

(2020) 11 DEL CK 0187

In the Delhi High Court

Case No : Civil Writ Petition No. 7196 Of 2020

Deepak Wankhede

APPELLANT

Vs

Indian Renewable Energy Development Agency & Ors

RESPONDENT

Date of Decision : 09-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 12, 311

Specific Relief Act, 1963 — Section 14, 14(1)(c), 41, 41(e), 41(1)(b)

Indian Contract Act, 1872 — Section 73

Citation : (2020) 11 DEL CK 0187

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Sweety Chauhan, Sangram Patnaik

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. Petitioner was employed as a Driver by Respondent No.4 to work in Indian Renewable Energy Development Agency (hereinafter referred to as

IREDA) in June 2012. He was attached with Director (Finance), IREDA. IREDA/ Respondent No.1 is a Company owned by the Government of

India and under the administrative control of Ministry of New and Renewable Energy, while Respondent No. 4 is an Agency for engaging manpower

and outsourcing the work. Respondent No.1 deploys outsourced/temporary staff through manpower agencies empanelled with it and had accordingly

empanelled Respondent No.4.

2. As per the case set up by the Petitioner, he was hired by Respondent No.4 and attached to Director (Finance) till he retired in April 2020. On

06.05.2020 Respondent No.2 was appointed as the new Chairman and Managing

Director of Respondent No.1. Petitioner has worked continuously for eight years since June 2012 without any complaint and has been removed without any just cause or even a sufficient notice period after the appointment of Respondent No.2. He was verbally informed on 29.05.2020 by the Manager (HR) that his services were no longer required and he need not come to office with effect from 01.06.2020.

3. Grievance of the Petitioner is that while there is a requirement of Drivers and the record of the Petitioner is unblemished, his services have been illegally and arbitrarily discontinued. This is substantiated by the fact that two new Drivers have been hired by the Respondents and that too on a pay scale higher than what was being given to the Petitioner.

4. It is argued by learned counsel for the Petitioner that the Respondents have erroneously stated in their reply dated 05.06.2020 to the legal notice sent by the Petitioner that since the Director (Finance) has retired, the services of the Petitioner are no longer required, whereas the fact is that the Petitioner was hired for employment with Respondent No.1 and not specifically for Director (Finance). This is fortified by the identity card of the Petitioner.

5. It is further argued that the sudden removal of the Petitioner has left him in a state of penury and he is the sole bread earner of his family. On account of the Pandemic Covid-19 the Petitioner will find it difficult to get employment elsewhere.

6. Mr. Patnaik on the other hand submits that the Petitioner was hired as a Driver through Respondent No.4 and attached to the Director (Finance), on contract basis, and there is no privity of contract between Respondent Nos.1 to 3 and the Petitioner. Learned counsel for Respondents further argues that under the law a contract of service is unenforceable and therefore the present petition seeking directions to the Respondents to reinstate the Petitioner is not maintainable.

7. Dr. P. Sreenivasan, General Manager (Human Resources), is present in Court. He reiterates that the Petitioner was hired through an Agency for Director (Finance) and his services are no longer required. He submits that the employment of the Petitioner was on contract basis and there is no provision under which his services can be continued, as Respondent No.1 is a Company controlled by the Government of India and bound by its Rules

and Regulations for employing the Drivers. Despite the fact that the Petitioner was not working during the Pandemic, special powers were invoked

and exercising the discretion, salary of the Petitioner has been released upto May, 2020. He submits that it is not possible for Respondent Nos. 1 to 3

to accede to the request of Petitioner, as it would be beyond the jurisdiction of the said Respondents.

8. I have heard learned counsels for the Petitioner and the Respondents.

9. Through the present petition the petitioner seeks enforcement of a contract of service. The law on the issue is no more res integra. Subject to well

defined categories of exceptions, the law and more particularly provisions of Specific Relief Act, do not contemplate enforcing a service contract, as

that would amount to specific performance of a contract. In this context I may usefully rely on a passage from Halsbury's Laws of England,

Fourth Edition, Volume 44, which is as under:-

407. Contracts for personal work or services." A judgment for specific performance of a contract for personal work or services is

not pronounced, either at the suit of the employer or the employee. The court does not seek to compel persons against their will to maintain

continuous personal and confidential relations. However, this rule is not absolute and without exception. It has been held that an employer

may be restrained from dismissing an employee in breach of contract if there is no loss of confidence between employer and employee or if

(at least in a contract of employment to carry out a public duty) the employee has been dismissed in a manner which does not comply with

statutory or contractual regulations governing dismissal. No court may, whether by way of an order for specific performance of a contract

of employment or an injunction restraining a breach or threatened breach of such a contract, compel an employee to do any work or attend

at any place for the doing of any work.

This principle applies not merely to contracts of employment, but to all contracts which involve the rendering of continuous services by one

person to another, such as a contract to work a railway line or a bus line.

10. Supreme Court in several judgments has observed that a Court would normally not give a declaration that a contract subsists and the employee,

after removal from service, can be deemed to be in service against the consent

of the employer, subject to three broad exceptions (i) where a public servant is removed in contravention of Article 311 of the Constitution of India; (ii) where the worker is reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body violates mandatory provisions of a Statute.

11. The only remedy thus available to such an employee, who is discontinued from service, if aggrieved, is to sue for damages and this is evident from reading the provisions of Section 14 read with Section 41 of the Specific Relief Act.

12. A similar question came up before a Coordinate Bench of this Court in *Shri L.M. Khosla vs. Thai Airways International Public Company Limited* and Anr. 2012 SCC OnLine Del 4019 where the issues framed by the Court were as under:-

1. Whether the continuance of the plaintiff in the employment of defendant was vested and inherent right until the date of

superannuation?

2. Whether there is privity of contract between defendant no.2 and the plaintiff?

3. Whether the termination of the plaintiff was as per the terms of contract of employment?

4. Whether the plaintiff was entitled to automatic promotions and revisions of salaries as claimed by him?

5. Whether the plaintiff is entitled to damages and compensation as claimed alongwith interest and if so at what rate and for which period?

6. Relief.

13. Relevant paras of the judgment are as under:-

4. In the judgment in the case of *Shri Satya Narain Garg (supra)*, I have referred to the recent judgment of the Supreme Court in the

case of *Binny Ltd. v. V. Sadasivan* (2005) 6 SCC 657 and which holds that public policy principles or administrative law principles do not

apply to private employment. The relevant paras in the judgment in *Shri Satya Narain Garg (supra)* read as under:-

7. Merely because two views are possible, this Court will not interfere with the conclusion arrived at by the Trial Court, unless the

conclusion is illegal or perverse or causes grave injustice. In case of private employment, the employers are fully justified in taking steps

for termination of services, if it finds that the employee is not upto the mark. Principles applicable in public law domain do not apply with respect to employees in private employment. Employment in private sector is governed by the terms and conditions of employment, and unless the termination is shown to be violation of the terms and conditions of employment, it cannot be said that the termination is illegal. In the present case, in my opinion, since there was no fixed period of employment so far as the deceased plaintiff is concerned, the deceased plaintiff could have been terminated from services even by a simplicitor notice, assuming even if the services of the deceased plaintiff were upto the mark. Further, even if there is illegal termination of services, it is not possible to grant damages as claimed inasmuch as the principle of mitigation of damages squarely applies. As per this principle of mitigation of damages enshrined in Section 73 of the Contract Act, 1872 even if an employee is illegally terminated from services, he cannot sit at home and he must take sufficient steps to procure alternative employment. The law in this regard is contained in the judgment of the Supreme Court reported as S.S. Shetty v. Bharat Nidhi Ltd., AIR 1958 SC 12. Paras 12 and 13 of this judgment are relevant and the same read as under:

12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained.

â??They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wagesâ?!

â?! â?! No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the

damages.â?? (Chitty on Contracts, 21st Edition, Vol (2), p. 559 para. 1040).

13. If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be

measured prima facie and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide Collier v. Sunday

Referee Publishing Co. Ltd., 1940-4 ALL. E.R. 234 at p.237 (A). The servant would then be entitled to the whole of the salary, benefits, etc.,

which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of

damages by way of seeking alternative employment.â??

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9. Surely, these types of self-serving averments cannot be held as discharge of onus of proof of mitigation of damages. The statement made

by the deceased plaintiff is bereft of any details as to which companies or firms or persons he applied to, and on which dates, and for what

position, and for what salary and also the details as to why he could not obtain the alternative employment. I am, therefore, of the opinion

that the deceased plaintiff, even assuming he was wrongly terminated from services, failed to prove that he had taken sufficient steps for

mitigation of damages.â??

5. In the case of GE Capital Transportation Financial (supra), I have referred to the earlier judgment in the case of Shri Satya Narain Garg

(supra), and also the fact that contracts which are determinable in nature cannot be specifically enforced as per Section 14(1)(c) of the

Specific Relief Act, 1963. I have also referred to the fact that if the contract of employment provides for one month's notice, then, the

maximum entitlement of damages of an employee who alleges illegal termination is one month's pay. Paras 10 to 12 of the judgment in the

case of GE Capital Transportation Financial (supra) are relevant and the same read as under:-

â??10. In fact, the subject suit was also barred by Section 14(1)(c) of the Specific Relief Act, 1963 which provides that the contract which

is in its nature determinable, cannot be specifically enforced. I have referred to the fact that the contract was determinable by a one month's

notice as per clause 7 of the terms and conditions of the letter dated 21.4.1998

and therefore the contract which was determinable by one month's notice cannot be specifically enforced. What cannot be done directly cannot be done indirectly i.e. if there cannot be specific performance of the contract, there cannot be declaration and injunction to continue such a service contract. Section 41(e) of the Specific Relief Act, 1963 provides that injunction will not be granted to prevent breach of the contract, performance of which could not be specifically enforced.

11. Therefore, looking at the matter from the point of view of the contract of personal service not being enforceable under Section 14(1)(b) of the Specific Relief Act, 1963, the contract being determinable in nature and hence cannot be enforced as per Section 14(1)(c) of the Specific Relief Act, 1963 or that injunction could not be granted to prevent breach of a contract which cannot be specifically enforced, the suit was clearly barred and not maintainable. The judgment of the trial Court does not refer to the binding provisions of Sections 14(1)(b), (c) and 41(e) of the Specific Relief Act, 1963. To complete the discussion on this aspect, I would once again refer to the recent judgment of the Supreme Court in the case of Binny Ltd. (supra) and which specifically provides that in private contracts i.e. in strict contractual matters, there does not arise the issue of applicability of Administrative Law principles.

12. I have already stated above that even presuming there was breach of contract, at best reasonable damages can be granted and once there is a clause for termination of services by one month's notice, it can only be one month's notice which can be treated as reasonable damages inasmuch as parties understood the period for obtaining of an alternative employment as a one month's notice period-vide SS shetty's case (supra)â??

As already stated above, an S.L.P. filed against this judgment has been dismissed.

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8. In view of the aforesaid judgments, the following conclusions in law emerge:-

(i) A contract of private employment is not similar to the public employment and in such private employment there is no scope of applicability

of the principles of administrative law/public law.

(ii) A contract of employment which provides termination of services by one month's notice, then, at best the employee will only be entitled to

one month's pay in terms of the employment contract. An employee is not entitled to any relief of continuation in services or pay with

consequential benefits for alleged remaining period of services till the date of his superannuation.

(iii) As per the provision of Section 14(1)(c) of the Specific Relief Act, 1963, a contract which is determinable in nature cannot be

specifically enforced. Since the service contract in the present case is determinable by one month's notice there does not arise the question

of giving of any reliefs which tantamount to enforcement of a determinable contract. As per Section 14(1)(b), a contract of personal service

cannot be enforced when the employer is not the Government or 'State' as per Article 12 of the Constitution of India.

Plaintiff has in fact received one month's pay and therefore his claim will stand satisfied in law and he is not entitled to any reliefs as

prayed for in prayer clauses in the suit.''

14. This law applies with greater vigour in the case of writ jurisdiction where disputed questions of law cannot be adjudicated. In the facts of the

present case it is an admitted position that the petitioner was not an employee of respondent No.1, but was hired through an agency/ Respondent

No.4. This was not an employment which conferred any right upon the petitioner to continue, on the threshold of a regular employment or even an ad-

hoc appointment and was purely a contract of personal service, through an outsourced agency.

15. In view of the settled law this Court in a writ jurisdiction cannot give any direction to reinstate the petitioner and continue his services.

16. There is no merit in the petition and the same is accordingly dismissed.

17. Ms. Sweety Chauhan learned counsel for the Petitioner, at this stage, submits that she may be given the liberty to resort to remedies under the

Industrial Disputes Act, 1947.

18. Liberty is granted to the Petitioner to approach an appropriate Forum, to ventilate his grievances, in accordance with law.