

(1995) 01 AHC CK 0037**Allahabad High Court****Case No:** Second Appeal No. 1326 of 1984

Supt.Post Office,Azamgarh and
Others

APPELLANT

Vs

Sri Chandra Bhan Pandey

RESPONDENT**Date of Decision:** Jan. 11, 1995**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: D.S.Sinha, J**Final Decision:** Dismissed

Judgement

D. S. Sinha, J.

Heard Sri K. C. Sinha, learned counsel appearing for the defendant appellants and Sri Rajesh Tewari, holding brief of Sri K. P. Agrawal, learned counsel representing the plaintiff respondent, at length and in detail.

2. This appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the decree and judgment dated 6th March, 1984 passed by the V Addl. District and Sessions Judge, Azamgarh in Civil Appeal No 532 of 1983 between the Union of India and others and Chandra Bhan Pandey, whereby the decree and judgment of the Munsif, Mohammadabd Gonna, Azamgarh dated 21st March, 1983 rendered in Original Suit No. 1025 of 1981 has been affirmed.

3. Admitted facts are that the plaintiff respondent was appointed as Extradepartmental Branch Post Master in village Rasoolpur Nandlal in the district of Azamgarh provisionally by order dated 4th December, 1974 (Paper No. 20 Ga) consequent upon putting "off duty" of one Sri Ambika Pauday working as Extradepartmental Branch Post Master in the aforesaid village ; that the plaintiff respondent was relieved of the post of Extradepartmental Branch Post Master with effect from 23rd July, 1981, that the plaintiff respondent instituted the suit, inter alia, praying for a declaration that the action of the defendant appellants

"relieving him from the post of Extradepartmental Branch Post Master amounted to wrongful dismissal ; and that he continued to hold the post with the right to all the benefits relating thereto. The suit of the plaintiffrespondent was resisted by the defendantappellants on the ground that Sri Ambika Paaday, predecessor of the plaintiffrespondent, was involved in a criminal case and as such he was put "off duty" leading to a provisional vacancy of the post of Extra departmental Bench post Master, that the plaintiffrespondent was appointed in the aforesaid vacancy provisionally, that consequent upon his acquittal from the criminal court Sri Ambika Pandey had to be reinstated on the post against which the provisional appointment the plaintiff respondent was made, and that in the circumstances the order removing the plaintiffrespondent from the post of Extradepartmental Branch Post Master, Rasoolpur Nandlal was quite lawful.

4. The courts below have, on the evidence produced before them, concurrently found that the action of the defendantappellants in relieving the plaintiff respondent from the post of Extradepartmental Branch Post Master was illegal inasmuch as the contractual relationship between them had not been terminated. It has further been found by the court below that the contract of service between defendantappellants and the plaintiffrespondent having not been legally terminated, the plaintiff respondent would be deemed to be continuing in service and entitled to all the benefits relating to continuance of the contract of employment.

5. It is vehemently contended by the learned counsel for the appellants that the courts below have committed grave error of law in upholding the claim of the plaintiff respondent as he having been appointed provisionally had no right to hold the post of Extradepartmental Branch Post Master and could legally be relieved of the post.

6. In order to appreciate the contention of the learned counsel for the defendantappellants, it would be apposite to notice the condition No. 2 contained in the order dated 4th December, 1974 (paper No, 20 Ga) whereby the plaintiffrespondent was appointed as Extradepartmental Branch Post Master. The aforesaid condition No. 2 reads thus :

"2. Sri Chandra Bhan Pandey should clearly understand that his employment as E. ". B. P. M. shall be in the nature of a contract liable to be terminated by him or the undersigned by notifying each other, in writing, and that he shall be governed by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time." (Emphasis supplied)

7. It cannot be gainsaid that conciliation No. 2 reproduced above made it abundantly clear that the employment of the plaintiffrespondent was in the nature of a contract between him and the signatory of the order, who had signed on behalf of the defendantappellants, and that the contract of employment so coming into

existence could be terminated by either party in writing. Thus except the mode of termination in writing, no other mode could bring about termination of the contract of employment between the plaintiffrespondent and the defendantappellants.

8. It is not disputed that the defendantappellants produced no evidence to demonstrate that the contract of employment which had come into existence by the order of appointment dated 4th December, 1974 (paper No. 20Ga) was ever terminated in writing. In the absence of evidence of termination of the contract of employment between the plaintiffrespondent and the defendantappellants in writing which was a condition precedent for termination of the contract of employment in terms of condition No. 2, it cannot be contended that the courts below committed illegality in holding that the plaintiffrespondent continued to be in the employment in the capacity of Extradepartmental Branch Post Master.

9. The contract of employment of the plaintiffrespondent as Extradepartmental Branch Post Master having not been terminated, the courts below were fully justified in declaring that the action of the defendantappellants in relieving the plaintiffrespondent from the post of Extra departmental Branch Post Master was illegal and that he continued to hold the said post and was entitled to all the benefits of such continuous employment. The decrees and judgments of the courts below are perfect and not liable to be interfered with by this court.

10. In the result, the appeal fails and is hereby dismissed. However, in the circumstances of the case, there will be no order as to costs.