
(2010) 05 AHC CK 0378
In the Allahabad High Court
Case No : Second Appeal No. 835 of 2008

Ninua Nath

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 311
Specific Relief Act, 1963 — Section 14

Citation : (2010) 6 AWC 5731

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties.

2. By this second appeal, the Plaintiff Appellant has challenged judgment and decree dated 1.3.2001, passed in Civil Appeal No. 82 of 2000, passed by IInd Additional District Judge, Agra dismissing the appeal and confirming the judgment and decree dated 26.3.1984, passed by Munsif, Fatehabad in Original Suit No. 267 of 1979.

3. Counsel for the Appellant was to argue the matter on maintainability of the second appeal today. He has fairly placed a judgment dated 15.7.2008 rendered in Second Appeal No. 731 of 2008, Rallies India Limited and Ors. v. Gopalji Shukla, in which the Court considered the question regarding maintainability of the second appeal by a person belonging to the category of workmen under Industrial Disputes Act, 1947.

4. The Plaintiff-Appellant Ninua Nath was appointed as messenger/cash courier in Nunhai Branch of State Bank of India, Agra. He was suspended pending enquiry on the ground of committing theft of Rs. 100. In the departmental enquiry, he was found guilty, hence his services were terminated. The Appellant thereafter filed Original Suit No. 257 of 1979 in the court of Munsif, Agra with the prayer that he may be permitted to file the suit as an indigent person and sought the

relief of declaration that he may be declared to be in service of the bank and suit be decreed for Rs. 5,200.67 P. against the bank as his services had been wrongly terminated with mala fide intention. The trial court dismissed the suit. Appeal filed by him against the trial court judgment and decree, was also dismissed and hence this second appeal.

5. It appears that the Plaintiff Appellant was claiming continuance in employment of the bank on the basis of contract. Such contract of service is barred by Section 14 of the Specific Relief Act. Therefore, the suit was not maintainable u/s 9, Code of CPC as has been held in the case of Nandganj Sihori Sugar Co. Ltd., Rae Bareli and another Vs. Badri Nath Dixit and others, In the aforesaid case, the Apex Court laid down that a contract of employment cannot ordinarily be enforced by or against an employer and remedy available in such a case is either to file suit for damages or recourse to alternative remedy available as recognized exception to such a rule, i.e., (i) where a public servant is sought to be removed from service in violation of the provision of Article 311 of the Constitution ; (ii) where a worker is sought to be dismissed under the Industrial law and (iii) where the statutory body acts in breach of any mandatory provisions of the statute.

6. In the present case, since the Plaintiff Appellant is a workman of nationalised bank, he has an alternative and efficacious remedy under Industrial Disputes Act, 1947.

7. Counsel for the Appellant submits that as suit for declaration was not maintainable, and consequently this appeal is also not maintainable but in view of the judgment rendered in Nandganj Sihori Sugar Co. Ltd., Raebareli's case (supra), the Appellant may be granted liberty to raise an industrial dispute before the appropriate forum.

8. In the facts and circumstances of the case, the second appeal is dismissed as not maintainable. The Appellant is granted liberty to raise industrial dispute before concerned Labour Commissioner (Central) within a period of two months from today. On such application being filed, the Labour Commissioner (Central) concerned or any other competent authority, shall try to bring the parties to an amicable settlement of such industrial dispute. However, in the event if no amicable settlement is reached, the matter may be referred for determination to the appropriate labour court for decision on merits by giving benefit of period of pendency of suit and appeal for the purpose of limitation.