
(1998) 03 AHC CK 0138
In the Allahabad High Court
Case No : Second Appeal No. 148 of 1996

Managing Director, Canara Bank

APPELLANT

Vs

Ramji Shukla

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Banking Regulation Act, 1949 — Section 35B(1)
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 311
General Clauses Act, 1897 — Section 16
Specific Relief Act, 1963 — Section 34

Citation : (1998) 2 UPLBEC 1244

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : Rakesh Tiwari and J.N. Tewari, for the Appellant; A.K. Yog and Anu Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Phaujdar, J.—The present appeal was preferred against the first appellate decree and judgment dated 12.3.1996 recorded by Sri V.S. Shukla, IVth Additional District Judge, Allahabad, in First Appeal No. 397 of 1986 arising out of original suit No. 966 of 1982 between Ramji Shukla and Laxmi Commercial Bank Ltd, and another. The suit of the plaintiff-respondent stood dismissed by the 1st Additional Civil Judge, Allahabad by his judgment and decree dated 7.12.1985. The first appellate Court had reversed the decree of dismissal and had decreed the suit and directed that the letter of the defendants terminating the services of the plaintiff was void. A further direction was given by the appellate Court that the plaintiff-respondent was entitled to full pay and allowances, as were claimed in the suit, as also for the period from the date of the suit till the decree with the benefits of increments, etc. There was a declaration that the plaintiff was continuing with his service. Canara Bank was made liable for the decree.

2. Before the appeal was filed, a caveat was filed by the plaintiff-respondent through Sri A.K. Yog and accordingly Sri Yog was noticed at the time of admission of the appeal as. there were prayers for interim relief also. Sri Rakesh Tewari with Sri J.N. Tewari appeared for the appellant and Sri A.K. Yog appeared for the caveator-respondent. A counter affidavit was also filed on behalf of the caveator. A rejoinder affidavit was put in by the appellant. By an order dated 24.7.1996 this Court directed that the matter would be taken up; for final disposal at the admission stage itself on 9.8.1996. The matter, however, lingered on and could be heard on the point of admission, for final disposal, on 21.2.1998 only. At the hearing Sri A.K. Yog was assisted by Ms. Anu Jaiswal. The Court also directed the office to call for the records from the Court below and the records had been received.

3. Original suit No. 966 of 1982 was filed by Ramji Shukla arraying Laxmi Commercial Bank Ltd. as defendant No. 1 and the Managing Director-cum-Chairman, Canara Bank, as defendant No. 2. The plaint indicated that the first defendant-Bank had merged with the Canara Bank by a notification of the Government of India, Finance Ministry, in the year 1985. It was stated that Laxmi Commercial Bank was a Private Limited Banking Company under the Indian Companies Act and the bank issued an advertisement for employment in officers' cadre of the Bank. The plaintiff was an aspirant for the post and after interview and satisfaction of the Board of Directors of the Bank, the plaintiff was appointed in the managerial cadre on condition, inter alia, that in all matters he would be governed by the Bank's Rules, practice, procedure enforced from time to time and the Regulations applicable to the employees of his cadre. Upon a letter received from the Secretary of the Bank, the plaintiff joined the post on 1.11.1977 at New Delhi. He was directed to report to Kanpur Branch and accordingly he reported for duty at Kanpur on the next day. Subsequently, he was transferred as a Branch Manager to the Allahabad Branch of the Bank. It was stated that his performance as Manager of the Branch were appreciated by his employers and he had achieved the targets of business expected of him by his employers. However, due to back-biting and some mischievous maneuvering some complaints were made to the higher officers, who, in their turn, did not give any opportunity to the plaintiff to show-cause against the alleged conducts levelled against him and issued a letter on 15.10.1982 to the plaintiff determining his services and ordering him to make over charge of the Allahabad Branch to Sri R.M. Arora immediately. On a second thought, however, another letter was issued to him on 15.10.1982 charge-sheeting him levelling certain charges against him and advising him to get the irregularities rectified and to deposit the amount, allegedly involved, as per inspection report dated 18.5.1982.

4. The plaintiff further stated that the letter dated 15.10.1982 was received by him on 25.10.1982 and he submitted his explanation on 28.10.1982 explaining all the matters involving the charges levelled against him. The employers, however, did not go through the explanation given by him. They did not give him any opportunity of being heard on his explanation and the letter dated

14.10.1982 was issued after changing the letter number from 7557 to 7857 and the date from 14.10.1982 to 20.10.1982 whereby his services were terminated. The plaintiff took up a plea that he was appointed by an order of the Board of Directors while the letter of determination of service was issued by the General Manager of the Bank without any authorisation by the Board of Directors, and the General Manager being an authority inferior to the Secretary of the Bank, he could not have terminated the services of the plaintiff nor could he direct making over of the charge. The plaintiff valued the suit at Rs. 24,000/- and odd for which separate Court fee was paid.

5. The plaintiff made a prayer for a declaration that the letter of termination dated 14.10.1982/29.10.1982 was null and void and inoperative. There was a further prayer for a direction upon the defendants, their agents, servants and representatives so that they may not disturb or in any way interfere with the functioning of the plaintiff as Manager under defendant No. 1. The plaintiff also prayed for costs of the suit. The name of the present appellant was introduced by an amendment allowed by an order dated 28.8.1985. The prayer portion of the plaint appears to have been amended on 19.9.1983 in terms of the Court's order dated 18.7.1983. The prayer portion was not at all amended to include any relief as against the Managing Director/Chairman, Canara Bank (the present appellant).

6. In the written statement of the defendants, the appointment of the plaintiff was not denied. It was, however, asserted that the services of the plaintiff was terminated in terms of the contract of employment and it was within the right of the Bank to terminate the services of its employee after giving a month's notice or a month's pay in lieu thereof. The termination order was stated to be according to law. The performance of the service was issued by the General Manager of the Bank without any authorisation by the Board of Directors, and the General Manager being an authority inferior to the Secretary of the Bank, he could not have terminated the services of the plaintiff nor could he direct making over of the charge. The plaintiff valued the suit at Rs. 24,000/- and odd for which separate Court fee was paid.

7. The plaintiff made a prayer for a declaration that the letter of termination dated 14.10.1982/29.10.1982 was null and void and inoperative. There was a further prayer for a direction upon the defendants, their agents, servants and representatives so that they may not disturb or in any way interfere with the functioning of the plaintiff as Manager under defendant No. 1. The plaintiff also prayed for costs of the suit. The name of the present appellant was introduced by an amendment allowed by an order dated 28.8.1985. The prayer portion of the plaint appears to have been amended on 19.9.1983 in terms of the Court's order dated 18.7.1983. The prayer portion was not at all amended to include any relief as against the Managing Director/Chairman, Canara Bank (the present appellant).

8. In the written statement of the defendants, the appointment of the plaintiff was not denied. It was, however, asserted that the services of the plaintiff was terminated in terms of the contract of employment and it was within the right of

the Bank to terminate the services of its employee after giving a month's notice or a month's pay in lieu thereof. The termination order was stated to be according to law. The performance of the plaintiff was not satisfactory and hence the Board had taken a resolution on 1.9.1982 to terminate his services and to take legal opinion in this respect. The Bank was advised to pay the plaintiff one month's salary in lieu of notice and to terminate the services thereafter. Only thereafter, by the letter dated 29.10.1982, the plaintiff was offered one month's pay and his services were terminated. His termination was not made on the basis of any charge. It was further indicated that on the notice dated 15.10.1982 the plaintiff himself had prayed for time for one month and because his papers were not satisfactory, the resolution of the Board of Directors dated 1.9.1982 were made effective. It was stated that the plaintiff was not entitled to the protection under Article 311 of the Constitution of India as he was in private employment and not under State employment.

9. After some amendment in the plaint an additional written statement was filed by Laxmi Commercial Bank and it was further asserted that the plaintiff was never employed as a Manager and was simply an Officer of the Bank. Not being a Manager, his removal or termination of his services could be done without the prior sanction of the Reserve Bank of India. After taking over of the Laxmi Commercial Bank by the Canara Bank, the latter mentioned Bank was made defendant No. 2 and the factual assertion in the written statement of Laxmi Commercial Bank were adopted by the Canara Bank. At the same time it was stated that the Canara Bank was added as defendant on a wrong interpretation of the law as they had not taken up the assets and liabilities of the Laxmi Commercial Bank. The removal from service was made by the Laxmi Commercial Bank and no relief could be had by the plaintiff from the Canara Bank.

10. The trial Court had framed different issues touching the status of the plaintiff, the nature of his services, the legality of the termination order, the protection of law available to the plaintiff and, of course, on the point of relief. The trial Judge decided, on the facts laid before him, that although the plaintiff had been working as a Branch Manager, he was not "a Manager" in terms of the Banking Regulation Act. The trial Court further held that he was not entitled to the protection of Article 311 of the Constitution, rather his services were on purely contractual basis and were governed by the terms of the contract of employment, as per the letter of appointment. It was also held by the trial Court that the services of the plaintiff were terminated not with any mala fide intention nor as a measure of punishment and the termination order was passed not by an officer below the rank of the appointing authority, and, as such, the termination order was not in-operative or void. Accordingly, it was held that the plaintiff was not entitled to any wages after the date of termination as he was already paid the wages for one month in lieu of notice. The suit was accordingly dismissed by the trial Judge.

11. The First Appellate Court, however, appears to have been a different view of

the facts and had come to a conclusion that the plaintiff had been a Manager under the Laxmi Commercial Bank and before termination of his services concurrence of the Reserve Bank of India, as per Section 35B of the Banking Regulation Act, was necessary. It was further held that the plaintiff was appointed by the Board of Directors and only the Secretary to the Board of Directors could have expelled him from services and not the General Manager by whom the services of the plaintiff were terminated. The appellate Court further found that the notice of termination was proceeded by a notice of enquiry on a particular charge and it was a colourable exercise of the powers of termination only to avoid proof of the charges levelled against the plaintiff and there had been a clear violation of the provisions of Article 311 of the Constitution.

12. It may be mentioned at this stage that after dismissal of the suit by the trial Judge, the first appeal was preferred before this High Court. Subsequently, on enlargement of jurisdiction of the District Courts, the appeal was transferred there and the impugned appellate judgment was recorded.

13. In the instant second appeal the defendant-appellant, Canara Bank, questioned the validity of the aforesaid three points on which the first appellate Court had allowed the appeal. It was urged that the plaintiff had not been a Manager as was held by the first appellate Court. It was further stated that the principle of termination by an authority lower than the one appointing the plaintiff was not applicable to the present set of facts in the absence of any rule in that regard. It was also contended that Article 311 of the Constitution was not at all applicable to the plaintiff as he was a mere contractual employment under a private employer. In addition to these points, two more grounds were agitated before this Court by the learned Counsel for the appellant. It was contended that the frame of the suit was bad as a decree for personal services could not be granted by a Civil Court and after actual termination of service, even though wrong, a prayer for a declaration that the services of the plaintiff were continuing was really a prayer for a decree for a contract of personal service. It was also urged that u/s 45A of the Banking Regulation Act together with the memorandum under which Laxmi Commercial Bank was taken over, the Canara Bank was not liable to re-employ the plaintiff-respondent. In this appeal all these five points would be taken into consideration for a final disposal of the appeal at the stage of admission itself, as regard upon by the parties.

14. On the question of status of the plaintiff as a Manager, reference may be made to Section 35B of the Banking Regulation Act, 1949. Sub-section (b), requires that no appointment or re-appointment or termination of appointment of a Chairman, Managing or whole time Director, Manager or Chief Executive Officer by whatever name called shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Reserve Bank. The term "Manager" has not been defined in the Banking Regulation Act. A Banking Company, however, has been defined as a Company which transacts the business of Banking in India and a Branch or Branch Office in

relation to a Banking Office in relation to a Banking Company means any Branch or Branch Office whether called a pay office or sub-pay office or by any other name at which deposits are received, cheques cashed or money is lent and for the purpose of Section 35 it includes any place of business where any other form of business, referred to in sub-section (1) of Section 6, is transacted. Section 2 of this Act provides that the provisions thereof would be in addition to and not in derogation of the Companies Act, 1956. In the absence of any definition of the term "Manager" in the Banking Regulation Act, 1949, we may look to the Companies Act, 1956 for its meaning. Under this Act, as per Section 2(24), Manager means an individual (not being the Managing Agent), who subject to the superintendence, control and direction of the Board of Directors has the management of the whole or substantially the whole of the affairs of a company and includes a Director or any other person occupying the position of a Manager, by whatever name called and whether under a contract of service or not. It was argued that a Banking Company is also basically a company as defined in Sections 5(c) and (d) of the Banking Regulation Act. The definitions of the terms "Banking Company" and "Branch" as per this Act clearly makes a distinction to show that the "Branch" suggests an office for transaction of business and is not the company itself. A "Manager" of a company is supposed to have the management of the whole or substantially the whole of the affairs of the company subject to the control and superintendence and directions of the Board of Directors. A Branch Manager no doubt acts under the superintendence, control and direction of the Board of Directors but he is not entrusted with the management of the whole or substantially the whole of the affair of the company. Thus, a Branch Manager, although he carries the suffix Manager with his designation, may not be a "Manager" as thought of under the Companies Act or even u/s 35B of the Banking Regulation Act. The term "Manager" u/s 35-B(1)(b) has been uttered along with the Chairman, managing or whole time Director or a Chief Executive Officer by whatever name called. This suggests that a Branch Manager, not being in the rank of the managing or whole time Director, or a Chief Executive Officer cannot get the protection of Section 35-B(1)(b) of the Act and an order of termination of the services of a Branch Manager of a Banking Company may not require the previous approval of the Reserve Bank of India.

15. This view finds support in a decision of a Full Bench of the Allahabad High Court in the case of U.P. Bank Employees Union and Ors. v. State of U.P. and Ors., as reported in 1985 Lab. I.C. 337. In paragraph 19 of this judgment, as reported, the Hon"ble Judges referred to the arguments that Section 35B applied to appointment of the topmost executive of the Bank and did not apply to any other post or office. The Full Bench also referred to the argument that if the term "Manager" was interpreted to mean all officers designated as Managers, practical functioning of the Bank would become difficult apart from the fact that the Reserve Bank of India would be flooded with an work in which it would have no direct interest. There were hundreds of Banks having thousands of branches, each branch having a Manager and the Reserve Bank of India could to be

expected to deal with the appointment of all those thousands of Branch Managers. The Court was of the view that the Reserve Bank of India did not control the day to day functioning of the Bank and it only regulated the policy matters and for that it had to deal only with the top brass of the Bank. The Court expressed its views that Section 35-B(1)(b) required the approval of the Reserve Bank of India only in cases of appointment of the topmost executive of the Bank. To counter the aforesaid argument, the learned Counsel for the respondent took me through the provisions of Section 35-B(3) of the Banking Regulation Act, 1949. A mere reading of this provision indicates that it relates to an act done by a Manager notwithstanding an improper appointment and not the appointment itself of the Manager. Thus, this provision has no bearing with the aforesaid interpretation.

16. Upon the above finding, it must be held that the learned lower appellate Court had misdirected itself on the true interpretation of the term "Manager" and had wrongly held that the previous approval of the Reserve Bank was necessary before termination of services of a Branch Manager.

17. As regards, the second point, it was urged that there was no necessary of termination of services by an authority not below the rank of the appointing authority as this principle stood enunciated only in Article 311 of the Constitution and the provisions thereof were applicable only to Government Servants and was not liable to be extended to persons under private employment. Article 311 of the Constitution deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State and requires that no person, who is a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or holds a civil post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. It further required that no such person, as aforesaid, shall be dismissed or removed or reduced in rank except after an enquiry which he had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In this connection the evidence on record shows that appointment was given to the present plaintiff upon a decision of the Board of Directors communicated through a letter by the Secretary of the Banking Company. It is also in evidence that the General Manager had terminated the services of the plaintiff. The first appellate Court found that the General Manager was an authority below the rank of the Secretary and as such he could not have terminated the services of the plaintiff. It is undisputed that there were no specific rules for the conditions of service of the plaintiff or regarding disciplinary proceedings. The learned Counsel for the respondent submitted that even though the provisions of Article 311 were not applicable in letters to the plaintiff as he was under a private employment, the spirit thereof is always applicable and the learned Counsel referred to the provisions of the General Clauses Act to say that the power of appointment includes the power of dismissal suggesting that a person may be removed by the person appointing him and not by any other person. Section 16 of the General Clause Act indicate

that where, by any Central Act or Regulation, a power to make any appointment is conferred, then unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. This Section requires that the power of appointment is to be conferred by any Central Act or Regulation. The Banking Regulation Act, 1949 does not speak of the power of appointment of an officer of the Bank barring those in the category of Branch Manager, as indicated in Section 35-B(1)(b) of the Act. The provisions of Section 16 of the General Clauses Act are, therefore, not applicable. Moreover, no materials have been brought on record to show that on the date of termination of services the General Manager was not the appointing authority for persons in the rank of Branch Managers.

18. In this connection reliance was placed on a decision of the Supreme Court in the case of *State of Bank of India Vs. S. Vijaya Kumar*, . It was a case of dismissal of service of a bank officer and a question arose as to who was the competent authority to record the dismissal order. The delinquent officer was appointed by the Executive Committee. The order of dismissal was recorded by the Chief General Manager, admittedly an authority lower than the Executive Committee. The order was, however, held valid as the Chief General Manager, at the relevant time, had become, under the amended Regulations, the appointing authority in respect of the delinquent officer. In paragraph 23 of this judgment the Supreme Court quoted the provisions of Article 311(1) of the Constitution of India and in the next paragraph a similar provision in the State Bank of India General Regulations, 1955 was referred to. While the language of the Constitution required that no person shall be dismissed by an authority subordinate to that by which he was appointed, the language of the Regulation stated that an officer or employee shall not be dismissed from service by an authority lower than the appointing authority. The Court found that there was a material difference between the languages of these two provisions and the Chief General Manager, being already the appointing authority of the concerned officers under the Regulations, had the right to dismiss them although he was admittedly an authority lower than that who had given the appointment. A significant, observation was made by the Supreme Court, to the following effect, in paragraph 24 of the judgment:-

"So far as the right or protection guaranteed under Article 311 of the Constitution is connected, it applies to members of the Civil Service of the Union or an All India Service or a Civil Service of a State or who holds a Civil Post under the Union or a State. Admittedly the employees of the State Bank do not fall under any one of these categories and they cannot seek any protection under Article 311(1) of the Constitution; The employees of the State Bank can only claim such rights which have been conferred under Regulation 55 (2) (a) of the General Regulations. The only right conferred under the said provision is that the offices or employees of the State Bank cannot be dismissed by an authority lower than the appointing authority."

19. The next point that was agitated by the learned Counsel for the appellant was that the termination was not effected by way of punishment, as observed by the learned First Appellate Judge. Here also the First Appellate Court appears to have applied the principles of Article 311(2) of the Constitution to hold that termination of services without an enquiry was not thought of. For the reasons stated in relation to the earlier point it can only be stated that this provision-of Article 311 of the Constitution is applicable to persons holding a Civil Post under the Union or the State, but the facts are to be analysed as there had been a difference on the finding of facts by the two Courts below.

20. On the present point, the accepted facts are as follows :-

The plaintiff-respondent was, in fact, given two notices. One was of termination of services simpliciter and the other was a charge-sheet against him. The decision for termination of services of the plaintiff was taken by the Board, as alleged, on 1.9.1982 and the letter in that respect bore a date 14.10.1982, but no paper was brought on record to show that the Board's resolution was taken on 1.9.1982 or any other date. The termination Setter was initially dated 14.10.1982, but it was posted on 29.10.1982. The charge-sheet was dated 15.10.1982 and it was served on 23.10.1982. A reply thereto was submitted on 28.10.1982 and only thereafter the termination order was issued. The question whether the services of the plaintiff were terminated male fide, as a punishment, was an issue before the trial Judge as issue No. 4. The trial Court found that no action was taken upon the charge-sheet. The Trial Court found from the evidence of two D.W.S. that in 1982 the Board of Directors had decided in a meeting that the services of the plaintiff should be terminated. The papers were opposed to be brought on record through D.W.1, but the same could not be filed upon an objection taken by the plaintiff. The oral evidence, however, indicated that the services of the plaintiff were terminated on administrative reasons and not as punishment. On the basis of the materials available on record, the Trial Judge found that the plaintiff had functioned loans beyond his capacity without any written order from the higher authorities. It was true, therefore, as rightly found by the Trial Judge, that although a charge was framed alleging irregularities, the termination order was passed on administrative decisions as it was open for a master to take a decision about continuing the services of its servant and this contract is based on mutual confidence.

21. The problem may be seen from another angle. Even if it is accepted that the charges spoke of material irregularities committed by the plaintiff and the termination order was issued subsequent to the issuance of the charge-sheet, the order itself clearly indicates that it is an order of termination simpliciter not alleging anything wrong against the plaintiff. Even if an enquiry is pending, it would be within the authority of the employer to terminate the services of an employee after following the rules without giving him a bad name. If, at all, the enquiry was not concluded, that fact alone may not lead to the conclusion that termination simpliciter was a colourable exercise of the powers and hence bad in

law. The decision to terminate was taken according to oral evidence, long prior to October, 1982. The letter of termination was made ready on 14.10.1982 and if for any legal advice or for any other reason it was withheld for sometime and the employer thought it proper to issue a charge-sheet and subsequently decided not to proceed with the enquiry and to order termination simpliciter, the order of termination may not be challenged.

22. The first appellate Court had recorded the decree on the above three points only and when this Court finds that the decision of the first appellate Court could not be sustained on any of these three grounds, no further discussion may be necessary in allowing the appeal. But an important question of law was raised before this Court on which a decision is to be given and that would affect the appellate decree, even though the first three points are conceded in favour of the plaintiff. It was urged by the learned Counsel for the present appellate that the Civil Court had no jurisdiction to grant the relief of reinstatement or any like relief which amounts to reinstatement, e.g. a declaration that the services were continuing even after termination. The very frame of the suit was challenged by the present appellant. Reference was made to several decisions to urge that a suit of the present nature was not all maintainable before a Civil Court.

23. Reliance was placed on the decision of the Supreme Court in the case of *Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another*, . It was observed herein that reinstatement was a relief which could not be granted by a Civil Court. A suit for a declaration that dismissal of the plaintiff from service was bad and void as also for back wages and for injunction preventing the employer from giving effect to the order of dismissal was in substance a suit for the relief of reinstatement and back wages and was not maintainable before the Civil Court. The Supreme Court had before it the provisions of Section 9 of the CPC and it was observed that wherever the jurisdiction of the Civil Court is expressly or impliedly barred the Civil Court would have no jurisdiction to take up a suit of a civil nature. A contract of employment for personal service could not be specifically enforced under the law of contract and under the civil law an employee whose services were termination could not seek the relief for reinstatement or back wages. At best, he could seek the relief of damages for breach of contract. The only exception, according to this decision, was the Industrial Law. The scheme of the Industrial Disputes Act was taken up in paragraph No. 5 of this judgment (as reported) and it was observed in the next paragraph "Under these circumstances therefore so far as the present suit filed by the appellant-plaintiff is concerned, there appears to be no doubt that Civil Court had no jurisdiction."

24. Reference was also made to another decision of the Supreme Court in the case of *Executive Committee of Vaish Degree College, Shami and Ors. v. Laxshmi Narain and Ors.* AIR 1976 SC 888. Here also the Supreme Court had faced a question if a contract of personal service could be enforceable. The provisions of Sections 10 14 34 and 36 of the Specific Relief Act were considered and it was

held that a contract of personal service could not ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsisted and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. The Supreme Court found three exceptions to this accepted principle. Such a contract could be enforced (1) where a public servant was sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India, or (2) where a worker is ought to be reinstated on being dismissed under the Industrial Law, or (3) where a statutory body acted in breach or violation of the mandatory provisions of the statute. In the instant case the provisions of Article 311 of the Constitution are not applicable as the plaintiff was not a public servant covered by that Article. He was not even a worker falling under the Industrial Disputes Act and had he been so, his relief would have lied before the Industrial Tribunal. It is not a case of statutory body acting against the breach of a mandatory provision of statute as the employer of the plaintiff was a private Banking Company and there had been no allegation of violation of any mandatory provision of a statute. On this point the learned Counsel for the plaintiff-respondent submitted that the plaintiff had every authority to file a suit for compensation and the Court would be within its right to direct payment of compensation. The arguments of the appellant, however, covered this aspect also as the very frame of the suit was challenged. The suit was filed not for compensation but for a declaration of status which would amount to a prayer for reinstatement and in the absence of a suit for compensation of breach of contract, if any, this Court, sitting in Second Appeal, may not grant a decree for any compensation.

25. Yet another legal point has been raised by the appellant touching the liability of the Canara Bank for certain action by a private Banking Company, who were the original defendant No. 2. For a brief recapitulation, it may be stated that the suit was filed against the Laxmi Commercial Bank and its General Manager in the year 1983 and the bank was taken over by the present appellant, Canara Bank, in the year 1985 upon a notification of the Central Government under sub-section (7) of Section 45 of the Banking Regulation Act, 1949. The date of amalgamation of Laxmi Commercial Bank with Canara Bank was 24.8.1985 and a scheme of amalgamation was there. Under the scheme the property rights, assets, benefits of all guarantees in connection with business of the transferor Bank stood to and become the properties and assets of the Canara Bank with effect from 24.8.1985. There was a further clause that from that date all the liabilities, duties and obligations of the transferor Bank would become the liabilities, duties and obligations of the transferee Bank. A specific clause was there in the scheme that if on the prescribed date (i.e. 24.8.1985) any suit, appeal or other legal proceedings of whatever nature by or against the transferor Bank was pending, the same shall not abate, or be discontinued or be in any way prejudicially affected. Subject to other provisions of this scheme the suits, appeals or other legal proceedings would be prosecuted and enforced by or

against the transferee Bank. As regards what was meant by "subject to the other provisions of this scheme" reference was made to point No. 10 at page 18 of the scheme. It was indicated under that point that all the employees of the transferor Bank other than those specified in the schedule referred to in the succeeding paragraph, shall continue in service and be deemed to have been appointed by the transferee Bank at the same remuneration and on the same terms and conditions of service as was applicable to such employee immediately before the close of business on 27.5.1985. From the wordings of this provision it was clear that the benefit of the provision was not applicable to those employees whose name found mention in the schedule. The name of the plaintiff was not there in the schedule, although the name of another gentleman described as Manager, Allahabad, was indicated at Sl. No. 8 of the schedule. Both the parties wanted to interpret this fact in their favour.

26. In this connection also the learned Counsel for the appellant made reference to two case laws. The first one is a decision of the Supreme Court as reported in *The Chairman, Canara Bank, Bangalore v. M.S. Jasra and Ors.* AIR 1992 SC 1100. The provision of the Banking Regulation Act concerning amalgamation of Banks was considered in this case in relation to the question of age of retirement of employees employed by the transferor Bank. The Supreme Court in this connection took up Clause (10) of the scheme of 1985 in the light of Section 45(5)(i) of the Banking Regulation Act. It was held that sub-section (5) of Section 45 provided what were the provisions that could be covered in a scheme and the very mention of a particular matter in this Section did not automatically indicate that it was incorporated in a scheme unless it was present in the scheme itself. I may read the judgment for this direction only as the question before the Supreme Court was not at par with the question in the instant case. In the present case certain relief was claimed by an ex-ex-employee of Laxmi Commercial Bank against the employer in a suit filed by him long prior to the amalgamation of the Bank with the Canara Bank. The provisions of scheme (10) could not be read as one covering the employment of the present plaintiff as he was not in service on the date of amalgamation. The earlier provision in the scheme, however, would always be applicable in his favour as the question of his re-employment, re-instatement, or his getting damages for wrongful dismissal would always be a duty or obligation of the transferor Bank and under the scheme of amalgamation this liability would have come to the transferee Bank as well and this was the purpose for making the transferee Bank a party to a pending suit either as plaintiff or as defendant and such suit would not only be prosecuted but would be enforced by or against the transferee Bank. Enforcement of a sit would only mean enforcement of a decree in a suit.

27. Reference was also made to another decision of the Supreme Court reported in *Bank of Baroda v. Rajendar Pal Soni* (1996) 7 SCC 646. Here was a suit filed not against the transferor Bank after amalgamation under a notification under the Banking Regulation Act but against the transferee Bank challenging to acceptance of resignation by a transferor Bank and claiming the arrears of pay.

In this light it was held that the arrears of pay to such an employee would not be a liability taken over by the transferee Bank under the scheme. This case law does not fit in with the facts of the present case.

28. However, if at all the suit was maintainable for the relief claimed against Laxmi Commercial Bank, then and then only the Canara Bank could have been made liable for the liabilities they had undertaken the scheme. It has been found, from an analysis of the law that the first appellate Court had wrongly decreed the suit and moreover a suit for reinstatement was not at all maintainable in a Civil Court and in the frame of the suit no other relief was permissible. Under these circumstances, the decision on the last point is only academic and would not entitle the respondent to any relief against the appellant, Canra Bank.

29. For the reasons, as stated above, the appeal is allowed. The first appellate decree in F.A. No. 397 of 1986 is set aside and the decree of dismissal recorded by the trial Judge in Original Suit No. 966 of 1982 is restored. In the circumstances of the case the parties are to bear their own costs.