
(1985) 02 MAD CK 0026
In the Madras High Court
Case No : Appeal No. 104/80

L. William

APPELLANT

Vs

The Church of South India and Another

RESPONDENT

Date of Decision : 19-02-1985

Acts Referred:

Limitation Act, 1963 — Article 113, 58

Citation : (1987) 1 LLJ 249

Hon'ble Judges : P.R. Gokulakrishnan, J;David Annoussamy, J

Bench : Division Bench

Judgement

Gokulakrishnan, J.—The plaintiff is the appellant. The suit is one for declaration that the plaintiff shall be deemed to be in service in the

school belonging to the first defendant and managed by the second defendant continuously from 20th January, 1954 and for consequential

mandatory injunction directing the second defendant to cancel the entries dated 13th November, 1971 and 13th November, 1971 made in the

Service Register of the plaintiff regarding the alleged suspension and dismissal from service and to reinstate the plaintiff as Headmaster in the first

defendant's school within Conoor Range and also for payment of Rs. 27,691.73 with interest at six per cent per annum from the date of suit till

payment.

2. It is the case of the plaintiff that he was appointed as a secondary grade teacher by the first defendant on 20th January, 1954. Subsequently, he

served as Headmaster for thirteen years. At the time when he was working at C.S.I. School, Conoor Range, the second defendant on 4th August,

1971 passed on order transferring the plaintiff as First Assistant to C.S.I. School at Melur Estate. The Headmaster at Melur was junior to the

plaintiff. On 5th August, 1971 the plaintiff protested against the transfer. On 12th August, 1971, the plaintiff was suspended from service and

charges were framed against him for disobedience of the order passed by the management. On 13th November, 1971, the plaintiff was dismissed

from service. On 22nd November, 1971 the plaintiff filed an appeal to the District Educational Officer, Nilgiris, who by his order dated 6th

November, 1972 set aside the order of dismissal and directed the reinstatement of the plaintiff as Headmaster. Against this order of the District

Educational Officer, the second defendant filed an appeal to the Chief Educational Officer, Coimbatore. The Chief Educational Officer,

Coimbatore by his order dated 10th August, 1973 (Ex. A-3) confirmed the order passed by the District Educational Officer and directed the

second defendant to reinstate the plaintiff as Headmaster within ten days with a direction that the period of suspension should be treated as duty

and that the plaintiff should be paid salary. In spite of the above said orders Exs. A-2 and A-3 passed by the District Educational Officer and the

Chief Educational Officer respectively, the plaintiff was not reinstated in service. Further, entries of suspension and dismissal were made in the

Service Register of the plaintiff. Hence, the plaintiff has come forward with the above suit.

3. The defendants in their written statement contended that the order of transfer was correct, that the question of transfer was an internal

administration of the school which cannot be questioned, that the defendants cannot be forced or directed to reinstate any person who has been

grossly insubordinate, that the entries made in the Service Register of the plaintiff are correct, that the prayer of the plaintiff for reinstatement is

misconceived and cannot be sustained both on law and on facts, that such a relief prayed for is against the provisions of the Specific Relief Act and

as such, the plaintiff cannot claim any salary for service not rendered. It is further contended by the defendants, that the plaintiff cannot be deemed

to be in service and he cannot claim any salary or remuneration either in law or on facts, that the amount claimed is in any way excessive and

exaggerated, that the Service Register cannot be corrected, that since the plaintiff's service is only a service of contract, the prayer for

reinstatement cannot be sustained, that due to the attitude of the departmental authorities, the school in which the plaintiff was working had been

closed and that the second defendant is not personally liable for any claim made by the plaintiff. Finally, the defendants submitted that the suit claim

is barred by limitation since the orders of the Chief Educational Officer were passed on 10th August, 1973 itself. With these allegations, the

defendants wanted the suit to be dismissed with costs.

4. The learned Subordinate Judge of Nilgiris at Ootacamund, after referring to the decision of the Supreme Court reported in Vaish Degree

College Vs. Lakshmi Narain, 1976-II-LLJ-163 held that on the facts and circumstances of the present case, the plaintiff cannot specifically

enforce for reinstatement in service, that the declaration as prayed for by the plaintiff viz., that he shall be deemed to be in service and also the

consequential relief of mandatory injunction directing the defendants to reinstate him or to delete certain entries from the Service Register of the

plaintiff, cannot be granted nor is he entitled to claim any arrears of salary and that the only remedy open to the plaintiff is to seek for a declaration

that the termination of his service was wrongful and on such basis, for damages. With these observations, the learned Subordinate Judge dismissed

the suit on the preliminary issue itself which is to the effect as to whether the suit as framed is not maintainable. Aggrieved by the judgment and

decree of the trial Court, the plaintiff has preferred this appeal.

5. Mr. V. Krishnan, learned Counsel appearing for the appellant, after conceding that the plaintiff cannot ask for reinstatement in service as

Headmaster in view of the decision reported in Vaish Degree College Vs. Lakshmi Narain (supra) contended that the prayer for a declaration that

the plaintiff is deemed to be in service is maintainable and that the further prayer for consequential mandatory injunction directing the second

defendant to cancel the entries dated 13th August, 1971 and 13th November, 1971 at page 18 and 19 of the plaintiff's Service Register regarding

the alleged suspension and dismissal from service, is also maintainable. The learned Counsel further submitted that unless the slur in the Service

Register of the plaintiff regarding suspension and dismissal is removed, it will be very difficult for the plaintiff to get job in any other institution. In

effect, Mr. V. Krishnan, learned Counsel appearing for the appellant/plaintiff submitted that the first prayer in the plaint has to be taken as

questioning the validity of the order of suspension and dismissal. In this line, Mr.

V. Krishnan submitted that the prayer for payment of Rs.

27,691.73, being the arrears of salary as if the plaintiff has to be deemed to be in service, can be asked for. According to Mr. V. Krishnan, the

first prayer in the plaint, ""Plaintiff is deemed to be in service"", which means ""as if the plaintiff is in service"" will not amount to specifically enforcing

the right to be reinstated. As regards the question of limitation, the learned Counsel submitted that the plaintiff came to know of the entry in the

Service Register only on 23rd March, 1976 and as such, the suit is well within time since Article 113 of the Limitation Act is applicable to the facts

of the present case.

6. Mr. S. W. Kanakaraj, learned Counsel appearing for the respondents/defendants submitted that the orders passed by the District Educational

Officer and the Chief Educational Officer under Exs. A-2 and A-3 cannot have any statutory force, that at best the authorities can derecognise the

institution and cannot direct the institution to reinstate a dismissed servant and that as a matter of fact, the authorities have derecognised the

institution and as on date, it is closed. Mr. S. W. Kanakaraj further submitted that the suit as framed is not maintainable and that it cannot be

construed as if the plaintiff is questioning the validity of the order of suspension and dismissal. According to the learned counsel, the suit is

hopelessly barred by limitation since Article 58 of the Limitation Act is applicable to the facts and circumstances of the present case and it is too

much to contend that the period of limitation runs only from 23rd March, 1976, which, according to the plaintiff, is the date of his knowledge for

the entries made in the Service Register.

7. We have been taken through the pleadings, evidence and the judgment of the Court below. The prayer for reinstatement of the plaintiff as

Headmaster in the respondents' school, cannot be specifically enforced. This has been made clear in Vaish Degree College Vs. Lakshmi Narain

(supra). It is unnecessary for us to discuss on this aspect of the case in as much as Mr. V. Krishnan, learned Counsel for the appellant is not

pressing this prayer in paragraph 17(b) of the plaint.

8. The trial Court took it as a preliminary issue as to whether the suit as framed is not maintainable and decided that the suit is not maintainable. It

will be useful to refer to the pleadings in this case for the purpose of finding out

as to whether the question of maintainability decided by the trial Court is correct or not. The plaintiff alleges that he was employed by the first defendant as a Secondary Grade teacher on 20th January, 1954. The school is aided by the Government and as such, the service condition of the appellant is governed by the rules framed by the Tamil Nadu Government under the Madras Elementary Education Act and other educational rules framed by the Government from time to time including the Tamil Nadu Recognised Private Schools Regulations Act, 1973 and the rules framed thereunder. It is the case of the plaintiff that he served in the first defendant's school as Headmaster for thirteen years. While so, he was transferred as First Assistant at C.S.I. School, Melur Estate. He protested against the said transfer as affecting his service condition and by his letter dated 5th August, 1971 requested the second defendant to reconsider his transfer. But, the second defendant, after receiving the said letter, placed the plaintiff under suspension by communication dated 12th August, 1971 pending framing of charges for the termination of his services. After receiving explanation from the plaintiff, the second defendant dismissed him from service as and from 13th November, 1971. This dismissal, according to the plaintiff, is in gross violation of the rules, regulations and service conditions and principles of natural justice and as such, the plaintiff filed an appeal to the District Educational Officer, Nilgiris, on 22nd November, 1971, who by order dated 6th November, 1972 set aside the order passed by the second defendant and directed the reinstatement of the plaintiff forthwith as Headmaster. The second defendant filed an appeal against that order to the Chief Educational Officer, Coimbatore, who confirmed the order of the District Educational Officer, Nilgiris and further directed the second defendant to reinstate the plaintiff within ten days from the date of receipt of the said order. That order further states that the period from the date of suspension till the date of rejoining should be treated as on duty and the management should pay salary to the plaintiff for the said period. The plaintiff has further alleged in the plaint that in spite of the orders of the District Educational Officer and the Chief Educational Officer and in spite of the communication sent by the plaintiff for reinstatement, and payment of arrears of salary, the defendants have not complied with the orders of the educational authorities. At

this juncture, it is the case of the plaintiff, he received Service Register from the second defendant with a communication dated 23rd March, 1976.

In that Service Register, the plaintiff found two entries made on 13th August, 1971 and 13th November, 1971 relating to the suspension and

dismissal of the plaintiff from Service respectively, which entries, according to the plaintiff, are contrary to the orders of the District Educational

Officer and the Chief Education Officer. Subsequently, according to the plaintiff, there was exchange of notices and in the notice issued by the

plaintiff, he has prayed for the reinstatement and arrears of salary as per the orders of the District Educational Officer and the Chief Educational

Officer. In paragraph 13 of the plaint, the plaintiff has specifically averred that the defendants have not reinstated him in Service despite the orders

of the higher authorities and as such, the plaintiff is deemed to be in service under the defendants as and from 13th August, 1971. It is further

averred in that paragraph that the plaintiff is entitled to salary and all other benefits payable to a Headmaster of an aided elementary school as and

from that date. The plaintiff has also averred that the entries in his Service Register regarding the suspension and dismissal are illegal and unlawful

since such suspension and dismissal orders have been set aside by competent authorities. With these allegations, the plaintiff in paragraph 17 of the

plaint, has made the following prayers :-

(a) For a declaration that the plaintiff is deemed to be in service in the schools belonging to the first defendant managed by the second defendant

from 20th January, 1954 continuously without any break.

(b) for a consequential mandatory injunction directing the second defendant to cancel the entries dated 13th August, 1971 and 13th November,

1971 at pages 18 and 19 of the plaintiff's Service Register regarding the alleged suspension and dismissal of the plaintiff from service and to

reinstate the plaintiff as Headmaster in the first defendant's schools in Coonoor Range forthwith.

(c) For payment of Rs. 27,961.73 with interest thereon at 6 per cent per annum from the date of suit till payment.

(d) For costs of suits; and

(e) For such other reliefs as the Court may deem fit to grant as the circumstances of the case may require.

Thus on a reading of the plaint as a whole, it is clear that the plaintiff in effect wanted reinstatement in service and prayer (a) in paragraph 17 of the

plaint, in the context of the pleadings referred to above, though states that there must be a declaration as if the plaintiff is deemed to be in service, in

effect wants reinstatement in service in spite of the order of suspension and dismissal by the defendants. The other reliefs such as mandatory

injunction, etc., even according to the prayer in the plaint, are only consequential to the abovesaid main relief.

9. Ex. A-2 is the order of the District Educational Officer, Nilgiris, wherein he has directed the reinstatement of the plaintiff in service. As against

this order, the first defendant filed appeal to the Chief Educational Officer, Coimbatore, who by his order dated 10th August, 1973, which is

marked as Ex. A-3, dismissed the appeal observing that failure to carry out the order would subject the institution to action under rule 14 of the

rules for recognition. He has also observed that the period of unemployment should be treated as on duty and the plaintiff should be paid for the

period of unemployment by the management. The effect of this order would be that it would at best give right to the authorities to de-recognise the

institution if the direction given under it is not followed by the school authorities. By virtue of the decision reported in Executive Committee of Vaish

Degree College, Shamli V. Lakshmi Narain supra and also from the wording of the abovesaid order Ex. A-3, the plaintiff cannot ask for

reinstatement on the strength of Exs. A-2 and A-3. The argument of Mr. V. Krishnan that he only wants a declaration that the plaintiff is deemed to

be in service, in effect, gives a legal status to the plaintiff to be in employment with all the benefits that will follow by virtue of such employment. The

Law Lexicon of British India, 1940 and AIR 1930 54 (Privy Council) only state that ""when a person is "deemed to be" something, the only

meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were."" Hence, the

argument of Mr. V. Krishnan that he is not specifically enforcing the orders of the District Educational Officer and the Chief Educational Officer

cannot be countenanced since, in effect, he wants only such an enforcement.

10. The next decision cited by Mr. V. Krishnan, learned Counsel for the appellant, is reported in Lena Ratnam V. The Indian Red Cross Society,

Madras 1970-II-LLJ-642. In that case, it was held by this court that though reinstatement cannot be asked for, the prayer for a declaration that the termination of the service was illegal can be granted. As far as the present case on hand is concerned, there is no such prayer and as we have already observed in paragraphs supra, the prayer in the suit, in effect, is one of reinstatement on the strength of the orders passed in Exs. A-2 and A-3. Hence, this decision has no bearing to the facts of the present case.

11. Mr. V. Krishnan, learned Counsel for the appellant, then cited the decision reported in *The Andhra University, a Corporate body with its headquarters at Vizakhapatnam Vs. Korada Durga Lakshmi Manoharam*, . Even in this case the plaintiff has prayed for a declaration that the dismissal is wrongful. There is no such prayer in our case. In that decision, this Court has held that the fact that the plaintiff may well have pursued the remedy of an action for damages in tort does not; in its opinion, necessarily preclude the present form of suit if otherwise in order. We do not think that this decision has any relevance to the facts of the present case. To the very same effect is the decision reported in *Thiruvengada Mudaliar Vs. T. Narayana Reddiar and Others*, , cited by Mr. V. Krishnan. For the reasons stated supra, this decision also has no relevance to the facts of the present case.

12. Mr. S. W. Kanakaraj, learned Counsel appearing for the respondents, at the outset argued that the suit itself is barred by limitation. According to him, the District Educational Officer and the Chief Educational Officer cannot direct the reinstatement of the plaintiff since it is beyond their power. The only power the authorities have got under the Act and the rules made therein according to Mr. S. W. Kanakaraj, is to de-recognise the institution if it does not obey the directions of the authorities concerned. This submission is not disputed by Mr. V. Krishnan also. According to Mr. S. W. Kanakaraj, the main suit itself is based upon the orders passed under Exs. A-2 and A-3. Mr. S. W. Kanakaraj contended that such orders for reinstatement are to be considered as non est. If that be so, the suit filed as late as 11th June, 1977, according to Mr. S. W. Kanakaraj, is hopelessly barred by limitation. The order of the District Educational Officer is dated 6th November, 1972 and that of the Chief Educational Officer is dated 10th August, 1973. Article 58 of the Limitation Act states that to

obtain any other declaration, three year period is available and that the same has to be reckoned from the date when such a right to sue accrues. The right to pray for such a declaration arose on 13th November, 1971 when the plaintiff was dismissed from service. Applying Article 58 of the Limitation Act, we are of the view that the suit itself is hopelessly barred by limitation.

13. Mr. V. Krishnan, learned Counsel for the appellant, submitted that on the facts of the present case, only Article 113 of the Limitation Act is applicable. Article 113 reads as follows :

Any suit for which no period of limitation is provided elsewhere in this schedule-period of limitation three years-Time from which period begins to run-when the right to sue accrues.

The prayer in the suit is for a declaration that the plaintiff is deemed to be in service in the school belonging to the first defendant, managed by the

second defendant, from 20th January, 1954 continuously without any break. The mandatory injunction prayed for and also the prayer for

cancelling the entries in the Service Register of the plaintiff are only consequential reliefs. The body of the plaint, which we have extracted in

paragraphs supra, amply makes out that the plaintiff rests his case only on the strength of Exs. A-2 and A-3 and in effect, wants a declaration on

the strength of those orders. If that be so, the suit is for a declaration squarely coming under the purview of Article 58 of the Limitation Act. The

argument of Mr. V. Krishnan that the plaintiff came to know of the adverse entries in his Service Register only when the Service Register was sent

to him on 23rd March, 1976, even though the entries are dated 13th August, 1971 and 13th November, 1971 and as such, the suit is well within

time, cannot be countenanced since the main prayer in the suit is for a declaration and the other prayers are only consequential depending upon the

main prayer. In view of this finding of ours, we do not see any reason to accept the argument of Mr. V. Krishnan to the effect that the limitation

starts running only from the date of knowledge of the entries in Service Register of the plaintiff. Further, the decision reported in C. Mohammed

Yunus Vs. Syed Unissa and Others, cannot have any bearing to the facts of the present case. As rightly contended by Mr. S. W. Kanakaraj, the

Tamil Nadu Elementary Education Act, 1920, has no statutory force upon the

institution of this nature. Further, such statutory powers given under Chapters II and IV have been already removed by Act II of 1939. As rightly held in *Kumari Regina Vs. St. Aloysius Higher Elementary School* and *Another*, the rules made u/s 56(2)(h) have no statutory force. It is unnecessary for us to deal with the other sections of the Tamil Nadu Elementary Education Act, 1920, and also the Tamil Nadu Recognised Private Schools Regulation Act, 1973 and the rules made thereunder since Mr. V. Krishnan has no contra view to that suggested by Mr. S. W. Kanakaraj, learned Counsel for the respondents, on the strength of the decisions reported in *Regina V. St. Aloysius Higher Elementary School*, *supra* and *St. Joseph's College Society v. Director of Collegiate Education*, (1983) 1 M.L.J. 418. As correctly contended by Mr. S. W. Kanakaraj, there is absolutely no prayer in the plaint questioning the validity of the order of suspension and dismissal. We are not able to agree with Mr. V. Krishnan when he states that sufficient allegation has been made in the plaint questioning the order of suspension and dismissal.

13. For all these reasons, we are of the view that apart from the fact that the suit is hopelessly barred by limitation, the suit as framed is not maintainable. We are in complete agreement with the reasoning and finding of the Court below and as such, the appeal is dismissed. There will be no order as to costs. But Court fees payable as per law have to be paid by the appellant.

14. Appeal dismissed.