
(2008) 08 AHC CK 0320
In the Allahabad High Court

Har Swarup Sharma

APPELLANT

Vs

Prabandhak Samiti, Amar Jyoti Junior High School and Others

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 14

Citation : (2008) 4 AWC 4127

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard learned Counsel for the appellant.

2. Record of the lower court is made available. The instant appeal was dismissed in default by this Court vide order dated 4.5.2007. The order dated 4.5.2007 dismissing the appeal has been recalled by this Court vide order dated 4.8.2008. The appeal is restored to its original number.

The appellant has preferred this appeal challenging the judgment and decree dated 5.4.1983 passed by the Additional Civil Judge, Bulandshahr, in Civil Appeal No. 515 of 1979 setting aside the judgment and decree dated 28.11.1979 passed by the VIIth Additional Munsif, Bulandshahr, in Original Suit No. 380 of 1978.

An original suit was instituted by the plaintiff/appellant for declaration. The declaration was prayed for that the plaintiff continued to function as Principal of Amar Jyoti Junior High School, Ajitpur Bhagwala, Pargana Agota, District Bulandshahr. The salary and allowances payable on the said post were also claimed and injunction was sought that the defendant/respondents be restrained from interfering in his functioning as Principal of the institution.

The appellant claimed that he was appointed as Principal by means of valid resolution, which was duly approved by the Basic Shiksha Adhikari and appointment letter was issued vide Exhibit-1. The appellant was appointed as

permanent Principal but his services were illegally terminated without obtaining any approval by the Basic Shiksha Adhikari, which was a condition precedent for terminating services of the Teachers and Principal of Basic Schools. The services were governed by the Basic Shiksha Adhiniyam.

Management Committee of the institution was arrayed as defendant No. 1, Society Junior High School Ajitpur Baghwala as defendant No. 2, Manager, Amar Jyoti Junior High School as defendant No. 3 and Zila Basic Shiksha Adhikari, Bulandshahr as defendant No. 4.

4. The suit was instituted on 18.10.1978. The defendant Nos. 1 and 3 filed their written statement. A specific objection was raised that the suit is not maintainable. Besides, appointment of the plaintiff was neither made in accordance with law nor he was entitled for the relief claimed as the Committee of Management was not a statutory body, as a result there was no question of taking any approval from the Basic Siksha Adhikari for termination. The trial court decreed the suit vide judgment and decree dated 28.11.1979 recording the finding that the appellant was validly appointed Principal. The Basic Siksha Adhikari himself had declared that termination of service of the appellant was illegal and void on 6.9.1978 and the order of termination did not depend on the sweet-will of the defendant.

The defendants/respondents preferred an appeal before the learned Additional Civil Judge, Bulandshahr. The appeal was allowed by means of the impugned judgment and decree, which is challenged in the instant appeal.

5. The second appeal was -admitted by this Court vide order dated 21.7.1983 on single substantial question of law, which is quoted hereinbelow:

1. Whether on the facts and circumstances of the present case, the lower appellate court was Justified in reversing the decree of the trial court for the relief claimed on the ground that the Committee of Management was not a statutory body?

6. The lower appellate court/recorded categorical findings that the Committee of Management is not statutory body, the appointment of the plaintiff itself was illegal. Only relationship between the plaintiff and defendants was that of master and servant and if he was discontinued for not being up to the mark, it could not be challenged. Besides, the appellate court held that the plaintiff has not been able to establish that the Committee of Management, which had appointed him, was statutory body and, therefore, initial appointment itself being illegal, termination cannot be challenged. The suit was also barred by Section 14 of the Specific Relief Act and consequently, he was entitled for declaration whatsoever.

7. While allowing the appeal, the 4ower appellate court placed reliance on certain decisions of the Apex Court; Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. AIR 1976 SC 888, wherein it was held that before an institution can be a statutory body it must be created by or

under the statute and owe its existence to a statute. This is a primary thing to be established. There is a clear distinction between an institution, which is not created by or under a statute but is only governed by certain statutory provisions for the proper maintenance and administration.

8. The other case relied upon by the lower appellate court; Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another, wherein the Apex Court held that Dayanand Degree College, Varanasi, an institution affiliated to the Banaras Hindu University is not a creature of statute but an entity like a company or a co-operative society or other body, which has been created under the operation of a statute,, therefore, the Supreme Court declined to pass any order of reinstatement of a servant, who was dismissed by the college authorities. The other case relied upon by the lower court; Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others,

9. I have considered the arguments of the Counsel for the appellant, who has relied upon the certain documents adduced in evidence, which was specifically relied upon by the trial court especially paper No. 16-A-I whereby the Basic Shiksha Adhikari himself had declared that termination of service of the appellant is illegal as well as letter of appointment to which the approval was obtained from the Basic Shiksha Adhikari and since there was no approval the termination order, the declaration was sought in the suit as well as injunction against the society Junior High School, Ajitpur, defendant respondent No. 2 and the Manager of the institution.

10. Learned Counsel for the appellant has also supported his arguments on the substantial question of law raised in this appeal on which the instant appeal was admitted. Full Bench decision of this Court in the case of Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors., was challenged before the Apex Court and relied upon by the lower appellate court while allowing the appeal.

11. I have perused the Full Bench decision of this Court as well as Apex Court. In that very case where it was held that when the executive committee of a college registered under Registration of the Co-operative Societies Act and affiliated to a University is not a statutory body and without the approval of the Vice-Chancellor as required u/s 25C(2) of Agra University Act, the services of the plaintiff as Principal of the college terminated on the ground that he is habitually and perpetually absent from his duties without permission does not fall within any expansion to the rule of non-enforceability of contract of services and hence prima facie the plaintiff is not entitled to any declaration or injunction. In view of these circumstances, the Apex Court was of the view that grant of declaration or injunction in favour of the plaintiff was incorrect and thus decision of the Full Bench and the single Judge in the second appeal was reversed by the Apex Court.

12. Learned Counsel for the appellant has laid emphasis on the Full Bench decision of this Court which has been obviously and clearly overruled by the Apex

Court and is of no help to the appellant.

13. In the facts and circumstances, there is no error of law whatsoever in the judgment and decree passed by the lower appellate court and the substantial question of law raised in this appeal is absolutely insignificant without any basis and not sustainable in law. It is sad aspect that the Counsel for the appellant has tried to place reliance on a decision, which has clearly been overruled by the Apex Court and the lower appellate court was conscious enough to quote the decision of the Apex Court in his judgment.

14. Admittedly, on consideration of the facts in the instant case, institution is run by a society, which has been arrayed as one of the defendants by the plaintiff himself and the principle laid down by the Apex Court in the case of Executive Committee of Vaish Degree College (supra) is squarely covered. In the circumstances and for the reasons given above, claim of the plaintiff is without any merit. No substantial question of law raised worth consideration in the instant appeal.

15. The Apex Court depreciated the liberal construction and generous application of provisions of Section 100, C.P.C. Hon"ble Supreme Court was of the view that only because there is another view possible on appreciation of evidence that cannot be sufficient for interference u/s 100, C.P.C. For ready reference, extract of paragraph No. 7 of the case of Veerayee Ammal Vs. Seeni Ammal, is quoted below:

7. ...We have noticed with distress that despite amendment, the provisions of Section 100 of the Code have been liberally construed and generously applied by some Judges of the High Courts with the result that objective intended to be achieved by the amendment of Section 100 appears to have been frustrated. Even before the amendment of Section 100 of the Code, the concurrent finding of facts could not be disturbed in the second appeal. This Court in Paras Nath Thakur v. Mohani Dast held: 1205 AIR 3

It is well-settled by a long series of decisions of the Judicial Committee of the Privy Council and of this Court, that a High Court, on second appeal, cannot go into questions of fact, however, erroneous the findings of fact recorded by the Courts of fact may be. It is not necessary to cite those decisions. Indeed, the learned Counsel for the plaintiff-respondents did not and could not contend that the High Court was competent to go behind the findings of fact concurrently recorded by the two courts of fact.

16. Similar view has been expressed in a number of other decisions by the Apex Court in the cases of Thiagarajan and Others Vs. Sri Venugopalaswamy B. Koil and Others, Rajeshwari Vs. Puran Indoria, Gurdev Kaur and Ors. v. Kaki and Ors. 2006 All CJ 1481 : 2006 (3) AWC 2373 and Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others,

17. The Apex Court in the recent case of Santosh Hazari Vs. Purushottam Tiwai

(Dead) by Lrs., , ruled that a point of law which admits of no two opinions may be preposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties, before it are concerned. It will, therefore, depend on the facts and circumstances of the each case whether a question of law is substantial one and involved in the case or not? The same view has been expressed by the Apex Court in the case of Govindaraju Vs. Mariamman,

18. The judgments under challenge cannot be interfered in this appeal in exercise of jurisdiction u/s 100, C.P.C. The two judgments do not suffer from any error and no substantial question of law arises.

19. The instant second appeal fails and is dismissed with cost.