

(2002) 01 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Revision Petition No. 372 of 2000

Municipality

APPELLANT

Vs

Mohan Singh and Another

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2002) 5 WLN 558

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Heard learned Counsel for the parties, perused the memo of revision petition and the impugned order.

2. With the consent of learned Counsel for parties, the following documents are taken on record:

1. Office order No. 649 to 652 dated 10.1.1996 passed by Nagar Palika, Rajakhhera;

2. Copy of plaint of suit, out of which the revision petition arises;

3. Copy of order/letter dated 19.8.1996 of the office of Dy. Director, Local Bodies, Jaipur.

4. Copy of order dated 24.8.1996 of Nagar Palika, Rajakhhera issued under the signature of its Chairman and Executive Officer.

3. The facts of the case are that the plaintiff respondent No. 1 filed a suit for injunction, in which the prayer has been made:

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vxj nkSjku nkok ;k fdlh iwoZ vkns''k ds oknh dh Isok, lekIr dh tkos rks mldh Isok,-----fd;s tkus ds vkns''k izfroknhx.k dks fn;s tkos A

nhxj nknjlh djhus bUlKQ] oknh f[kykQ izfroknhx.k gks og Hkh vrk Qjek;h tkos] cM+h d`ik gksxh A

Alongwith the suit the plaintiff respondent No. 1 filed an application for grant of temporary injunction. This is a matter pertain to the termination of services of an employee. Learned trial Court has allowed the application and restrained the petitioner-defendant from terminating the services of plaintiff-respondent No. 1. This order came to be confirmed by the Appellate Court, Additional District Judge, Dholpur vide its order dated 16.11.1999. Hence this revision petition.

4. Under order dated 10.1.1996 the plaintiff-respondent No. 1 was appointed on temporary basis as Class IV. It was a purely temporary and adhoc appointment. Learned Counsel for the respondent No. 1 despite of repeatedly put by the Court has failed to show that it was a regular appointment of the plaintiff-respondent No. 1 made by petitioner-defendant. After following the Recruitment procedure as laid down in Rajasthan Municipalities, (Class IV) Services Rules. This appointment prima facie is not only de hors of recruitment rules aforesaid but also of Constitutional Provisions as contained in Article 16 of the Constitution of India.

5. This appointment has been objected by Director, Local Bodies, Rajasthan Jaipur and naturally as it is being prima facie an illegal appointment, it has rightly given direction to petitioner-defendant to terminate services of the plaintiff. Under the order dated 24.8.1996 the services of plaintiff-respondent were brought to end. The suit has been filed by plaintiff-respondent on 6.9.1996. From the prayer made in the suit itself, I am satisfied that the, plaintiff-respondent has not come up with clean hands. He was knowing well that his services are terminated, this also clearly fortify from the prayer made by the plaintiff in suit itself and still he had concealed this fact and obtained the orders from the Courts below.

6. The grant of relief under Order 39 Rules 1 & 2 CPC is discretionary and the conduct of plaintiff-respondent No. 1 is very important and relevant. It is not shocking that if he has not come up with clean hands, certainly he cannot be entitled for the grant of discretionary relief in his favour by the Courts. The learned Courts below have not correctly appreciated the law of temporary injunction, which has been laid down by the Hon''ble Supreme Court as well as by this Court in Service matters. In the matter where a specific plea has been taken by defendant-petitioner that services of respondent No. 1 has been terminated and copy of that order has also been reproduced, even if it is taken that the order is not served, it is hardly of any substance and justify the Courts to grant interim relief. By way of interim relief, in fact the Courts below have granted final relief in the suit. The service of the plaintiff-respondent prima facie de hors of the service rules and against the constitutional provisions. The Courts''

orders should not perpetuate illegality. The Courts should not go on sympathy and mercy because the appointment of plaintiff-respondent is prima facie illegal and no protection should have been granted, more so in exercise of their discretionary powers.

7. In the facts and circumstances of the case, I am satisfied that the plaintiff-respondent has no prima facie case in his favour. Leaving apart this aspect, otherwise also, no temporary injunction as prayed for can be granted to plaintiff-respondent as he will not suffer any irreparable injury, which cannot be compensated in terms of money. If ultimately the plaintiff-respondent succeeds in suit, relief of reinstatement with full back wages can be granted. In case the suit is decided against the plaintiff-respondent, possibly the Court may not order for refund of the payment, which he got as salary, it is public money and is being usurp by the plaintiff-respondent. In case he is allowed to continue in service, it cannot be recovered back on his failure in the suit. Leaving apart this fact, if we go by the dates of appointment and termination of his service he was there for a very short period. In these facts and circumstances of this case, the balance of convenience also does favour non-grant of temporary injunction in favour of the plaintiff respondent.

8. Last but no least, the grant of relief of the nature as granted in the present case, the Courts by way of temporary injunction have granted the relief to plaintiff which is nothing but a final relief in the matter, which ultimately the Court may or may not grant. The grant of final relief by way of temporary injunction or interim order has time and again been deprecated by their Lordships of Supreme Court. Reference here may have to following decisions:

1. Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another,
2. State of U.P. v. Visheshwar

As a result of aforesaid discussion, the revision petition succeeds and the same is allowed with cost. The impugned orders of the Courts below dated 16.11.1999 and 26.2.1997 are quashed and set aside.

9. Learned Counsel for the plaintiff-respondent prays that the suit of plaintiff may be ordered to be decided at the earliest. I find justification in this prayer made by learned Counsel for plaintiff-respondent No. 1.

10. It is service matter and pertains to low paid employee and priority in hearing of suit deserves to be given. Accordingly, the learned trial Court is directed to decide the suit within a period of six months from the date of receipt of certified copy of this order.