
(1966) 05 OHC CK 0001
In the Orissa High Court
Case No : Civil Revision No. 76 of 1966

C. Dharmarajan

APPELLANT

Vs

The Governing Body and Karanjia College and Another

RESPONDENT

Date of Decision : 06-05-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r), 151, 94
Constitution of India, 1950 — Article 14

Citation : (1966) 32 CLT 999

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : C.V. Murty, for the Appellant; D. Sahu, S. Misra and K.C. Jagadeb Ray, for the Respondent

Final Decision : Allowed

Judgement

Barman, J.—The Petitioner is a Lecturer in Economics, Karanjia College, Karanjia, District Mayurbhanj. This civil revision arises out of an order refusing to grant an interim injunction on the Governing Body of Karanjia College not to terminate the services of the Petitioner, and on Utkal University

2. The Petitioner is M.A. of Annamalai University; he was appointed as a Lecturer of Karanjia College on July 6, 1964 on which date he joined; the qualification required for the post as advertised was First or Second Class Master's Degree. The Petitioner received a notice of termination of his services on December 17, 1965 in accordance with the instructions issued by the University dated October 22, 1965 dispensing with the services of the Petitioner with effect from January 1, 1966, that is to say about a year and a half after he joined his appointment. The ground on which his services were sought to be terminated was as per a resolution passed by the Governing Body of the college for his disqualification to remain as a lecturer in any of the colleges affiliated to the Utkal University. The decision of the University was based on the resolution passed by the Equivalence

Committee on January, 24, 1962 and accepted by the Academic Council on March 1-7-1962. The resolution was this:

That it be recommended to the Academic Council that the B.A./B. Sc. (3 year Honours) degree of Nagpur, Andhra, Annamalai and Madras Universities followed by M.A./M. Sc. degree by efflux of time be not recognised as equivalent to the M.A./M. SC. degree of this University for purpose of recruitment as lecturers.

Sd. D.P. Barai

Deputy Registrar.

3. Thereupon on January 7, 1966, the Petitioner filed a suit being T.S. No. 1 of 1966 against the Governing Body of the college as Defendant No. 1 and the Utkal University as Defendant No. 2 for, inter alia, the following reliefs:

(A) that it be declared that the Plaintiff continues to be in service under the Defendant No. 1 being duly qualified to hold such appointment; and

(B) that a perpetual injunction be issued to the Defendants. Defendant No. 1 not to terminate the services of the Plaintiff on the plea that the Plaintiff is not qualified and the Defendant No. 2 not to enforce the alleged decision contained in their letter dated 22-10-1965.

The Petitioner also filed an application (miscellaneous Case No. 1 of 1966) under Order 39, Rule 1 and Section 151, CPC before the trial Court for an interim injunction restraining the Defendants from terminating the services of the Petitioner and/or enforcing the decision contained in the letter dated October 22, 1965 pending disposal of the suit. On the said application, the learned trial Court passed an ex-parte injunction as prayed for but ultimately after hearing the parties the injunction order was vacated. Hence this civil revision by the Petitioner.

4. A preliminary point was taken on behalf of the college challenging the maintainability of the civil revision on the ground that the application for injunction being one under Order 39, Rule 1 of the CPC Code, an appeal lies from an order on such application by virtue of Order 43, Rule 1(r). In my opinion; this argument is not tenable. The reasons are these: The application before the trial Court for interim injunction was under both Order 39, Rule 1 and also u/s 151. Neither Order 39, Rule 1 or Rule 2 will apply, in this case. The suit not relating to any property, Order 39, Rule 1 will not apply. Order 39, Rule 2 also will not apply to the present case because there is no question of breach of contract; a disqualification has been imposed on the Petitioner by the University deciding that his M.A. degree is not to be recognised as equivalent to M.A. degree of the Utkal University; it is in fact a stigma. Therefore, the Petitioner's application for interim injunction before the trial Court in substance is or is to be treated as one only u/s 151 of the CPC Code, although it purports to be also under Order 39, Rule 1 which on the face of it does not apply.

5. Section 151 itself says that nothing in this Code shall be deemed to limit or otherwise affect the inherent pow of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In the face of such a clear statement it is not possible to hold that the provisions of the Code control the inherent "power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. There being no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in the circumstances not covered by Order 39 or by any rules made under the Code, the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order 39, CPC Code, if the Court is of opinion that the inherent of justice require the issue of such interim injunction *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, .

6. Thus it is now when settled law that in a miscellaneous proceeding not falling under the provisions of Order 39, it is within the competency of the Court when the interests of justice so require, to make an appropriate order granting temporary injunction in the exercise of its inherent powers; in such a case to vacate an ex-parte order of temporary injunction granted u/s 151 on the ground that the Court did not at all have the jurisdiction to make such an order, is a grave error with regard to jurisdiction which requires to be set right revision; no appeal lies in such a case under Order 43, Rule 1(r) as the order vacating the order of injunction is, in substance, an order pertaining to Court's jurisdiction u/s 151, CPC Code.

7. In this view of the position in law as discussed above, this civil revision is maintainable.

8. Then on merits it is said that in 1953 the Petitioner passed B.A. (Pass two years after I.A.) degree of the Madras University ; in 1956: he passed B.A. (Hons.) degree in Economic's from Annamalai University; in 1957 he was awarded B.A. (Hons.) degree; in 1958 he was awarded M.A. degree of the same University; before 1957 there was no M.A. class after B.A.(Hons.) in the Madras Andhra and Annamalai Universities.

9. The Petitioner's main contentions in the suit are, inter alia, that the disqualification envisaged in the resolution passed by the Equivalence Committee is not applicable to him as he had studied for four years after Intermediate; that even if the resolution is made applicable the same would not have retrospective operation for those qualified before the late; that the Petitioner was picked) chosen and discriminated against in violation of Article 14 of the Constitution of India.

10. On the other hand, the University in support of its case relied on inter alia, resolution No. 139 on the question of revising the minimum qualifications for appointment of lecturers in the colleges affiliate to the University, namely, that in

partial modification of the earlier decisions the minimum qualification for appointment of lecturers in the affiliated colleges in Arts and Science subjects be fixed in Second Class M.A. or M. Sc. with 48% of marks in the aggregate. .1? was, however, submitted on behalf of the Petitioner that in the Utkal University Electoral Roll for the Registered College Teacher's Constituency, 1964.65 there are lecturers with B.A. (Hons.) or B. Sc. (Hons.) degree-even simple B.A. or B. Sc. degree. In support of this submission a printed copy of the Electoral of was placed before this Court from which it appears that it includes lecturers with B.A. (Hons.), B. Sc. (Hons.) and even in some colleges there were also lecturers with simple B. Sc. or B.A. degree.

11. In these circumstances, this Court is satisfied that the Petitioner will suffer irreparable injury if before the decision of the suit on merits he is turned out from his post as Lecturer of the college in such manner as sought, which in substance, amounts to a stigma that he is an impostor-not qualified for the post, although he holds M.A. degree of Annamalai University. It is clearly a case where the learned trial Court has failed to exercise his jurisdiction for the ends of justice.

12. While, therefore, expressing no opinion on the merits of the respective contentions 01 the parties herein, the order of the learned trial Court is set aside. The Defendants are restrained from terminating the services of the Plaintiff and/or enforcing the decision contained in the letter dated October...22, 1965 until the disposal of the suit.

13. The learned trial Court is directed to decide and dispose of the suit as early as possible. I must make it clear that none of the observations in this judgment relating to or having any bearing on the merits of the case are in any way binding on the trial Court; he is free deal with, decide and dispose of the suit before him as he thinks just and proper, all according to law.

14. In the result, therefore, this civil revision is allowed. The costs of this Court will abide the result of the suit.