

1979 KHC 748  
Supreme Court of India  
V. R. Krishna Iyer; N. L. Untwalia; P. S. Kailasam, JJ.

Shri H. D. Vashishta v. M/s. Glaxo Laboratories (I. ) (P. ) Ltd.  
Parallel citation(s) : 1979 KHC 748 : AIR 1979 SC 134 : 1978 (1) SCC 170 :  
1978 SCC (L&S) 46 : 1979 Lab IC 11  
CaseNo : C. A. No. 2035 of 1977  
Date : 08/11/1977

Code of Civil Procedure, 1908 -- O.6 R.2 -- Plaintiff -- Suit for setting aside dismissal of an employee as illegal and contrary to the Standing Orders -Facts necessary to constitute a cause of action about the illegality of the dismissal had not been averred in the plaint -- No averment to the effect that the past record of the worker had not been considered while making the order of dismissal -- Held, the suit is liable to be dismissed. Para(s):1  
Advocates:

#### JUDGMENT

V. R. Krishna Iyer, J.

1. This is an appeal by special leave where the High Court has dismissed the suit of a workman who was dismissed by his employer, the respondent. The case put forward by the appellant in his plaint was that his dismissal was illegal and contrary to the Model Standing Orders which were applicable to this industry. Without going into the question as to the maintainability of the suit, the High Court dismissed the appeal on the short point that the material facts necessary to constitute a cause of action about the illegality of the dismissal had not been averred in the plaint. More specifically, the High Court pointed out that there was no averment to the effect that the past record of the worker had not been considered while making the order of dismissal. This is the basic contention relied upon by the appellant to demolish the dismissal order. Shri Jain appearing for the appellant has taken us through the plaint averments and other connected proceedings. We are satisfied that this plea that the past record of the employee has not been considered while dismissing the appeal has not been averred at all. On this alone the suit must fail. We do not go into the question, even as the High Court does not, whether the suit is maintainable in law. Assuming *arguendo* that such a suit is maintainable we make it again clear that we do not decide in favour of the appellant on this point but leave it open for the time being the lack of a material fact in the averments in the plaint is sufficient to dismiss the suit as not disclosing a cause of action. This is precisely what the High Court has done. We agree. Therefore, we dismiss the appeal.

2. At the end of the arguments, on a suggestion from the Court, counsel for the respondent has agreed that his client would make an ex gratia payment of Rs. 5,000/- having regard to the overall circumstances of the case. This sum will be paid within three weeks from today to the counsel for the appellant. We record this fact and direct the parties to bear their own costs throughout.