
(1951) 08 MAD CK 0025

In the Madras High Court

Case No : Second Appeal No. 150 of 1948

Gadhavajhala Satyanarayanamurthi

APPELLANT

Vs

Rao Saheb Y. Narayanamurthi and Others

RESPONDENT

Date of Decision : 09-08-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1952 Mad 106 : (1952) ILR (Mad) 535 : (1951) 64 LW 798 : (1951) 2 MLJ 333

Hon'ble Judges : Satyanarayana Rao, J

Bench : Single Bench

Advocate : V. Parthasarathy, for the Appellant; S. Venugopal Rao and M. Venkateswarlu, for the Respondent

Final Decision : Allowed

Judgement

1. The plaintiff is the appellant in this second appeal. He was the Head Clerk in the Taylor High School, Narasapur. He was suspended by the management of the Institution on 12-10-1943 and was ultimately dismissed from service on 19-11-1913. He instituted the suit out of which this second appeal arises, for a declaration that the orders of suspension and dismissal were ultra vires and void and that he continued to be an employee of the Taylor High School, Narasapur, and for an injunction directing the defendants to allow him to work in his post in the school. The suit was contested by the management on various grounds. They maintained that the dismissal was justified and was proper, that the plaintiff's only remedy if he was aggrieved by the decision of the Executive Committee was to have preferred an appeal to the General Committee under Rule 9 of the Rules framed by the General Committee under Clause 25 of the scheme

framed by the Court in O. S.No. 19 of 1922 on the file of the Sub Court, Narasapar, and that, therefore, the suit was not maintainable. The trial Court found practically on almost all the points against the plaintiff and dismissed the suit. On appeal the learned Subordinate Judge found that the order of dismissal was wrongful, as there was no proper enquiry by the Committee, that the procedure adopted by them was not proper and that the rule of natural justice that a man should not be condemned without giving him an opportunity to prove his innocence was not observed. He however dismissed the suit on the sole ground that Rule 9 excluded the jurisdiction of the civil Court from entertaining the suit and that the remedy of the appellant was to have preferred an appeal to the General Committee under Rule 9.

2. In this second appeal the entire ground was covered by the learned advocate appearing on both sides. In the first place the respondent's advocate attempted to argue that the finding of the learned Judge that the dismissal of the plaintiff was wrongful was not justified. It is not disputed that the plaintiff was a permanent employee of the Institution and that his tenure of office was not terminable at pleasure. The learned Subordinate Judge has found that no opportunity was given to the appellant to establish his innocence, and that the committee were not prepared to accept the explanation offered by the plaintiff in answer to the charges framed against him. He also found that the charges of bribery levelled against the appellant were not proved and that the appellant was not given an opportunity to show that charges 1 and 4 were not true. On these findings the conclusion is irresistible that the dismissal of the plaintiff from service was wrongful and cannot be upheld.

3. The next question that falls to be considered is whether the jurisdiction of the civil Court to entertain the suit is excluded by Rule 9. Rule 9 is as follows:

It shall be open to any person aggrieved by any decision or order or resolution of the Executive Committee to appeal to the General Committee against the said decisions, order or resolution within 15 days of the passing thereof, and the decision, or order or resolution of the General Committee passed in the said appeal shall be final.

It is contended on behalf of the respondents that as a remedy is provided by the

rule by way of appeal against the decision of the Committee, it is the duty of the appellant who claims that he is aggrieved by that order to have preferred an appeal to the General Committee. Not having done so, he is precluded from instituting the present suit. I am not prepared to agree with this contention. In the first place, it is not obligatory upto the aggrieved person even under the rule to prefer an appeal to the General Committee, as it states that it shall be open to a person aggrieved to prefer an appeal to the General Committee and not that it is incumbent upon him to prefer an appeal,

4. The jurisdiction of the civil Court u/s 9. Civil P. C., can be barred either expressly or by implication. The decisions referred to in the judgment of

the learned Subordinate Judge for the view that the jurisdiction of the civil Courts is excluded by Rule 9, in my opinion, have no relevancy. In *R.*

Venkata Rao v. Secretary of State, I.L.R.(1937) Mad. 532 the tenure was a tenure at pleasure, and it was held by the Privy Council that the only

remedy of the aggrieved person was to have followed the procedure laid down by the rules, and that even if those rules were not observed the

dismissed person had no right of action. In the other decision in *Ramanatha Gurukkal alias Parameswara Gurukkal Vs. V.V.R. Arunachalam*

Chettiar and Another, which was affirmed on Letters Patent Appeal in *Ramanatha Gurukkal alias Parameswara Gurukkal Vs. V.V.R.*

Arunachalam Chettiar, Manager for the time being of Tirupalathurai Siva Devasthanam and Another, the jurisdiction was impliedly barred by the

statutory provisions of the Madras Hindu Religious Endowments Act. The legislature is entitled to enact provisions depriving the civil Court of its

ordinary jurisdiction It cannot be said that a Committee or a General Committee like the General Committee of the Taylor High School. *Narasapur*,

stands in the same position as the legislature of the Province. The decision in *Sasala Raminaidu Vs. The Secretary of State for India in Council*, is

also of no assistance as the provisions therein considered were also statutory provisions.

5. The present is not a case of a right for the first time created by a statute along with a remedy to enforce that right and, therefore, the person

claiming that right or deprived of that right should pursue the remedy provided by the statute, as that is his only exclusive remedy. The right of suit

u/s 9 cannot be taken away by a rule made under the power conferred by the scheme framed for the administration of the school It has no

statutory force and cannot affect the provisions of the Civil Procedure Code. My attention has not been drawn to any authority which holds that in

such circumstances by the existence of a rule which provides an optional remedy by way of appeal to the General Committee the aggrieved party

has no right to go to a civil Court to have an adjudication on the right which he claims in the suit. The view taken, therefore, by the learned

Subordinate Judge in this aspect of the case cannot be upheld. The plaintiff on the findings of the learned Subordinate Judge is entitled to no higher

relief than that of a mere declaration that his dismissal was wrongful.

6. The decree, therefore, of the Courts below must be reversed, and there should be a declaration granted in favour of the plaintiff that his

dismissal from service was wrongful. As the parties have partly succeeded and partly failed it will be just I think, in the circumstances of the case,

to direct each party to bear his costs throughout. No leave.