

(2000) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Revision Petition No. 590 of 1999

Manav Hitkari Sangh

APPELLANT

Vs

Rajkumar Singh

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Constitution of India, 1950 — Article 136, 14, 16, 19(1), 311
Contract Act, 1872 — Section 23
Rajasthan Societies Registration Act, 1958 — Section 12

Citation : (2002) 4 LLJ 809 : (2001) 3 RLW 1911 : (2001) 1 WLC 618

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Amod Kasliwal, for the Appellant; Babulal Gupta, for the Respondent

Final Decision : Allowed

Judgement

Madan, J.—This civil revision petition is directed against the order dated 5.4.1999 of the Addt. District Judge No. 8, Jaipur City, whereby he quashed order dated 4.3.1999 of the Civil Judge (Jr.Div.) Jaipur City (West), who dismissed the 2nd application under Order 39 Rules 1 & 2 CPC filed by the plaintiff-respondent.

(2). Manav Hitkari Sangh petitioner (defendant) is a charitable society duly registered under the Rajasthan Societies Registration Act, 1958. As per its alms and objects, the petitioner Society, has benevolent object so as to render services to the mankind more particularly in the field of homeopathic medicine. It is totally a private society wholly dependent on the donation and funds received from the donors and the patients. It has one clinic at New Colony Jaipur in a rented premises and another one of at Shyam Nagar Jaipur. It has its own bye laws which contemplate powers of management & administration vested in the executive committee which has corresponding powers for creation and abolition of the posts.

(3). It is the case of the defendant that the society has been facing financial

crisis since the year 1997-98 with a loss of Rs. 17,244/-. Therefore, on 23.4.1998 a meeting of its executive committee was held to discuss the financial and administrative problems, so also to discuss:- (1) the liability of demand raised by the land and building tax department of Rs. 120815,00, (2) urgent need for purchases of Indian and German Medicines whose stock had reduced considerably; (3) the urgent need of water proofing required for the Shyamnagar Hospital building which had been suffering damage due to water seepage in the previous years, and (4) about the decrease in the number of patients and the consequent fall of revenue at the New Colony clinic and in the evening shift at the Shyam Nagar clinic.

(4). The executive committee of the petitioner Society after discussing the aforesaid problems and taking into consideration suggestions of its member had approved following resolutions:-

1. That new colony clinic be closed in phases w.e.f. 16.5.98.
2. Evening Shift at Shyamnagar hospital be closed from 16.5.98,
3. One post of consultant-homeopathy, two posts of compounders and one post of servant be also abolished from 16.5.98.

(5). Pursuant to aforesaid resolution approved in its meeting held on 23.4.98, the petitioner Society issued letter-cum-order dated 16.5.98 to the plaintiff (respondent) by dispensing with his services w.e.f. 16.5.98 and alongwith aforesaid letter, two cheques one for a sum of Rs. 3510/- towards one moth's salary in lieu of notice and another for Rs. 5625/- towards other arrears, were also sent to the plaintiff by registered posts, whereupon, the plaintiff instituted a suit for permanent injunction for restraining the petitioner society (defendant) from terminating his services without following due process of law. Alongwith the suit, temporary injunction was also sought by filing an application under Order 39 Rules 1 & 2 CPC.

(6), Upon notices of the suit and aforesaid T.I. application having been served, the petitioner society filed its reply to the said application stating inter-alia therein that the services of the plaintiff respondent had been dispensed with w.e.f. 16.5.98 in pursuance of the resolution of the executive Committee as to the abolition of one post of homeopathy consultant and as a result of which the respondent was no longer in services of the petitioner society w.e.f. 16.5.98 prior to the institution of the suit which was filed by the plaintiff on 19.5.98.

(7). After hearing the parties, the trial Court dismissed the TI application by its order dated 6.6.98 holding that the respondent had no prima facie case or balance of convenience or Irreparable loss in his favour, against which the respondent preferred an appeal but the same was dismissed by the Addl. District Judge No. 5, Jaipur City by his order dt. 12.11.98.

(8). However, in annual general meeting of the petitioner Society held on 6.9.98, the resolution of executive committee dated 23.4.98 was confirmed. Thereafter,

the plaintiff sought amendment of the plaint so as to add a prayer for declaring his termination as bad. The trial Court allowed the amendment.

(9). Thus, after seeking the amendment, the plaintiff moved second application for injunction under Order 39 Rule 1 & 2 CPC with the prayer to allow him to continue in service of the petitioner Society with all consequential benefits. Again, the petitioner society filed its reply to the TI application reiterating the contentions raised in its earlier reply to the first TI application. The trial Court by its order dated 4.3.1999 dismissed second application holding no prima facie case, balance of convenience and irreparable loss in favour of the plaintiff. Against aforesaid order dt. 4.3.1999, the plaintiff preferred an appeal which was allowed by the appellate Court by its order dated 5.4.1999 and while setting aside trial Court's order dated 4.3.1999 it granted temporary injunction in favour of the respondent staying the operation of the impugned order dated 16.5.1998 whereby, the petitioner society had dispensed with his services, during pendency of the suit, Hence, this revision petition.

(10). Shri Amod Kasliwal, learned counsel for the petitioner society vehemently contended that the appellate Court has gravely erred in law in granting injunction in favour of the plaintiff on his second TI application after allowing amendment in the plaint for adding prayer seeking relief of declaration, without considering the facts in their true perspective that earlier as well both the trial as well as appellate Courts had dismissed plaintiff's TI application after having held no prima facie case, balance of convenience and irreparable loss in his favour. Shri Kasliwal then referred to the bye laws of the petitioner Society and contended that the decision of the executive committee to abolish the post of homeopathic consultant on which the respondent had served prior to termination of his services by the Society is final and is not open to challenge or review because it is within the domain i.e. the management of petitioner Society to do so of the employer inasmuch as abolition of post does not attract the provisions of Article 311 of the Constitution and even the principles of natural justice are not applicable to such a case. Shri Kasliwal further contended that the petitioner Society is a private institution and employer to whom no grant in aid is accorded by the State Government thereby it cannot be said to be any statutory body. Hence, the contract of employment for personal services cannot be enforced by way of any injunction in a civil suit. Since such an order passed on an injunction application against the petitioner Society could not be held to be binding on it being beyond the scope of its jurisdiction. Shri Kasliwal placed reliance upon the decision in *K. Rajendran v. State of Tamil Nadu* (1), *Jitendra Nath Biswas v. M/s. Empire of India & Ceylon Tea Co.* (2), *Dipak Kumar Biswas v. Director of Public Instruction* (3) and *Vidhya Bhawan Society v. Smt. Vishwa Vijay Singh* (4).

(11). On the other hand, Shri B.L. Gupta, learned counsel for the plaintiff reiterating the contentions raised before the appellate Court contended inter-alia that the Civil Court is fully competent and it is within its jurisdiction to consider in suit for permanent injunction and declaration the validity of impugned order of

termination of the plaintiff services which have been dispensed with without due process of law and in violation of Sec. 12 of the Rajasthan Societies Registration Act, under which a society duly registered is a statutory body and bound to follow the principles of natural justice before dispensing with services of its employees, inasmuch as the executive committee had no jurisdiction vested in it under its bye-laws to dispense with services of the plaintiff notwithstanding its resolution taken in its meeting date 23.4.1998. In these circumstances, Shri Gupta submitted that the appellate Court was right in granting Injunction in favour of the plaintiff staying the operation of the impugned order dispensing with his services w.e.f. 16.5.98. Shri Gupta cited catena of decisions including the followings :- U.P. State Cooperative Land Development Bank v. Chandra Bhan (5); Uptron India Ltd. v. Shamibhan (6); Jyoti Bandhopadhyaya v. W.B. Secondary Education (7); and M. Gopalkrishnaiah v. Union of India (8).

(12). I have heard the learned counsel for the parties at length and perused the orders of the courts below so also the decision cited by the learned counsel at the bar. Having considered the rival contentions, prima-facie I am of the view that the services of the plaintiff were rightly terminated w.e.f. 16.5.1998 prior to the institution of the suit which was filed on 19.5.1998. The terms of appointment of the plaintiff were governed by the bye laws of the petitioner society, under which its executive committee is vested with the powers not only of the control, management & administration, but also corresponding powers for creation and abolition of the posts. Moreover, from a bare perusal of its bye laws, it is crystal clear that though the petitioner society is registered under the Rajasthan Societies Registration Act, 1958 but it is totally private institute having its own funds for survival and is thus wholly dependent upon the donation received from the donors or the patients. No grant-in-aid is accorded by the State Government. Thus it cannot be said that it is a statutory body being governed by the statutory rules or the Act promulgated by the Central or the State Government. Rather it can be said that under the bye laws of the petitioner society, its executive committee was fully authorised and empowered to consider and take decision for creation or abolition of any post keeping in view the financial contingency and in pursuance of that decision taken in its meeting, the petitioner society is empowered to dispense with services of the plaintiff or any of its employees. Furthermore, the right to abolish or create a post is the domain of the employer and is not open to challenge by way of review unless it establishes the mala fide intention and abolition of post does not attract the provisions of Article 311 of the Constitution because even the principles of natural justice are not applicable to such cases and no show cause notice or hearing is required to be given to the effected person whose services may stand terminated upon abolition of any post. I am also of the view that contract of private employment for personal services, can not be specifically enforced except under the industrial law as per the provisions of Industrial Disputes Act, 1947 or under law of contract which under the civil law, an employee whose service are terminated cannot seek relief of reinstatement and back wages by way of a suit

for Injunction. The employee cannot enforce contract of private service or employment which stands terminated on his services being dispensed with by the employer consequent upon the abolition of post and in such cases declaratory relief cannot be claimed for the purpose of continuance in service, since refusal of employer to direct reinstatement in service even though erroneous cannot be held in contravention of any statutory rules. That apart prima-fa-cie plaintiff has failed to establish any prima facie case in his favour on the basis of which it could be inferred that there has been any violation of statutory rules, on the strength of which the plaintiff can "claim continuation of service with the petitioner society and this being admittedly the case of contract of personal and private services employment, it cannot be enforced by way of declaratory suit. My aforesaid view is fortified from the decisions in K. Rajendra v. State (supra) and Jitendra Nath v. M/s. Empire India (supra). In K. Rajendra's case (supra), the Apex Court held that the abolition of post is not a personal penalty. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution of India and, therefore, opportunity of showing cause does not arise in the case of abolition of post. In that case, the question before the Apex Court was of interpretation of the Tamil Nadu Abolition of Posts of Part Time Village Officers Act and it has been held that the aforesaid Act does not violate Article 19(1)(g) of the Constitution of India as it does not affect the right of any of the incumbents of the posts to carry on any occupation of their choice, and that the power to abolish a post which may result in the holder thereof ceasing to be a government servant has got to be recognised. But any action legislative or executive taken pursuant to that power is always subject to judicial review. It has further been observed that the question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is a matter of policy on which the Court has no voice.

(13). In Jitendra Nath's case (supra) the Apex Court observed that in a case of contract of employment for personal service which cannot be specifically enforced except under the industrial law, at best the employee can seek damages. It has also been held that relief of reinstatement and back wages is available only under Industrial Disputes Act, 1947 and the same cannot be granted by civil court because provisions of I.D. Act impliedly excludes jurisdiction of civil court as regards such relief.

(14). In Deepak Kumar v. Director of Public Instructions (supra), a lecturer upon his termination from service for want of approval had sought for declaration and permanent injunction. The Apex Court held that declaration sought by Lecturer that he continues to be in service of a college cannot be granted since refusal though erroneous was not in contravention of any statutory rules. However, the Supreme Court under Article 136 of the Constitution directed to pay three years salary and allowances by way of compensation to him.

(15). In Vidhya Bhawan Society v. Smt. VishwaVijay Singh (supra), the question

in a suit for specific performance of contract of personal service filed by terminated employee was whether temporary injunction can be granted and this Court held that when such contract is not specifically enforceable, no injunction can be granted, This Court further held that when no relief can be granted even in the suit then no temporary relief can be granted by the civil court to retain her in service against the will of the management.

(16). As regards the ratio of decisions cited by Shri B.L. Gupta, learned counsel for the plaintiff, though catena of decisions have been relied upon which I have carefully examined, in my humble opinion the same are not attracted to the facts in controversy inasmuch as there would be no relevancy to discuss it keeping in view distinguished and distinct features of the controversy in the present case but I will like to briefly discuss the resume of the decisions of the Apex Court.

(17). In U.P. State Cooperative Land Development Bank (supra), the controversy raised was as to whether the aforesaid Bank was "State Authority" and thereby amenable to writ jurisdiction. The Apex Court held that the appellant Bank though functioning as Society under U.P. Cooperative Societies Act, 1965 is constituted under aforesaid Bank Act, 1964 and the provisions of the said Bank Act 1964 and Societies Act 1965 show that affairs of society are fully controlled by State Govt. Thus, the Apex Court held that the aforesaid Bank is instrumentality of State and its employees had statutory protection thereby the Bank is amenable to writ jurisdiction.

(18). The facts in the matter of Uplron India United (supra) show that it was a case where the Management of Uplron India Ltd. informed the female employee who was an Operator that her services stood automatically terminated in terms of clause 17(9) of the Certified Standing Orders. She raised an industrial dispute and the State Govt. on her request, had referred the dispute for adjudication to the Tribunal under the Industrial Disputes Act. The services of employee in that case were terminated because she allegedly remained absent from 30.1.85 to 12.4.85 without leave application. Explaining objects and aims of the Industrial Employment (Standing Orders) Act 1948 the Apex Court held that services of a permanent employment cannot be abruptly or arbitrarily terminated, merely by giving requisite notice even if there is a stipulation in contract of service or standing orders.

(19). In M. Gopalakrishnaiah v. Union of India (supra), M. Gopalakrishnaiah, who was Executive Director (wholtime Working Director) of the Bank of Maharashtra by way of writ petition challenged his removal from service under an order dated 9.7.1993 issued by the Central Government in the exercise of powers conferred by Sub-clause (1A) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970. The petitioner's case was that his removal was in violation of Sub-clause (4) of Clause 8 of the scheme and was not termination simpliciter and in any case sub clause (1A) was void being unconstitutional. The Division Bench of the Delhi High Court held that Clause 8(1A) of the aforesaid scheme providing for removal of whole time Director before

expiry of his term by giving notice and pay was invalid and violative of Articles 14 & 16 of the Constitution so also Section 23 of the Contract Act being against public policy.

(20). Next case cited by Shri Gupta is in the matter of Jayanti Bandhopadhyaya v. WB Board Education (supra) wherein Head Mistress of the School alleged to have acted against the administration. She was placed under suspension; disciplinary proceedings were initiated and a charge sheet was issued against her without giving an opportunity to her to file show cause by denying her inspection of the documents. The Division Bench of the Calcutta High Court in appeal against the order passed in writ petition which was dismissed in limine by the Single Bench, held that the charge sheet was illegal as issued without giving facility to the delinquent to defend herself and against the principles of natural justice and mandatory provisions of the Management rules.

(21). I have considered the decisions cited by Shri Babulal Gupta learned counsel for the plaintiff and discussed the ratio of decisions referred to above. Without disputing the principles of law laid down in different sets of facts and circumstances of the case, I am of the view that the ratio of decisions (supra) are not at all attracted to the present case wherein the controversy raised at the bar is limited to the question as to whether the temporary injunction granted by the appellate court while reversing the order of the trial Court which declined to do so, deserves to be interfered in exercise of revisional jurisdiction u/Section 115 CPC by this Court.

(22). As discussed above, admittedly the plaintiff upon dispensation of his services by the petitioner society under the impugned order dated 16.5.1998 was not in services of the petitioner Society w.e.f. 16.5.1998 I.e. prior to the date of institution of the suit which was filed on 19.5.1998, Inasmuch as his first application for temporary injunction was dismissed by the trial court as well as the appellate court after having found no prima facie case, balance of convenience and irreparable loss in his favour and this revision petition is directed against the order of the appellate Court directing the relief of temporary injunction to an employee as regards his continuance in services of the petitioner Society staying the operation of the impugned order of the termination passed after one year of termination of his services by the management meaning thereby that respondent has been given the relief to continue in service till disposal of the suit. Applying the principles of law laid down in the decisions cited on behalf of the petitioner society which have been discussed above, to the present case, I am of the opinion that the Impugned temporary injunction granted by the appellate court is not sustainable in a suit for enforcement of contract of private employment upon termination of services of the plaintiff inasmuch as three conditions which are essential requisites for relief in a suit in question are not prima facie fulfilled in the light of the conclusions drawn by the trial Court while declining to grant such temporary injunction. Thus the appellate court committed not only illegality but also material irregularity in exercise of its

jurisdiction which calls for interference by this Court in revisional jurisdiction.

(23). Shri Babulal Gupta learned counsel for the plaintiff referred to the provisions of Sec. 12 of the Societies Registration Act which have been relied upon by the appellate court as well. Sec. 12 of the aforesaid Act reads as under:-

"12. Societies enable to alter, extend, or abridge their purposes -Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society, either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society; but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of the month after the former meeting."

(24). In my considered view, afore quoted provisions do not at all help in advancing the cause of the plaintiff for grant of temporary injunction in any manner whatsoever.

(25). As a result of the above discussion, this revision petition is allowed. The order dated 5.4.1999 passed by the learned Additional District Judge No. 8, Jaipur City is quashed and set aside and the order of the trial Court referred to above is upheld. No order as to costs.