VERDICTUM.IN

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Pronounced on: 06.03.2025

CFA No. 08/2009

Punjab National Bank ….Petitioner(s)/Appellant(s)

Through :- Mr. Dheeraj Sharma, Advocate

V/s

V K Gandotra ….Respondent(s)

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

Through :- Mr. V R Wazir, Sr. Advocate with
Mr. Rajat Sudan, Advocate

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Feeling aggrieved of the judgment and decree dated 13.09.2008 passed by Additional District Judge, Bank Cases, Jammu (for short Trial Court) whereby Trial Court while decreeing the suit of the plaintiff/respondent herein, has declared his dismissal from appellant-bank as illegal and plaintiff declared entitled to be reinstated as also entitled to damages, the appellant bank has preferred this civil first appeal.

2. The trial Court decree is challenged by the appellant-bank on the following grounds:-

   (a) Impugned judgment and decree is bad both in law and on facts.

   (b) Trial Court has proceeded on the assumption that the dismissal of the respondent was wrongful without there being any case of the respondent therefor. The suit was simpliciter recover of damages. The trial Court, unmindful of the frame of the suit which was simpliciter as suit for recovery, went to the extent of allowing reinstatement of the respondent not ever prayed for.

   (c) The evidence has been misread and misappreciated by trial Court in decreeing the suit in favour of the respondent.

   (d) The trail court has proceeded to deal with the matter on ill-founded compassion, non-existent records, unproved facts and in turn has omitted to take into account

VERDICTUM.IN

proven case of the appellant bank justifying the order of dismissal of the respondent.

(e) Many issues framed in the suit have gone undetermined or determination thereof is only a cosmetic one, whereas taking into account the pleadings, their determination was indispensable and which rather required a conscious determination to arrive at the rights of the parties conclusively.

3. As record would demonstrate, plaintiff/respondent filed a suit before the Trial Court, stating therein that he joined defendant-bank as an Accountant on 25.02.1970. After nine months, he was given a chance to officiate as a Manager of the New Bank of India Ltd., Jammu Branch, and was confirmed in the same capacity on 01.05.1971. In recognition of the efforts and efficient and smooth working of the branch, the defendant-bank was pleased to accord special cash reward/increments for promoting the interests of the bank by way of mobilising of deposits and making advances during the years 1971, 1972 and 1973. He also worked at the Srinagar Branch from September 1974 to 10th of February 1975, and during this period, he brought the working of the branch on smooth base set of the branch routine in the proper manner. He was driving a total sum of Rs. 1,944/- per month.

4. It was also the case of plaintiff before the Trial Court that in the month of December 1974, he was approached by Hindustan Commercial Bank Ltd., Kanpur, to work as an agent for the proposed new branch at Jammu. He was reluctant to leave his service in view of his past association. On 8 January 1975, he wrote a personal D.O. letter to the Chairman of the defendant bank, requesting him to make him in charge of both the branches at Jammu and Srinagar, in accordance with the discussion they had at Delhi. After waiting for a considerable time and having received no reply from the defendant, the plaintiff resigned from the service of the bank on 28.01.1975, and sent the

resignation letter to the defendant, thereby giving one month's notice as required according to the service conditions of the Bank.

5. It was also stated by plaintiff in his plaint that appointment letter issued by the defendant in his favour stipulated that either party could terminate employment by giving one month's notice to quit. No other written conditions of the service were conveyed to the plaintiff nor do they exist. As he got a better offer, he resigned from the service and wrote a letter of resignation by asking them to treat it as notice and he be relieved from service. The period of one month expired on or about 1st of March 1975.

6. The defendant-bank through its General Manager vide letter no. STF/TRF/1611 dated 04.02.1975 directed the plaintiff to hand over the charge of Srinagar Branch to Sh. J.M. Tando and seek further instructions from Assistant General Manager, Northern Zone. The defendant-bank vide letter no. AGM.NZ/150 dated 15.02.1975 intimated plaintiff which was received on 17.02.1975, that already advised as per letter dated 19.01.1975 he should get the unauthorised advances adjusted failing which he would be held responsible. It was stated in the said letter that "under the circumstances you are advised that your resignation date 28.01.1975 which has been received by us through Regional Manager, Pathankot, is not accepted for the time being till the above unauthorised advances or any further unauthorised advances which are brought to our notice about which communication will be sent to you shortly, are adjusted".

7. The statement in this letter that the resignation could not be accepted unless the unauthorised advances were adjusted by the plaintiff, was, according to plaintiff, unwarranted by any rule, banking usage or contract between the parties. The plaintiff did not furnish any security for due performance and

VERDICTUM.IN

reimbursements of any loss that may occur to the defendant by act of omission or commission by him.

8. It was also stated by plaintiff that defendant being a master and the plaintiff being a servant working under him and only term in the letter of appointment that the service could be terminated by one month's notice to quit by either side. The defendant was bound under law to accept the resignation and not to insist on adjustment of unauthorised advances as a pre-requisite for the acceptance of the resignation. The plaintiff, realising that the defendant is not going to give him the discharge certificate, ultimately withdrew his resignation vide his letter dated 30.07.1975, and further requested the defendant for restoration of status quo ante and the payment of all these dues.

9. It had also been the case of plaintiff that defendant dismissed the plaintiff from the service on 08.08.1975, but no reference was made regarding his withdrawal of resignation. The reasons for dismissal in the letter of dismissal were on account of serious and grave lapses by the plaintiff as Manager Branch and Jammu Branch, misuse or abuse of power, etc. His dismissal is contrary to any written contract unwritten conventions, banking usage or practice and against the well-settled principles that no dismissal can take place without a proper enquiry, after framing charges in accordance with the rules of common law.

10. The plaintiff in his plaint prayed for recovery of Rs. 12,00,000/- as damages, for wrongful dismissal from service by the defendant, the dismissal being illegal, unwarranted and *mala fide*.

11. Defendant-bank contested the suit of plaintiff. It filed written statement. The defendant, while contesting the claims and pleas of plaintiff, pleaded in written statement that the suit is barred under Section 41 of the Specific Relief Act, and is also time barred. It was expected from the Manager that he works for the

VERDICTUM.IN

growth of the Branch, but the conduct of the plaintiff runs counter to his assertions. Merely because the plaintiff was given cash award at one time does not mean that he got the right to commit irregularities in future. The plaintiff was shifted because of making unauthorized advances. The plaintiff sent resignation letter dated 28.01.1975, but the reasons for it are denied. It is admitted that one of the terms and conditions of the appointment was that either party could terminate the employment by giving one month's notice to quit. It is, however, denied that this was the only terms and conditions of the appointment.

12. Appellant-bank also denied for want of knowledge that the plaintiff had got any letter of offer and, therefore, he resigned from service. Plaintiff was shifted because of bad/unauthorised advances made by him as Manager of Srinagar/ Jammu Branch putting the bank's pecuniary interest at stake. Appellant-bank did not accept the resignation because of unauthorised advances made by the plaintiff and he was asked to get the said advances adjusted. Plaintiff had come to know that his action of making unauthorised advances is going to be exposed and therefore, he submitted the resignation, so that he could escape the responsibility/liability. The appellant bank could not have allowed the plaintiff to go scot-free and to cheat another bank.

13. It had also been stated by defendant-bank that on coming to know about the unauthorised advances made by the plaintiff, he was issued detailed show cause notice giving details of such advances. The condition put by the Bank in letter dated 15.02.1975 was in accordance with banking practice, etc. even now and there are govt. guidelines in this effect. The claim of damages by the plaintiff is misconceived and untenable. The plaintiff is presuming that he would have been allowed to remain in service till the adjustment of

VERDICTUM.IN

unauthorised advances with any other action against him. On the contrary, as it happened, for the irregularities committed by the plaintiff, he was suspended in April 1975 and dismissed from service on 08.08.1975. Between April 1975 and 08.08.1975, the plaintiff could have put in efforts for adjustment of unauthorised advances. He never took any such steps.

14. It was also stated by defendant-bank that even during suspension, there was no cessation of employment and the relationship of master and servant existed. The bank could have still asked the plaintiff to comply with the directives by adjusting the unauthorised advances. However, the plaintiff failed to do so in spite of letter dated 15.02.1975. Plaintiff was trying to take advantage of his own lapse. When he made advances, he kept many documents, incomplete. No letter of withdrawal of resignation by the plaintiff is on record, and no such letter has ever been received by the Asstt. General Manager, as alleged. It could not be addressed to Asstt. General Manager, who was not the competent authority.

15. According to defendant-bank, plaintiff was suspended when there was a prima facie case against him. The defendant has right to terminate the services of the plaintiff by giving one month's notice as per terms of appointment. However, in order to give him a chance, a detailed show cause notice was given and he was given an opportunity to reply the same., which was duly considered and the plaintiff was dismissed vide a reasoned and detailed order dated 08.081975. The dismissal order is proper, valid and reasonable. Proper procedure was followed.

16. Defendant-bank also claimed that the claim of salary upto the age of 60 years was clearly misconceived, untenable and without any basis. When his contract could be terminated by giving one month's notice and the plaintiff had no right

VERDICTUM.IN

to remain in service upto the age of 60 years; he cannot claim his salary upto the date of retirement. The claims are imaginary, devoid of merit and not maintainable under law. Hence, the appellant-bank prayed for dismissal of the suit.

17. The Trial Court on the basis of the pleadings of the parties framed the following eighteen issues:

    1. Whether the suit of the plaintiff is time barred? …O.P.D.
    2. Whether the suit is barred u/s 41 of Specific Relief Act and the plaintiff cannot claim damages? …O.P.D.
    3. Whether the suit is liable to be dismissed because the plaintiff has taken inconsistent pleas? …O.P.D.
    4. Whether the suit is liable to be rejected under O.7 R. 14 CPC because the plaintiff has not attached the documents described in para-5 of the plaint with the plaint? …O.P.D.
    5. What were the other terms and conditions of the service governing the parties and what is their effect on the present suit? …O.P.D.
    6. Whether the defendant was bound to accept the resignation submitted by the plaintiff and not to pass his dismissal order subsequently. If so, what is its effect on the suit? …O.P.P.
    7. Whether the plaintiff submitted the resignation because of his misdeeds or unauthorized advances were going to be exposed and not because he was offered services by the Hindustan Commercial Bank? …O.P.D.
    8. Whether the defendant was not accepting the resignation of the plaintiff with a view to pressurize him to withdraw his resignation and also with held the resignation in order to see that the plaintiff does not get the employment in the Hindustan Commercial Bank. If so, what is its effect on the suit? …O.P.P.
    9. Whether the defendant was competent to ask the plaintiff to get the advances adjusted before accepting his resignation? …O.P.D.
    10. Whether the relationship of the master and the servant existed after the receipt of letter of resignation by the defendant and expiry of one month thereafter? …O.P.D.
    11. Whether the defendant vide his letter dated 15.2.1975 called upon the plaintiff to explain satisfactorily the charges against him and it was not a simple calling of explanation? …O.P.D.
    12. Was the defendant not authorized to with held the resignation but the resort to remedies available in common law for unauthorized advances made by the plaintiff and if so, what is its effect on the suit? …O.P.P.
    13. Whether the plaintiff had discretionary power of granting loan up to Rs. 60,000/- per truck with a margin of 25% as such all the advances made by him in respect of trucks were within his power? …O.P.P.
    14. Whether the order of dismissal of plaintiff is bad in law as no chargesheet was drawn or enquiry conducted or the plaintiff given proper chance to defend himself? …O.P.P.

VERDICTUM.IN

15. Whether the services of the plaintiff could be terminated giving a one month notice and as such, claim of the plaintiff that he would have remained in service up to 60 years entitling him to salary till retirement is not tenable? …O.P.D.
16. In case issue no. 14 is proved and issue no. 2 is disproved, is the plaintiff entitled to claim damages of Rs. 12 lacs as claimed by him in paras no. 32 & 37 of the plaint? …O.P.P.
17. Whether the plaintiff is entitled to diem allowances and salary from the month of February 1975 to 8th August, 1975 when his dismissal was issued by the defendant? …O.P.D.
18. Relief? …O.P. Parties

18. Plaintiff produced two witnesses - PW1 V.K. Gandotra and PW2 Bansi Lal Dogra, whereas defendant-bank produced two witnesses - DW1 Sarwan Singh and DW2 Bhushan Lal Koul. No documentary evidence was led by the plaintiff, whereas defendant bank produced the documentary evidence, viz. (i) Letter dated 15.02.1975 - EXDW-SS1, (ii) Letter dated 08.08.1975 - EXDW-SS2, (iii) Letter dated 12.04.1975 - EXDW-SS3.

19. The resume of the evidence is as under:

(a) **PW1 V. K. Gandotra**, the plaintiff has deposed that that he has filed the present suit against the defendant for damages, mental torture and loss of reputation. The bank has wrongfully dismissed him from service. The defendant-New Bank of India merged with the Punjab National Bank on 25.02.1977. He joined the bank as an Accountant and after nine months he was appointed as an Officiating Manager by the defendant and thereafter, after 15 months, he was confirmed as Bank Manager, as his work and conduct was satisfactory. In the year 1971, 1972, & 1973, the bank gave him cash awards which were given to him because the deposits in the bank were considerably raised and as a reward for general efficiency. The Bank Branch situated at Srinagar, was not functioning properly, as such, the New Bank of India transferred him to Srinagar. He applied through an application in the Hindustan Commercial Bank and on 28.01.1975, he submitted his resignation and gave a notice that he should be relieved within one month. At that time, he was drawing from the New Bank of India, Rs. 1944/- and the Hindustan Commercial Bank offered him the salary to the ,tune of Rs. 1860/ - and 75 litres of Petrol for the use of the vehicle. The New Bank of India did not accept his resignation, as such, he could not join the Hindustan Commercial Bank. The appointment letter is placed on the file. The New Bank of India did not allow him to join the Hindustan Commercial Bank, as such, his appointment letter was withdrawn by it. As such, he withdrew his

VERDICTUM.IN

resignation from the New Bank of India who dismissed him and prior to his dismissal, no enquiry was conducted and also no notice was served upon him. The dismissal order passed by the New Bank of India was such that he should not get any other service. When he was dismissed from the service, he was of 35 years of age. He was engaged as Managing Director by the Citizens' Cooperative Bank and after 2/3 months the Employee's Union of the Bank filed a case before the Registrar, Co-operative Societies against him on the ground that he has already been dismissed from service and the case was filed on the basis of letter of dismissal as such, he lost the case and he was discharged from the service. The defendant has wrongfully dismissed him from the service, as a result whereof he has suffered a huge financial loss. When he was dismissed from the service it was specifically mentioned in the letter that no bank should provide him service. On the basis of this letter, he could not get any service. In the society his reputation was badly affected and he was mentally tortured. He suffered a financial loss to the tune of Rs. 9,50,000/-, as he was to serve for 25 years more and at the age of retirement his salary would have been Rs. 5,000/- per month. He has claimed Rs. 2,00,000/- for mental torture and Rs. 2,00,000/- for loss of reputation and for the unpaid salary Rs.20,000/ - and as such, he is entitled to recover Rs. 12,00,000/ — as damages from the defendant.

On being cross-examined, he has stated that he was not given any notice with regard to dismissal. It is wrong that the notice dated 12.04.1975 was sent to him. He had not replied to the notice. It is wrong that he was dismissed for the irregularities committed by him. This is also wrong that he has misused his official position. The letter dated 12.04.1975 issued by the Assistant General Manager placed on the record was received by him which he replied. Besides that, he also received inspection note on 12.04.1975 which he also replied. Through the letter dated 28.01.1975, he submitted his resignation to the bank on which he has put his signatures. In the resignation letter, the notice of one month was given to the bank, though it is not mentioned in the letter. In the month of February, 1970, he joined the service in the New Bank of India which was a limited company. At the time of joining the service, the rules were not furnished to him. He has not filed the copy of the appointment letter with the file. He replied the letter dated 07.06. 1974 of the bank on 21.06.1974. In that letter he got regularized the wasteful expenditure which was not in his power. He did not receive any letter issued by the bank in which he was advised not to over-step his powers. On 13.05.1974, he received a letter from the Central Zone and thereafter he did not receive any letter. The suit was filed in the Hon'b1e High Court in the year 1975. He served in the Citizens' Co-operative Bank and was ousted after 2/3 months. This is wrong that he also misused his official position in the Citizens Co-operative Bank, as such he was ousted, but their Employee's Union filed a case against him as they were having objection about his engagement in the said bank. Copy of the

VERDICTUM.IN

judgment is placed on the file. He did not challenge the order of The Citizen's Co-operative Bank.

(b) **PW2 Bansi Lal Dogra** has deposed that he knows the plaintiff since 1960. In the year 1960, the plaintiff was obtaining the training of Chartered Accountant from R. C. Gupta and Co. In the year 1974-75, he had seen the plaintiff working as Manager in the New Bank of India. In the month of August, 1975, the defendant dismissed the plaintiff from service as a result whereof his financial position became very critical and many a times he took financial help from him. He got the wife of the plaintiff employed as Teacher in Dewan Badri Nath School. After the dismissal, the plaintiff did not obtain any service, as he was having stigma of being dismissed from the service. At the time of dismissal, the age of the plaintiff was 30 to 35 years and the plaintiff would have achieved the heights. The New Bank of India, afterwards, was amalgamated with the Punjab National Bank.

On being cross-examined, he has stated that prior to joining the service in the New Bank of India, the plaintiff was working with the S.F.C. He does not know why the plaintiff was dismissed from the service by the defendant. When the plaintiff wanted to join Hindustan Commercial Bank, the New Bank of India dismissed him. He was having personal relation with Mr. Jain, Chairman of the Hindustan Commercial Bank, as such he came to know that he was dismissed from service in the year 1975. He has not seen the appointment letter of the plaintiff. He told him that the defendant is causing damage to him. After the plaintiff was dismissed from service, he started providing tuitions to the children. He was also appointed as Managing Director in the Citizens' Co-operative Bank. On the objections raised by the union of the bank, he was also dismissed from the Citizens' Cooperative Bank.

(c) **DW1 Sarwan Singh** has deposed that deposed that in the year 1974-75, he was posted in the Head office of the New Bank of India, situated at New Delhi. He also dealt with the disciplinary matter of the plaintiff and as such he has knowledge about the same matter. He used to deal with the disciplinary matters of the staff in the office of Mr. J. Sethi, General Manager of the defendant-bank. He used to deal the matters of the Northern Zone. He has a personal knowledge about this case. The letter dated 15.02.1975 attached with the file was written by Mr. Sethi, General Manager, Northern Zone, which bears the signatures of Mr. Sethi with whom he has worked. The letter in question bears the signature of Mr. Sethi and also bears his initial. He proved the contents of the letter and the letters dated 15.02.1975 and 08.08.1975, were exhibited as EXDW-SS1 and EXDW-SS2 respectively. He also proved the letter dated 12.04.1975 which is exhibited as EXDW-SS3. Letter dated 25.06.1975 written to the plaintiff bears the signature of Mr. B. L. Khorana. Through letter dated 08.8.1975, the plaintiff was dismissed from the service.

VERDICTUM.IN

On being cross-examined, he has deposed that he has not conducted any enquiry against the plaintiff. He also does not know whether any Enquiry Officer was appointed in this case or not. As per the service condition, the enquiry is not required to be conducted by the bank because it is a Private Sector. He has never worked in the office of the defendant in Jammu. He has not personally come for inspection of the branch of the plaintiff. The employment of the plaintiff was on contractual basis which fall within the purview of Common Law. No departmental enquiry was conducted against the plaintiff, as such no file was maintained. At the time of dismissal, the plaintiff was the Branch Manager. He did not remember who was having power to dismiss the plaintiff during those days.

(d) **DW2 Bhushan Lal Koul** has deposed that the plaintiff has filed the suit against the New Bank of India. In the year 1993, the New Bank of India, merged with the Punjab National Bank and this suit was followed by the Punjab National Bank. The documents numbering 67 to 167 were filed by the Punjab National Bank after the New Bank of India merged with it, which have been placed on the record. The document numbering 296 as per the list has been filed by the Punjab National Bank and all these documents have been issued by the New Bank of India.

On being cross-examined, he has deposed that the liabilities of the New Bank of India, have been owned by the Punjab National Bank. The documents he has seen are in the custody of the head office.

20. After appreciation of evidence on record, the Trial Court has decided that "the Issue nos. 2, 4, 14 to 17 in favour of plaintiff and against defendant-bank, as such, the order No.STF/DA/1928 dated 08.08.1975 passed by defendant-bank, whereby plaintiff was dismissed, has been declared illegal, unwarranted, *mala fide*, arbitrary and in violation of the principles of natural justice and accordingly set-aside by the Trial Court. The plaintiff has been declared entitled to be inducted in service but because of the fact that the plaintiff having already attained the age of superannuation, could not be inducted into service, thus, a decree to the tune of Rs. 12.00 Lac (Rupees twelve lakhs) as damages with simple interest @6% p.a. has been passed by the Trial Court in favour of plaintiff and against defendant-bank with costs. The suit has been accordingly decreed by the trial Court.

VERDICTUM.IN

21. I have heard learned counsel for the parties and considered the matter.
22. The decree of the Trial Court is being challenged in the present appeal on the foremost ground that the suit was not maintainable under law as it was simpliciter for recovery of damages. Appellant-bank, while challenging the decree, has taken a ground that the respondent-plaintiff had not challenged the order of termination, but Trial Court has exceeded its jurisdiction while holding the order of termination bad and while setting-aside the same and holding the plaintiff entitled to be reinstated, but since the plaintiff had already attained the age of superannuation, it held the defendant-appellant bank liable for damages.
23. As is evident from the plaint and relief claimed, the plaintiff has not challenged the order of dismissal nor has sought for reinstatement. What is claimed by him in the suit is damages on account of wrongful dismissal. The first question would arise as to whether without seeking the declaration of termination, can the trial Court grant such relief, which he has nowhere sought.
24. It is seen that no such issue of maintainability of the suit under law was framed by the Trial Court. From the perusal of the record, it is seen that issues 01 to 04 were held to be preliminary issues and were decided in favour of the plaintiff.
25. No issue on the maintainability of the suit had been framed by the trial Court on the ground that when the plaintiff had not sought the relief of declaration declaring termination of services as wrongful, could the relief of damages be granted for alleged wrongful termination. At this juncture, a point arises whether this Court in Civil First Appeal can decide this issue of maintainability of the suit under law, when the trial Court has not framed such issue. The issue is purely of law and no evidence is required to be led by the parties. This issue was not raised by the defendant-bank in their written statement before the trial Court and has been raised in the instant appeal.

VERDICTUM.IN

26. Reference is being made to ***R. Kandasamy* v. *T.R.K. Sarawathy*, 2024 SCC OnLine SC 3377**, wherein the Hon'ble Supreme has held that:

> "44. Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order VII Rule 1, CPC. If a suit is barred by law, the trial Court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by section 9, CPC, it is obligatory for a trial Court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial Court) to proceed to trial and consider granting relief to the plaintiff as claimed. No higher court, muchless the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial Court to grant relief if the 'jurisdictional fact' imperative for granting relief had not been satisfied. It is fundamental, as held in Shrisht Dhawan (supra), that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial Court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed. This is a duty the trial Court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial Court's prima facie opinion of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad."
>
> 47. However, we clarify that any failure or omission on the part of the trial Court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

27. In view of above and having regard to law laid down as aforesaid, omission on the part of the Trial Court to frame the issue on the maintainability of the suit under law, as mentioned above, does not trim the powers of this Court to decide the issue as there are no new facts which are required to be pleaded and no new evidence is to be led by the parties.

VERDICTUM.IN

28. If evidence on the file is sufficient, Appellate Court can decide and determine the case finally under and in terms of Order 41 Rule 24 CPC, which reads as under:

> "**24. Where evidence on record sufficient, Appellate Court may determine case finally.—**
> Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

29. Thus, Order 41 Rule 24 of the Civil Procedure Code provides that where evidence on record is sufficient enabling Appellate court to pronounce judgement, after resettlement/reframing of the issues, if necessary, so as to finally determine the suit notwithstanding the Trial Court judgement, from whose decree the appeal has been preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds. As such, a new issue is, accordingly, framed in the suit:

17A. Whether the suit is maintainable under law in its present form?...OPD

This issue is treated as a preliminary issue.

30. This Court in appeal will now give issue-wise findings. Issue nos. 1 to 4 were preliminary issues which have been decided by the trial Court on 30.09.2000 by a separate order. The said issues have been rightly decided by the trial Court.

31. Now the next issue is ***issue no. 5 - What were the other terms and conditions of the service governing the parties and what is their effect on the present suit? …OPD***

32. The onus to prove this issue was on the defendant. The letter of appointment has not been tendered in evidence by both the sides. However, it is an admitted fact that one of the conditions stipulated in the appointment letter was that

VERDICTUM.IN

either party could terminate the employment by giving one month's notice. From the pleadings of the parties, it stems that it was a contract of personal service. The extant case is a private employment which normally would be governed by the terms of the employment between the parties. But since the letter of appointment of the plaintiff is not on record, the Court will have to take the admitted stand of the parties that either party could terminate the employment by giving one month's notice, which forms the backbone of the case.

33. The trial Court in its judgment has while relying on judgments of the Supreme Court in AIR 1986 SC 1571 and AIR 1991 SC 101 held that the condition of one month's notice attached to the service condition of the plaintiff is abuse of public policy and is void.

34. In *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*, AIR 1991 SC 101, the matter pertained to termination of services of permanent employees of public/ semi government undertakings or statutory corporations where only one month's prior notice was to be issued or pay in lieu of notice without any enquiry was to be paid. It does not cover employees under private employment. As such, the said judgment is not applicable in the instant case.

35. The Trial Court has further, relying upon the decision of the Supreme Court in the case of *Central Inland Water Transport Corporation Ltd. Etc* v. *Brojo Nath Ganguly*, AIR 1986 SC 1571, held that public policy principles will also apply to private employment. This judgment, however, in my opinion, no longer lays down the correct law inasmuch as the Supreme Court in the case of *Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657* has held that public policy principles cannot apply to private employment.

VERDICTUM.IN

36. Thus, the Trial Court has wrongly decided this issue. The issue no. 5 is accordingly, decided in favour of the defendant-appellant and against the plaintiff-respondent.

37. The issue no. 6 and 8 are taken together. ***Issue no. 6 - Whether the defendant was bound to accept the resignation submitted by the plaintiff and not to pass his dismissal order subsequently. If so, what is its effect on the suit? …O.P.P.***

    Issue no. 8 -Whether the defendant was not accepting the resignation of the plaintiff with a view to pressurize him to withdraw his resignation and also with held the resignation in order to see that the plaintiff does not get the employment in the Hindustan Commercial Bank. If so, what is its effect on the suit? …O.P.P.

38. These issues have been rightly decided by the Trial Court that they had become redundant as the plaintiff in his plaint has himself pleaded that he had withdrawn his resignation on 30.07.1975.

39. The ***issue no. 7*** is - ***Whether the plaintiff submitted the resignation because of his misdeeds or unauthorized advances were going to be exposed and not because he was offered services by the Hindustan Commercial Bank? …O.P.D.***

40. The onus of this issue was on the defendant-bank. However, from the perusal of the evidence, it appears that no evidence with regard to this issue has been produced by the defendant-bank. As such, this issue is decided against the defendant and in favour of the plaintiff.

41. The ***issue no. 10*** is: ***Whether the relationship of the master and the servant existed after the receipt of letter of resignation by the defendant and expiry of one month thereafter? …O.P.D.***

VERDICTUM.IN

42. The Trial Court on this issue has said that the relationship of master and servant between the defendant-bank and the plaintiff continued till the resignation was not accepted. Resignation was not accepted and it was ultimately withdrawn by the plaintiff/respondent on 30.07.1975 and, therefore, relationship of master and servant continued up to 08.08.1975 when the defendant was dismissed from service, as such, the master/defendant-bank was competent to ask the servant/plaintiff to get the advances, if any bad proved, adjusted before he was dismissed.

43. However, despite the aforesaid reasoning, Trial Court has strangely held that the issue is decided in favour of the plaintiff and against the defendant. It is a settled position of law that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end, as has been held by the Supreme Court in ***Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia*****, (1997) 4 SCC 280.**

44. Keeping in view the aforesaid, the issue no. 10 is decided in favour of the appellant-defendant bank.

45. The issues no. 9 and 11 are interlinked and are taken up together. The onus of both these issues is on the defendant. As has been observed in the issue no.10 above, it is seen that by mere submission of resignation, jural relationship of defendant-bank and plaintiff did not come to an end. The service of the plaintiff could have been terminated by either of the parties by giving one month's notice. No other condition of appointment can be gone into as the appointment letter is not on record. The resignation letter has also not been tendered in evidence by the plaintiff. Whether he had given a month's notice can be

VERDICTUM.IN

inferred from the cross-examination of the plaintiff, wherein he has stated that he had not mentioned about one month notice in his letter. It has also been observed while deciding issue no.10 that the defendant was competent to ask the plaintiff to get the advances adjusted before accepting his resignation.

46. Letter dated 15.02.1975 has been exhibited in the defendant's evidence as EXDW-SS1. From the contents of the letter, it appears that it was seeking explanation qua unauthorised advances made by the plaintiff. It was not a charge-sheet. As such, issue no.9 is decided in favour of the defendant, but issue no.11 is decided against the defendant.

47. The ***issue no. 12*** is: ***Was the defendant not authorized to withheld the resignation but the resort to remedies available in common law for unauthorized advances made by the plaintiff and if so, what is its effect on the suit? …O.P.P.***

48. As has been observed while deciding the previous issues, the issue of jural relationship of defendant-bank and plaintiff continued till the resignation was accepted. The issue of withholding the resignation becomes redundant, as the same has been admittedly withdrawn by the plaintiff. Further, the plaintiff has also not led any evidence in this regard. As such, this issue is decided against the plaintiff.

49. The ***issue no. 13*** is: ***Whether the plaintiff had discretionary power of granting loan up to Rs. 60,000/- per truck with a margin of 25% as such all the advances made by him in respect of trucks were within his power? …O.P.P.***

50. The onus to prove this issue was on the plaintiff. However, from the perusal of the evidence, it appears that no evidence with regard to this issue has been produced by plaintiff. The Trial Court has also while deciding this issue held that there is no oral or documentary evidence wherefrom it could arrive at a conclusion that the plaintiff was having power to advance loan up to

VERDICTUM.IN

Rs.60,000/- with a margin of 25%. But it has still wrongly decided the issue in favour of the plaintiff. It was for the plaintiff to show that he had any such discretionary power, which he has asserted in his plaint. As such, keeping in view the aforesaid, this issue is decided against the plaintiff and in favour of the defendant.

51. The main issue in the suit is the ***issue no.14 – Whether the order of dismissal of plaintiff is bad in law as no chargesheet was drawn or enquiry conducted or the plaintiff given proper chance to defend himself? …O.P.P.***

52. The onus of this issue was on the plaintiff-respondent. It is the case of the plaintiff that he was terminated from services by the defendant-bank by virtue of termination letter dated 08.08.1975, and the said termination is bad in law as no charge-sheet was drawn or enquiry conducted nor was he given a proper chance to defend himself. PW1 – plaintiff has deposed before the trial Court the no enquiry was conducted and no notice was served upon him. The DW1 Sarwan Singh has stated in his cross-examination that no enquiry was conducted against the plaintiff. However, communication dated 12.04.1975 which is exhibited as EXDW-SS3 is of essence in this case along with the termination letter dated 08.08.1975, which is exhibited as EXDW-SS2.

53. Perusal of the communication EXDW-SS2 dated 12.04.1975 of the Assistant General Manager (Norther & Eastern Zone), The New Bank of India Limited reveals that the plaintiff was called upon to show cause within a fortnight as to why disciplinary action should not be taken against him for unauthorised advances and he was suspended forthwith. Plaintiff in his cross-examination has deposed that he replied to this letter. As such, plaintiff was in know of this communication.

VERDICTUM.IN

54. Perusal of the termination letter EXDW-SS2 dated 08.08.1975 mentions about letter dated 12.04.1975 about show cause. It mentions that since the plaintiff had failed to watch the interest of the bank in making recovery of the sticky/ unauthorised and/or unwarranted advances made by him. And as such, plaintiff was dismissed from the services of defendant-bank forthwith.

55. Thus, from the above, the question that arises is whether the show cause notice was enough to dismiss the plaintiff from service of the defendant-bank, in absence of a formal charge-sheet or enquiry.

56. Reference is made to the judgment passed in the case of ***Satya Narain Garg v. DCM Ltd.*****, (2012) 187 DLT 25**, wherein the High Court of Delhi has held that:

> *"In case of private employment, the employers are fully justified in taking steps for termination of services, if it finds that the employee is not upto the mark. Principles applicable in public law domain do not apply with respect to employees in private employment. Employment in private sector is governed by the terms and conditions of employment, and unless the termination is shown to be violation of the terms and conditions of employment, it cannot be said that the termination is illegal."*

57. The plaintiff in the instant case has failed to prove that there was requirement of enquiry or framing of formal charge-sheet before termination of contract, as the letter of appointment has not been placed by him on record. The plaintiff's case had to stand on its own legs. It is clear from termination letter dated 08.08.1975, that plaintiff was not up to the mark. The termination cannot be termed to be bad, and further the same has not even been challenged in the suit. As such, this issue is decided against the plaintiff.

58. Now the next issue is ***issue no. 15 - Whether the services of the plaintiff could be terminated giving a one month notice and as such, claim of the plaintiff that he would have remained in service up to 60 years entitling him to salary till retirement is not tenable? …O.P.D.***

VERDICTUM.IN

59. The onus of this issue is on the defendant-bank. As observed in issue no.5, it is an admitted fact that the services of the plaintiff could be terminated by giving a one month's notice. It was private employment and the claim of the plaintiff that he would have remained in service up to 60 years is not tenable under law.
60. The service of the plaintiff could have been terminated by any of the parties by giving one month's notice. No fixed tenure was assured by the defendant to the plaintiff in the defendant bank. The letter of appointment has neither been produced in evidence nor has been placed on file. The plaintiff PW1 In his cross-examination has also stated that he has not filed a copy of the appointment letter with the file. Accordingly, in terms of admitted facts, services of plaintiff could have been terminated by the defendant by serving one month's notice.
61. A contract of private employment is not similar to the public employment and in such private employment there is no scope of applicability of the principles of administrative law/public law. A contract of employment which provides termination of services by one month's notice, then, at best the employee will only be entitled to one month's pay in terms of the employment contract. An employee is not entitled to any relief of continuation in services or pay with consequential benefits for alleged remaining period of services till the date of his superannuation.
62. As per the provision of Section 14(1)(c) of the Specific Relief Act, 1963, a contract which is determinable in nature cannot be specifically enforced. Since the service contract in the present case is determinable by one month's notice, there does not arise the question of giving any reliefs which tantamount to enforcement of a determinable contract.

VERDICTUM.IN

63. In ***Executive Committee of Vaish Degree College* v. *Lakshmi Narain*, (1976) 2 SCC 58**, the Supreme Court has held that:

> ***"18. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions — (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.***

64. Thus, in a contract of personal service, the court normally would not give a declaration that the contract subsists and employee even after having been removed from service can be deemed to be in service against will and consent of the employer and the present case does not fall in any of the recognised exceptions narrated by Supreme Court in the aforesaid judgment.

65. As such, this issue is decided in favour of the defendant and against the plaintiff.

66. The next issue is ***issue no. 16 - In case issue no. 14 is proved and issue no. 2 is disproved, is the plaintiff entitled to claim damages of Rs. 12 lacs as claimed by him in paras no. 32 & 37 of the plaint? …O.P.P.***

67. The issue no.2 has been disproved, however issue no.14 as aforesaid has not been proved in favour of the plaintiff, as such, this issue is decided against the plaintiff.

68. The next issue is ***issue no. 17 - Whether the plaintiff is entitled to diem allowances and salary from the month of February 1975 to 8th August, 1975 when his dismissal was issued by the defendant? …O.P.D.***

69. The onus of this issue was on the defendant-bank. However, from the perusal of the evidence, it appears that no evidence with regard to this issue has been

VERDICTUM.IN

produced by defendant-bank. As such, this issue is decided against the defendant.

70. This Court shall now decide new framed issue, i.e., issue no. 17A. The question is ***whether without seeking the declaration of termination, is the suit maintainable under law***. It is not in dispute that the order of termination has not been challenged in the suit, and further the plaintiff has not prayed for his reinstatement. He has only sought for damages on account of wrongful dismissal. It is an admitted fact that the contract between the appellant-bank and the respondent-plaintiff was a contract for personal service determinable by one month notice.

71. In ***Maharashtra State Coop. Housing Finance Corpn. Ltd. v. Prabhakar Sitaram Bhadange*****, (2017) 5 SCC 623**, it has been held by the Hon'ble Supreme Court that:

> ***"9. We may also clarify one more aspect. Contract of personal services is not enforceable under the common law. Section 14, read with Section 41(e) of the Specific Relief Act, 1963, specifically bars the enforcement of such a contract. It is for this reason the principle of law which is well established is that the civil court does not have the jurisdiction to grant relief of reinstatement as giving of such relief would amount to enforcing the contract of personal services. However, as laid down in the cases referred to above, and also in Vaish Degree College v. Lakshmi Narain [Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58 : 1976 SCC (L&S) 176] , there are three exceptions to the aforesaid rule where the contract of personal services can be enforced:***
>
> > ***(a) in the case of a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India;***
> >
> > ***(b) in the case of an employee who could be reinstated in an industrial adjudication by the Labour Court or an Industrial Tribunal; and***
> >
> > ***(c) in the case of a statutory body, its employee could be reinstated when it has acted in breach of the mandatory obligations imposed by the statute.***
>
> ***10. Even when the employees falling under any of the aforesaid three categories raise dispute qua their termination, the civil court is not empowered to grant reinstatement and the remedy would be, in the first two categories, by way of writ petition under Article 226 of the Constitution or the Administrative Tribunal Act, as the case may be, and in the third category, it would be under the Industrial Disputes Act. An employee who does not fall in any of the***

VERDICTUM.IN

> ***aforesaid exceptions cannot claim reinstatement. His only remedy is to file a suit in the civil court seeking declaration that termination was wrongful and claim damages for such wrongful termination of services. Admittedly, the appellant Corporation is not "State" under Article 12 of the Constitution. The respondent also cannot be treated as a government/public servant as he was not under the employment of any Government. He was also not "workman" under the Industrial Disputes Act as he was working as Manager with the appellant Corporation."***

72. The instant case is a private employment which normally would be governed by the terms of the contract between the parties. Since there is no written contract between the parties on record, the dispute cannot be resolved with reference to any terms and conditions governing the relationship between the parties. The plaintiff has neither pleaded nor has there been any effort on his part to show that the impugned order of dismissal was in violation of any terms of his employment. He has only pleaded that there was no mention of his withdrawing his resignation in his letter of termination.

73. Thus, as held by the Supreme Court in ***Maharashtra State Coop. Housing Finance Corpn. Ltd. v. Prabhakar Sitaram Bhadange*, (2017) 5 SCC 623**, the only remedy for the plaintiff was to seek declaration of his termination as wrongful, with consequential relief of the damages for wrongful termination. Without seeking the said relief of declaration, the suit could not be held as maintainable.

74. The Trial Court has ventured into area which was not germane to the facts. The suit is a simpliciter suit for recovery of damages. The Trial Court has travelled beyond its realm by declaring the termination bad and allowing entitlement for reinstatement, which was never prayed for.

75. Thus, as could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of his services as bad in law. In the absence of such prayer by the plaintiff the original

VERDICTUM.IN

suit filed by him before the trial Court for grant of decree for recovery of damages for wrongful termination is not maintainable in law.

76. In view of the settled position of law, this Court holds that the suit filed by the plaintiff/respondent is not maintainable under law and accordingly the issue no.17A is decided against the plaintiff.

77. The appeal is accordingly allowed and the judgment and decree of the trial Court is **set aside** and the suit is **dismissed**.

78. Registry to prepare a decree sheet, which shall form part of this judgement.

(Vinod Chatterji Koul)
Judge

Jammu:
06.03.2025
Bir

Whether the order is reportable : Yes/no