

(1961) 11 P&H CK 0007
In the Punjab And Haryana At Chandigarh

Delhi Transport (by General Manager)	Vs	APPELLANT
Dharam Singh		RESPONDENT

Date of Decision : 10-11-1961

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1962) 2 LLJ 285

Hon'ble Judges : S.B. Capoor, J

Bench : Single Bench

Judgement

S.B. Capoor, J.—This is a regular second appeal against the Judgment and decree, made in appeal, of Sri Rameshwar Dayal, additional District Judge, Delhi, whereby he maintained the judgment and decree of a Subordinate Judge of the First Class, Delhi, decreeing Dharam Singh plaintiff's suit for declaration as well as arrears of salary and allowances against the Delhi Road Transport Authority.

2. Originally the plaintiff had filed a suit for declaration to the effect that the order of dismissal passed against him was illegal and wrongful and that he was entitled to be treated as continuing in the service of the defendants, who then were the Union of India and the Chairman of the Delhi Road Transport Authority. That suit was withdrawn in view of certain objections made by the defendants, that there was a settlement of the counsel for the plaintiff dated 11 May 1954, to the effect that the plaintiff did not claim to be a Government servant or to be governed by the fundamental rules or the Constitution of India qua his status as a Government servant. An amended plaint was filed on 7 July 1955, and the Union of India was given up as a defendant. The further objection taken by the defendants was that the suit for a mere declaration without asking for the consequential relief did not lie and in consequence the plaintiff amended his plaint claiming Rs. 1,643-3-3 as arrears of salary and allowance till the date of the institution of this suit.

3. The facts so far as material for the decision of this appeal are these. In the year 1947 Dharam Singh plaintiff was appointed as a conductor in the Gwalior

and Northern India Transport Company, Ltd. On 14 May 1948, the Central Government took over this company, the agreement between the parties being dated 23 April 1948. The plaintiff was, however, along with others retained in service. Then by virtue of the Delhi Road Transport Authority Act, 1950 (Act XIII of 1950, hereinafter to be referred to as the Act), which came into force on 27 March 1950, the Central Government constituted the Delhi Road Transport Authority. Section 30 of this Act provided as follows:

Section 30. Authority to assume obligations of the Central Government in respect of matters to which this Act applies.-All obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Central Government for any of the purposes of this Act before the establishment of the authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for the authority: and all suits or other legal proceedings instituted or which might but for the issue of notification under Sub-section (1) of Section 3 have been instituted by or against the Central Government may be continued or instituted by or against the authority.

4. Subsequently, a departmental enquiry was instituted by the officers of the authority against the plaintiff and he was dismissed from service by an order dated 3/4 August 1952, and his appeal was rejected on 25 May 1953. The plaintiff in his suit claimed that these orders were illegal, wrongful and against the principles of equity and natural justice because:

(1) no proper enquiry was conducted, nor was he given any opportunity to put forward his defence;

(2) the order was wrong on the facts, and

(3) the plaintiff being in the position of a Government servant the fundamental rules were not complied with in the conduct of the enquiry.

5. The plaintiff claimed the following reliefs-vide Para. 21 of the plaint:

(a) It may be declared that the order of dismissal dated 3/4 August 1952, passed against the plaintiff as well as the order of rejection dated 25 August 1952, passed on the plaintiff's appeal referred to in Paras. 15 to 18 above are illegal, mala fide, unjust, oppressive and against principles of equity and natural justice and that the same are of no effect.

(b) It may be declared that the plaintiff is entitled to be treated in the service of the defendants, particularly defendants 1 and 2, without any interruption and that his rights and benefits under the said service are in a way prejudiced or affected by the said order of dismissal dated 3/4 August 1952, as well as by the rejection of his appeal of 25 August 1952.

(c) That the defendants may be restrained by a mandatory injunction from enforcing the aforesaid illegal orders of dismissal dated 3/4 August 1952, as well as of the rejection of appeal dated 25 August 1952.

(d) That a decree for Rs. 1,643-3-3 may also be passed in favour of the plaintiff against the defendants on account of pay and allowances from 29 July 1952 to 15 December 1953, the date of institution of the original suit.

(e) Costs of the suit and such other relief as this Hon'ble Court may deem fit and proper be also awarded.

6. The suit was resisted by the defendants and the following issues were struck:

(1) Was the plaintiff a Government servant, according to Article 311 of the Constitution?

(2) Do fundamental rules apply to the plaintiff?

(3) Was the dismissal of the plaintiff illegal as declared?

(4) Was the report of T.T. Har Ram the only charge against the plaintiff? If not, what is its effect?

(5) Was any misappropriation of money by the plaintiff proved during enquiry held by defendants 1 and 2? If not, what is its effect?

(6) Was the order of dismissal dated 3/4 August 1952, in question issued by Sri Ram Parkash Jha? If so, was that illegal and improper and ultra vires of him?

(7) Relief.

(8) To what amount is the plaintiff entitled?

(9) Did the defendant assume all the obligations with respect to the services of the plaintiff?

(10) Is the suit barred by limitation?

7. The learned Subordinate Judge found issues 2, 3, 8 and 9 in favour of the plaintiff and issues 1, 4, 5 and 6 in favour of the defendants. In the result, the trial Court held that the dismissal of the plaintiff was illegal and wrongful and decreed the suit with costs in favour of the plaintiff and against the defendants. In appeal the learned District Judge maintained the findings of the lower Court on the issues except on issues 4 and 5 as to which his opinion was that they went beyond the requirements of the case, and the appeal by the defendants as mentioned above, was dismissed with costs.

8. Both the Courts below have found that the plaintiff was not a Government servant according to Article 311 of the Constitution of India. It was, however, considered that Rule 55 of the Civil Services Rules applied to the plaintiff as a condition of service between him and the authority by virtue of Section 30 of the Act read with the memorandum of the Government of India in the Ministry of Transport (Ex. P. 5). It was further found that since the enquiry against the plaintiff was conducted in breach of the service rules, his dismissal was illegal and wrongful. Mr. Gurbachan Singh, on behalf of the defendants, argued that as

the statutory protection under Article 311 of the Constitution of India was, on the finding of the Courts below, not available to the plaintiff, his only remedy, if there was a breach of the agreement of service between him and his employer, was a suit for damages, and a declaration as claimed in Sub-para (b) of Para. 21 of the plaint as to the plaintiff's continuing in the service of the defendants could not in any case be granted to him. In this matter, there is no difference between the position of a statutory authority such as the defendants, and a private employer, and a person who has been dismissed wrongfully by such an authority or by private employer could in no case claim to be continuing in service and can only sue for damages for breach of contract on account of his wrongful dismissal. In support of these contentions, *Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others*, and *Nagendra Kumar Roy, Assistant Executive Engineer Vs. Commrs. for the Port of Calcutta and Others*, . It is, however, necessary to discuss these authorities because the same proposition has been laid down by our own Court in *Ved Parkash Kansal v. Municipal Corporation of Delhi* and *Anr. C.W. No. 364-D of 1959*, decided on 23 May 1961 and by their lordships of the Supreme Court in *S.B. Dutt Vs. University of Delhi*, In the latter case their lordships observed that a contract of personal service cannot be specifically enforced. An award purporting to enforce a contract of personal service stating that the dismissal of the employee "has no effect on his status," and "he still continues to be a professor of the university," if filed in Court, would result in decree directing that the professor be treated as still in the service of the university, would enforce a contract of personal service and thus offend the provisions of Section 21 of the Specific Relief Act.

9. Mr. Hardy has no answer to these authorities. He had also to concede that if the plaintiff could not be deemed to have continued in service on account of the alleged wrongful dismissal, decree for the amount claimed as pay and allowances could also not be granted to him. It is, therefore, dear that so far as the prayers given in Sub-para (b), (c) and (d) of Para. 21 of the plaint are concerned, they could not legally be decreed by the trial Court.

10. Mr. Hardy, however, maintained that so far as the prayer contained in Sub-para (a) of Para. 21 of the plaint, that is, for a declaration as to the plaintiff's dismissal being illegal and wrongful, is concerned, it is severable from the rest of the decree and to that extent the decree should be maintained by this Court. This argument is untenable and it is liable to be thrown out by virtue of the provisions of Section 42 of the Specific Relief Act, 1877, on account of the plaintiff not having asked for the consequential relief for damages which was open to him.

11. As pointed out above, the plaintiff had to amend his plaint on account of the objection raised by the defendants on the basis of Section 42 of the Specific Relief Act. I fail to see how it is open to the Court to grant to the plaintiff a declaration in vacuo which by itself could not have been claimed by him in his plaint and which was not legally permissible for him to ask for. Mr. Hardy

particularly directed my attention to the observations made at p. 5 in S.B. Dutt case:

Another point raised on behalf of the appellant was that the portion of the award which held that his dismissal had no effect on his status and that he continued to be a professor was merely consequential and hence a surplusage and therefore, an error disclosed in it would not vitiate the award. This contention seems to us to be unfounded. The award held that the appellant had been dismissed wrongfully and mala fide. Now, it is not consequential to such a finding that the dismissal was of no effect, for a wrongful and mala fide dismissal is nonetheless an effective dismissal though it may give rise to a claim in damages.

12. I do not see how these observations are of any help at all to him.

13. It is, therefore, to be held that the suit was misconceived and that the trial Court erred in decreeing it. The appeal is, therefore, allowed, the judgments and decrees of the Courts below being set aside, but in as much as the law was clarified after the judgments of the Courts below, I leave the parties to bear their own costs throughout.