

(2009) 10 AHC CK 0045
In the Allahabad High Court
Case No : Second Appeal No 733 of 1983

Co-operative Cane Development Union and Another	APPELLANT
Vs	
Jagmohan Lal Verma	RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 4 AWC 3437

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : K.S. Pawar, for the Appellant; A.R. Khan, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard Sri K. S. Pawar, learned Counsel for the Appellants and Sri A.R. Khan, learned Counsel for the Respondent.

2. This second appeal has been filed u/s 100 of Code of CPC against the judgment and decree dated 19.8.1983 passed in Civil Appeal No. 295 of 1981 by the 1st Additional District and Sessions Judge, Lakhimpur Kheri.

3. The instant appeal has been filed by framing seven grounds but this Court, vide order dated 28.10.1983, admitted this second appeal only on the ground Nos. 2, 3 and 6, as is evident from the order-sheet. The ground Nos. 2, 3 and 6 read as under :

2. That there being relationship of master and servant, the Respondent cannot compel the Appellants to keep him in service and pay even when his work was not satisfactory, the learned lower appellate court erred legally in taking contrary view.

3. That the Respondent being seasonal clerk of a Co-operative Society, was neither a Government servant nor was there any order of Labour and Industrial Court in his favour nor had any statutory protection, could only claim damages

for his dismissal if the same was wrongful, but could not claim continuity of employment, the learned lower appellate court erred in taking view contrary to the above settled view.

6. That the learned lower appellate court granted a declaration in favour of the Respondent which he could not legally claim.

4. Brief facts, giving rise to the instant second appeal, are that Respondent-Jagmohan Lal Verma entered in employment as Cyclist under Arnikhana Co-operative Cane Development Union, district Lakhimpur Kheri. Subsequently, looking into his work and conduct, he was promoted to the post of Seasonal Clerk and was employed in all the seasons and was classified in Category "A" upto the crushing season 1977-78 but the Special Secretary of the said Cane Union by abuse of his powers started making unwarranted imputations and allegations against the Respondent and called for explanations from time to time in violation of rules and ultimately, he was not allowed to join the duty in the next crushing season, i.e., 1978-1979.

5. Feeling aggrieved, Respondent-Jagmohan Lal Verma filed a Regular Suit No. 269 of 1979, in the nature of declaration that the Respondent be allowed and declared that the Plaintiff to be continuing in service of District Cane Committee, Lakhimpur Kheri on the post of Seasonal Clerk from the commencement of the crushing season starting w.e.f. 1.10.1978 and further allow all the benefits of pay-allowances and bonus etc. The said suit was contested by the Appellants on the grounds that the Respondent is careless and negligent in performing duties and further had committed several irregularities, which came to the knowledge on checking by the squad and as such, he was not allowed to continue in service during the crushing season 1978-1979.

6. The trial court, on the basis of pleadings, framed the following five issues :

7. With regards to issue No. 1, i.e., , the trial court, after adducing evidence and perusing the records, came to the conclusion that the Respondent was not entitled for re-employment for the crushing season 1978-1979 and as such, the issue No. 1 has been decided in favour of the Appellants. With regards to issue No. 3, i.e., ?, the trial court found that the suit was not barred by limitation. With regards to issue No. 4, i.e., , the trial court came to the conclusion that there was nothing to show that civil court has no jurisdiction to entertain the suit. With regards to issue No. 5, i.e., , the trial court came to the conclusion that the suit was not barred by the provisions of U.P. Act No. 57 of 1976, U.P. Act No. 17 of 1976 and under the Specific Relief Act and lastly with regards to issue No. 2, i.e., , the trial court came to the conclusion that the Respondent was not entitled for the relief. After dealing each issue, as stated above, the trial court, vide order dated 16.11.1981, dismissed the suit.

8. Against the order dated 16.11.1981, the Respondent preferred an appeal, which was numbered as Civil Appeal No. 295 of 1981 and the appellate court, after going through the provisions of Regulation Nos. 21, 22, 23, 24, 26 and 27

of U.P. Co-operative Societies Act (Act No. 11 of 1966), U.P. Cane Co-operative Service Regulations, 1975, allowed the appeal and set-aside the order dated 16.11.1981. Hence, the Appellants have preferred the instant second appeal.

9. Learned Counsel for the Appellants submits that there was a relationship of master and servant and as such, the Respondent cannot compel the Appellants to keep him in service and pay even when his work was not satisfactory. Further, the Respondent being a Seasonal Clerk of a Co-operative Society, was neither a Government Servant nor was there any order of labour court or industrial Tribunal in his favour nor any statutory protection, could only claim damages for his dismissal if the same was wrongful but could not claim continuity of employment. Therefore, the view taken by the lower appellate court is not correct.

10. On the other hand, learned Counsel for the Respondent submits that if the disciplinary proceedings initiated against the seasonal employees of the Cane Union are not completed by the end of the crushing season, the same shall be deemed to be automatically dropped. In support of his submission, he has relied upon the judgment of this Court rendered in the case of Mahaveer Prasad Sharma Vs. Cane Commissioner, U.P. and others,

11. The U.P. Cane Co-operative Service Regulations, 1975 [hereinafter referred to as the "Regulations"] were framed u/s 122 of the U.P. Co-operative Societies Act, 1965 [Act XI of 1966] by the Cane Commissioner, Uttar Pradesh under the Government Notification No. C/95(1)-S/XII-CA-Co-op. (A) Department, dated January 12, 1970. The said Regulations are applicable upon all the employees of Co-operative Cane Development Unions of Uttar Pradesh. Chapter IV of the Regulations deals with Categorization, recruitment, disciplinary proceedings and appeals etc. of Seasonal Staff.

12. Regulations 21, 22, 26 and 27 contained in Chapter IV of the Regulations, which are relevant, are being reproduced here-in-under :

21. Categorization.--At the end of each crushing season the Secretary of the Cane Union shall classify the entire seasonal staff into "A" and "B" categories on the basis of their work and worth during the season. Such persons unquestionable integrity and have discharged their duties efficiently during the crushing season shall be placed in "A" category and the rest in category "B". When seasonal employee is placed in category "B" he will be informed of the same together with the ground of his categorization and an opportunity shall be given to him to explain the charges and deficiencies against him. These proceedings shall be of summary nature and shall be conducted by the Secretary of the Union concerned.

22. The Secretary shall put the category-wise lists of the seasonal staff before the Committee of Management of the union for approval. In case of the list of category "B" staff he shall also put up the charges, explanation of the employees concerned and his findings thereon for the consideration of the Committee of

Management. If in any case the committee disagrees with the findings of the Secretary it may in that case alter the category from "B" to "A". Thereafter the original lists including the alternations if any, ordered by the Committee of Management shall be declared final and posted on the notice board of the union duly signed by the Chairman of the meeting and the Secretary.

26. The staff placed in category shall be automatically re-employed in the next season unless the strength of seasonal staff has been reduced in any particular year to such an extent that it may not be possible to re-employ all such staff.

27. Disciplinary proceedings. --In the event of a complaint against any member of the seasonal staff the Secretary of the Union shall make a preliminary inquiry and if he is satisfied that a prima facie case is established against the person concerned, he shall intimate the same to him in the form of charges and call for his explanation to be submitted within a specified time. The Secretary of the Union shall examine the explanation, documents and connected records and submit his final report alongwith definite recommendations to the Committee of Management of the Union for passing final order in the case. In case the explanation is not received within the specified time the Secretary shall submit his final report to the Committee of Management on the basis of material already on the file. These proceedings shall be of a summary nature and the Secretary should not take more than a month to complete the same. The Committee of Management should also arrange to dispose of the case within one month of the final report from the Secretary, in case of default on the part of Secretary of Cane Union or the Committee of Management in not completing the disciplinary proceeding against a seasonal staff by the end of crushing season, the same shall be deemed to have been automatically dropped.

13. From the perusal of the aforesaid provisions it is clear that there are two categories of seasonal staff, i.e., "A" and "B" category. The Staff placed in category "A" is entitled for automatic re-employment on the commencement of next crushing season unless the strength of seasonal staff has been reduced. For placing an employee of category "A" in category "B", he has to be informed the reasons together with the grounds for his proposed categorization so as to enable him to explain the charges and deficiencies against him. Regulation 27 enjoins that in case of any disciplinary action against any member of the seasonal staff, the Secretary of the Union shall make a preliminary inquiry and if he is satisfied that a prima facie case is established against the person concerned, he shall serve a charge-sheet and call upon the concerned official to submit his explanation and after taking into consideration the explanation, if any, the Secretary concerned shall submit his final report to the Zonal Authority. It is further provided that in case the proceedings are not completed by the end of crushing season, it shall be deemed to have been automatically dropped.

14. Thus, it is clear that the employer/master has to follow prescribed Regulations in the matter of seasonal staff and it is not open for him to oust a seasonal employee merely on his whim or by saying that his work was not

satisfactory. There must be documentary evidence in existence to establish the said fact. The procedure for initiation of disciplinary proceedings and its conclusion is to be followed in the manner as prescribed under the Regulations. The lower appellate court has observed that the stand of the Appellants was that the checking squad found certain irregularities committed by the Respondent for which a charge-sheet was served upon him meaning thereby the provisions of Regulation 27 were invoked. As provided under Regulation 27, the disciplinary proceedings against a seasonal staff if is not completed by the end of crushing season, the same shall be deemed to have been automatically dropped. The Appellants have failed to produce any documentary evidence to establish that the disciplinary proceedings were concluded by the end of the crushing season. On the contrary, the appellate court has observed that it is admitted by the Appellants that the said proceedings have not been finalized and disposed of even till the disposal of the appeal. Therefore, the appellate court rightly came to the conclusion that the disciplinary proceedings deemed to have been dropped and the so called charges against the Respondent were not found proved.

15. It would be useful to add that in Mahavir Prasad Sharma's case (supra) this Court while interpreting the provision of Regulation 27 held that the expression used "automatically dropped" clearly indicates when read alongwith phrase "deemed to have been" that no other order is necessary and it is dropped automatically at the end of the crushing season.

16. As regard the declaration in favour of the Respondent by the lower appellate court, it may be stated that the relief claimed by the Respondent Jagmohan Lal Verma in the Regular Suit No. 269 of 1979 was in the nature of a declaration that he be deemed and declared to be continuing in service of the Appellants on the post of seasonal clerk from the commencement of the crushing season started w.e.f. 1.10.1978 and as such entitled to all the benefits of pay allowances and bonus etc. The assertion of the Appellants that the appellate court had declared the Respondent to be in continuous service on the post of Seasonal Clerk from the commencement of the crushing season in October, 1999 is not correct. Before the appellate court the Appellants strongly asserted that the Respondent was not in service after the crushing season 1978-79 and as such no protection is available to him. While dealing with this question, the appellate court recorded a categorical finding which reads as under :

... The learned Counsel for the Respondents then submitted that at the close of crushing season services of the Appellant automatically ceased and he had no right of being reemployed. I have shown that crushing season starts on 1st October, each year and ends by 30th June of the following year. The submission of the learned Counsel for the Respondents is self contradictory and paradoxical, in as much as on one hand he says that the Appellant was not the employee of the Respondent and on the other hand he admits that the department served the Appellant with the charge-sheet on 4.10.1979 the previous crushing season was to end on 30.6.1978 and it according to the statement of Special Secretary of

Respondents ended by the first week of August, 1978. If the submission of the learned Counsel for the Respondents is accepted after the first week of August, 1978, the Appellant was not and was not to be employee of the Respondents at all. There was, therefore, no question of serving him with the charge-sheet. The next crushing season had started on 1.10.1979. The Appellant was served with the charge-sheet on 4.10.1978. He, therefore, was admittedly an employee of the Respondents. The Respondents cannot be allowed to blow hot and cold together. On one hand the Respondents were proceeding departmentally against the Appellant and had started disciplinary proceedings and on the other hand they said and are still saying that the Appellant was not their employee. Their own contentions and acts are full of inconsistencies and paradoxities.

17. In view of the aforesaid finding and the fact that the Appellants themselves had erred in not categorizing the Respondent and even arbitrarily precluded him from joining service and from working, it is wrong to say that the Respondent cannot claim to work as seasonal clerk in the subsequent crushing season. The disciplinary proceedings and its conclusion are to be done in the manner as provided under the Regulations. As averred above, the Appellants cannot and should not act on whims and they are bound to follow the prescribed procedure. In the event of failure, the protection as enshrined under the Regulations would be available to a servant/seasonal employee. Therefore, none of the contentions of the Appellants can be sustained.

18. It may be added that u/s 100, Code of CPC the limited jurisdiction, inter alia, would become exercisable when the findings are based on misreading of evidence or are so perverse that no reasonable person of ordinary prudence could take the said view. In other words, the interference in second appeal is very minimal and would not extend to a mere reappraisal of the evidence.

19. In the present case, on examination, it is found that the judgment of the first appellate court is well-reasoned and based on proper appreciation of the entire evidence on record. There is no perversity or infirmity in the findings recorded by the first appellate court.

20. For the reasons aforesaid, the appeal is dismissed. Consequences to follow.