(1953) 09 MAD CK 0003

In the Madras High Court

Mohanakrishniah Naidu APPELLANT

Vs

National Bank of India and Another RESPONDENT

Date of Decision : 24-09-1953

Acts Referred:

Citation : (1954) 1 LLJ 136

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Judgement

Govinda Menon, J.—This petition coming on for hearing, upon perusing the petition and the affidavit filed in support thereof and the order of

the High Court, dated 20 August 1952, and made here in, and the counter-affidavit and reply-affidavit filed herein, and other papers material to

this application and upon hearing the arguments of Mr. R. Thirumalaiswami Naidu, advocate for the petitioner, and of Mr. O.T.G. Nambiar for

Messrs. King and Partridge attorneys for the respondent 1, and the respondent 2 not appearing in person or by advocate, the court made the

following

ORDER

2. This is an application for the issue of a writ of mandamus on the National Bank of India, Ltd., directing it to reinstate the petitioner as a clerk in

its office at Madras as per order, dated 22 October 1951, in case No. 284 of 1951 on the file of the Commissioner for Workmen''s

Compensation, Madras.

3. The petitioner was employed as a clerk in the National Bank of India, Ltd., and for some reason or other which it is unnecessary to canvass

now, his services were dispensed with. u/s 41 of the Madras Act No. XXXVI of 1947 he filed an. appeal before the Commissioner for

Workmen''s Compensation, Madras, who by the order aforesaid set aside the order dispensing with the services of the petitioner but there was no

direction in the order that the petitioner should be re-employed as such. The last paragraph of the Commissioner''s order is as follows:

In spite of this I am constrained to set aside the order of the management, dated 29 June 1951, as no procedure as contemplated in Section 41(1)

of the Madras Shops and Establishments Act, 1947, has been followed by the management. It has been admitted by the assistant accountant that

no charge of misconduct was made and no inquiry was held, by the management before terminating the services of the petitioner. Since the

statutory requirements contemplated therein have not been followed by the bank, I have no option but to set aside the order of discharge.

Since the petitioner was not reemployed after the reversal of the order dispensing with his services, the manager of the bank as the employer was

proceeded with u/s 45 of the Act for contravening the order made u/s 25, and a fine of Rs. 25 was imposed upon him. Not being satisfied with

that, the petitioner now seeks extraordinary powers of this Court for a writ of mandamus directing the reinstatement of the petitioner in the bank.

4. An objection is taken by Mr. O.T.G. Nambiar appearing for the respondent that the respondent bank is not a statutory body or a public officer

on whom any statutory duty is enjoined, and that there fore this Court cannot compel a private institution like the bank to re-employ the petitioner.

On the other hand, Mr. Thirumalaiswami Naidu for the petitioner relies upon passages in Halsbury''s Laws of England, Volume 9 at page 75 ,

where there are observations to the effect that where a private person is to perform certain duties under a statute, a writ of mandamus will issue to

compel him to perform those duties. In the present case the statute, viz., Act No. XXXVI of 1947 only provides for the imposition of fine for

contravening any order made u/s 41. Such being the case and since that remedy is exhausted, what I have to decide is whether it is open to this

Court to compel the respondent to re-employ the petitioner. On this aspect of the case the observations of Lord Goddard, Lord Chief Justice, at

page 431 in Rex v. the National Arbitration Tribunal Ex parte Horatio Crowther and Co. Ltd. are particularly apposite and relevant. The learned

Lord Chief Justice says as follows:

It seems to me it is a strong thing to say, looking at this regulation which alone gives force to the order, that a power is thereby impliedly given to

the tribunal to grant a remedy which no court of law or equity has ever considered it had power to grant. If an employer breaks his contract of

service with his employees, either by not giving notice to which the latter are entitled, or by discharging them summarily for a reason which cannot

be justified, the workmen''s remedy is for damages only. A court of equity has never granted an injunction compelling an employer to continue as a

workman in his employment or to oblige a workman to work for an employer. If a workman or any other employee who occupies a higher status

than that usually implied by the term workman, breaks his contract with his employer, no injunction has ever been granted obliging that workman or

employee to work for the employer. The most that has ever been done is that if the contract was one by which for a certain period a person has

agreed to serve another exclusively, the workman or employee may be restrained from working for anybody else during the term for which he

contractually engaged to serve his employer.

5. Following these observations, this Court, in my opinion, cannot compel a private employer to employ a workman against its own will. The

punishment for contravening an order u/s 41 of the Act is the imposition of a fine as contemplated in Section 45. Even in the case of a Government

employee, it has been held by the Privy Council in Lati''s case 1948 (2) M.L.J. 55 that the court cannot compel the Government to re-employ an

officer whose services have been dispensed with.

6. In these circumstances it seems to me that no writ of mandamus can be issued, and that this petition must be dismissed. This does not mean that

the petitioner''s ordinary common law remedy to file a suit for damages for wrongful non-reinstatement is in any way interfered with or barred. He

is at liberty if he is so advised and if he has any claims, to bring an ordinary suit for damages.

