

## SUREME COURT OF

Bank of Baroda Ltd.

Vs.

Jeewan Lal Mehrotra

(A.N. Grover, J.C. Shah and K.S. Hegde JJ.)

09.03.1970

### JUDGMENT

#### **A.N. GROVER, J.**

1. This is an appeal by special leave from a judgment of the Allahabad High Court. The facts may be stated. The respondent was appointed as a cash clerk in the appellant's branch at Birhana Road ,Kanpur, on April 1, 1949. In July 1955 he was working in the cash department as a ' Receiver and Receiving Clerk'. On July 2, 1955 it was detected that there was a shortage of Rs. 1,000/- in the cash. According to the respondent this shortage in the cash of one B. N. Shukla who was the Assistant Cashier, However B. N. Shukla created a suspicion against the respondent. The Inquiry Officer. was the Agent of the Bank at its Lucknow branch. He found that the respondent was guilty of the charges which had been preferred against him in respect of the disappearance of Rs. 1,000/-. On October 1, 1956, the service of the respondent were terminated. He instituted a suit in September 1957 alleging that the inquiry held against him was illegal lot various reasons. He claimed a declaration that his dismissal was null and void and that he was still in the service of the bank. He further laid claim to the recovery of Rs. 1,650/- being the arrears of salary from October 1, 1956 to August 31, 1957. The bank contested the suit. The learned Munsif dismissed the suit holding, inter alia, that a proper inquiry had been held into the charges made against the respondent. The respondent preferred an appeal to the First Additional Civil Judge, Kanpur. That appeal was allowed principally on the ground that certain witnesses had not been produced before the Inquiry Officer but their statements recorded at some prior stage had been taken into consideration by the Inquiry Officer without the respondent having any opportunity of cross-examining them. The suit was consequently decreed. The appellant filed a second appeal which was disposed of by a brief order by the learned single Judge of the High Court. He agreed with the view of the first appellate court that two witnesses had not been examined by the Inquiry Officer and their statements had been taken into consideration. The inquiry was, for that reason, not legal and proper.

2. The decree which was passed by the first appellate court is somewhat unusual and vague. In the decree sheet all that was stated was "therefore it is ordered and decreed that this appeal be allowed with costs. The judgment and decree of the lower court be set aside and that a sum of Rs. 271/- as detailed below be paid by the respondent to the appellant on account of the costs of the appeal". It would, however, appear that the court decreed the suit in its entirety although that is not expressly

stated.

3. The main point that has been urged on behalf of the appellant is that the present case was one of termination of service after giving of three months' notice and the ordinary law of master and servant applied. Although in case of illegal termination or dismissal the respondent could have claimed damages but he could not ask for or be granted a declaration that he should be treated as if he was still in service. The law as settled by this court is that no declaration to enforce a contract of personal service will be normally granted. The well recognised exceptions to this Rule are (1) where a public servant has been dismissed from service in contravention of Article 311; (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunals; (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute; vide Executive Committee of U.P. State Warehousing Corporation Ltd v. Chandra Kiran Tyagi [1970 20 F.L.R. 17]. The case of the respondent did not come under any of the above exceptions. Therefore in granting a declaration of the nature sought by the respondent the courts acted contrary to law and that part of the decree could not be upheld. On behalf of the appellant the reversal of the decree for Rs. 1650/- has not been pressed.

4. The appeal is allowed and the declaratory part of the decree is hereby set aside. There will be no order as to costs, in this court.