PARMESHWARI PRASAD GUPTA

v.

THE UNION OF INDIA

August 2, 1973

[K. K. MATHEW AND M. H. BEG, JJ.]

Termination of service—Resolution of Board of Directors terminating service of employee invalid because meeting not properly called—Ratification of termination at a subsequent properly convened meeting relates back to date of act ratified and makes termination effective—Notice of termination—One month's notice, sufficiency of.

The appellant was appointed Secretary of the respondent company in 1942. Later he was promoted as General Manager. By a resolution dated December 16, 1953 the Board of Directors of the company decided to terminate the services of the appellant. By a telegram and a letter dated December 17, 1953 addressed to the appellant the Chairman of the Board of Directors terminated the services of the appellant. Subsequently at a meeting held on December 23, 1953 the Board of Directors confirmed the minutes of the meeting held on December 16, 1953 and the action of the Chairman in terminating the services of the appellant by his letter and telegram dated December 17, 1953. The appellant filed a suit challenging his dismissal and also claimed that he was entitled to 18 months' notice before termination of his services. The trial Court and the High Court decided against the appellant. In appeal by certificate to this Court the questions for consideration were : (i) whether the termination of the appellant's service was valid and (ii) whether the appellant was bound by the company's rules which provided for termination of the service of employees after one month's notice.

Dismissing the appeal,

HELD : (i) Notice to all the Directors of a meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting. As admittedly no notice was given of the meeting on December 16, 1953 to one of the Directors, the resolution passed terminating the services of the appellant was invalid. [307 D-E]

But the resolution of the Board of Directors to confirm the action of the Chairman to terminate the services of the appellant by his telegram and letter dated December 17, 1953, would show that the Board ratified the action of the Chairman. Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. Even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because he purported to act in pursuance of the invalid resolution. Therefore it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953. [307 G—308 C]

(ii) The rules which provided for one month's notice in case of termination of services of all employees would apply to the appellant as well. The rules expressly purported to bind all the employees of the respondent-company. There was no reason to hold that the appellant was not an employee of the respondent-company. The appellant had himself relied on the rules. It was therefore idle to contend that the rules did not bind him. The contention of the appellant that he was entitled to 18 months' notice must be rejected. [308 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1333 (N) of 1967.

A From the Judgment and Decree dated the 25th November, 1966 of the Delhi High Court in Regular First Appeals Nos. 89-D and 104-D of 1956.

V. S. Desai, Ravinder Bana, O. P. Rana and *Uma Mehta,* for the appellants.

B *B. Sen, Suresh Sethi, R. K. Maheshwari* and *B. P. Maheshwari,* for the respondent.

The Judgment of the Court was delivered by—

MATHEW, J.—This appeal by certificate is directed against the Decree of the High Court of Delhi dated November 25, 1966, passed in Regular First Appeals No 89-D of 1956 and No. 104-D of 1956, C both arising from Suit No. 282 of 1954 instituted by the plaintiff-appellant for a declaration that he continued to be the General Manager of the Fire Insurance Company in question and that the purported termination of his services was inoperative, and claiming a sum of Rs. 37,352.30 from the defendant on account of his arrears of pay, etc., or in the alternative, for a sum of Rs. 1,63,820/- as money due to him by way of bonus, gratuity, etc., as detailed in the D plaint.

The respondent Company had filed a suit against the appellant for the recovery of Rs. 1,10,000/- being Suit No. 306 of 1954 in which the Company was granted a decree for Rs. 5,759/9/6 with proportionate costs. First Appeal No. 88-D of 1956 before the High Court was the appeal by the Company against the rejection of the rest of E its claim in Suit No. 306 of 1954. We are not concerned with that appeal. Regular First Appeal No. 89-D of 1956 was the Company's appeal against the award of decree for Rs. 73,936/15/9, passed in favour of the appellant. Regular First Appeal No. 104-D of 1956 was the appellant's appeal against the rejection of his other claims in his suit. The High Court dismissed First Appeals No. 88-D of 1956 and 104-D of 1956 but partially allowed First Appeal No. 89-D F of 1956.

The appellant was appointed as the Secretary of the respondent-Company on October 16, 1942. His pay was fixed at Rs. 1,000/- p.m. free of income tax. Later on, he was promoted as the General Manager of the Company. On November 21, 1953, the appellant sent an application for leave to the Chairman of the Board of Directors G but no reply was received by him. He thereafter sent another application for 8 months' leave on the 16th of December, 1953. On December 17, 1953, the appellant received a telegram from the Chairman of the Board of Directors stating that the services of the appellant had been terminated by the Company and that he should stop attending the office. A registered letter to the same effect from the Chairman was also received by him.

H The allegation of the appellant in the plaint was that his services had not been validly terminated by the respondent-Company and that he still continued as the General Manager of the Company and was

entitled to recover the sum already mentioned from the respondent. In the alternative, the appellant claimed, among other things, 18 months' salary as due to him on the basis that he was entitled to 18 months' notice before terminating his services. A

In the written statement, the respondent-Company contended that the Chairman validly terminated the services of the appellant on December 17, 1953 in pursuance to a resolution passed by the Board of Directors on the 16th, and that subsequently, that resolution and the action of the Chairman terminating the services had been confirmed by a meeting of the Board of Directors held on December 23, 1953, and, therefore, the services of the appellant were validly terminated. The respondent-Company also contended that the appellant was in no event etitled to 18 months' notice as claimed by him but only to one month's notice and, therefore, he was entitled to get only one month's salary *in lieu* of notice under that head. B C

The trial court found that the meeting of the Board of Directors held on December 16, 1953 was valid, that the services of the appellant were validly terminated by telegram and letter of the Chairman dated December 17, 1953 addressed to the appellant, that even if it be assumed that the meeting of the Board of Directors held on December 16, 1953 was irregular, the resolution of the Board of Directors terminating the services of the appellant on the 16th and the action of the Chairman in actually terminating the services were ratified by the Board of Directors by its resolution of December 23, 1953, and, therefore, the services of the appellant were legally and validly terminated. It further held that the rules framed by the Company, namely, exhibits D-3 and D-4 would govern the appellant and that he was entitled, under clause (6) of exhibit D-3 only to one month's notice for terminating his services although the Court found that if the appellant was not bound by the rules, he would have been entitled to 12 months' notice before the termination of his services. D E

The findings of the trial court in these respects were confirmed in appeal by the High Court. F

In this appeal only two points were argued by counsel for the appellant : (1) that the services of the appellant were not validly terminated and, therefore, he was entitled to a declaration that he continued to be the General Manager of the Company and to claim the amount specified in the plaint; and (2) that, in any event, the appellant was entitled to 12 months' notice before his services were terminated and as only one month's notice was given, he was entitled to 11 months' pay in addition to what was awarded under this head. G

As regards the first point, it was said that the meeting of the Board of Directors dated December 16, 1953 was not properly convened for the reason that notice of the meeting was not given to all the Directors. The trial court found that one of the Directors, viz., Mr. B. P. Khaitan, was not given notice of the meeting of the Board of Directors held on December 16, 1953, and that he was not present at the meeting when the resolution to terminate the services of the appellant was passed. H

A Now, it cannot be disputed that notice to all the Directors of a meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting and that as, admittedly, no notice was given to Mr. Khaitan, one of the Directors of the Company, the resolution passed terminating the services of the appellant was invalid.

B Article 109 of the Articles of Association of the Company provides as follows :—

> "109. *When meeting to be convened*—A Director may at any time summon meeting of the Directors by serving every Director with at least 72 hours' notice in writing, through the officer of the Company authorized to receive such notice who shall arrange to convene the meeting".

C In Hasbury's Laws of England, Vol. 9, p. 46, it has been stated that it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate and that if a member whom it is reasonably possible to summon is not summoned, the meeting will not be duly convened, even though the omission is accidental or due to the fact that the member has informed the officer whose duty it is to serve notice that he need not serve notice on him. D In Volume 6 at p. 315 article 626, it is stated that a meeting of the directors is not duly convened unless due notice has been given to all the directors, and the business put through at a meeting not duly convened is invalid.

To put it in other words, as the meeting of the Board of Directors held on December 16, 1953, was invalid, so the resolution to terminate E the services of the plaintiff was inoperative.

Then, the question for consideration is, what is the effect of the confirmation of the minutes of the meeting of the Board of Directors held on December 16, 1953 and the action of the Chairman in terminating the services of the appellant by his telegram and letter dated December 17, 1953, in pursuance to the invalid resolution of the F Board of Directors to terminate his services, in the meeting of the Board of Directors held on December 23, 1953 ?

The agenda of the meeting of the Board of Directors held on December 23, 1953 shows that one item of business was the confirmation of the minutes of the meeting of the Directors held on December 16, 1953. The confirmation of the minutes of the meeting G of the Directors held on December 16, 1953, would not in any way show that the Board of Directors adopted the resolution to terminate the services of the appellant passed on December 16, 1953. It only shows that the Board passed the minutes of the proceedings of the meeting held on December 16, 1953. But the resolution of the Board of Directors to confirm the action of the Chairman to terminate the services of the appellant by his telegram and letter dated December H 17, 1953, would show that the Board ratified the action of the Chairman. Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December

16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim.

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The second point for consideration is whether the appellant was entitled to 18 months' notice before his services were terminated as claimed by him. The trial Court found that the rules of the Company, viz., exhibits D-3 and D-4 were binding on the appellant and that rule 6 of exhibit D-3 which provides for one month's notice in case of termination of services of all employees would apply to the appellant as well. The High Court confirmed that finding. The rules expressly purport to bind all the employees of the respondent-Company. There is no reason to hold that the appellant was not an employee of the respondent-Company. Besides, the appellant himself has relied upon these rules for the purpose of computation of the amount due to him on account of bonus, provident fund, etc. In these circumstances it is idle to contend that the rules did not bind him. In this view, it is quite unnecessary to consider the question whether, apart from the rules, one month's notice was reasonable in the circumstances of the case.

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There is no merit in this appeal. We dismiss it but in the circumstances we make no order as to costs.

G.C. *Appeal dismissed.*