

SUPREME COURT OF INDIA

Union of India (Uoi)

Vs.

Sumitra Devi (Smt)

(G.B. Pattanaik and U.C.Banerjee JJ.)

31.01.2000

ORDER

G.B. PATTANAİK, J.

1. Delay condoned.

2. Leave granted.

3. The defendants are the appellants against the impugned judgment of the High Court in Second Appeal. The plaintiff -respondents filed the suit challenging the order of termination on the ground that the order of termination had not been passed by the competent authority. The learned trial Judge decreed the suit obviously because the order had been communicated not by the competent authority but by one Mr. Onkar Singh. On an appeal being filed the lower appellate court reversed the judgment and decree of the trial Judge. The plaintiff-respondents carried the matter in appeal to the High Court.

4. The High Court re-considered the matter and came to the conclusion that it is Onkar Singh who passed the order and not the General Manager and, therefore, the lower appellate court was not justified in interfering with the judgment and decree of the trial Judge. The second appeal thus having been allowed and the judgment and decree of the trial Judge having been confirmed, the defendants are in appeal.

5. The only question that arises for consideration is whether the General Manager who was the competent authority to terminate the services of the plaintiff passed the order of termination or not. We have requested the learned Addl. Solicitor General to produce the relevant file dealing with the termination of the plaintiff and pursuant to our request the entire file has been produced before us. On going through the said file there is no manner of doubt that it is the General Manager who passed the order of termination which was of course communicated by one Mr. Onkar Singh. Since the competent authority has passed the order of termination its communicated by any other authority will not make the order of termination bad. The High Court was, therefore, wholly in error in interfering with the judgment of the lower appellate court. We accordingly set aside the impugned judgment of the High Court, confirm the judgment and decree passed by the lower appellate court. The appeal is allowed and the suit filed by the plaintiff stands dismissed. Notwithstanding the fact that the appeal is being allowed, we direct if the plaintiff has already got some monetary relief

during the interregnum on the basis that suit was decreed by trial court, he may not be called upon to reimburse the same. No order as to costs.