
(1985) 03 PAT CK 0033

In the Patna High Court

Case No : Appeal from Appellate Decree No. 51 of 1984

Adhyaksha Bihar Khadi Gram Udyog Sangh and Others

APPELLANT

Vs

Ram Bilash Sharma

RESPONDENT

Date of Decision : 19-03-1985

Acts Referred:

Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 2A
Specific Relief Act, 1963 — Section 14(1)(b)

Citation : (1985) PLJR 755

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : R.J. Ojha and Madan Mohan Prasad Singh, for the Appellant; K.N. Gupta and Satyendra Krishna Prasad, for the Respondent

Judgement

S.B. Sanyal, J.—This appeal is by the defendants against a judgment of affirmance. It arises out of a suit instituted by the plaintiff respondent against the termination of his services by the defendants. In the suit the plaintiff prayed for a declaration that the order terminating his services is void and without jurisdiction. He further prayed for cost and incidental to the proceeding. The suit was contested by the defendants, inter alia, on the ground that the same is not maintainable in a civil court because the plaintiff is a worker, and his remedy lies in raising an industrial dispute.

2. The trial court decreed the suit after declaring the termination of service to be illegal and void because the defendants could not prove the misconduct alleged to have been committed by the plaintiff. The trial court, however, did not quash the suspension.

Against the said judgment the defendants preferred an appeal and the plaintiff also filed a cross-appeal. The lower appellate court held that the cumulative effect of the evidence has been that the defendants completely failed to substantiate the charge levelled against the plaintiff and, therefore, the plaintiff

was neither liable to suspension nor dismissal from service. The orders as such are quite illegal, void and could not be sustained in a court of law. The question of maintainability was disposed of by observing--

.....by no stretch of imagination it could be said that the dispute involved in the suit was of the nature of an industrial dispute u/s 2A of the Industrial Disputes Act...

It further held that the court of learned Munsif had jurisdiction to try the suit. After having recorded the said findings it dismissed the appeal filed by the defendants and allowed the cross-appeal. The court of appeal below ordered that the plaintiff should be deemed to have continued in service without any break and to be entitled to all the consequential benefit's of the service.

3. Mr. Ram Janam Ojha, appearing for the defendant-appellants, contended that the suit itself is not maintainable in the civil court and the courts below had no jurisdiction to grant the, decree of reinstatement in view of the provisions of section 14(1)(b) of the Specific Relief Act. He further submitted that the plaintiff himself states that he is a workman and, therefore, his remedy actually, if any, was before the industrial court and he chose a wrong forum for the redressal of his grievances.

4. Mr. K.N. Gupta, appearing for the plaintiff-respondent, on the other hand, contended that the suit is maintainable and if this Court can cull out from the plaint that there is a prayer for damages as well, the courts below should be asked to adjudicate the damages sustained and not to dismiss the suit in its entirety. He further submitted if this Court is of the opinion that the remedy of the plaintiff also lay before the industrial court, then the time spent in pursuing a wrong forum may not stand in his way in raising an industrial dispute and consideration of the same by the appropriate Government for making a reference of the dispute

5. It is now well settled on consideration of various authorities and the law laid down by the Supreme Court that a contract of personal service cannot be enforced and a court will refuse to give a declaration that the contract subsists and that an employee even after having been removed from service can be deemed to be in service against the will and consent of his employer. This law is, however, subject to three exceptions and they are:

(i) where a servant is sought to be removed in contravention of Article 311 of the Constitution;

(ii) where a worker is sought to be reinstated on being dismissed under the industrial law; and

(iii) where a statutory body acts in breach and violation of the mandatory provisions of the statute.

[See Executive Committee of Vaish Degree College, Shamli and Others Vs.

Lakshmi Narain and Others, , and Bank of Baroda Ltd. Vs. Jeewan Lal Mehrotra,].

6. In the instant case the defendants firm is a private firm registered under the Societies Registration Act. It is neither a statutory body nor it has to act under any statute. It has not been contended that there has been any Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946, so as to violate the provisions of the Standing Order which also has been held to be statutory and there has been infraction of the said Act. I am, therefore, constrained to hold that the suit in the form registered, is not at all maintainable and the courts below have acted illegally in granting specific performance of the contract of service. This is in the teeth of the aforesaid proposition of law.

7. Mr. Ram Janam Ojha also drew my attention to the decision in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, where the Supreme Court observed that if a worker has a remedy under the industrial law for the redressal of his grievance, the jurisdiction of the civil court is automatically ousted because the right and remedy have been provided under the Industrial Disputes Act itself. The Supreme Court in the said case was considering the jurisdiction of the civil court u/s 9 of the CPC and ultimately held that the jurisdiction of the civil court to grant relief in relation to an industrial dispute is impliedly barred. The civil court has further no jurisdiction to grant any injunction.

8. Mr. Gupta, however, tried to bring his case within the law laid down by the Supreme Court in the case of Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co., . He contended that if on a total perusal of the plaint, it can be culled out that there is a prayer for grant of damages as well, then the court should provide an opportunity to the plaintiff for adjudication of the said claim. In the case of Sitaram Kashiram Konda (supra) prayer (d) read as follows:

In the alternative the defendant may be ordered to pay to the plaintiff such compensation as to the Hon''ble Court may deem fit.

The said prayer (d) was preceded by a prayer for an order that the plaintiff be reinstated.

Mr. Gupta has taken me through paragraphs 16, 19, 20 and 21 as well as the prayer portion of the plaint. Having gone through the same I nowhere find that there is any claim for damages nor the damages have been quantified and court fee thereupon has been paid, which the lower court can be asked to adjudicate.

I had some doubts with respect to prayer (kha) which reads;

Zerbari wo kharcha Adalat mudalahum sedila miley.

The dictionary meaning of the word "Zerbari" is "Karz ka bojh", "reen bhaar", "ehsaan ka bojh". It is, therefore, manifest from the plaint that there is no claim for damages and as such I am unable to give any relief to the plaintiff in this regard.

9. I, however, think that the plaintiff should not be penalised for having chosen a wrong forum. If it is a fact that his remedy lay before the industrial court and since it is a case of dismissal of one individual, he has the right to raise the dispute u/s 2A of the Industrial Disputes Act, provided he is a workman within the meaning of the said Act.

Mr. Gupta fears that because of the long gap between the termination of his service and the dispute that may be raised, it may be turned down on the ground of staleness, and therefore, the plaintiff is in the eye of law left with no remedy and that too for no fault of his. He is guided by the legal advice obtainable at Samastipur and has acted bona fide as per the legal advice.

There is force in this submission of Mr. Gupta and I think that the delay in raising the dispute cannot be taken into consideration for the purpose of making a reference u/s 10 of the Industrial Disputes Act if the appropriate Government otherwise thinks fit that a case for reference under the Industrial Disputes Act has been made out. The matter is left absolutely to the discretion of the appropriate Government, except that the prayer for making a reference should not be turned down on the ground of delay in raising the dispute.

In the result, the appeal is allowed, the judgments of the two courts below are set aside, but on the facts and in the circumstance of the case there will be no order as to costs.