Oriental Insurance Co. Ltd. vs T. Mohammed Raisuli Hassan on 18 December, 1992

Equivalent citations: JT1991(1)SC493, 1992(3)SCALE568, (1993)1SCC553, 1993(1)SLJ157(SC), (1993)1UPLBEC265, AIRONLINE 1992 SC 61, 1993 (1) SCC 553, (1993) 1 CUR LR 905, 1993 SCC (L&S) 297, (1993) 1 SERV LR 431, (1993) 1 UPLBEC 265, (1993) 2 LAB LN 24, (1993) 1 SCJ 149, (1993) 2 SCT 224, (1993) 1 SERV LJ 157, (1993) 82 FJR 242, (1992) JT (SUPP) 767, (1993) 23 ATC 809

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Bench: J.S. Verma, Yogeshwar Dayal, N. Venkatachala

JUDGMENT

N. Venkatachala, J.

1. We are granting special leave. We are also disposing of this appeal on merits after hearing learned Counsel on both sides.

2. The Oriental Insurance Co. Ltd., the appellant had appointed the respondent as one of its InspectOrs. There were two stipulations governing the conditions of his service in the order by which the respondent was appointed. One of them related to continuation in service of the respondent as probationer unless confirmed, while the other related to termination of his service at any time by giving one month's notice or on payment of one month's salary in lieu of such notice. By a Notice dated May 19, 1980 served upon the respondent on May 26, 1980 the respondent's service was terminated with effect from June 18, 1980. The respondent instituted a suit in the Munsiff Court seeking a declaration that the termination of his service effected by the appellant was illegal and he was entitled to be reinstated with back-wages. That Court recorded a finding of fact that the respondent's service with the appellant at the time of his termination was on probation inasmuch as his service was not confirmed. It, however, found the termination of service of the respondent to be illegal for non-giving of one full month's notice as a condition precedent for such termination. Yet, it dismissed the plaintiff's suit as barred by the provisions of the Industrial Disputes Act, 1947. The respondent took up the matter in appeal before the Civil Judge Court. That Court affirmed the finding of the Munsiff Court as regards the respondent being on probation at the time of termination of his service, but upheld the view of the Munsiff Court that the termination of the respondent's service by the appellant was illegal for want of one month's prior notice. However,

taking the view that a suit for mere declaration of invalidation termination of the respondent's service could lie in a civil court, granted the decree declaring the termination of service of the respondent to be illegal, in reversal of the decree of the Munsiff Court. When the appellant took up the matter in second appeal before the High Court, it affirmed the decree of the Civil Judge Court, even though it specifically affirmed the finding of fact concurrently recorded by the courts below that the respondent was in service as a probationer at the time of termination of his service. It is this decree of affirmation made in the second appeal by the High Court which is the subject-matter of the present appeal brought up by the appellant.

3. It was submitted by learned Counsel for the appellant that the courts below had overlooked the apparent purport of Clause 10 of the appointment order and had misread the clause. According to him, assuming that under the clause a probationer's service also was liable to be terminated with one month's notice failure to serve one month's notice did not invalidate or vitiate the termination of the respondent's service effected by Notice dated May 19. 1980, for service of such notice as a condition precedent for termination of the service of the is respondent was not a mandatory requirement, the breach of which could result in vitiation of the termination. In any event, non-service of such one month's notice before termination of the respondent's service, could have at the most entitled him to claim one month salary in lieu thereof and nothing else. The submission of the learned Counsel, in our view, is well founded.

4. Admittedly, there was no statutory rule requiring one month's notice for termination by the appellant of the service of the respondent. It is only the term of appointment order, which stipulated for one month's notice or one month's salary in lieu thereof by either side to bring an end to the service of the respondent, which is made the basis for claiming invalidation of termination. That term contained in Clause 10 of the appointment order reads:

> 10. This appointment is liable to be terminated at any time by giving one month's notice, in writing, on either side, or a month's salary in lieu of notice, without assigning any reason. Breach of this condition will entitle the company to recover from you one month's salary in lieu of notice.

5. When the above term in the clause relating to the condition of service of the respondent with the appellant is seen as a whole, there is nothing to indicate or suggest, even remotely, that non-service of one month's notice as a condition precedent for termination of the respondent's service would result in vitiation or invalidation or termination, if effected. On the contrary, the second part of the term contained in the clause, "breach of this condition, will entitle the company to recover from you one month's salary in lieu of notice" makes it obvious that the same would be the consequence if there was a breach of condition on the part of the company in the matter of service of one month's notice before termination of the respondent's service Hence, we are constrained to hold that the non-service of one month's notice in writing by the appellant to the respondent before terminating the latter's service did not invalidate or. vitiate such termination. From this, it follows that courts below had misread the said clause, by which either party was required to serve notice for putting an end to service of the respondent and consequently committed an apparent error in taking the view that non-service of one month's prior notice to the respondent had vitiated the termination of his

service.

6. What remains to be considered is an objection raised by the learned Counsel for the respondent regarding the maintainability of the second appeal before the High Court and this further appeal by special leave. According to him when the appellant had not challenged the finding of the Munsiff Court that the termination of the respondent's service was illegal for want of one month's prior notice by filing an appeal even though that suit had been dismissed as one without jurisdiction, it was not open to the appellant to seek to have that finding set aside by filing a second appeal after the first appellate court had made a decree based on that finding. The objection, in our view, cannot be sustained for more than one reason. First, this objection had not been raised on behalf of the respondent before the High Court when the second appeal of the appellant was heard. And, secondly, this objection overlooks the very provision in Rule 22, Order 41 of the Civil Procedure Code, 1908 that a respondent in appeal could support the decree made in his favour urging that the issue held against him by the court below ought to have been held in his favour.

7. In the result we allow this appeal, set aside the judgment and decree of the Court of the learned Civil Judge and the affirmative judgment and decree of the High Court and restore the decree of dismissal of the suit made by the Munsiff Court. The amount deposited by the appellant towards cost, in terms of the earlier order made by this Court, and already drawn by the respondent, is not liable to be refunded to the appellant in the circumstances of the case.