

(1983) 11 MAD CK 0037
In the Madras High Court
Case No : Appeal No. 23 of 1979

J. Jeevanandam

APPELLANT

Vs

Correspondent, American Advent Mission School, Madras

RESPONDENT

Date of Decision : 28-11-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3
Specific Relief Act, 1963 — Section 39

Citation : (1985) 2 LLJ 118 : (1984) 97 LW 571

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Judgement

1. The plaintiff in O.S. No 619 of 1970 on the file of the City Civil Court, Madras is the appellant in this appeal.

2. The suit is for a declaration that the order of dismissal passed against the plaintiff from the services of the declaration on 5th June, 1967 is void

and of no effect and for consequential direction that the plaintiff should be paid a sum of Rs. 10,000 as damages.

3. As I will be setting out later in detail the grounds of attack as regards the dismissal as claimed to be wrongful by the plaintiff, it is enough to state

that the plaintiff's dismissal is challenged on the ground that there has been violation of principles of natural justice because no enquiry at all was

held. The other ground urged by the plaintiff is that the dismissal is mala fide on the facts pleaded by him. The suit as originally laid was for mere

declaration that the dismissal is void. Subsequently, The plaint was amended as per order in I.A. No. 6640 of 1974 dated 29th March, 1974. By

virtue of the amendment, the plaintiff had claimed damages in the sum of Rs. 10,000 and for return of documents.

4. The defence is that the dismissal is valid in law. There was a domestic enquiry and thereafter only the plaintiff was dismissed from service. The plaintiff did not demand that the witnesses should be cross-examined or that he should be allowed to cross-examine the said witnesses though such procedure is not necessary in the course of an enquiry. The communication received from the Deputy Inspector of Schools was even before the enquiry was conducted and even before the charges were framed. Only on the strength of the communication, the charges were framed. The plaintiff preferred appeals against the order of dismissal passed by the management : but the said order was confirmed by the appellate authorities. The relief of damages is barred by time. The suit is therefore to be dismissed with costs.

5. The trial court framed the following issues :

1. Whether the charge memo was issued on the report of the Deputy Inspector of Schools ?
2. Whether the enquiry held by the defendant was against the principles of natural justice and is vitiated as alleged in para 16 of the plaint ?
3. Whether the order of dismissal of the plaintiff, dated 5th June, 1967 is void, illegal and unenforceable as stated in para 24 of the plaint ?
4. Whether the suit is not maintainable without any consequential prayer ?
5. Whether the plaintiff cannot file this suit as S. 39 of the Specific Relief Act is a bar ?
6. To what relief ?

On issue No. 1 the trial court held that the charge memo was issued with the report of the Deputy Inspector of Schools. Under issue No. 2 it found that the enquiry held by the defendant was not against the principles of natural justice. Consequently it held on issue No. 3 that the plaintiff's dismissal is not void and so answered issue No. 3 against the plaintiff, he hold issue No. 4 against the defendant. It found issue No. 5 in plaintiff's favour. However, it dismissed the suit with costs, in view of its finding on issue Nos. 1 to 3.

6. It is this judgment and decree of learned Judge of the City Civil Court that are assailed in this appeal.

7. It is convenient, in the first instance to advert to the maintainability of the suit. According to the learned counsel for the respondent, the

declaration sought for would imply that the plaintiff should be reinstated in service and that in such a case, the plaintiff is not entitled to maintain

such a relief for reinstatement in a civil court. Indeed, the learned counsel cited a decision in *Pranois v. Municipal councillors Etc.*, (1962) 3 All

E.R. 633 in support of this contention. The Privy Council in that case held that when there has been a purported termination of contract of service,

a declaration to the effect that the contract of service still subsisted would merely be made and would not be made in the absence of the special

circumstances, because of the principle that the courts would not grant specific performance of contracts of service and in that case there was no

special circumstance and therefore the appellant's remedy lay in damage for wrongful dismissal. But in the instant case, the plaintiff has claimed not

only declaration that his dismissal from service is wrongful but also that he is entitled to damages in a sum of Rs. 10,000. When the plaintiff has

unequivocally stated that the ancillary relief claimed on the basis of the said declaration is only for damages, there is no scope for the contention

that the relief of declaration if granted would imply that the plaintiff should be reinstated. Again, I am to point out that only the ancillary relief

claimed by the plaintiff-appellant is restricted to damages. I am unable to comprehend as to how there can be any apprehension at all that the

plaintiff would claim reinstatement if the declaration were to be granted. In the circumstances, I am unable to agree with the learned counsel for the

respondent. As a matter of fact, the decision cited by the learned counsel supports the view that the remedy of a dismissed employee for wrongful

dismissal is to obtain declaration and to claim damages. This is what has been done by the plaintiff in the instant case.

8. It is the contention of the learned counsel for the respondent that the relief for damages was included by virtue of amendment ordered in I.A.

6640 of 1974 on 29th March, 1974. According to the learned counsel, the dismissal was on 5th June, 1966. The application for amendment was

presented on 20th March, 1974. Therefore, the claim for damages was made long after the period of limitation. Relying upon a decision of

Rajasthan High Court in *The State of Rajasthan and Others Vs. Rao Dhir Singh and Others*, the learned counsel for the respondent urged that the

claim for damages cannot relate back to the date of the presentation of the original plaint; but only dates back to the presentation of application for

amendment. The other decision pressed into service is the decision of N. S. Ramaswami, J. in K. Ramachandran Chettiar Vs. G.

Lakshminarayanawami Chettiar, . No doubt the ratio laid down by these decisions is that the claim made for the first time by virtue of amendment

will not relate back to the presentation of plaint; but will take effect only on the date of presentation of the application for amendment. The

proposition of law as such is well founded. But the question is whether the said principle of law is applicable to the facts of the present case. In

both the cases, by virtue of amendment what was claimed is the principal relief; but not a relief ancillary to the one which was already made within

the period of limitation. In the instant case, the relief of declaration was made even on the date of presentation of the plaint and it is not in dispute

that the said claim is made within the law of Limitation. The damages is only a relief following from such a declaration, if so, I am of the view that

the ratio quoted above will apply to the case where the principal relief is claimed for the first time by way of amendment but would not apply to a

case where a consequential relief alone is claimed. Thus I find that the contention advanced by the learned counsel for the respondent that this

particular relief for damages is barred by time, is not tenable.

9. It is the case of the appellant that there had been a violation of principles of natural justice when the defendant terminated his services. There are

two aspects that are presented by the learned counsel for the appellant on the particular matter. The first is that the management took in to

consideration the past misdeeds and the appellant was not given any opportunity to explain such past misdeeds. Secondly when the appellant

denied the incident dated 9th March, 1977 as spoken to by the management, there was a duty in the management to hold an enquiry and to permit

the appellant to defend himself. According to the learned counsel for the appellant the documentary evidence in this case will amply point out that

there was no enquiry at all held by the management. In this connection the learned counsel for the appellant invited my attention Exs. A. 1 and B. 3

to B. 8 After a careful examination of these documentary evidence. I find that the grievance of the appellant is well-founded Immediately, it is

necessary to point out that the stand taken by the management in the written statement is totally false. For, in the written statement it is pleaded that

the communication of the Deputy Inspector of Schools was not an after thought and that in fact a communication was received from the Deputy

Inspector of Schools before any charges were framed against the plaintiff. (Vide para 12 of the written statement.) A reference to Ex. A. 1 will

show that it was signed by the Deputy Inspector of School, Tiruporur Range on 22nd March, 1967. The intrinsic evidence as disclosed by the

document is that it was prepared only on 22nd March, 1967 and that was addressed to the defendant management while a copy is directed to be

sent to the appellant. From this, it is patent that the document in the usual course must have reached the management only the next day; so also the

plaintiff, the next day. However, the charge is framed under Ex. B. 3 as early as 11th March 1967. Therefore the averment in the written statement

quoted above cannot be correct. Secondly it is interesting to note that the decision of the management that the appellant should be dismissed from

service was made on 21st March, 1967, i.e., even before Ex. A. 1 was prepared.

10. It is unnecessary for me to advert to the oral evidence adduced by either side because I find that the documents produced by the appellant as

also by the respondent throw a good deal of light to establish that there had been no enquiry at all by the Management and that therefore, there had

been a gross violation of the principles of natural justice. I have already pointed out that Ex. B. 3 is the charges memo issued to the appellant by the

management. The principal charge is that the appellant caught hold of the Deputy Inspector of School, Tiruporur Range, held him by shirt and

abused him in vulgar language. This said to have taken place on 9th March, 1967 when the said officer made a surprise visit to the respondent-

institution. There are also other charges levelled against the appellant in Ex B. 3. They are that on 27th August, 1966, 25th October, 1966 and

12th December, 1966 the appellant was guilty of violent behaviour. Ex. B. 4 is the explanation submitted by the appellant and to be brief, he had

denied everyone of the charges levelled against him, particularly, the incident said to have taken place on 9th March, 1967. Ex. B. 5 dated 20th

March, 1967 is the communication sent by the respondent management to the appellant. Copies of the said communication as seen from the said

document appears to have been sent to the Headmaster of the respondent-institution and the Deputy Inspector of Schools. Tiruporur Range. It is

necessary state at this stage that the offended person is the deputy Inspector of Schools. Tiruporur Range by names Shri N. Ratnasabapathy. As in

my view, Ex. B. 5 itself destroys the respondent's defence, it is necessary to extract its text :

I am in receipt of your letter which is by way of answer to my memo dated 11th March, 1967. In your reply you request a personal inquiry. I do

not see that you have anything to present at such an equity, as you consistently deny all the charges which have been brought against. Therefore a

personal inquiry cannot reap any benefits. However, if you wish to wait for such an inquiry, you may be present at the residence in Guindy on 21st,

March, 1967 in the morning at 10.00 sharp. You will be allotted time from 10.00 to 10.30 a.m. for your matters, failing which there will not be

another opportunity for such an inquiry.

It is manifest from a reading of the said document that the management was so certain that the appellant was not entitled to an enquiry in law and

that a personal enquiry cannot reap any benefits; however, the respondent management called upon the appellant to present himself on 21st

March, 1967 at 10.00 sharp at the residence of the correspondent-institution. A plain reading of Ex. B. 5 reveals the following : 1. The appellant

had nothing to present at the enquiry, 2. the personal enquiry cannot reap any benefit, and 3. the management had pre-determined to send away

the appellant from service. The reference to para. 2 in the said document "such an enquiry" clearly establishes that was a mere farce purporting to

meet the demand made by the appellant under Ex. B. 4. It transpires that on 21st March, 1967, the appellant appeared in person before the

management where the Correspondent, St. Thomas Mount, Saidapet Range, Chairman, St. Thomas Mount, Saidapet Range, Chairman, A.A.M.

Schools, Mylapore Range, Correspondent, A.A.M. Schools, Mylapore Range and Chairman A.A.M. Schools, Tiruporur Range were present. It

is unnecessary to look into the evidence of either P.W. 1 or the defence witnesses as to what took place on 21st March, 1967. By Ex. B. 6. the

decision of the management is expressed. It is seen from the said document that no witnesses were examined on behalf of the management to

prove the charge relating to the incident on 9th March, 1967. It is further pertinent to note that the complaint by the offended person, namely,

Ratnasabapathy, the Deputy Inspector of Schools. Tiruporur was not kept before the said Committee, Indeed, that was kept even produced

before the appellant nor was he called upon to explain with reference to that charge. Thus there was neither oral evidence nor any documentary

evidence before the Committee which purported to hold a personal enquiry on 21st March, 1967. I wish to emphasise here that according to the

management, it was not an enquiry; but merely an interview for the satisfaction of the appellant. It is rather strange that the management would

plead a defence to the effect that the plaintiff did not insist upon the cross-examination of the witnesses. I am at a loss to understand as to how the

appellant could know who is the witness and whom he could cross-examine unless he is told of the witnesses or at least shown the document

which the management relied on in support of the charges. It can hardly be contended that the appellant had a reasonable opportunity to defend

himself. This is, where it is repeatedly held by Courts of law that there is violation of principles natural justice. The fast para in Ex. B. 6 will

reinforce the above statement. It runs as follows :-

The interview continued in this manner for over an hour, and because the teacher denied everything in the above manner, and was becoming

offensive in his manner, the interview was terminated. The decision of the meeting was that in view of the many witnesses to the event, the teacher

was speaking falsely when he denied that it had happened. Therefore, the teacher should be dismissed from service according to proper

procedure.

Excepting employing the expression ""proper procedure"", the management never bothered to adhere to the fundamental principles that before a man

could be found guilty, he should be given reasonable opportunity. Reasonable opportunity consists of two stages (i) examination of witnesses on

the management side and facility for-cross-examination of such witnesses at the instance of the alleged wrong-doer, and (ii) there should be a

reasonable opportunity extended to the wrong-doer to adduce rebuttal evidence. In this case, both are absent. There were no witnesses at all

examined. Nor even the documents were exhibited to the appellant, yet it is stated in Ex. B. 6 that in view of the witnesses to the event, the teacher

was speaking falsehood when he denied that it had happened. Who are these

witnesses nobody knows. I must hasten to add that I am conscious that in a domestic enquiry all the procedural law which the court should observe need not be adhered to. But that would not dispense with the examination of witnesses on the part of management and the rebuttal evidence on the part of the alleged wrong-doer.

11. The Supreme Court in *Indian Iron and Steel Co. Ltd. v. Their Workmen* 958 1 L.L.J. 260, had formulated the principles whereby the Labour

Appellate Tribunal can interfere with the order passed by the Management. According to the ratio of the Supreme Court, it can interfere (i) when

there is a want of good faith, (ii) when there is a victimisation or unfair practice, (iii) when the management has been guilty of a basic error or

violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse. No doubt in that particular

case, their Lordships held that the said case fell under clause (iv). But, this case, in my opinion, falls both under clauses 3 and 4. As no enquiry was

held, I have no hesitation to hold, that the management has been guilty of a basic error or violation of the principles of natural justice, and that the

finding that the appellant is guilty of gross misconduct and unruly behaviour, is completely baseless. I find support from the decision of the Supreme

Court in *Bareilly Electricity Supply Co. Ltd. v. Workmen* AIR 192 S.C. 330 and I quote :

But the application of the principles of Natural Justice does not imply that what is not evidence can be acted upon. On the other hand, what it

means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about

them and are subject to cross-examination by the party against whom they are sought to be used. When a document is produced in Court or a

Tribunal the questions that naturally arise are, is it genuine document, what are its contents and are the statements contained therein true.

12. Even at the outset I pointed out that before the offended person lodged the complaint under Ex. A. 1 dated 22nd March, 1967 charges were

framed which related to unruly behaviour of the appellant towards the offended person on 9th March, 1967 and referred to. The so the decision

was held on 21st March, 1967, and the decision taken on the same day. The learned counsel for the respondent contended that notwithstanding

the written complaint by the Deputy Inspector of Schools. Tiruporur Range, it was open to the management to take cognizance of unruly behaviour

on the part of the appellant and to initiate proceedings against him. Such a connection is hardly tenable in the face of the averments contained in

para 12 of the written statement. Nor it is stated therein that the communication of the Deputy Inspector of Schools was received before any

charges were framed against the appellant. Secondly, unless that charge is established, by examining witnesses, on behalf of the management and

by extending an opportunity to the appellant to cross-examine and adduce rebuttal evidence, the management cannot take advantages of the

incident by itself and to proceed against the appellant. Under Ex.A. 1 dated 22nd March, 1967, the appellant was called upon to submit his

explanation with three days from receipt thereof, it is stated therein that if no explanation was submitted with the stipulated time it would be

presumed that the charges levelled against the appellant would be taken to be true and that necessary action would be taken against him on that

basis. To this the appellant sent Ex. A. 2 dated 27th March, 1967. Admittedly, the appellant was not called upon to appear before any

authority for the purpose of meeting the charges levelled against him under Ex. A1. On the other hand, it is surprising to note that under Ex.A. 3

which is not signed by the Correspondent, A.A.M. School, Tiruporur Range, that it makes a reference to the charges issued on 11th March, 1967

i.e., Ex. B. 3 and to the personal enquiry obviously referring to "interview held on 21st March, 1967". From the records I find that the appellant

had not sent any rejoinder to Ex.A. 3. But that will not in any way help the management because the decision that the appellant should be

dismissed had already been taken by the management even on 21st March, 1967 under Ex. B. 6.

13. I must reiterate that even before the receipt of Ex.A. 1 when the management wanted to proceed against the appellant on the strength of the

complaint made by the Headmaster, nothing prevented the management from examining the Headmaster, to permit the appellant to cross-examine

the Headmaster and to adduce rebuttal evidence. Neither of these courses was admittedly adhered to by the management.

14. With reference to past misconduct, no doubt, there is reference in Ex. B. 3. Here again there are several infirmities which will give a death blow

to the defence. The foremost is that it is very difficult to accept the charges Nos. 8 to 12 in Ex. B. 3 for except a reference in Ex. B. 3, the respondent had not produced any satisfactory evidence. If really the appellant is guilty of violent behaviour, nothing prevented the respondent-management from serving the appellant with a memo then and there and calling upon him to make an explanation. On none of these occasions was any memo served on the appellant. Therefore, I commented that it is very difficult to accept the alleged misconduct of the appellant on the four occasions referred to in Ex.B. 3 Further, at the interview held on 21st March, 1967, the appellant was not called upon to meet these charges because no witnesses were examined on behalf of the management with reference to the past misconduct. If so, the management is guilty of having violated the principles of natural justice.

15. I agree with the learned counsel for the appellant that the dismissal in the circumstances, cannot be sustained because the management has been guilty of a basic error as also violation of principles of natural justice and because the finding is completely baseless. Consequently, the appellant is entitled to the declaration sought for. It is my duty to point out that the learned trial Judge has not properly understood the scope of the suit as also the limited grounds available to the plaintiff in assailing the dismissal and hence reached a conclusion which cannot be sustained in law.

16. The immediate question is what is the damage to which the plaintiff is entitled. In the plaint, the appellant had claimed a sum of Rs. 10,000 towards damages. In the written statement there is no plea that the amount claimed is excessive. In the result, no issue did arise out of the pleadings with reference to the quantum of damages claimed by the appellant. As a matter of fact, no issue was framed by the trial court. When the court was not called upon to decide a particular point. It is unnecessary that any evidence need be placed before court for the claim which was not specifically disputed in the written statement. The learned counsel for the respondent however referred to Order 8, rule 3, C.P.C. and contended that notwithstanding any specific denial in the written statement, it was the duty of the appellant to adduce evidence to sustain the quantum claimed by him. A fair reading of Order 8 rule 3, C.P.C. will show that the said argument can hardly be countenanced. In the instant case, the respondent

management was so sure about the defence regarding the appellant's entitlement relating to the declaration on sought for by the appellant. The result was that the respondent did not specifically challenge the quantum claimed by the appellant. According to me, what is contemplated under Order 8, Rule 3, C.P.C. is that so far as the damages are concerned the defendant need not specifically deal with each allegation which was averred in the plaint to support the claim of damages. But I am unable to read Order 8, rule 3 as suggesting that there was no duty on the defendant to challenge the quantum of damages, and that even without such a specific denial, he can still call upon the plaintiff to prove the damages. It may not be out of place to point out that in a case where damages or mesne profits are claimed the defendant shall specifically allege that the quantum is either excessive or arbitrary so as to raise an issue and to render the court to give its finding. In this case there is no specific denial relating to the claim for damages. Therefore, as pointed out by me earlier, there was no occasion for the court to frame and determine that issue. The result is that as there is no specific denial. I cannot but accept the damages of Rs. 10,000 as claimed by the appellant. There is also another aspect to be taken into consideration in this context. The suit was laid as early as in 1979 by an indigent person, the appellant, The money value in 1970 has very much gone down in the days. Therefore, the respondent can hardly be said to have been prejudiced by refusing the request for remand on the ground that the plaintiff shall prove his damages and on the further ground that there is absolutely no evidence on the part of P.W. 1.

17. Thus the appellant succeeds. The judgment and decree of the City Civil Court, Madras are set aside and the suit will stand decreed with costs throughout. The respondent is directed to pay the court fee payable on the memorandum of appeal.

R.S.

18. Appeal allowed.