Syed Azam Hussaini vs The Andhra Bank Ltd on 31 January, 1995

Equivalent citations: 1995 AIR 1352, 1995 SCC SUPL. (1) 557, AIR 1995 SUPREME COURT 1352, 1995 AIR SCW 1302, (1995) 70 FACLR 827, (1995) 2 LABLJ 126, (1995) 1 CURLR 435, (1995) 1 SERVLR 706, 1995 SCC (SUPP) 1 557, (1995) 2 LAB LN 250, (1995) 2 SCT 347, 1995 SCC (L&S) 573, (1995) 2 JT 37 (SC)

Author: S.C. Agrawal

Bench: S.C. Agrawal

PETITIONER:
SYED AZAM HUSSAINI

Vs.

RESPONDENT:
THE ANDHRA BANK LTD.

DATE OF JUDGMENT31/01/1995

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 AIR 1352 1995 SCC Supl. (1) 557
JT 1995 (2) 37 1995 SCALE (1)380

ACT:

HEADNOTE:

JUDGMENT:

1. This appeal, by special leave, arises out of proceedings initiated by the appellant under Section 41 of the Andhra Pradesh Shops and Commercial Establishments Act, 1966, hereinafter referred to as 'the Act'.

2. The appellant was appointed in the clerical grade of the respondent-bank by order dated March 21, 1970. The said appointment was on probation for a period of six months which could be extended by teh respondent-bank at its discretion. In the letter of appointment it was stated that during the probation period, the appellant's services were liable to be terminated without assigning any reason whatsoever by one month's notice or on payment of a month's pay and allowances in lieu of notice. In pursuance of the said letter of appointment the appellant joined duty on April 6, 1970. The period of probation which was to expire on October 6, 1970 was extended for a further period of three months. Before the expiry of the extended probation period the services of the appellant were termi- nated by order dated January 2, 1971 which reads as under-.

> "This is to inform Mr. Syed Azam Hussaini, Probationer in Clerical grade at Khairatabad (Hyderabad branch) that his services are hereby terminated with effect from the close of business hours today.
>
> He will be paid one month's salary and allowances in lieu of notice."

3. In pursuance of the said order an amount equivalent to one month's salary and allowances of the appellant was cred- ited to his Savings Account with the respondent bank on January 5, 1971.

4. Feeling aggrieved by the said termination of his service the appellant filed an appeal under Section 41 of the Act before the Authority, hereinafter referred to as 'the Authority'. Before the Authority the case of the appellant was that no defect in his work was pointed out to him nor did he receive any memo and that his services were terminated with a view to victimise him because he had joined the Union on December 2, 1970. respondent-bank contested the said appeal and pleaded that the Act had no application and that the conditions of the service of bank employees are governed by the Sastry Award and the Desai Award and further that it was not necessary to notify the defects of the employee during probation was indicative of the fact that the employee's work during the probation was not satisfactory. The respondent-bank did not, however, adduce any evidence to justify that the said termination was for a reasonable cause. The Authority, by order dated November 29, 1971, held that the order of termination was illegal as it was against the provisions of the Act and directed reinstatement of the appellant with full back wages and all antecedent benefits. The Authority found that the appellant was governed by the provisions of the Act and that the right of the respondent-bank to terminate the services of the appellant was subject to Section 40 of the Act and that in the present case respondent-bank has not shown any reasonable cause for termination of the services of the appellant and that one month's salary in lieu of notice was not paid with the order of termination.

5. The respondent-bank filed an appeal against the said order of the Authority which was dismissed by the Labour Court at Hyderabad, by judgment dated October 30, 1972. The Labour Court also held that no reasons had been assigned by the respondent-bank in the order terminating the services of the appellant and the omission on the part of the appellant to exercise the option in favour of the statutory benefits would not deprive him of the statutory protection given under the Act. Relying on the decisions of this Court in The Management of the Express Newspapers (Pvt.) Ltd., Madurai v. The Presiding Officers, Labour Court, Madurai & Anr., AIR 1964 SC 806, the Labour Court held that

the services of the appellant could not be terminated before the expiry of the period of probation. The Labour Court further held that under the Act an employer can terminate the services of an employee only for a reasonable cause and that reasonable cause was wanting in this case. The Labour Court also held that under the provisions of Section 40 of the Act the services of the employee cannot be terminated without giving either one month's notice or paying wages in lieu thereof and placing reliance on the decision of this Court in National Iron & Steel Co. Ltd. & Ors. v. The State of West Bengal & Anr., 1967 (2) SCR 391, the Labour Court held that it was incumbent on the employer to pay to the workman the wages in lieu of notice at the time when he was asked to go and he could not be asked to collect his dues afterwards.

6. The respondent-bank filed a writ petition (No. 705 of 1973) in the Andhra Pradesh High Court which was dismissed by a learned Single Judge by judgment dated February 29, 1975, on the view that Section 40 of the Act contemplates that the payment of wages in lieu of one month's notice shall be simultaneous with the termination of the services of an employee. In this context it was observed that the provision in Section 40 of the Act was more akin to Section 25-F of the Industrial disputes Act and that the principle 1 down in National Iron & Steel Co. Lid..& Ors. v. The State of West Bengal & Anr. [supra] would apply to construction of Section 40 of the Act. The learned Single Judge also placed reliance on the decision of this Court in Senior Superintendent, R.M.S. Cochin & Anr. v. K. V Gopinath, Sorter, 1972 (3) SCR 530, wherein rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 was construed and it was held that to be effective the termination of service has to be, simultaneous with the payment of one month's pay in lieu of notice. The learned Single Judge distinguished the decision of this Court in Straw board Manufacturing Co. v. Gobind, 1962 Supp. (3) SCR 618, wherein this Court, in the context of Section 33(2)(b) of the Industrial Disputes Act, has held that a notion of split- second timing should not be imported in the matter of payment of wages and making the application under Section 33(2)(b) and it should be done at once without delay. The learned Single Judge observed that in this case the services of the appellant were terminated with effect from January 2, 1971 while the salary for the period of the notice was deposited to his credit on January 5, 1971 and that undoubtedly there was a contravention of the provisions of Section 40 of the Act. The learned Single Judge also held that paragraph 522 of the Sastry Award does not prescribe a different procedure than that prescribed by Section 40 of the Act even if it was assumed that the award can override the provisions of the statute and that paragraph 522 of the Sastry Award does not contemplate the termination of the services of a probationer with-

out one month's notice or without immediate payment of a month's pay and allowances. The learned Single Judge did not disagree with the findings recorded by the Authority and the Labour Court that the respondent-bank had failed to show any reasonable cause for terminating the services of the appellant. After referring the decisions of this Court in The Management of the Express Newspapers (Pvt) Ltd., Madurai [supra]; Management of Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik, 1966 (2) SCR 434 and The Management of Brooke Bond India (Pvt.) Ltd. v. Y.K Gautam, AIR 1973 SC 2634, the learned single Judge observed that so far as industrial and labour law is concerned the principles applicable to permanent employees have always been extended to probationers.

7.The respondent-bank filed a letters patent appeal [Writ Appeal No. 304 of 1976] against the said decision of the learned Single Judge which was allowed by a division bench of the High Court by judgment dated July 28, 1976. The learned Judges on the Division Bench disagreed with the view of the learned Single Judge on the interpretation of the provisions of Section 40 of the Act regarding payment of wages in lieu of one month's notice and held that the principles, applicable for construing Section 25-F of the Industrial Disputes Act or Rule 5 of the Central Civil Services (Temporary Service) Rule, 1965 could not be applied for construing Section 40 of the Act because the language of the said provisions differs materially from the provisions of Section 40 of the Act. According to the learned Judges the provisions of Section 40 of the Act should be construed in the light of the decisions on Section 33(2)(b) of the Industrial Disputes Act and on that view the learned Judges held that in the instant case the services of the appellant were terminated on January 2, 1971 which was a Saturday and the following day was Sunday, a closed day for the Bank, and that on 4th January directions appear to have been issued for payment of salary and on January 5 the amount that was to be paid to the appellant was actually credited in his Savings Bank account and that this amounted to payment to him and that the entire thing was part of the same transaction and, therefore, the question of any time lag between the service of the order of termination of services and payment of wages in lieu of one month's notice could not come in the way of both the things being considered to be part of the same transaction. The learned Judges held that the requirement of simultaneity was complied with in this case. The learned Judges, therefore, ordered that the termination of the services was legal since the requirement of Section 40 of the Act was, in fact, satisfied. While upholding the order of termination, the learned Judges did not, however, upset the finding recorded by the Authority as well as by the Labour Court holding that the respondentbank had failed to establish a reasonable cause for termination of the services of the appellant.

8. Shri R.C. Pathak, the learned counsel appearing for the appellant, has assailed the correctness of the view of the Division Bench of the High Court on the construction of Section 40 of the Act and has submitted that the interpretation placed on the provisions of Section 40 by the learned Single Judge is the correct interpretation and that it was incumbent on the part of the respondent-bank to have paid one month's wages in lieu of one month's notice at the time of termination of the services of the appellant on January 2, 1971 and crediting the said amount to his Savings Account on January 5, 1971 could not be regarded as compliance with the requirement of Section 40 of the Act. Shri Pathak has also submitted that the Authority as well as the Labour Court had both found that the respondent-bank had failed to establish any reasonable cause for terminating the services of the appellant and that the learned Judges of the Division Bench of the High Court, without upsetting the said finding, could not have held that the termination of the services of the appellant was legal and in accordance with the provisions of Section 40 of the Act.

9.We find considerable force in the submission of Shri Pathak that since the Authority as well as the Labour Court had recorded a finding that the respondent-bank had not produced any material to show that there was a reasonable cause for terminating the services of the appellant the learned Judges of the Division Bench of the High Court could not have held that the said termination was legal without upsetting the said finding recorded by the Authority as well as the Labour Court. In this context, it may be mentioned that in Express Newspapers'case (supra) the employee had been appointed on probation for six months and before the expiry of the said period his services were

terminated and this Court held "It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months hAd expired except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory." (p. 307)

10. In Management of Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik (supra), this Court examined the matter on the assumption that the employee was appointed on probation and during the period of probation her services could be terminated without serving any notice and without assigning any reason and has upheld the view of the Labour Court that " in the absence of any Standing Order the unsatisfactory work of an employee may be treated as misconduct and when the respondent was discharged according to the management for unsatisfactory work it should be taken that her discharge was tantamount to punishment for alleged mis- conduct" and that the management was not justified in discharging the respondent without holding a proper enquiry. In that case the Court has pointed out that before the Labour Court there was no evidence adduced on behalf of the management to show that the work of the respondent employee was unsatisfactory.

11. This view was reiterated in The Management of Brooke Bond India (Pvt.) Ltd. v. Y.K. Gautam [supra] where the ser- vices of an employee were terminated during probation period.

12. In the present case we find that Section 40 of the Act entitles a workman to assail the legality of the termination of his services if it is made without any reason able cause. The order dated January 2, 1971 did not contain any reason for termi nation of the services of the appellant. Before the Authority the appellant assailed the legality of the termination of his services on the ground that the said termination was without any reasonable cause and that it was done with a view to victimise him for having joined the union. The case of the respondent-bank before the Authority was that the services of the appellant were terminated for the reason that he was on probation and his work was not satisfactory. This was disputed by the appellant who asserted that during the period of his service no body pointed out any defect in his work and that he did not receive any memo and further that he was ready and willing to do whatever work that was allotted to him and worked to the best of his abilities. The Authority has observed that these averments made by the appellant were not denied by the respondent-bank. Moreover, the respondent- bank did not produce any material to show that the per- formance of the appellant was not satisfactory. In the absence of any material having been placed by the respondent-bank to show that the work of the appellant was not satisfactory and that his services were terminated for that reason, the Authority as well as the Labour Court were justified in recording a finding that there was no reasonable cause for terminating the services of the appellant. The said finding has not been upset by the High Court. The learned Judge of the Division Bench of the High Court were, therefore, not right in upholding the legality of the termination of the services of the appellant.

13. There is one more hurdle in the path of the respondent- bank. It cannot be disputed that the appellant had completed 240 days of service since he had joined duty on April 6, 1970 and his services were terminated on January 2, 1971. The appellant was a "workman" for the purposeof

Section 2(s) of the Industrial Disputes Act, 1947 since he was employed in the clerical grade with the respondent-bank which is an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. The termination of appellants services was, therefore, retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947 and it could be done only in accordance with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. In Krishna District Co- operative Marketing Society Ltd. Vijayawada v. N. V. Pumachandra Rao & Ors., 1987 (4) SCC 99, this Court has construed the provisions of Chapter V-A of the Industrial Disputes Act, 1947 and Sections 40 and 41 of the Act and has held that if the employees are 'workmen' and the management is an 'industry' as defined in the Industrial Disputes Act and the action taken by the management amounts to 'retrenchment' then the rights and liabilities of the parties are governed by the provisions of Chapter VA of the Industrial Disputes Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under sub-sections (1) and (3) of Section 41 of the Act. In that case proceedings had been initiated in the form of appeal filed under Section 41 of the Act before the Authority and it was held that since the orders for termination of services of the employee amounted to retrenchment and had been passed without complying with Section 25-F of the Industrial Disputes Act, the order of the Authority setting aside the said orders of termination could be affirmed in view of Section 25-F of the Industrial Disputes Act. This Court further held that it is open to the authority under Section 41 of the Act to determine whether Section 25-F and Section 25-G of the Industrial Disputes Act were complied with or not and to set aside the orders of termination and to grant appropriate relief if it is bound that there was non-compliance with Sections 25-F and 25-G of the Industrial Disputes Act. Applying the said decision to the facts of the present case it can be said that since the appellant was a workman and the respondent-bank is an industry under the Industrial Disputes Act the action taken by the respondent-bank in terminating the services of the appellant amounts to 'retrenchment' and since the appellant had worked continuously for more than 240 days such retrenchment could be done only in accor dance with provisions of Section 25-F of the Industrial Disputes Act, 1947. The said provisions were admittedly not complied with because one month's wages in lieu of notice were not paid at the time of such retrenchment on January 2, 1971 and were paid subsequently on January 5, 1971. The termination of the services of the appellant cannot, therefore, be upheld as legal and valid.

14.In that view of the matter we do not consider it necessary to go into the question whether Section 40 of the Act postulates payment of one month's salary in lieu of notice alongwith the order of termination and its non payment at that time renders the termination illegal.

15.The next question which requires consideration is whether in the facts and circumstances of the case it would be ap- propriate to direct reinstatement of the appellant or he may be awarded compensation in lieu of back wages and reinstate- ment. The services of the appellant were terminated with effect from January 2, 1971. More than 24 years have elapsed since then. In the circumstances it would not be- conducive to the proper functioning of the respondent-bank to direct the reinstatement of the appellant. Having regard to the facts and circumstances of the case, we consider it appropriate that a lump sum amount may be awarded to the appellant by way of compensation for reinstatement as well as back wages. Keeping in view the salary that was being paid to the appellant at the time when his services were terminated, we arc of the opinion that a sum of Rs. 75,000/- would be an adequate amount for such compensation.

16. The appeal is, therefore allowed the order passed by the High Court upholding the legality of the termination of the services of the appellant is set aside but the orders passed by the Authority as well as the Labour Court and the learned Single Judge and modified to the extent that instead of reinstatement with back wages appellant shall be paid an amount of Rs. 75,000/- by way of compensation in satisfaction of all his claims against respondent-bank towards reinstatement and back wages. The said payment shall be made within a period of one months. The payment of this amount may be spread over during the period 1971-95 for tax purposes. No costs.