

(1999) 04 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : R.P. No's. 4 to 6 of 1998

Jammu and Kashmir Women's Development Corporation Ltd. APPELLANT
and Another

Vs

Kawkab Jabeen and Others RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Specific Relief Act, 1963 — Section 21

Citation : (1999) 2 LLJ 1403

Hon'ble Judges : G.L. Raina, J

Bench : Single Bench

Advocate : M.H. Attar, A.A.G, for the Appellant; I. Sofi and A. Haqani, for the Respondent

Judgement

G.L. Raina, J.—These three revision petitions arise out of the three suits which are based on identical facts and the reliefs sought are similar.

These petitions are therefore taken up together for disposal as under:-

2. The J. and K. Women's Development Corporation, (hereinafter referred as, the Corporation) Srinagar, issued the notice inviting the applications

from interested and eligible candidates for the filling up of the posts of Project Officer, Supervisors, Typist/UDC's and Orderly for its Monitoring

and Marketing cell. The advertisement notice clearly indicated that the posts carried the consolidated salaries and the appointments were to be

purely on contract basis for a period of one year only.

3. Applications having been received and considered lead to the appointments of the plaintiffs in Civil Suit Nos. 79, 80 and 81 of 1997.

4. While these contract-engagements were in subsistence, the suits aforesaid

came to be instituted in the Court of City Judge, Srinagar, seeking the declaratory decrees that the plaintiffs are entitled to the regularisation of their services on permanent basis against the posts held by them. The plaintiffs sought the directions, in the nature of injunction, restraining the Corporation and its functionaries from causing any interference in the said appointments or from withholding the emoluments of the appointees. Mandatory injunctions, commanding the Corporation to take steps for absorption of the plaintiffs on permanent basis, were also sought.

5. Pursuant to the filing of the suits, the collateral applications were laid seeking interim injunction to protect the continuation of the engagements in reference. The trial Court passed on these collateral applications the ex parte order on October 28, 1997 directing the Corporation not to dispense with the services of the plaintiffs till the issue of their absorption in the Corporation was considered and decided. The Court directed the payment of emoluments to the plaintiffs for the period they work on the said posts.

6. Aggrieved by these orders, the revisional jurisdiction has been invoked on the ground that the order, impugned, have emanated by the exercise of the jurisdiction which did not vest in law with the trial Court. It is contended that the non- statutory Corporation made, on contract basis for the fixed term of one year and on consolidated emoluments, the appointments in its Monitoring and Marketing cell, which was funded by the Government of India. The life of the posts in the cell having not been extended and the funds having not been made available, after the lapse of one year, the contractual services of the respondents, herein, came as per the averments, to the end on October 31, 1997. It is contended that in the facts and circumstances of the case the plaintiffs had no right to seek permanent absorption or regularisation of their appointments and that too against the non-existent posts. The maintainability of the suits on the facts projected in the plaints is challenged and it is urged that the Court below has erred in not rejecting the plaints.

7. The very jurisdiction of the Civil Court to entertain the suits and to pass the impugned orders having been challenged in the petitions at hand has led to the arguments that notwithstanding the position that the orders were not only subject to objections but were appealable, so the revisional

jurisdiction is ousted.

8. Section 115 of the CPC clothes the revisional Court with the power to pass appropriate orders if it is found that the subordinate Court has

exercised the jurisdiction not vested in it by law or has passed the orders which have caused failure of justice.

9. The principle is well settled that contract of employment generates relationship of master and servant. The contract of employment is not capable

of specific performance. Breach of the contract can at best provide cause for damages. Breach of contract of employment is not capable of

founding any declaratory judgment of the subsistence of employment.

10. The plaintiffs, in the cases in reference were engaged on contract for specific period of one year and on consolidated wages in a scheme which

was funded by the Government of India. This contract of employment could not be specifically enforced against the Corporation as Section 21 of

the Specific Relief Act would not permit the specific performance of this type of contract. Similarly the breach of the contract in the given premise

is not capable of founding any declaratory judgment for subsistence of the contract of employment. This is one aspect of the matter.

11. The perusal of the complaints and the annexure thereto goes to show that the plaintiffs were appointed to the Monitoring and Marketing cell of the

Corporation under that scheme that was funded by the Government of India. The plaintiffs were contract employees for fixed term and on fixed

emoluments. It is urged that the scheme having come to an end, by having been not extended beyond one year and consequently not funded,

would ipso facto set an end to the contract of employment. No rights of continuation as such contract employees stemmed, as per the contention,

in favour of the plaintiffs. It is further contended that the suits seeking declaration qua the continuation on the contract engagement beyond the

period of contract were not competent. It is urged that the trial Court has wrongly embarked upon the course of determination of a controversy

which is not adjudicable as no rights accrued to the plaintiffs to seek their continuation, on the posts, beyond the contract period.

12. It cannot be disputed that the non-statutory Corporation cannot be burdened with the liability of retention of that staff which is engaged on

contract basis for specific period and on consolidated wages. Yet again the

scheme providing for engagement on contract basis for one year having allegedly come to an end would not provide the blank to the contract employees to seek perpetuation of their engagement through the orders of injunction. Even if the Corporation can be validly saddled with the consequences of the breach of the contract, yet specific performance of the contract being barred u/s 21 of the Specific Relief Act, no injunction could u/s 56 of the said Act be issued to perpetuate the claimed contract employment.

13. The objection as to the maintainability of the revision motions is misconceived as Section 115 of the CPC attracts the revisional jurisdiction as and when a subordinate Court assumes jurisdiction to itself which does not vest with it. It matters not that the impugned orders in these matters were subject to objections or could have been appealed against because in the facts and circumstances of the case the Court below *ex facie* assumed to itself the jurisdiction to determine the claims and rights, which under the contract of employment, were not at all available. No rights were available for enforcement through the suits and yet the trial Court not only entertained them but even passed the impugned orders. The plaintiffs had *ex facie* no cause of action to approach the Civil Court. The Corporation is therefore on solid ground to urge that the trial Court has committed error of jurisdiction which, must be set right under the revisional powers.

14. In the facts and circumstances of the suits it is held that the reliefs sought in the suits could not be granted even in the final analysis, so the question of issuing the interim directions could not arise. The plaints are therefore liable to be rejected.

15. The counsel appearing for the Corporation has stated at the Bar that the Board of Directors of the Corporation has taken the decision that on creation of posts for the staff recruitment, preference will be given to the ex-employees; that is the plaintiffs in the suit, who were discontinued from the services in November 1997. It is expected that the Corporation will abide by this decision so as to offer employment to the plaintiffs who had been engaged on contract basis for specific period.

16. With the above said observations I find that the plaints did not disclose such a cause as could clothe the trial Court with the powers to entertain

the suits and issue the interim directions. While allowing the revision petitions, the impugned orders are hereby set aside and the plaints are rejected.

17. Copies of this order to accompany the other two captioned revision petitions.