Aggarwal who was only a General Manager and not a Director and the termination was illegal for this reason also. The amount of Rs.16 lakhs was claimed as damages on the basis of the amount which the appellant would have earned by serving in the respondent Company till

December, 2015.

4. The respondent and Mr. K.K. Aggarwal aforesaid contested the suit by filing a written statement pleading that the contract of the respondent Company with the appellant was a contract of personal service which was not specifically enforceable and qua which no declaration was maintainable; that there was information available with the respondent which implicated the appellant and owing whereto the respondent Company lost faith in the appellant; however, since imputing misconduct of the appellant would have affected the future prospects of the appellant, the respondent Company as per its policy resorted to discharge simpliciter of the services of the appellant; that the respondent Company is not required to justify its action of terminating the services of the appellant.

5. On the pleadings of the parties, the following issues were framed by the suit Court:

- “i) Whether the termination of the services of the plaintiff is illegal and wrongful?*
- ii) Whether the suit is not maintainable?*
- iii) To what relief the plaintiff is entitled?”*

6. The suit Court after recording of evidence held, (a) that the appointment letter dated 1st October, 1973 issued by the respondent Company to the appellant and proved as Ex.DW1/3 empowered the

respondent Company to terminate the services of the appellant at any time without assigning any reason and without giving any notice and merely by giving one month's salary in lieu of notice; (b) that in the termination letter dated 8th October, 1991 proved as Ex. CW/15, there was no whisper of any charge of misconduct or otherwise against the appellant and it was a case of termination simpliciter; (c) that there was thus no breach of the terms and conditions of appointment and the termination was valid. The plea of the appellant that the appointment after completion of probation and promotion was not governed by the appointment letter dated 1st October, 1973 was rejected and it was held that it was not necessary that after every promotion a fresh appointment letter has to be issued and that the terms of appointment would remain the same, even if the employee is promoted subsequently. It was yet further held that the respondent Company had given valid explanation for not terminating the services of the appellant on the ground of misconduct. Accordingly, the termination of the services of the appellant was held to be legal and valid and in accordance with the service agreement Ex.DW1/3. Qua Issue No.2, the suit court held that the respondent Company is not a State and the relief of declaration cannot be granted against a company which is neither a Government, Government Company,

Government Instrumentality, Statutory Corporation nor an authority within the meaning of Article 12 of the Constitution of India and that the status of the appellant was different from that of employees working with Government or Government Bodies within the meaning of Article 12 of the Constitution of India. It was yet further held that in the case of illegal termination of a contractual relationship of master and servant, since such a contract is not specifically enforceable, damages if any and not declaration is the remedy. Accordingly, the suit filed by the appellant was held to be not maintainable; axiomatically the suit was dismissed.

7. The counsel for the appellant has drawn attention to some of the clauses of the appointment letter dated 1st October, 1973 Ex.DW1/3 and the senior counsel for the respondent to others. The relevant clauses of the appointment letter are as under:

“You will be on probation for three months. On the completion of the same and if your service are found satisfactory, of which the Management will be the sole judge, you will be confirmed. Your services are liable to be terminated at any time, even before the expiry of the probationary period without assigning any reason, and without giving any notice.

The Management may however, extend the period of probation for a further specified period and thereby offer further opportunity of satisfy the Management as to your usefulness to the Company. On confirmation, your services can

be terminated on giving one month's notice or one month's pay in lieu of notice and without assigning any reason.

If any act of misconduct is alleged against you the management shall take such action against you as it might find necessary. The Management may in the case of serious misconducts hold an inquiry and even suspend you, pending inquiry. You shall not claim any payment for the suspension period.

In case the Management finds that you are surplus to requirements, the Management shall terminate your service on payment to you of such compensation as provided under law. Management in that event shall not be obliged to follow the rule of Last come First go.

In the event of your wishing to terminate your service with the Company, you shall given the Company at least 30 days notice in writing.”

It may be mentioned that though the paragraphs of the appointment letter are not numbered but the first of the clauses reproduced above is para 2 of the appointment letter and the second clause reproduced above is para 3 of the letter. It may further be mentioned that the impugned judgment has referred only to para 2 of the letter and has not made any reference to para 3 aforesaid, though the termination vide letter dated 8th October, 1991 Ex.CW/15 has been affected thereunder.

8. The contention of the counsel for the appellant is that the services of the appellant could be terminated “at any time without assigning any

reason” under para No.2 aforesaid (which as aforesaid is the only paragraph of the appointment letter referred to in the judgment) only during the period of probation and, after the completion of probation and especially after 18 years of service, the services of the appellant could be terminated only under the other two clauses aforesaid i.e. on the ground of misconduct or on the ground of the appellant being surplus to the requirement of the respondent Company. It is further contended that though the respondent Company in the termination letter did not assign any reason but subsequently in the written statement in the suit took the plea of having lost confidence in the appellant and which demonstrates that the termination of the appellant was for the reason of misconduct but the respondent Company neither served any charge-sheet nor held any enquiry nor gave an opportunity to the appellant to defend himself. It is thus contended that the judgment of the Trial Court is erroneous.

9. Before noticing the argument of the respondent Company, it may be highlighted that the argument of the appellant before the Suit Court was to the contrary. There the contention of the appellant was that his services were no longer governed by the terms and conditions of the appointment letter dated 1st October, 1973 Ex.DW1/3 but by “general, reasonable and fair

common employment conditions” as specifically recorded in the impugned judgment under Issue No.1 in para 6. On enquiry the counsel for the appellant informs that it is not the plea of the appellant in the memorandum of appeal that the said argument of the counsel for the appellant has been wrongfully recorded. It has also been enquired from the counsel for the appellant whether the appellant has proved any “general, reasonable and fair common employment conditions” of the respondent Company. The answer again is in the negative. What emerges therefor is that save for the appointment letter on the basis whereof the argument before this Court has been addressed, there are no other terms and conditions pleaded of the employment of the appellant with the respondent Company.

10. The senior counsel for the respondent Company on the other hand has argued that the services of the appellant were terminated in 1991 and the suit was filed only in March, 1992; that the claim of Rs.16 lakhs for emoluments to be earned upto December 2015 was in any case not maintainable; that the respondent Company terminated the services of the appellant in exercise of its contractual right to terminate the services without assigning any reason.

11. The counsel for the appellant in rejoinder has raised the argument of the termination of services being by an officer junior in rank to the officer of

the respondent Company, who had appointed the appellant.

12. As far as the contention of the appellant of termination having been effected by an officer junior in rank to the officer appointing the appellant is concerned, on enquiry, it is stated that the Suit Court has not rendered any finding on the plea of the appellant. However, on further enquiry whether the appellant in the memorandum of appeal has pleaded that the said ground was urged and not decided, the counsel for the appellant fairly states that no such pleading has been made. The senior counsel for the respondent Company has responded to the said contention by drawing attention to the resolution dated 7th March, 1990 of the Board of Directors of the respondent Company proved as DW1/2 authorising the then respondent No.2, General Manager to exercise the power of termination qua the employees. In view of the same, no merit is found in the said contention.

13. I am unable to accept the contention of the appellant, of para 2 supra of the appointment letter making the services of the appellant 'liable to termination at any time even before the expiry of probationary period, without assigning any reason and without giving any notice' being applicable only during the period of probation and not thereafter. Merely because the words "even before the expiry of probationary period" are used

would not limit the right conferred by the respondent Company thereunder unto itself to terminate the services without assigning any reason and without giving any notice, to the period of probation.

14. Be that as it may, the termination affected by the respondent Company was under para 3 as aforesaid and not under para 2 and which para 3 has escaped the attention of the Suit Court. Even if there were to be any ambiguity in para 2, the same is unequivocally removed in para 3 by observing that “on confirmation, your services can be terminated on giving one month’s notice or one month’s pay in lieu of notice and without assigning any reason”.

15. Thus post probation, the services of the appellant were terminable under three clauses; firstly, by one month’s notice or paying salary in lieu thereof and without assigning any reason; secondly, if misconduct was alleged against the appellant by holding enquiry; and, thirdly, if the services of the appellant were to become surplus to the requirements of the respondent Company, by payment of compensation. I have repeatedly enquired from the counsel for the appellant as to how such multifarious contractual rights of the respondent Company could be limited and as to how the respondent Company inspite thereof can be said to be entitled to

only to terminate the services if the appellant was guilty of misconduct or if his services become surplus and which interpretation would have the effect of making para 3 of the appointment letter entitling the respondent Company to terminate the services with one month's notice or one month's pay in lieu thereof without assigning any reason, redundant. The accepted rule of interpretation of deeds and documents is to first attempt to give a harmonious construction thereto and even if the same is not possible, the earlier clause prevails over the latter. Even if it were to be so, para 3 entitling the respondent Company to terminate the services without assigning any reason with one month's notice or one month's pay in lieu thereof would prevail over the latter paragraph permitting termination on the ground of misconduct or on the ground of services of the appellant becoming surplus.

16. Faced therewith, the counsel for the appellant has urged that the respondent Company in the written statement to the suit having averred the termination to be owing to misconduct, contractually was bound to hold an enquiry and having not done so, the termination is bad and stigmatic.

17. I am unable to agree. The Supreme Court in ***Krishna Devaraya Education Trust Vs. L.A. Balakrishna*** AIR 2001 SC 625 and ***Pavanendra***

Narayan Verma Vs. Sanjay Gandhi P.G.I. Of Medical Sciences AIR 2002

SC 23, though relating to cases of probation, has held that if the dispensation is simpliciter, merely because the employer, upon such dispensation being challenged before the Court, explains the reason for such dispensation, cannot turn the dispensation from being simpliciter to stigmatic for it to be held that dispensation without holding enquiry is bad. It was further held that in order to amount to a stigma, the termination order must be in a language which imputes something and allegations made against the terminated employee in the counter affidavit by way of defence to a challenge to termination made by the terminated employee do not change the nature and character of the order of termination.

18. In the present case, even in the written statement, the respondent has not elaborated or imputed any misconduct on the appellant and has merely pleaded that on the basis of the information received, it was not possible for the respondent No.1 Company to continue to repose confidence in the appellant who was employed at a sensitive position at the Airport and since any punitive action against the appellant would have had adverse consequence for the appellant and may have affected his future prospects, the respondent Company as per its policy decided to exercise its right of

simpliciter termination of the services. The said explanation has been given merely in defence to the plea taken by the appellant in the plaint of the termination being attributable to the change of hands in the management from Sindhis to Parsis and with motive and attempt to employ a Parsi in the place of the appellant.

19. It is worth mentioning that in any case it is not the case of the appellant that the appellant suffered any adverse consequence owing to the said plea taken by the respondent Company in the written statement or that the respondent Company has in any manner published having lost confidence in the appellant. The termination, therefore, remains a simpliciter one.

20. Before parting with this case, I may record that when during the course of hearing it was brought to the notice of the counsel for the appellant that there was no security of tenure in private employment (as observed by the Supreme Court in para 14 of *Union Public Service Commission Vs. Girish Jayanti Lal Vaghela* (2006) 2 SCC 482) as that of the appellant with the respondent was and it was not the case of the appellant that the appellant was a workman, the counsel for the appellant had sought to urge that the promotion of the appellant from Office Boy to Assistant Manager was only nominal; however the counsel fairly admits that there is no foundation for such a case in the pleadings or in the evidence.

Rather, the case built up by the appellant is to the contrary.

21. I am therefore of the view that the termination of the services of the appellant was in accordance with the contract of employment of the appellant with the respondent Company and the grounds urged to impugn the said employment are not available to the appellant. Once it is held that the termination is not illegal, the question of the appellant being entitled to any damages does not arise.

22. There is no merit in the appeal; the same is dismissed; however in the facts and circumstances, with no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JULY 02, 2013/bs..