

Supreme Court of India

Brig. S. Ramachandran vs Hyderabad Allwyn Metal Works ... on 7 February, 1995

Equivalent citations: (1996) IILLJ 741 SC, 1995 Supp (3) SCC 674

Author: K Singh

Bench: K Singh, N Venkatachala

ORDER Kuldip Singh, J.

1. The appellant joined service with Respondent 1 as General Manager/Executive Director in June 1980. His services were terminated on payment of three months' salary in lieu of the notice period by the order dated May 4, 1981. Clauses 4, 5 and 6 of the appointment order are as under:

4. You will be on probation for a period of one year from the date of joining duty.

5. The Management reserves the right to terminate your probation at any time during the period of probation, without notice and without assigning any reason whatsoever.

6. The appointment is terminable on three months' notice on either side.

2. The appellant represented before Respondent 1 that Clause 6 by itself was sufficient to protect the interests of both the parties and as such it was not necessary to retain Clauses 4 and 5 of the appointment order. On the said representation the employer deleted Clauses 4 and 5 from the appointment order.

3. The appellant challenged the order of termination by way of a writ petition before the Andhra Pradesh High Court. A learned Single Judge dismissed the writ petition on the following reasoning:

It is clear from a perusal of the above correspondence that, in the original offer of appointment, the petitioner was supposed to be kept on probation for a period of one year from the date of joining duty, and the Management reserved to itself the right to terminate his probation at any time during the period of probation without notice, and without assigning any reasons (vide conditions 4 and 5 in the order dated January 1, 1980). Condition 6 of this order clearly provided further that 'the appointment is terminable on three months' notice on either side'. When this offer was made to the petitioner, he objected only to conditions 4 and 5, stating that condition 6 is sufficient protection for both sides. He also wanted to be designated as Executive Director, instead of General Manager. The 1st respondent Company accepted the said conditions and, accordingly, deleted conditions 4 and 5. This was intimated to the petitioner by letter dated February 13, 1980. Subsequently, the order of appointment issued on June 10, 1980, while omitting conditions 4 and 5 contained in the original offer, but specifically incorporating condition 6 in the original offer, as condition 4, which stated the 'appointment is terminable on three months' notice on either side'. It is thus clear that the appointment of the petitioner was on contract, and was the result of an agreement between the parties. Both the parties clearly understood and stipulated that either party shall be entitled to terminate the employment by giving three months' notice. The present order of termination is clearly in terms of the contract of service.

4. Mr. A. Subba Rao, learned Counsel for the appellant, has vehemently contended that Clause 6 of the appointment order (quoted above) is liable to be struck down in view of the law laid down by this Court in Central Inland Water Transport Corporation Ltd., v. Brojo Nath Ganguly 1986-II-LLJ-171, as approved by the Constitution Bench in Delhi Transport Corporation v. DTC Mazdoor Congress 1991-I-LLJ-395. We are of the view that the law laid down by this Court in the above said two judgments has no application to the facts of the present case. The appellant joined service on June 10, 1980 and his services were terminated on May 4, 1981. He had hardly worked for one year. There is nothing on the record to show that he was appointed by Respondent 1 on a regular basis. We are, therefore, of the view that the appellant was not a regular/permanent employee of Respondent 1 and he had no right to continue till super annuation. The ratio of the above two judgments is not, therefore, applicable to the case in hand.

5. The Judgment of the learned Single Judge was upheld by the Division Bench of the High Court. The Bench gave liberty to the appellant to approach the civil court if he so wishes.

6. We see no ground to interfere with the judgment of the learned Single Judge as upheld by the Division Bench of the High Court. The appeal is dismissed. No costs.