

Smt. Kusum Gupta alias Kusum Bansal

Vs

Haryana State Small Industries & Export Corpn., Chandigarh

Civil Appeal No. 2569 of 1986

(O. Chinnappa Reddy, M. M. Dutt JJ)

31.07.1986

ORDER

CHINNAPPA REDDY, J. –

1. Special leave granted.

2. The services of Smt. Kusum Gupta, who was originally appointed as a clerk in the respondent-Corporation on July 25, 1974, were terminated on August 7, 1980 by an Office Order running as follows :

Office Order

The services of Mrs. Kusum Gupta working as Sales Assistant in Haryana Emporium, New Delhi are no longer required by the Corporation with immediate effect. She will be paid one month's pay plus allowances in lieu of notice period.

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Sd/-

P. R. Kaushik

Managing Director

Endst. No. HIEC/Estt./6165

Dated August 7, 1980.##

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1. General Manager, Marketing They are required to issue
2. Company Secretary } no dues certificate in favour of Mrs. Kusum Gupta,
3. Controller of Accounts
4. General Manager, New Delhi Emporium } Sales Asstt. immediate.

5. Mrs. Kusum Gupta, Sales Assistant, New Delhi Emporium, New Delhi. General Manager for Manager Director##

It is admitted that the "one month's pay plus allowances in lieu of notice period" was never paid to the appellant. She filed a suit questioning the order terminating her services on the principal ground that she had not been paid "one month's pay plus allowances in lieu of the notice period" simultaneously with the order terminating her services. The suit was decreed by the trial court, but on appeal, the Additional District Judge reversed the judgment and decree of the trial court. The appellant filed a second appeal to the High Court. The High Court while holding that one month's pay and allowances had to be paid along with the order terminating the appellant's services, nevertheless confirmed the decree of the appellate court on the ground that the plaintiff had failed to obtain the no dues certificate even by the time she appeared in the trial court. We are of the view that the judgment of the High Court is wholly unsustainable.

3. Bye-law No. 3.2(ii) which governs the situation is as follows :

3.2 Termination of Service. - The services of an employee of the Corporation may be terminated by the Appointing Authority -

(ii) In the case of temporary employees by giving one month's notice on either side or, in lieu thereof pay for the period the notice falls short of one month.

The bye-law is clear that the services of an employee could only be terminated by giving one month's notice or, in lieu of notice, by paying the salary, etc. for the period of one month. It would not be open to the employer to insist upon the production of no dues certificate' by the employee. In fact, we fail to see how the employer can insist upon the production of a 'no dues certificate' by the employee when the certificate has to be given by the employer. The employer is the person who is in the know of things whether any amount is due from the employee or not. The employer cannot certainly take advantage of his failure to give a certificate to the employee and claim that he was entitled to withhold the one month's pay and allowances payable in lieu of the one month's notice on the ground of non-production of no dues certificate by the employee. We have no hesitation in allowing this appeal. The judgment and decree of the High Court are set aside. The judgment and decree of the trial court are restored with costs throughout.

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