

(1973) 02 CAL CK 0024
In the Calcutta High Court
Case No : Second Appeal No. 291 of 1971

Calcutta Electric Supply Corporation Ltd. and Another	APPELLANT
Vs	
Ramratan Mahato Ramratan Mahato Vs Calcutta Electric Supply Corporation Ltd. and Another	RESPONDENT

Date of Decision : 02-02-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Industrial Employment (Standing Orders) Act, 1946 — Section 5
Specific Relief Act, 1963 — Section 14

Citation : AIR 1973 Cal 258 : (1974) 1 CALLT 97 : (1973) 77 CALLT 367 :
(1973) 1 CALLT 343 : 77 CWN 367 : (1974) 2 LLJ 106

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Arun Kumar Dutta and P.N. Chunder, for the Appellant; S.N. Banerjee and Kanika Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal by the defendants against a judgment of reversal. The plaintiff instituted the suit on the following allegations : The plaintiff worked for several years temporarily under the Calcutta Electric Supply Corporation Ltd., the defendant No. 1 (hereinafter referred to as the Company) at its Regional Office at premises No. 433/1, G. T. Road (North). Howrah as vendor, cleaner and plate washer in places of absent and leave-enjoying bearers. He was appointed by the company in that post on February 1, 1968 and after unspotted and continuous service for six months became automatically permanent in his post from August 1, 1968. The Revenue Officer of the said office, the defendant No. 2 by a verbal order passed on November 12, 1968 discontinued the plaintiff's service without assigning any reason or following legal procedure. The plaintiff in the circumstances, instituted this suit on November 13, 1968 praying for a declaration that (i) the verbal order of discontinuance of the plaintiff's service was illegal, void, inoperative and ultra

vires; (ii) the plaintiff was and continued to be in the said permanent service and entitled to salary and damages; (iii) in-junction restraining the defendants from issuing any written order of dismissal of the plaintiff without following the legal procedure.

2. The suit was contested by the defendants who filed a joint written statement slating inter alia that the plaintiff served as a casual labourer paid on hourly basis for a "little" period in non-permanent post of vendor, cleaner and plate washer. Eventually he was found surplus and his services were dispensed with by the defendant No. 2 who was the competent authority. A casual labourer was never appointed in writing, nor his service was required to be dispensed with by any written order and as a casual labourer, the plaintiff could not claim right of enquiry or observance of legal procedure in matter of his dismissal from service, as he held the job at the pleasure of the defendants. The impugned order was legal, proper and valid and the plaintiff, it was submitted, was not entitled to any relief in the suit which was not maintainable in law.

3. On a trial on evidence, the learned Munsif found that the plaintiff was a temporary workman and was not entitled to any notice before his dismissal. The impugned order of dismissal was legal and valid and passed by the competent authority. It was further held that the suit was not maintainable in law. which, in the premises was dismissed.

4. An appeal was preferred by the plaintiff against the said decision and the appellate Court held, in agreement with the trial Court, that the plaintiff was a temporary workman in the company, as defined in Order 3 (c) of the Standing Orders as he worked during February to November 12, 1968 continuously for the said period without any break. It was further held that exclusion of Sundays and holidays was necessary only for purpose of calculation of salary which was on hourly basis and it did not indicate break in service. Under Order 13 (b) of the Standing Orders it requires one week's notice for termination of engagement of temporary workman employed for six months continuously. Accordingly the plaintiff's service could not be terminated without one week's notice or holding an enquiry before dispensing with his service. It was further held that Order 18 requiring reference of all unsettled disputes of workmen to the Government had no application as the instant dispute related to an individual workman outside the definition of industrial dispute, as provided in Section 2(k) of the Industrial Disputes Act, Even assuming Order 18 applies, no effect should be given to it as it was found that there was a breach of statutory obligations under the Standing Orders in terminating the service of the plaintiff. Rights and obligations of the company and its workmen being governed by Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 and a breach of such provision in terminating the plaintiff's service was a violation of statutory provisions on part of the defendant company and the Civil Court was competent to grant the relief in the circumstances. The appeal was accordingly allowed and the suit was decreed. The plaintiff was granted, the declaration that the order of

dismissal was null and void and the plaintiff continued to remain in the employment of the company. The present appeal is against this decision by the defendants.

5. Mr. Arun Kumar Dutta (Sr.) learned Advocate appearing for the appellants has contended that the Standing Orders are not statutory in the sense the rules framed by appropriate authority under a statute are. as such Standing Orders could be modified by an industrial Court under the provisions of the said Act. He further contended that the declaration in suit against the legal validity of an order passed in breach of provisions of a statute or its rules regarding master and servant for enforcing personal contract of service is available only against a statutory body and not against non-statutory body like the company before us. Mr. Dutta referred to the decision in the case of Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, in which it was observed :

"..... the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognised exceptions to this rule and they are : To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311 ; (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals; (3) statutory body when it has acted in breach of a mandatory obligation imposed by a statute."

In Indian Airlines Corporation Vs. Sukhdeo Rai, . it was held that the service regulations made under the power conferred by the statute embody merely terms and conditions of service but do not constitute a statutory restriction as to the kind of contract which the Corporation could make with its servants or the grounds on which it can terminate them. Thus the Corporation had undoubtedly the power to dismiss its employee, the dismissal of the employee was with jurisdiction, and even if it was wrongful being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent it did subsist and the present case did not fall under any of the three well known exceptions. The employee was accordingly entitled to damages and not to the declaration that, his dismissal was null and void.

6. Strongly relying on the aforesaid decisions Mr. Dutta has contended that the exceptions to the principle that no declaration to enforce a contract of personal service lies relate to Government or a statutory body or to the reinstatement of a dismissed workmen under the Industrial Law by Industrial Tribunals. Even accepting that the standing orders have statutory force, to which Mr. Dutta has reservations, it is contended that the company incorporated under the English Companies Act and also registered under our Companies Act 1956. is not an employer of any of the excepted classes referred to above, being neither Government nor a statutory body. The present suit in effect for enforcement of personal contract of service is thus not maintainable.

7. Mr. S. Banerjee learned Advocate appearing for the plaintiff respondent has

disputed the contentions and submitted that the exceptions referred to by the Supreme Court in the U. P. Warehousing case are not exhaustive and will extend to the employers against actions committed by them in breach of statutory obligations. He has also relied on the decisions in *Tata Chemicals Ltd. v. K. C. Advharya*. (1965-66) 27 FJR 64 = (AIR 1964 Gui 265) in which a dismissal of an employee from service in breach of statutory obligation under the standing orders was held to be a nullity entitling him to a declaration that he continued in the employment of the master. He also referred to the decision in *Western India Match v. Rameswar Prosad* (1972) 24 Fac LR 48 = (1972 Lab IC 1447) (All) in which a Division Bench of the Allahabad High Court held that a statutory status was given to the employees by Standing Orders and for termination of service in violation of the Standing Orders the employee is entitled to a relief of declaration that the order is null and void and he continues in service.

8. Before we proceed to consider the respective contentions of the parties, we shall examine the nature and character of the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the said Act). In *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, it was observed by the Supreme Court:

"..... the Legislature took the view that in regard to industrial establishments to which the Act applied, the conditions of employment subject to which industrial labour was employed, should be well defined and should be precisely known to both parties. With that object the Act has made relevant provisions for making Standing Orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees."

That the certified Standing Orders under the said Act become part of the statutory terms and conditions of service between the industrial employer and his employees has also been recognised in *Workmen of Dewan Tea Estate and Others Vs. The Management*, .

9. Ordinarily when a contract is breached, the aggrieved party may accept the contract as broken and in such case the only remedy he is entitled to will be in damages. Alternatively, he may decline to accept the contract as broken and in such case he may sue for specific performance of contract under the Specific Relief Act. In case of a breach of contract of personal service, the Act, however, provides a bar u/s 21. Clause (b) of the Specific Relief Act 1877 (now Section 14. Clause (b) of the Specific Relief Act 1963) which provides inter alia that a contract which is dependent on personal qualifications or volition of parties cannot be specifically enforced. It was held in *S.B. Dutt Vs. University of Delhi*, that the award directing specific performance of contract of personal service involves a legal proposition which is clearly erroneous in view of Section 21 (b) of the Specific Relief Act. 1877,

10. Courts of Law have, however, recognised exceptions to the principle of legal

bar to specific enforcement of personal contract of service. In *Vine v. National Dock Labour Board*. (1956) 3 All ER 939. it was observed that an employment of service is effectively terminated whenever the master dismisses the servant, however, wrongly in breach of contract. But.

"as the removal of the employee's name from the register is in law a nullity. he continued to have the right to be treated as registered dock worker with all benefits which, by Statute, that status conferred on him. It is, therefore, right that with the background of this scheme (which is statutory), the Court should declare his right."

It was further observed that normally and apart from the intervention of statute there would never be a nullity in terminating an ordinary contract of master and servant. In *Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others*, . the termination was in breach of statutory obligation under an order framed by the Central Government under provisions of Section 11(2) of the Life Insurance Corporation Act, 1956 and was set aside.

11. Mr. Dutta. however, contended that these well recognised principles would be applicable when the employer is the State or a Statutory authority or when reinstatement is specifically provided under the Industrial Law by Labour Tribunals. The three cases referred to above, it was contended, are exhaustive as indicated in the Warehousing Corporation case and can never extend to employer who is neither the Government, nor a Statutory authority, but are private non-statutory persons or companies under the Companies Act. except through industrial adjudication.

12. Mr. Dutta also referred to the decisions in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, in which it was observed:

"..... an application for mandamus will not lie for an order for reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute."

It was further observed that the company being a non-statutory body incorporated under the Companies Act. no statutory or public duty was imposed on it which could be secured by means of mandamus.

13. A declaration to enforce a contract of personal service according to the above decisions is not to be normally granted and the well recognised exceptions have been noted. There may be cases in which no enforcement of a contract of personal service is prayed for as a relief, but a case may proceed on the basis that the dismissal could only be done in terms of a statute and as that had not been done it was a nullity from which the result followed that the respondent continued in service. In considering the case of the AIR 1948 121 (Privy Council) the Supreme Court in the Delhi University case (*supra*) of p. 1054 observed :

"All that the Judicial Committee did in this case was to make a declaration of the

statutory invalidity of an act which is entirely different from enforcing a contract of personal service."

When the case before the Court is not one for enforcement of a contract of personal service the principles and exceptions referred to by Mr. Dutta has no application.

14. A case for declaration of a statutory invalidity of an act of dismissal of employee is wholly different from the enforcement of a contract of personal service. The only question requiring consideration is whether any material term of service conditions which are statutory has been violated and if so, such act must be declared to be nullity, as the aggrieved employee under the provisions of the Act has a legal right under the certified Standing Orders. Such declaration is different and far from a declaration granting enforcement of personal contract of service or reinstatement of the dismissed workmen and it merely declares that the order of dismissal in breach of statutory conditions of service is invalid and a nullity, so that the employment was never terminated and the contract of service continued to be in force. The question as to whether the employer is a statutory person or otherwise is not relevant, as the real question is whether the terms of service are statutory and there has been a breach of its material provisions.

15. There is no dispute that the plaintiff has been a temporary workman under the company and the order of dismissal by word of mouth which is unconceivable in the present context of relationship between an employer and employee in industry has been in breach of a material provision of the certified Standing Orders of the Company. The Standing Orders duly certified are the statutory terms and conditions of service as held by the Supreme Court. If therefore there is a breach of provision thereof which is otherwise a material provision, there is in my opinion, a legal right in the aggrieved party to challenge such order as being a nullity and to obtain a decree declaring its statutory invalidity.

16. Mr. Dutta's contention that the power of the Certifying Officer to amend the statutory orders renders such orders other than statutory is not also tenable. The provisions and procedure for their amendment is laid down in the Act itself and such provisions do not make the Standing Orders the less statutory.

17. As to relief if the prayer declaring the impugned order nullity is granted, the other prayers are consequential and the plaintiff would be entitled to the same following the principle in I. M. Lall's case referred to above.

18. As all contentions raised on behalf of the appellants fail, the appeal is dismissed with costs.

19. Leave to appeal under Clause 15 of Letters Patent as prayed for by Mr. Chunder is granted.