

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).24137/2008

(From the judgement and order dated 02/09/2008 in DBCSA No. 1055/2007 & SBCWP No. 9287/2006 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

SAMBHAR SALTS LTD. & ANR. Petitioner(s)
VERSUS
DEVI DAYAL GUPTA & ANR. Respondent(s)

(With appln(s) for exemption from filing O.T.,vacating stay and prayer for interim relief and office report) and
(For final disposal)

Date: 19/07/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Sushil Kumar Jain,Adv.
Mr. Puneet Jain, Adv.
Ms. Eshita Baruah, Adv.
Ms. Christi Jain, Adv.

For Respondent(s) Mr. A.K. Shukla, Adv.
Mr. G.S. Chatterjee,Adv.
Mr. Raja Chatterjee, Adv.
Ms. Puja Anand, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted. Heard the counsel.

This appeal is disposed of in terms of the signed order, by modifying the order of the Division Bench of the High Court by clarifying that respondent will not be entitled to backwages for the period when he was not in service. The respondent should be permitted to join back into service within one month.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5670 OF 2010
[Arising out of SLP(C) No.24137/2008]

SAMBHAR SALTS LTD. & ORS.APPELLANTS

Versus

DEVI DAYAL GUPTARESPONDENT

O R D E R

Leave granted. Heard the counsel.

2. The respondent was working as Senior Manager under the Sambhar Salts Ltd., a Government company. On 3.4.2006, he tendered resignation with immediate effect alleging that he was doing so to protest against the pressure allegedly applied on him by the management to give fictitious production figures showing better performance of the company. Along with the said letter, he enclosed a cheque for a month's salary in lieu of notice. The employer (first appellant) accepted the resignation by letter dated 19.4.2006. In pursuance of it, the gratuity amount was also released to the respondent in May 2006.

3. The respondent filed an appeal to the Board of Directors against the acceptance of resignation, which was dismissed on 19.8.2006. Thereafter, the respondent filed2.

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a writ petition challenging the acceptance of the resignation contending that the resignation was given in a fit of anger, as a mere protest against the attitude of the management and was intended to be a real resignation. Learned single Judge of the High Court dismissed the writ petition by order dated 27.4.2007. The appeal filed by the respondent was, however, allowed by the Division Bench of the High Court, by the impugned order dated 2.9.2008. After examining the factual background which led to the tendering of the resignation and the tenor of the letter of resignation, the Division Bench of the High Court recorded a finding of fact that the letter of resignation was issued by way of protest and the use of the words "resignation with immediate effect" should not be given undue importance having regard to the tenor of the letter, and the context in which the said words were used. The High Court, therefore, set aside the judgment of the learned single Judge and also set aside the order dated

19.4.2006 of the employer, accepting the resignation and held that the respondent was entitled to reinstatement into service with consequential benefits. The said order is challenged by the employer in this appeal by special leave.

4. It is contended by the appellant that the

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unconditional resignation tendered by the respondent with immediate effect accompanied by a month's salary in lieu of notice, was accepted by the employer and consequently the relationship of master and servant came to an end. It was submitted that the construction of the resignation letter by the High Court to hold that it was in token of a protest, was erroneous and, therefore, the direction for reinstatement should be interfered. The appellant also contends that an inquiry held in regard to the allegation of the respondent that he was instructed to bloat the figures relating to production revealed that there was no such instruction or direction.

5. The Division Bench of the High Court took note of the fact that the resignation was not a simple resignation, but referred to the pressure applied on him (to furnish incorrect figures) and therefore stated that as a consequence he had no alternative but to tender his resignation. This has been read as a conditional resignation by the High Court related to the pressure applied and that if there had been no pressure on him to give fudged figures, he would not have resigned.

6. The question before the High Court was not whether

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the respondent was pressurised to show higher production figures or who pressurised him to give such figures. The issue was whether the reference to the alleged pressure and surrounding circumstances did or did not disclose an intention to resign and the letter was merely by way of protest against the action of the management. The Division Bench of the High Court on considering the entire facts, recorded a finding the letter dated 3.4.2006 was not an unconditional resignation.

7. On the facts and circumstances, we are of the view that the finding of fact recorded by the High Court, that the letter of resignation was not intended to be a resignation with immediate effect, does not call for interference. But while the respondent will be entitled to reinstatement with continuity in service, he cannot have backwages. In fact, if backwages are awarded, it would amount to rewarding the respondent for his mistake and punishing the employer for no fault of theirs. Further the employee not having worked from the date of his resignation, he cannot be awarded salary for the period when he did not work.

8. In view of the above, this appeal is disposed of, by

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modifying the order of the Division Bench of the High Court by clarifying that respondent will not be entitled to backwages for the period when he was not in service. The respondent should be permitted to join back into service within one month.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
July 19, 2010.

.....J.
(H.L. GOKHALE)