
(1955) 11 BOM CK 0034
In the Bombay High Court
Case No : Misc. No. 360 of 1955

C.M. Brahmbhatt

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 23-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1956 Bom 351

Hon'ble Judges : Coyajee, J

Bench : Single Bench

Advocate : Acharya, for the Appellant; R.J. Joshi, for the Respondent

Judgement

1. This is a petition asking for a rule and asking for certain writs in the nature of quashing certain orders made by the respondent in the following circumstances.

2. The petitioner was an officer serving in the office of the Assistant Registrar of Moneylenders, Bombay and was promoted to officiate as Inspector of Moneylenders. Certain allegations were made against him and some other officers of the Department whereupon a disciplinary enquiry was held. After the enquiry was held an order was passed on 25-4-1955 dismissing the petitioner from service.

He preferred an appeal which, was rejected on 14-9-1955. The petitioner says that the enquiry was held clearly in contravention of the Bombay Civil Service, Conduct, Discipline and Appeal Rules and also that the enquiry was entirely contrary to the principles of natural justice for which he relies upon the ground set out in para 29 of the petition.

First that inspection of the books was denied to the petitioner before his answer to the charge-sheet could be filed, that the petitioner was not supplied with copies of documentary evidence proposed to be led against him, that ex parte police statements recorded by the police were submitted and tendered, that legal assistance to which he was entitled was denied to him and he was denied

extension of time, that he was not examined in rebuttal of the evidence which was led against him nor was he allowed to make any oral statements as he was entitled to under the Rules and that the enquiry was held 15 months after the suspension, in the meanwhile the Department collecting evidence against him and during which time deponents who appeared against him got up certain entries.

These are very serious charges and If these charges can be substantiated by the petitioner he certainly has a case namely breach of the Rules namely the Bombay Civil Services, Conduct, Discipline and Appeal Rules.

3. The only question is whether I am entitled to issue a rule and go into these facts and evidence under 226 of the Constitution. Article 226 of the Constitution has been commented upon in numerous decisions and it .is provided for the purpose of using the extra-ordinary powers of this Court to intervene in matters where any other alternative and expeditious remedy is not available to a party.

I need not cite decisions on that well-known principle but Mr. Joshi has referred me to two decisions, one is reported in Indian Tobacco Corporation and Others Vs. The State of Madras, and the other is a Full Bench decision of the Allahabad High Court reported in Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others, . These principles have been enunciated by our High Court repeatedly. Therefore I will turn to see what are the reliefs asked for by the petitioner and whether these reliefs can be asked for by an alternative proceeding namely a suit.

The first is a declaration that the order of dismissal should be quashed on the grounds of irregularities, contravention of natural Justice and other grounds set out in para 29 of the petition, secondly pending the hearing and disposal of the petition an order and injunction be Issued against the respondent.

The third ground which I drew counsel's attention to is abandoned by counsel, because evidently it is not sustainable namely a writ of mandamus to compel the respondent to continue the petitioner in their service as Chief Inspector in the office of the Registrar. If that ground goes nothing remains except a declaration and injunction.

On the other hand in a suit he can ask for the same declaration and injunction and a pro-per consequential relief which is not apparent on the face of the reliefs asked here namely a decree for damages for wrongful dismissal. In the result in my view not only is there an alternative and proper remedy but that is the duly remedy where all his claims can be adequately made and consequential relief granted namely an order compensating him for wrongful dismissal.

4. In these circumstances I am unable to entertain this petition for the reasons stated above.

5. Mr. Joshi has also drawn my attention to the fact that the order of appeal was passed on the 14th September and that the petition was not filed till the 3rd of

November and presented on the 7th of November. There is some substance in what Mr. Joshi says, but I do not think this is such an inordinate delay as would entitle me apart from the other consideration to reject the petition, because as counsel on behalf of the petitioner pointed out the record is heavy, preparation had to be made and the October vacation had intervened.

Apart from the question of delay, on the merits as indicated above, the petitioner has not only an alternative remedy but has a better and proper remedy by a suit. In these circumstances the petition will stand dismissed. The petitioner will pay costs of the notice fixed at Rs. 75/-.

6. Petition dismissed.