

(1986) 01 BOM CK 0027
In the Bombay High Court
Case No : Second Appeal No. 250 of 1985

Janata Janardan Shikshan Sanstha and Another	APPELLANT
Vs	
Vasant P. Satpute (Dr.)	RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 12, 16(1), 16(2), 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 28(2), 28(4)
Specific Relief Act, 1963 — Section 14

Citation : (1986) 2 BomCR 131 : (1986) MhLj 260

Hon'ble Judges : M.H. Kania, Acting C.J.

Bench : Single Bench

Advocate : K.Y. Mandlik, for C.R. Dalvi, for the Appellant; R.M. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Kania, Actg. C.J.

1. This is an appeal against the judgment and order of the learned 8th Additional District Judge, Pune, in Civil Appeal No. 578 of 1984.

2. The appellants before me are the defendants, who succeeded in the trial Court but failed in the District Court and the respondent is the original plaintiff, who failed in the trial Court but succeeded in the District Court.

3. The plaintiff, Dr. V.S. Satpute, was working as the Head Master in a School run by defendant No. 1, a society registered under the Societies Registration Act and defendant No. 2 was the Honorary Secretary of the said society. Very briefly stated, there were allegations against the plaintiff that he misappropriated large amounts belonging to the society and there was a demand that he should make good the losses caused by him and submit his resignation. On 24th October,

1982 there was a meeting of the society at which two letters of resignation and a cheque were given by the plaintiff. According to the defendants, at that meeting the resignation of the plaintiff was accepted from the end of October, 1982. On 26th October, 1982 the plaintiff sent a letter to defendant No. 1 society informing the society, in terms, that his resignations and the cheque were obtained forcibly from him by the defendants and, therefore, he was withdrawing the resignations given by him. A similar letter was sent by him to the Director of Education, Pune. On 28th October, 1982 the plaintiff instituted the suit from the result of which this appeal arises. On 29th October, 1982 the plaintiff wrote another letter to the defendants stating that he should be granted leave for five days as applied for by him and he should be allowed to resume charge of his duties on 30th October, 1982. On 29th October, 1982 the defendants issued a notice calling a meeting of the executive committee on 31st October, 1982 wherein one of the subjects to be discussed was to consider the plaintiff's application for leave and also the conduct of the plaintiff in not showing the amount in hand as per the cash book during the earlier meeting on 24th October, 1982. The defendants have taken the stand the resignations of the plaintiff tendered at the meeting on 24th October, 1982 were accepted at that meeting although from the end of that month and it was on that footing that they did not permit the plaintiff to resume charge at the end of this leave.

4. The trial Court came to the conclusion that the plaintiff had failed to prove that on 24th October, 1982 the defendants had obtained his resignations by force or coercion. In view of this conclusion, the trial Court dismissed the suit of the plaintiff. The other contentions raised before the trial Court and the conclusions arrived at do not merit being mentioned here in view of the limited controversy in the appeal, except that the trial Court rejected the contention of the defendants that in view of the provisions of section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the said Act"), the jurisdiction of a Civil Court to entertain a dispute such as the one raised by the plaintiff was barred. It may be mentioned here that in the suit filed by the plaintiff he had asked for a declaration that his resignations obtained by the defendants on 24th October, 1982 were null and void and that he continued to be in service as the Head Master of the said school.

5. The trial Court dismissed the suit holding that the plaintiff had failed to prove that his resignation letters were obtained by force. On appeal, the learned Additional District Judge came to the conclusion that the plaintiff had succeeded in proving that the defendants and some executive committee members of defendant No. 1 had subjected the plaintiff to force and coercion and obtained two documents of resignation from him as well as a cheque. It was further held by the learned Judge that the defendants had failed to prove that the resignation of the plaintiff was accepted prior to 26th October, 1982 when the plaintiff's letter of withdrawing the said resignation reached the defendants. The learned Judge also rejected the contention of the defendants regarding the challenge to

the jurisdiction of a Civil Court to entertain the suit. In view of these conclusions, the learned Additional District Judge allowed the appeal and granted the relief of reinstatement with back wages to the plaintiff. It may be mentioned here that the plaintiff attained the age of superannuation in the beginning of August, 1984. No back wages have been paid to him from that date and no question of payment of back wages after that date arises.

6. The first contention of Mr. Mandlik, learned Counsel for the appellants, is that the trial Court, being a Civil Court, had no jurisdiction to entertain the suit filed by the plaintiff for a declaration that he continued to be in the service of the defendants as the Head Master. In support of this contention he placed strong reliance on the provisions of sections 9 and 12 of the said Act. The relevant portion of section 9 runs as follows:

"9(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the Management and who is aggrieved shall have a right of appeal and may appeal against any such order to the Tribunal constituted u/s 8:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

xx xx xx

Section 12 runs as follows:

"Notwithstanding anything contained in any law or contract for the time being in force, the decision of the Tribunal on an appeal entertained and disposed of by it shall be final and binding on the employee and the Management; and no suit, appeal or other legal proceeding shall lie in any Court, or before any other Tribunal or authority, in respect of the matters decided by the Tribunal."

The submission of Mr. Mandlik, is that a case of forcible obtaining of resignation and accepting of such resignation is covered by the expression "otherwise terminated" used in sub-section (1) of section 9 of the said Act and in view of this the only remedy which an employee, whose resignation has been forcibly obtained, can avail of is by way of an appeal to the Tribunal and section 12 provides that the decision of the Tribunal given in such a case would be final and not subject to any further appeal in any Court of law. In support of this submission, Mr. Mandlik placed strong reliance on the decision of a Division Bench of this Court in *Shriram Swami Shikshan Santha v. Education Officer, Zilla Parishad, Nagpur*, 1984 MhLJ 31. It was held in that case that it is well-settled proposition of law that a force resignation means a resignation which is not voluntarily given by the employee but is brought about by force, duress or in any

other manner by the employer, that is, by the act of the employer. In substance the contract of service comes to an end in such a case by the action on the part of the employer. It, therefore, amounts to termination of service by the employer. The expression "whose services are otherwise terminated" used in section 9 of the said Act covers cases of forced resignations and, therefore, in such matters an employee can move the School Tribunal u/s 9(1) of the Act. I find it difficult to accept the submission of Mr. Mandlik. An employee, who is wrongfully dismissed or whose dismissal is unlawful, certainly has a remedy under the general law by way of a civil suit. I shall come presently to the question of the relief which can be applied for in such a suit, but it is beyond dispute that an employee can file a suit in a Civil Court complaining of wrongful dismissal. There is nothing in section 9 of the said Act which expressly or by necessary implication takes away that right. What section 9 of the said Act does is to provide that in such a case a dismissed employee would have an additional remedy, namely, by way of an appeal to the Tribunal constituted under the said Act, and, if an employee resorts to such a remedy, then the decision given by the Tribunal in the appeal would be final and not liable to be challenged in any suit or other civil proceedings. It is only where the plain language of a statute either expressly bars the jurisdiction of a Civil Court or does so by necessary implication that a conclusion can be arrived at that the jurisdiction of the Civil Court is barred. But, such a bar cannot readily be read into provisions which do not contain any such express provision or a necessary implication to that effect. The reliance placed by Mr. Mandlik on the aforesaid decision is misplaced. What the said decision says is that an employee whose resignation has been forcibly obtained by his employer has a remedy of an appeal to the Tribunal u/s 9(1) of the said Act, but that decision nowhere states that the remedy of such an employee to go to a Civil and challenge his dismissal or termination of his services is barred by the provisions of section 9 or 12 of the said Act.

7. The next submission of Mr. Mandlik in this connection is that, in the present case, although the plaintiff had challenged the termination of his services, what he had asked for was not damages but was in effect the remedy of restitution and a Civil Court was not competent to grant such a relief. Such a relief could have been granted only by the Tribunal and hence the Civil Court was not competent to entertain the suit. It is well settled in law that where there is a contract of personal service simpliciter, in case of wrongful termination of such a contract, the remedy of specific performance does not lie under the general law and the only remedy available is by way of damages. This is clear from the provisions of section 14 of the Specific Relief Act, 1963. It is equally well-settled that where the dismissal is null and void because of certain statutory limitations placed on the employer terminating the service of the employee, then the Civil Court would be entitled to grant the relief of restitution, not in terms but by declaring that the order of dismissal was null and void and a declaration that the employee purported to be dismissed continued in service.

8. I propose to refer to two authorities in this connection. In Tata Chemicals Ltd.

and Others Vs. Kailash C. Adhvaryu, , Bhagwati, J., (As he then was) held that where there is a mere breach of a contractual obligation in terminating a contract of master and servant, the dismissal being in breach of contract would only sound in damages and the servant would not be entitled to a declaration that the dismissal is invalid and that he continues in the employment of the master since that would amount to enforcement of a contract of personal service. But where there is a breach of a statutory obligation which prevents the termination of the contract except in the manner prescribed by the statute, the dismissal being in breach of the statute, is null and void and the servant is entitled to a declaration that the dismissal is null and void and that he continued in the employment of the master. There is in such a case no enforcement of the contract of personal service. A similar conclusion was arrived at by the learned Single Judge of the Calcutta High Court in Calcutta Electric Supply Corporation Ltd. and Another Vs. Ramratan Mahato, The aforesaid decision of the Gujarat High Court was followed by the learned Single Judge. It is keeping in mind these principles that the submission of Mr. Mandlik will have to be examined.

9. In the first place, it is significant that no contention to this effect, namely, that Civil Court has no jurisdiction to grant relief by way of a declaration that the plaintiff continued to be in service, was raised either before the trial Court or at the stage of the first appeal, and it is only in this second appeal that such a contention is sought to be raised. There is no submission in the written statement that assuming that the plaintiff's services were wrongly terminated by forcibly obtaining his resignation, the only claim of the plaintiff would be for damages. Nor does such a contention appear to have been raised in the first appeal at the time of hearing. In these circumstances, even assuming that the contention of Mr. Mandlik is correct it appears to me that such a contention ought not to be allowed to be raised at this stage. The claim of the plaintiff by way of damages has become barred by the law of limitation by this time and hence allowing the defendants to take up such a contention would clearly prejudice the plaintiff. It is true that a view has been taken that in a fit case a plea of want of jurisdiction could be allowed to be raised at any state see Chandrika Misir and Another Vs. Bhaiya Lal, There is, however, no doubt that it would be in the discretion of the Court whether to allow such a plea to be raised and such discretion ought not to be exercised in allowing a plea to be raised where by doing so prejudice is likely to be caused to the other side which cannot be compensated by way of costs. In view of this, in my view, it is not open to Mr. Mandlik to raise this plea at all at this stage.

10. Apart from what I have stated in the earlier paragraph and even on the assumption that it were open to the appellants to take up the plea referred to therein, in my view, such a plea must be rejected. It is clear that the said Act has been enacted to regulate recruitment and conditions of service of employees of certain private schools. Sub-section (1) of section 16 of the said Act confers upon the Government powers to frame rules for the purposes of this Act. Sub-section (4) of section 16 provides that every rule made under the said Act shall be laid

before each House of the State Legislature while it is in session for a total period of thirty days. It is not necessary to set out the said sub-section fully. A perusal of the sub-section clearly shows that the rules framed u/s 16 of the said Act are statutory rules. The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the said Rules"), which have been framed in exercise of the powers conferred by sub-sections (1) and (2) of section 16 of the said Act, contain, inter alia provisions imposing limitation on the rights of private schools to dismiss or terminate the services of the employees. Rule 28 deals with removal or termination of service and sub Rules (2) to (4) thereof clearly define the manner in which the power to terminate the service of a permanent employee can be exercised. Thus a dismissal otherwise than in compliance with the provisions of these sub rules would be in violation of the statutory limitation and would, therefore, be void. If an employer were to obtain a resignation forcibly from an employee in a private school covered by the said Act, it is clear that obtaining of such a resignation and acceptance thereof would amount to termination of services of that employee which is null and void as being in violation of the statutory limitation referred to above, and hence a remedy would be available to the employee to ask for reinstatement by way of a declaration that the order of dismissal was null and void and the employee continued to be in service. It is true that the statutory limitations on the rights of a private school to terminate the services of an employee which give rise to that remedy are contained in the rules framed under the said Act and section 9 thereof provides a special remedy against termination of service by approaching the Tribunal referred to in the said Act. The language of section 9 of the said Act does not, however, nowhere provides that such a remedy was intended to be an exclusive remedy. As far as section 12 of the said Act is concerned, it is clear that the bar of jurisdiction of a Civil Court is only in respect of a decision given by the Tribunal in a matter covered by section 9. There is nothing in the language of section 9 or 12 to bar the jurisdiction of a Civil Court in a case where an employee has instituted proceedings therein and asked for a declaration that termination of his services is null and void as being contrary to the provisions of Rule 28 of the said Rules. The submission of Mr. Mandlik in this behalf must also, therefore, be rejected.

11. The final submission of Mr. Mandlik is that the learned Additional District Judge totally failed to appreciate the evidence on record and came to the conclusions which could be said to be perverse and in total disregard of the evidence on record. It was submitted by Mr. Mandlik that the learned trial Judge had carefully considered the evidence led and come to the conclusion that the plaintiff had failed to prove that he was coerced and forced into giving his letters of resignation and there was no basis on which these findings could have been upset in the said appeal in the District Court. I am afraid, it is not possible to accept this submission either. I find that in the judgment of the learned Additional District Judge there is a detailed discussion of the evidence on record and the learned Judge has taken pains to examine the proceedings book of the

meeting held on 24th October, 1982 very carefully. It was at this meeting that the resignation letters of the plaintiff were obtained. According to the defendants, they were given voluntarily and according to the plaintiff, they were obtained by force or coercion. The learned Additional District Judge has carefully analysed the evidence in respect of this meeting, both documentary as well as oral, and it is not possible to say that he failed to appreciate the evidence on record or that his approach to the evidence was perverse. What Mr. Mandlik wants me to do is to re-appreciate the evidence and see if a different conclusion can be arrived at, which I am afraid, is not the proper scope of enquiry in a second appeal. The aforesaid contention raised by Mr. Mandlik must also, therefore, fail.

12. In the result, the appeal fails and is dismissed but looking to the circumstances of the case, there will be no order as to costs.