

V. Gupta Vs. L.M.P. Precision Engineering Co. Pvt. Ltd.

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Court : Delhi

Decided On : Oct-05-1993

Reported in : 1993IVAD(Delhi)160; 52(1993)DLT402; 1993(27)DRJ642

Judge : J.K. Mehra, J.

Acts : [Limitation Act, 1963](#) - Sections 18

Appeal No. : Suit No. 807 of 1985

Appellant : V. Gupta

Respondent : L.M.P. Precision Engineering Co. Pvt. Ltd.

Advocate for Pet/Ap. : K.M. Sharma and; Nandita Chandra, Advs

Judgement :

J.K. Mehra, J.

(1) This is a suit filed by one Mr. V. Gupta, against the defendant company for recovery of a sum of Rs.1,03,496.00 together with interest @ 21% from the defendant on account of wrongful transfer and non-payment of wages for six month in lieu of notice and other dues and interest thereon. The summons in this suit were issued and the defendant in response thereto filed its written statement resisting the claim of the plaintiff on various grounds including that of limitation.

(2) The case of the plaintiff is that he was appointed by the defendant vide letter of appointment dated 22/2/1980 as General Manager (Northern Region) to be posted at Delhi at a salary of Rs.3,500.00 p.m. plus certain other benefits such as House Rent Allowance, car allowance, servant allowance, club expenses and medical allowance etc. Following the issue of letter of appointment the plaintiff joined the employment of the defendant w.e.f. 1st May, 1980. The parties have mainly relied upon the documents filed and admitted by each other. Only one witness was examined by the plaintiff merely for proving some of the documents. Before me, but the counsel conceded that it was mainly the case of interpretation of the documents.

(3) The aforesaid letter of appointment (Exhibit P-1) provided that the terms hereof were subject to review every three years and in addition, it was further provided that the contract will be subject to termination on six months' notice on either side. It is stated that the defendant transferred the plaintiff in September, 1981 to their establishment located at Bilimora and required the plaintiff to hand over the charge of Delhi office. At the Bar, it was stated that the instruction regarding transfer was conveyed on telephone first and then on a telex-cum-letter which is Exhibit P-11. Following this telex on 7th September, 1981, the plaintiff handed over the charge and confirmed this fact vide his letter dated 8th September, 1981, Exhibit D-1. However, the plaintiff did not proceed to Bilimora and on the contrary applied for leave and continued to stay at Delhi after handing over charge at Delhi. Thereafter he wrote to the defendants a letter dated 19th October, 1981 being Exhibit P-3. The relevant portion of the said document is reproduced as under:-

'I was appointed as General Manager (Northern Region), based at Delhi, as per terms and conditions detailed in your letter or contract of Employment dated 22/2/1980. Your sudden telephone instructions on 8th of September, 1981, advising me to hand over charge to Mr. Vijay Singh on the same day, without giving me any notice were rather upsetting and painful. Anyhow, your orders were immediately complied with. As the company is no longer interested in continuing my service in terms of my letter/ contract of employment, I therefore, respectfully request you to kindly arrange to clear all my dues according to the terms of my

appointment. I now look forward to your issuing necessary instructions to clear my dues at the earliest. A copy of the same may kindly be sent to me. Thanking you and with kind regards.'

(4) In this letter also, the plaintiff has not stated that his job was not transferable or that he had in any manner any grievance against transfer. In fact, he acted upon the transfer orders by handing over the charge of Delhi office and thereafter, he merely sought leave of absence. In that view of the matter, to write to the defendant that he was no longer interested in continuing his services, appeared to convey that the plaintiff was no longer interested in continuing his employment with the defendant. The defendant understood the aforesaid letter to be a resignation from the job. This understanding was conveyed to the plaintiff by the defendants vide their letter dated 9/1/1982, Exhibit P-4. They treated that letter as resignation from the service and conveyed their acceptance of the resignation. Even in the letter in reply to Exhibit P-4, being Exhibit P-5, the plaintiff did not challenge the understanding of the defendants about his having resigned as not correct and in fact the expression, which is reproduced hereunder clearly shows that the plaintiff had accepted the fact of acceptance of his resignation by the defendants without any demur.

'MY stay in Lmp, though a brief one was very beneficial and I am sure the experience I gained with you will be extremely useful to me. Being on my own I am now in a much better position to realise the problems you must be facing. Please do not hesitate to let me know if I can be of any help to you here in Delhi even though I may no longer be officially in LMP. I shall also be grateful if my dues could be settled at the earliest as I need the same urgently.'

(5) Even in his letter. Exhibit Pwi 1/3, dated 22/6/1982. the plaintiff has asked for settlement of his dues in view of his having started his own business. In none of the letters, has he challenged the understanding of the defendants of his letter dated 19/10/1981, being a letter of resignation, which was accepted on 9/1/1982. The said resignation was never withdrawn right up to the date of acceptance thereof. On August 28, 1982, the plaintiff repeated his demand for settlement of his dues vide Exhibit P

(6) This was replied to by the defendant in the following terms in Exhibit P-7 :-

'WE have for reference your letter dated 28th August, 1982 in connection with settlement of your dues. In this connection we would like to inform you that you have not yet settled the dues pending from you against the amounts received by you from the Company and in the absence of same we have not been able to settle the accounts. We would request you to kindly settle the same at your earliest.'

(7) For the first time, the plaintiff spelt out his claims against the defendants for settlement vide his letter, Exhibit Public Witness 1/7 dated 15/2/1983. He has listed his claim under the following four heads :-

A) Arrears of Provident Fund -1 noticed you have paid only 8% as per my appointment letter. B) 15% of my salary for the period I was in your employment is due to me in lieu of the super annuation which was not introduced. C) Gratuity for the period in which I was in your employment. D) My salary along with other allowances including Lta and medicals in lieu of the six months' notice period which would have been given.'

(8) Finally he detailed all these claims and added to the above claims in the annexure to his letter dated 6th September, 1983, being Exhibit Public Witness 1/9. When the said dues were not settled, the plaintiff filed the present suit after serving his lawyer's notice on the defendants.

(9) I have given careful thought to the above facts and in the light of the correspondence, referred to hereinabove, I am of the considered opinion that it was the plaintiff who had unilaterally decided to abandon his employment with the defendants without giving the contracted six months' notice. The argument of the counsel for the plaintiff that he was not liable to be transferred as his appointment initially was in Delhi, does not merit any consideration in view of the correspondence which followed the transfer order. The plaintiff by his own conduct not only acted upon the orders of transfer by handing over charge of Delhi office, but also applied for leave before joining without in any way challenging the defendant's right to transfer the plaintiff. Instead of joining at the place to which he

was transferred, the plaintiff wrote a letter. Exhibit P-3, referred to above that he had no intention to report for duty without in any manner challenging the validity of the transfer order or the right of the defendant to transfer. Not only that, after the defendants replied to the plaintiffs aforesaid letter vide their letter Exhibit P-4, deeming his letter. Exhibit P-3 to be a letter of resignation and accepting the same, the defendant's right to transfer or the acceptance of resignation was never challenged by the plaintiff except in the letter of his lawyer issued on 16th August, 1984. thereforee, in the circumstances, I have no hesitation in holding that the plaintiff had himself left the employment of the defendants without giving the defendants the required six months' notice. Consequently, I further hold that having himself failed to give notice, the plaintiff cannot take advantage of his own wrong and claim six months' wages from the defendants and as such, I hold that the plaintiff is not entitled to any wages or allowances for that period of six months. However, the plaintiff would be entitled to be paid following :-

(A)Proportionate salary and allowances up to 19th October, 1981, which is proportionate basic pay plus House Rent Allowance plus proportionate car allowance, servant allowance, medical reimbursement, if any, club expenses and subscription, if any. (b) It is stated by counsel for the defendants that provident fund contribution by the employer has been made @ 8% of the salary. It is also not in dispute that the contract of employment provided for 10% of the salary as contribution of the employer. As such, the defendant should also pay the difference of 2% to the plaintiff. As regards the amount, which is already lying deposited with the Provident Fund Trust or the Commissioner, Provident Fund, as the case may be, the plaintiff will be free to move appropriate application and receive that payment from the said authority directly. (c) Superannuation benefits, in case any annuities have been purchased or any similar scheme is there,the benefit of the same will also be given to the plaintiff. Plaintiff will also be entitled to half month's salary as gratuity as the contract of service does not provide for any qualifying period for entitlement of the plaintiff to gratuity, but simply states 'Half month's salary per year of completed service shall be paid as gratuity'. Since the plaintiff had already completed one year of service, he will be entitled to salary for half month. (d) Rest of the claims in the plaint, in the light of the aforesaid discussion, are rejected.

(10) Before concluding, counsel for the defendants raised the plea of limitation, which is also there in the written statement. In this case, the employment of the plaintiff came to an end w.e.f. 19th October, 1981 and suit of the plaintiff was filed on 25th April, 1985, which was beyond the period of limitation of three years for institution of such suits. The plaintiff has relied upon Exhibit P-7 dated 6th September, 1989, which has been quoted hereinabove and stated that in the light of his consistent claim for settlement of dues, this letter should be deemed to be an acknowledgement in the light of the pronouncements of Hon'ble Supreme Court in the case reported as : [1971]2SCR623 , wherein it has been held that the precise amounts or the nature of claim need not be acknowledged and it will be sufficient if from the document, a jural relationship of debtor and creditor is established. A reading of Exhibit P-7 would show that the accounts are yet to be supplied, while the defendant has talked of money due from the plaintiff, but the letter in the opening sentence commences with settlement of plaintiffs dues. This shows that there did exist a jural relationship of debtor and creditor between the two parties and I am inclined to accept this letter as amounting to an acknowledgement which would give a fresh period of limitation of three years from the date of said letter and in that light, I hold that the suit of the plaintiff is within time.

(11) The net result of the aforesaid discussion is that I pass a decree in favor of the plaintiff and against the defendants for:-

(I) proportionate salary and allowances up to 19th October 1981. Proportionate salary means proportionate basic pay, house rent allowance plus car allowance, servant allowance, medical reimbursement, if any, club expenses and subscription etc., (ii) The plaintiff shall further be entitled to receive the difference of 2% towards Provident Fund as discussed above and the superannuation benefits as discussed about plus gratuity of half month's pay. The Plaintiff will also be entitle to proportionate costs.