
(1991) 08 MP CK 0002
In the Madhya Pradesh High Court
Case No : S.A. No. 111 of 1988 (G.)

M.P. Khadi and Village Industries Board M.P. Bhopal	APPELLANT
Vs	
Basudev Sharma	RESPONDENT

Date of Decision : 20-08-1991

Acts Referred:

Madhya Pradesh Khadi Tatha Gramodyog Adhiniyam, 1978 — Section 29A, 4

Citation : (1991) 2 MPJR 310

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : M.C. Jain, for the Appellant; R.A. Roman, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Lahoti, J.

The Defendants have come up in appeal aggrieved by the judgments and decrees of the Courts below granting a declaration to the Plaintiff/Respondent that the resolution of the Board, Defendant/Appellant No. 1 passed in its meeting dated 8-7-1976 dismissing the Plaintiff from his service of the Board was null and void and that he was entitled to be reinstated and deemed to be in service through out.

The facts, in so far as necessary for the decision of the appeal are beyond controversy, in the major part thereof. M. P. Khadi and Gramodyog Parishad, Industrial Area, Govindpura, Bhopal has been so constituted by incorporation u/s 4 of the M. P. Khadi Tatha Gramodyog Adhiniyam, 1978, hereinafter referred to as the Act for short. The Plaintiff was serving the Board as its District Inspector. In the year 1973, an enquiry was held against the Plaintiff. Accepting the report made by the Committee of Enquiry, the Board in its meeting dated 8-6-1976, passed a resolution dismissing the Plaintiff from his employment. On 2-8-1976, the Plaintiff moved an application seeking a review of the resolution. Before it

could be considered, the Board was dissolved u/s 29-A of the Act and an Administrator was appointed. The Administrator rejected the prayer for review on 4-12-1976.

The Plaintiff alleged that the enquiry held against him was vitiated for non-compliance with principles of natural justice and that the enquiry as also the ultimate resolution of dismissal were all motivated by prejudice. Hence he claimed reinstatement with the benefit of arrears of salary.

The Courts below have found that the enquiry held against the Plaintiff was vitiated and hence the suit has been decreed.

Vide order dated 13-9-1989, this Court has admitted the appeal for hearing parties on the following substantial questions of law:-

(1) Whether the relationship of the parties would be governed by the theory of master and servant and hence the Plaintiff/ Respondent could not have sought for a decree for declaration as prayed and his remedy lay only in damages?

(ii) Whether a notice u/s 80 C. P. C. was a necessary pre-requisite for instituting the suit?

(iii) If so, whether, Ex. P/6 satisfied the requirement of a notice u/s 80 C. P. C. ?

At the hearing, liberty was granted to the Appellants to raise and argue on the following additional question:-

(iv) Whether the State of M. P. was a necessary party to the suit and in its absence, the suit was bad for want of necessary party before the Court ?

Question No. 1: - It Is not disputed that the Defendant/Appellant No. 1 is statutory Board incorporated under a special legislation. However, it is also admitted that the employees of the Board are neither government servants nor civil servants The learned Counsel for the Plaintiff Respondent has not pointed out nor placed before the Court if there were any rules or regulations framed governing the service conditions of the Board employees. Whether a declaratory decree reinstating the Plaintiff in employment could have been granted to the Plaintiff, is the core of controversy.

The Apex Court in *Vaish Degree College v. Lakshmi* AIR 1976 SC 888, at p. 897, laid down the law in the following words:-

.....a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists 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. This rule, however, is subject to three well recognised exceptions-(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law: and (iii) where a statutory body acts in

breach of violation of the mandatory provisions of the statute.

This decision has been affirmed in *Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others*, and reiterated in *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, and adverted to in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, at p. 1611. This position of law has been noted by the Apex Court recently in *Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another*, at para 17.

Vaish Degree College case (supra) has been re-affirmed by the Apex Court in *Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and others*,

As already noticed, the Plaintiff/Respondent being not a public servant, was not entitled to the protection of Art. 311 of the Constitution. It is nobody's case that the Plaintiff was a worker and the Defendants an industry so as to attract the applicability of the Industrial Law. Assuming it were so, the remedy of the Plaintiff/Respondent would have been before the Labour Court and not the Civil Court. Again, it is not the Plaintiff's case that the Defendant/Appellants had acted in breach or violation of the mandatory provisions of the statute. Indeed, as has already been stated, neither the Plaintiff nor any of the Courts below has relied on any provision of the statute to hold that there was any provision or statute protecting the employment of the Plaintiff or governing the enquiry proceedings against the Plaintiff. Though a casual reference has been made at the time of hearing before the Courts below to M. P. Civil Service (Classification, Control and Appeal) Rules, 1966, but it is beyond dispute that these Rules were not applicable to the Plaintiff, he being not a civil servant nor an employee of the State Government. It follows that a declaration as was sought for by the Plaintiff/Respondent and as has been granted by the Courts below, could not have been given. If at all the dismissal of the Plaintiff Respondent was wrongful, his remedy lay in seeking a decree of damages under the general law of master and servant.

The learned Counsel for the Plaintiff/Respondent tried to support the impugned decree by placing reliance on a division bench decision of this

Court in *Shivprakash Misra v. Sports Authority of India* 1989 MPJR HC 34. I have given my anxious consideration to that decision. It was the case of a probationer who was not discharged simpliciter but the order discharging him from service was passed on consideration of record stigmatising him. The Division Bench held that a citizen has a right to continue in public employment unless terminated by following reasonable procedure. That decision has no relevancy for the present case. Decisions of the Supreme Court referred to here in above were not placed before the Bench deciding the *Shivprakash Mishra's* case, apparently because the considerations and the points arising for decision in that case were different.

13. Question No. 4: -Section 29-A of the Act reads as under:-

29-A. Dissolution of Board.-(1) The State Government if it considers it expedient

or necessary so to do in the public interest may by notification direct that the board shall be dissolved from such date as may be specified in the notification and there upon the Board shall be deemed to be dissolved accordingly. (2) On and from the said date-(a) All properties, funds, and dues which are created in or liable by the Board shall vest in and be realised by the State Government.

(b) All rights, obligations and facilities (including any liability under any contract of the Board shall become the rights, obligations and liabilities of the State Government.

(c) All members shall vacate their office as members of the Board.

A bear reading of the provision shows that once the State Government has chosen to dissolve the Board, the Board becomes extinct and for all the practical purposes it is reincarnated in the State Government. Much before the institution of the suit, the Board had ceased to exist, is an admitted position. It was, therefore, necessary for the Plaintiff to have joined the State Government as Defendant to the suit. Simply because the Administrative Officer, designated as Managing Director of the Board, was joined as party to the suit, would not mean that the State of M. P. was joined as a party to the suit or was even substantially represented before the Court. The suit was filed against an entity which had ceased to exist. The Plaintiff should have complied with the provisions contained in Section 79 of C. P. C., which having not been done, the suit was bad from its very inception for non-joinder of necessary party to the suit.

Question No. 2:-In view of the finding recorded in the preceding paragraph, it follows as a necessary corollary to it that a notice u/s 80 C. P. C. should have preceded the institution of the suit.

Question No. 3:-In the plaint, as originally filed, there was no averment that the Plaintiff had served any notice u/s 80 C. P. C. before instituting the suit. An objection to the maintainability of the suit for want of notice u/s 80 C. P. C. was taken in the written statement filed on 4-8-1977. The Plaintiff then made an amendment in the plaint by introducing a plea in para 13 thereof that the Plaintiff had sent a letter on 2-8-1976 under certificate of posting which letter satisfied the requirement of notice.

At the stage of evidence, the Plaintiff tendered two documents in evidence namely copy of the notice (Ex. P/6) and a certificate of posting (Ex.P/7). On behalf of the Defendants, Hukumchand Jain, holding the post of Principal, the Khadi Gramodyog Board Training School, Indore appeared in the witness-box accompanied by record file of the case. He was the presenting officer at the enquiry held against the Plaintiff. He stated that no such notice was received by the Defendants.

The contents of the notice (Ex. P/6) itself betray a different story. This copy of the notice is dated 2-8-1976 that is the date on which certificate of posting (Ex. P/7) purports to have been issued by the post-office. However, the last but one

para of the notice states that on dissolution of the Board the Plaintiff had submitted a review petition on 2-8-1976 which was rejected on "4-12-1976". A draft incorporating the events upto the date of 4-12-1976 could not have been in existence and could not have been issued on 2-8-1976. This circumstances lends support to the contention raised by the learned Counsel for the Appellants that the document Ex. P/6 was a manufactured document, brought, into existence by ante-dating the same so as to meet the objection raised in the written-statement as to the want of notice u/s 80 C. P. C. In this background, the failure of the Plaintiff to serve the notice through Registered A. D. post also assumes importance. The Courts below have totally overlooked this material feature of the case and hence their findings holding that notice u/s 80 C. P. C. was issued by the Plaintiff and served on Secretary of the State becomes vitiated.

For the foregoing reasons, it is held that the judgments and decrees of the Courts below are vitiated and hence are liable to beset aside.

The learned Counsel for the Plaintiff/Respondent made an alternate submission that be be now permitted to join the State of M. P. as party to the suit in the event of this Court holding it to be a necessary party. For several reasons, the prayer cannot be allowed. An objection as to nonjoinder of State as necessary party to the suit was raised in the written statement filed on 4-8-1977 and yet the Plaintiff did not take care to remove the defect of non-joinder. A long period of 14 years has elapsed since then. If the State of M. P. was now permitted to be joined as party to the suit, the suit would be deemed to have been instituted against it now which would apparently be barred by limitation.

For the foregoing reasons, the appeal is allowed. Judgments and decree of the Courts below are set aside. The suit filed by the Plaintiff/ Respondent is directed to be dismissed. However, the parties are directed to bear their own costs through out. Counsel's fee as per schedule, if certified.