
(2014) 03 BOM CK 0054
In the Bombay High Court
Case No : S.A. No. 271 of 1998

Balaji Krishnaji Bhoyar

APPELLANT

Vs

Zilla Parishad

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Constitution of India, 1950 — Article 309, 311
Limitation Act, 1963 — Section 14, 5
Specific Relief Act, 1963 — Section 14, 34
State Bank of India Act, 1955 — Section 43(1)

Citation : (2015) 3 ALLMR 663 : (2014) 4 MhLj 386

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : V.V. Bhangde, Advocate for the Appellant; A.R. Patil, Advocate for the Respondent

Judgement

A.B. Chaudhari, J.—This second appeal is directed against the judgment dated 7-3-1998 in Reg. Civil Appeal No. 128/1988 by which the judgment and decree dated 9-2-1988 in Regular Civil Suit No. 580/1982 passed by the trial Court stood reversed. Upon hearing learned counsel for the rival parties, following two substantial questions of law are framed:

1. Whether the civil suit that was filed by appellant-Zilla Parishad employees was barred in view of section 14 of the Specific Relief Act, 1963 and in view of availability of the alternate remedy?.....No

2. Whether the period to be excluded contemplated by section 14 of the Limitation Act is with reference to the period of limitation primarily prescribed from the cause of action under the Law of Limitation?.....Yes.

2. It is not in dispute that the appellant was a Zilla Parishad employee governed by the provisions of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 so also service rules framed thereunder. It is also not in dispute that the service conditions of the appellant are governed by Maharashtra Zilla Parishad District

Services (Discipline and Appeal) Rules, 1964. The petitioner was thus a Zilla Parishad servant governed by statutory provision of law in respect of his service conditions and not by any contract of service as understood in the common parlance. It is true that under the Rules of 1964 remedy of preferring departmental appeal is available and was availed by the petitioner against his dismissal from service which was admittedly without holding any departmental enquiry against him though he was a permanent Zilla Parishad servant. The lower Appellate Court held that the suit filed by the appellant was not maintainable on the ground that the contract of personal service could not be enforced. In the above factual background answer to question No. 1 is no more res integra. In this context, it would suffice to quote the following paragraph from the decision of the Supreme Court in *State Bank of India and Others Vs. S.N. Goyal*, based on several earlier decisions of the Supreme Court. I quote para 17 and 18 of the judgment which read thus:

17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief damages or reinstatement with consequential reliefs is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by Courts. [Vide: *S.B. Dutt Vs. University of Delhi*, *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, *Sirsi Municipality by its President Sirsi Vs.*

Cecelia Kom Francis Tellis, ; Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, ; Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, ; and Dipak Kumar Biswas Vs. Director of Public Instruction and Others,

18. In this case the appellant is a statutory body established under the State Bank of India Act, 1955 and the contract of employment was governed by the State Bank of India Officers Service Rules, which are statutory rules framed u/s 43(1) of the said Act. The respondent approached the civil Court alleging that his removal from service was in violation of the said statutory rules. When an employee of a statutory body whose service is terminated, pleads that such termination is in violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in service is maintainable and will not be barred by section 14 of the Specific Relief Act.

3. In view of the pronouncement of law made by the Apex Court repeatedly and lastly in the aforesaid decision, question No. 1 will have to be answered in the negative. It must, therefore, be held that the civil suit filed by the appellant was very well maintainable before the civil Court.

4. The appeal filed by the appellant was dismissed by order dated 19-1-1976, admittedly, without holding any enquiry against him, though he was a permanent Zilla Parishad servant. He challenged the order of dismissal of his services in appeal before the Commissioner, Nagpur Division, Nagpur who dismissed his appeal on 19-1-1976. He preferred Special Civil Application No. 4202/1976 (writ petition) before the High Court against the said decision rendered by the appellate authority immediately after the appeal was dismissed. The Special Civil Application came up before this Court finally on 29-7-1981 and this Court made an order permitting the appellant to withdraw the Special Civil Application with liberty to file civil suit. The appellant then filed civil suit on 16-4-1982. The contention raised by Mr. Patil, learned counsel for the respondent, is that after withdrawal of the Special Civil Application, having obtained liberty to file civil suit on 29-7-1981, the appellant ought to have filed the suit immediately and late filing of the suit on 16-4-1982 must be held to be fatal to the suit which was dismissed by the lower Appellate Court also on the ground of limitation.

5. Having considered the submissions made by the counsel for rival pleadings, I find that the cause of action for the appellant to file appeal civil suit on 16-4-1982 arose on 29-7-1981 when the High Court permitted him to withdraw the civil application with a liberty to file civil suit. The next question is about exclusion of period u/s 14 of the Limitation Act from the date of filing of the Special Civil Application No. 4202/1976 in the High Court till 29-7-1981 i.e. is the period when the appellant was prosecuting the remedy before the High Court bona fide and, therefore, the said period was liable to be excluded by exclusion with reference to section 14 of the Limitation Act.

6. Apropos the primary period of limitation prescribed by the Limitation Act and counting of period after 29-7-1981, answer to the same is as follows.

The primary period prescribed under the Limitation Act for declaration is three years. The limitation after grant of liberty to file civil suit commenced w.e.f. 29-7-1981. I hold that the suit could be thereafter filed on or before 28-7-1984 and was filed on 16-4-1982. The reason is that the period of exclusion u/s 14 from 1976 to 1981 is independent for exclusion of period spent bona fide in a Court. After exclusion of the period contemplated by section 14 of the Limitation Act, the period prescribed primarily under the law of limitation will be available. The period spent from the commencement of cause of action i.e. upon dismissal of the appeal by the Commissioner the appellate authority till the date of filing of Special Civil Application No. 4202/1976 will also have to be added while calculating limitation for filing suit with liberty after withdrawal of the Special Civil Application No. 4202/1976 to the primary period of three years in this case prescribed under the Limitation Act. Thus, the period from dismissal of appeal by appellate authority till filing of the Special Civil Application No. 4202/1976 will have to be added to the period from 29-7-1981 till 16-4-1982 when the suit was actually filed. In this case, still the suit was filed within three years counting both the periods as aforesaid. This principle of law is very well supported by decision of the Supreme Court in the case of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, Relevant para 28 of the judgment reads thus:

28. Further, there is fundamental distinction between the discretion to be exercised u/s 5 of the Limitation Act and exclusion of the time provided in section 14 of the said Act. The power to excuse delay and grant an extension of time u/s 5 is discretionary whereas u/s 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep than section 14 in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of sections 5 and 14 are different. The effect of section 14 is that in order to ascertain what is the date of expiration of the "prescribed period" the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. Having regard to all these principles, it is difficult to hold that the decision in Popular Construction Co. rules that the provisions of section 14 of the Limitation Act would not apply to an application challenging an award u/s 34 of the Act.

Question No. 2, therefore, will have to be answered in the affirmative.

7. Apart from answer to the above questions, learned counsel for rival parties fairly stated before me that the appellant is now aged about 85 years. He received all the benefits of pension etc. since there was no interim order against him in the first appeal preferred by the employer. That being the position, in my opinion, it would be cruel to withdraw the benefits of the appellant even if the respondents were to succeed. However, since, the question being answered in favour of the appellant, there is no need to say anything further. In the result, I

pass the following order.

ORDER

(i) Second Appeal No. 271/1998 is dismissed.

(ii) Judgment and decree dated 9-2-1988 in Reg. C.S. No. 580/1982 passed by Jt. Civil Judge Junior Division, Nagpur is restored. No order as to costs.