

CALCUTTA HIGH COURT

Damodar Valley Corporation

Vs

Provat Roy

(Bachawat, J.)

22.06.1956

JUDGMENT

Bachawat, J.

1. The plaintiff was appointed a tracer by the Damodar Valley Corporation with effect from 17 January 1949. The letter of appointment must be read with the appointment offer dated 3 January 1949. The duration of the appointment was three years. The appointment was terminable on one month's notice on either side. The period of probation was up to 28 February 1910.

2. By letter dated 27 April 1949, Mr. R.N. Lahiri, the Executive Engineer of the defendant Corporation, Panchet Hill Division, suspended the plaintiff from office work in his division from 28 April 1919 forenoon till the defendant Corporation decided finally his case.

3. By office order dated 21 May 1949, Mr. Sohan Lal, Director of Personnel of the defendant Corporation, directed that the plaintiff be removed from Corporal ton services with effect from 28 April 1949. On receipt of this order, the plaintiff, by letter dated 8 June 1949, stated that he had the misfortune to be summarily dismissed from his service for no fault of his although under the terms of employment he was entitled to one month's notice, and requested reinstatement in service. The letter was addressed to the Director of of Personnel, Damodar Valley Corporation, and copies of the letter were forwarded to the Chairman and the Secretary of the Corporation. It is noticeable that in this letter the plaintiff does not complain that he had not already been dismissed from service, nor does he say that Sohan Lal had no authority to dismiss him. By letter dated 1 September 1949, addressed inter alia to the Director of Personnel and the Secretary, Damodar Valley Corporation, the plaintiff again reiterated his complaint, and stated that there was no just cause for his summary dismissal, and stated that in any event lie was entitled to at least one month's notice before his services are terminated, it, is again noticeable that the defendant does not complain that his services have not been already terminated or that Sohan Lal had no authority to dismiss him. In reply by letter dated 12 September 1949, Mr. Sohan Lal stated that the plaintiff had already been removed from the service of the Corporation with effect

from 28 April 1949. By letter dated 22 October 1949, Mr. Sohan Lal again wrote to Mr. P. Roy that his services were not required by the Corporation, and consequently he had been removed from the Corporation services with effect from 28 April 1949.

4. In this suit the plaintiff prays for a declaration that the order of suspension and removal is ultra vires, void, and inoperative, for a decree for setting aside the order of removal, for a decree for Rs. 838-4-0 on account of arrears of pay for seven months from 23 April 1949 up to 29 October 1949, and for a further decree at the rate of Rs. 117 per month up to the date of reinstatement. The plaintiff complains:

- (a) that at least one month's notice of termination should have been given;
- (b) that Mr. Sohan Lal not being an appointing authority should not remove or dismiss him from services, and, therefore his order is illegal and without jurisdiction;
- (c) that the plaintiff could not be legally removed from service until the charges were framed against him, and until he is allowed to defend his case as provided in the Government of India Act and Government Servants' Conduct Rules.

5. The learned Munsif passed a decree declaring that the order of the Director of Personnel removing the plaintiff from service is illegal, dismissed the prayer for reinstatement, and passed a decree in favour of the plaintiff for the sum of Rs. 574-13-9 on account of salary and compensation up to 25 August 1949.

6. On appeal, the learned Additional District Judge modified the decree of the trial court and directed that the plaintiff would get remuneration at the rate of Rs. 117 per month as from 28 April to 22 October 1949 and Rs. 117 for salary in lieu of notice for one month.

7. It is clear that the Damodar Valley Corporation is an independent statutory Corporation and the Government Servants' Conduct Rules and the Constitution have no application in relation to employees in the services of the Corporation.

8. It is clear that the plaintiff is not entitled to any enquiry or to the framing of any charge before he could be lawfully dismissed.

9. It is also clear that under the terms of appointment the services of the plaintiff could be lawfully terminated by one month's notice on either side without assigning any reason. It is also clear that if reasons for dismissal are given, the defendant Corporation is not bound to substantiate the reasons as long as it is ready and willing to pay salary for one month in lieu of notice.

10. I am satisfied that prior to 21 May 1949 there has been no lawful dismissal of the plaintiff by the defendant. The letter of the Executive Engineer, dated 27 April 1949, merely suspended the

plaintiff from employment. Suspension is not dismissal. Until the servant is dismissed from office he continues his employment. Where the master chooses to continue the servant in his employment, there is no right to suspend him or to deprive him of any part of the wages. See Diamond's *The Law of Master and Servant*, 2nd Edn., p. 199; Halsbury, Vol. XXII, p 162; *Warburton v. Taff Vale Railway Co*¹.

11. The lower appellate court held that the office order, dated 21 May 1949, cannot be treated to be a notice of dismissal, because it purports to dismiss the plaintiff with retrospective effect as from a prior date.

12. The office order, date 21 May 1949, reads thus:

Mr. P. Roy, tracer, office of the Executive Engineer, Panchet Hill Division, is removed from Corporation service with effect from 28 April 1949.

13. It is true that the plaintiff could not be dismissed with retrospective effect as from 28 April 1949. The order, dated 21 May 1949, could speak only as from the date of the order. The order, however, is a clear notice that the plaintiff is removed from the Corporation services. The removal could not take effect from 28 April 1949. In my opinion, the order dated 21 May 1949 should be treated as a notice of dismissal as from that date. In fact, the plaintiff himself well understood that order to be an order of dismissal and so treated that order in his subsequent letters which I have mentioned above. In my opinion, therefore, the order dated 21 May 1949, which was served upon the plaintiff, was and must be deemed to be a clear notice of dismissal as from 21 May 1949.

14. It is said that Mr. Sohan Lal not being the appointing authority could not dismiss the plaintiffs. There is a clear confusion of thought in the arguments advanced before me as also in the judgment of the lower appellate court as to the correct approach to this matter. As I have said, the Damodar Valley Corporation is an independent statutory Corporation. The rules of the Government servants which provided for dismissal of a Government servant by the authority appointing' him or by a higher authority has no application to the employees in the service of the Corporation. The Corporation like any other employer could dismiss its servants. The Corporation could also through its duly authorized agent dismiss its servants. It is remarkable that in the plaint it is not pleaded that Mr. Sohan Lal was not properly or duly authorized" by the Corporation to dismiss the plaintiff. The charge in the plaint is that Mr. Sohan Lal not being an appointing authority could not remove or dismiss him from service. The plaint is based upon the assumption that the Government Servants Conduct Rules apply to the employee in question. Furthermore, in the letter dated 1 September 1949 and 8 June 1949, the plaintiff did not complain that Sohan Lal had no power or authority to dismiss him. There are other materials on the record from which lawful authority of Mr. Sohan Lal to dismiss the plaintiff could lawfully be Inferred. The lower appellate court has clearly held that Mr. Sohan Lal had power to dismiss the plaintiff. I agree with that conclusion, but for different reasons mentioned above. The plaintiff has neither

alleged nor proved that Sohan Lal was not the duly authorized agent of the defendant.

15. In view of the finding, the conclusion is that the plaintiff is entitled to

(a) salary at the rate of Rs. 117 per month from 23 April to and including 21 May 1949,

(b) a farther sum of Rs. 117 on account of one month's salary in lieu of notice.

16. I pass the following order:

The appeal be allowed and the judgment and decree of the learned Additional District Judge dated 17 August 1954 and the judgment and decree of the learned Munsif dated 7 May 1953, be set aside and the suit be remitted to the trial court with the direction that the trial court should forthwith pass a decree in favour of the plaintiff,

(a) for salary at the rate of Rs. 117 per month as from 28 April 1949 up to and including 21 May 1949.

(b) for Rs. 117 on account of one month's salary in lieu of notice.

17. As the success of both sides is divided, and having regard to all the circumstances, each party do pay its own costs throughout.

18. Let the records be sent down as early as possible.

Cases Referred.

1(1902) 18 T.L.R. 420