

(1976) 08 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 2384 of 1976

Hindustan Antibiotics Ltd.

APPELLANT

Vs

Shri Ramdas Trimbak Deshmukh

RESPONDENT

Date of Decision : 04-08-1976

Acts Referred:

Constitution of India, 1950 — Article 311
Specific Relief Act, 1963 — Section 41

Citation : (1977) 79 BOMLR 364

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Chandurkar, J.—These petitions filed by the two petitioners, out of whom petitioner No. 1 is a public limited company and petitioner No. 2 is its Managing Director, arise out of four civil suits which are filed by the four employees of petitioner No. 1 company challenging the action of the employer in instituting disciplinary proceedings against them and appointing one Mr. Mahomed Hussein Shaikh, a retired Labour Court Judge, now at Poona, as an Enquiry Officer to enquire into the charges framed against the employees.

2. It is not disputed that the complaints in all the four suits filed by the four employees are identically worded and are based on identical facts. It is enough, therefore, to refer to the averments made in regular civil suit No. 8 of 1976 which was filed by one Mr. Chandrakant Dattatraya Janvekar out of which Special Civil Applications Nos. 2390 and 2391 of 1976 arise. The respondent-employee was originally suspended by an order dated August 9, 1975 by an order made by petitioner No. 2 who is the Managing Director. This order came to be revoked on August 14, 1975 with the result that the petitioner's suspension was discontinued and he continued to attend his duties. Then on September 19, 1975 a communication was sent to the employee intimating to him that Mr. Shaikh has been appointed as an Enquiry Officer to enquire into certain charges framed

against the employees and the employee was called upon to state whether he desired to be heard in person, to furnish the names and addresses of the witnesses, if any, whom he wished to call in support of his defence and to furnish a list of documents, if any, which he wanted to produce in support of his defence. Statement of allegations was enclosed with this communication which shows that there were as many as twelve charges framed against the employee. Amongst other things the misconducts complained of relate to his coming late on duty, not following the prescribed leave procedures, wilful insubordination and disobedience of a lawful and reasonable order of a superior and inciting the workers to go slow in work and to damage equipment and spreading rumours during the period July 8, 1975 to July 18, 1975. It appears that after the Enquiry Officer was appointed, the employee took part in the enquiry for sometime. He had requested that he should be given some assistance of a fellow employee since his application for assistance of a lawyer was rejected. That request of his was granted and even his request to have another employee as observer was also granted. The Department was represented by the Personnel Officer and the enquiry proceeded till October 17, 1973 when the employee made a request that there should be a joint enquiry in respect of all the employees against whom enquiries were instituted. On this request being rejected, the employee asked for adjournment which was granted on three occasions and when the enquiry proceedings were fixed for January 6, 1976, the four employees against whom similar enquiries were being made filed four suits in the Court of the Civil Judge, Senior Division, Poona. The claim of these employees in the suits is that sometime in July 1973 respondent Chandrakant along with some other office bearers and active members of the union had been to New Delhi and personally acquainted the Prime Minister of India and the other Union Ministers with the affairs of the petitioner company and they were apprised of the fact that the conduct of petitioner No. 2, the Managing Director, had resulted in financial loss to the company and unrest amongst the workers of the defendant company. In fact, according to the plaintiff, a demand for removal of petitioner No. 2 was made. It is on account of this that, according to the plaintiff Chandrakant, the Managing Director started harassing him and tried to victimise him firstly by issuing an order of suspension on August 9, 1975 and then by instituting an enquiry and appointing an Enquiry Officer on September 19, 1975. The bald averment made in the plaint is that all the orders passed by defendant No. 2 including the order revoking the plaintiff's suspension were ultra vires and were grounded upon express malice and improper motive just to get rid of the plaintiff. Some grievance was also made of an order transferring the plaintiff to another department. The prayer made in the plaint was that the orders dated August 9, 1975 and August 14, 1975 were ultra vires "the statutory and administrative rules, vindictive, illegal, penal and grounded on the express malice and, therefore, bad in law, inoperative and not binding on the plaintiff". A further prayer made in the plaint shows that the plaintiff wanted it to be declared "that the order No. PER/S-2576/25/75 dated September 19, 1975 appointing the Enquiry Officer to institute disciplinary proceedings against the plaintiff after the

order of reinstatement dated August 19, 1975 is ultra vires the statutory and administrative rules, vindictive, illegal, penal and grounded on the malice and, therefore, bad in law, inoperative and not binding on the plaintiff". On the same day on which the suit was filed an application for ad interim injunction under Order XXXIX of the CPC (CrPC) was made asking for an injunction that the defendants, their agents, servants, representatives, etc. be restrained from holding any enquiry or to proceed with any enquiry till the final disposal of the suit filed by the plaintiff. It appears that the learned Judge dealt with the matter during vacation at his residence and passed an extremely cryptic order in the following terms:

In view of the urgency of the matter urged by Mr. Gulavani for plaintiff issue ad interim ex parte injunction as prayed for with notice to show cause.

The learned Judge was then persuaded by the defendants to first decide the preliminary issue as to his own jurisdiction to entertain the suits. The learned Judge took the view that the question of jurisdiction must be decided on the allegations made in the plaint and that the Labour Court could not decide the question of bona fides or mala fides and that question can only be decided by a civil Court and hence the civil Court had jurisdiction to try the suit. In other words, it appears that the trial Court took the view that it could go further with the enquiry into the question as to whether the conduct of the management in issuing a charge-sheet to the employees was a malicious act or not. It is this order of the trial Court holding that it had jurisdiction to proceed with the suits that is challenged by the petitioner company in all the four petitions. Special Civil Applications Nos. 2385, 2386, 2389 and 2391 of 1976 are directed against the finding on the issue of jurisdiction. Special Civil Applications Nos. 2384, 2887, 2388 and 2390 of 1976 are filed by the petitioners challenging the order of temporary injunction.

3. It is contended on behalf of the petitioners by Mr. Paranjape that the trial Court has acted in excess of jurisdiction in entertaining the suit and it has fallen in a grievous error when it proceeded to issue an injunction in the matter of employment restraining the petitioner company from proceeding with the enquiry proceedings on the basis of charge-sheets framed against the four employees.

4. It was, however, contended on behalf of the employees by Mr. Abhyankar that the question whether the proceedings taken against the employees have been taken mala fide and vindictively because all the four employees had gone to Delhi and had made some complaints against the Managing Director could not be decided by the Enquiry Officer and such a question could be decided only in a civil Court.

5. Now it appears to me that the learned Judge of the trial Court has fallen in a grave error in issuing the injunction of the nature which it has done. He seems to have overlooked wholly the scope of a challenge which is normally open to an order passed by an employer against an employee which ultimately might result

in the termination of his employment. It is well-known that even in a suit seeking a declaration that the termination of service of an employee is bad, a civil Court has no jurisdiction to grant reinstatement which is a right exclusively created by the industrial legislation. Even in a case of a patently illegal termination by a private employer or for the matter of that by an employer whose relations with his employees are governed by the industrial law, a civil Court cannot make an order reinstating the employee. It is, therefore, difficult to see how it can be said to be a proper exercise of judicial discretion by the trial Court to have issued an injunction prohibiting the employer from proceeding with the disciplinary proceedings against an employee. The trial Court seems to have failed to see that what was done by the employer was that he had only issued a charge-sheet. The burden was on the employer to prove those charges satisfactorily and the further course of the disciplinary proceedings would depend on whether the charges framed against the employee have been proved or not. However, if the charges are conclusively proved in a given case, the motive for initiating the disciplinary proceeding will not be very material. When the civil Court took upon itself the heavy responsibility by passing an order that it had jurisdiction to entertain the suit, it failed to see that it would necessarily be required to go into the question whether there is substance in the charges framed by the employer. It cannot be disputed that the civil Court is not the forum to establish charges in a disciplinary matter against an employee. It is also well established that where in a disciplinary matter a finding has been reached by an Enquiry Officer or by the employer, the correctness of that finding on the ground that it is not supported by evidence or that it is based on inadequate evidence or that it is based on a misreading of evidence is not open to challenge in a civil Court because it is well established that so far as the jurisdiction of the civil Court is concerned, in the case, of an employer and an employee, if there is a wrongful or illegal termination, the employee has merely a right to claim damages if he does not prefer to take recourse to the other remedies provided by special enactments in the industrial law if they are applicable to him. It is, therefore, difficult to see how the trial Court could take upon itself the function of going into the question of mala fides of the employer in framing the charge against the employees and further into the question whether the mala fides alleged affected the enquiry proceedings against the employees.

6. It appears to me that the injunction issued by the trial Court almost amounts to an abuse of the powers vested under Order XXXIX of the Code of Civil Procedure.

7. The trial Court also seems to have failed to see that it was bound to first ascertain whether there was any prima facie case which the plaintiffs were able to make out and whether if the injunction was not granted the plaintiffs would suffer such irreparable injury that it could not be compensated by way of damages. If the plaintiffs were governed by the industrial law, their remedies in case of a wrongful dismissal would be found in the industrial law. If they were not so governed, the only right which they would have in case of a wrongful

dismissal or termination would be to claim reasonable damages from the employer. The question of jurisdiction of the civil Courts to grant a declaration in a particular case that an order of dismissal is void and that the dismissed employee continues to remain in service has been considered by the Supreme Court on more than one occasion. In *S.R. Tewari Vs. District Board Agra and Another*, , the Supreme Court observed as follows (p. 59):

...Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well recognized exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do.

8. The position of law in the matter of enforcement of a contract of personal service has been summarised in the decision of the Supreme Court in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , where it has been observed (p.850):

From the two decisions of this Court, referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are : To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311; (2) reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals; (3) a statutory body when it has acted in breach of a mandatory obligation, imposed by statute.

9. This question was again considered by the Supreme Court in *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , where it was pointed out that in an ordinary relationship of master and servant governed purely by contract a declaration of unlawful termination would indirectly amount to specific performance of contract of personal service which is not permissible under Specific Relief Act, the exceptions to this rule being the cases of master and servants arising under the Industrial law and cases of servants in the employment of State or of other public or local authorities created under the statute if the dismissal is contrary to rules of natural justice or is in violation of the provisions of the statute. The Supreme Court has in that case pointed out the distinction between private employment and employment under statutory bodies whose power of dismissal is limited by the statutory provisions and when the

limitation is disregarded, a dismissal may be held invalid. The employer in the instant case is not a statutory corporation. It is a company registered under the Indian Companies Act. Thus, if the Court was not competent in the case of dismissal of the employee to pass a decree requiring the employee to be treated as being in employment, it is difficult to see how it would have jurisdiction to grant a lesser relief of prohibiting the employer from proceeding with the disciplinary proceeding against the employees.

10. Having regard to the casual manner in which the ad interim injunction has been granted by the trial Court, it is necessary to point out that the power to grant injunction should be cautiously exercised and that too upon clear and satisfactory grounds. Courts must grant relief of injunction only in situations which so clearly call for it as to make its refusal work real and serious hardship and injustice. Injunction is a preventive relief against irreparable mischief. An injury is deemed to be irreparable and mischief is said to be irreparable where damage apprehended from the threatened act cannot be compensated with money. If a right being assailed is not justiciable, no relief in the form of injunction, temporary or perpetual, can be granted. Before an ad interim ex parte injunction is granted, the Court must, therefore, find out whether

- (i) the plaintiff has established a prima facie case,
- (ii) the plaintiff will suffer irreparable loss which cannot be compensated by damages if injunction is refused, and
- (iii) on which side lies the balance of convenience.

As I have already pointed out, the plaintiffs in all the four suits cannot be said to have any case for the relief which they have asked for in their suits. They have founded their suit on an anticipated breach of contract of personal service expecting that their services would be terminated as a result of the disciplinary proceedings. The contract of employment itself was such that its specific performance was not allowed. Section 41 Clause (e) of the Specific Relief Act, 1963, provides, that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. Even at the stage of granting ad interim injunction, the Court must apply its mind to all the material facts, which it is obvious, was not done in the instant case. In my view, therefore, the order of temporary injunction was entirely misconceived and, therefore, calls for interference at the hands of this Court.

11. It was, however, contended on behalf of the employees by Mr. Abhyankar that it was quite likely that the Enquiry Officer would not permit questions of mala fides to be raised before him. In my view, this apprehension is entirely misconceived. The person appointed as the Enquiry Officer earlier held the office of a Labour Court. He must, therefore, be well acquainted with the legal procedure and the scope of a departmental enquiry in a disciplinary matter. It will not be proper for me to express any opinion as to at what stage a question of mala fides, if any, could really arise. But it will be open for the Enquiry Officer to

go into the question as to whether the charges have been mala fide framed against the employees if such a question properly arises on the material before him. This can only be done if the enquiry is allowed to be proceeded with, properly on the basis of the charges framed by the management.

12. Mr. Paranjape, however, contended that the employees wanted the question of mala fides to be decided at the outset as a preliminary point. There is, however, no material before me to find out what is the stage of the enquiry. In any case in this petition which is directed against an order on the issue of the jurisdiction of the civil Court and an order of injunction, it will not be proper to go into the question as to how the Enquiry Officer should proceed with the enquiry, but it will suffice to say that where a question of mala fides of the management is raised, that question will have to be decided having regard to the entire evidence which is tendered by the parties regarding the charges framed against the employees.

13. In the result, all the petitions are allowed. The order passed by the trial Court granting temporary injunction is quashed and so also the order holding that it had jurisdiction to try the suit. Rule absolute. However, there will be no order as to costs.