

(2003) 06 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Revision Petition No. 681 of 2001

Nirmala Verma and Others

APPELLANT

Vs

Fioz Mohammad

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 151
Constitution of India, 1950 — Article 227

Citation : (2004) 2 RLW 1110 : (2003) 4 WLC 352

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

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant; Mahendra Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Keshote, J.—Heard the learned counsel for the parties.

2. The fact of the case, in brief, are that the plaintiff respondent filed an application under Order 39 R. 2A of the C.P.C. against the Officers of the Municipal Corporation, Jaipur. In these contempt proceedings the plaintiff respondents filed an application u/s 151 of the C.P.C. and prayed therein to direct to those Officers to pay to him the salary. Under the impugned order the learned trial court directed these Offices to pay the amount of salary mentioned therein to the plaintiff respondent. It is further ordered that so long as he continues in service of the Corporation he shall be paid regularly monthly salary.

3. The plaintiff respondent filed the suit in the trial Court for permanent injunction against the defendant petitioners alleging therein that he was appointed on the post of Time Keeper on 3.2.1999 for six months on contractual basis. It is alleged that the Corporation is removing him from the service even before expiry of six months contractual period, the period for which he was given the appointment on contractual basis. In this factual backdrop, the prayer has been made for permanent injunction in the terms that the defendant petitioners

be restrained from removing him from the service before the period for which he was given contractual appointment.

4. Along with the suit the plaintiff respondent filed an application under Order 39 R. 1 & 2 of the C.P.C. On 16.7.1999 the learned trial court passed interim order to the effect that the plaintiff respondent shall not be removed from the post till the next date. On 4th of December, 1999, it is not in dispute, the learned trial court dismissed the application filed by the plaintiff respondent for temporary injunction. The learned trial court directed the Corporation to make the payment of the salary to the plaintiff respondent for the period from 3rd of February, 1999 to 4th of December, 1999. It is not in dispute that the order of the learned trial court has been complied with by the Corporation by paying the aforesaid amount to the plaintiff respondent vide Cheque No. 007229 dated 24.5.2000.

5. In the application filed under Order 39 R. 2A of the C.P.C. the prayer has been made for punishing the defendant petitioners for committing contempt of the order of the court dated 4.12.1999. The further prayer has been made that the defendant petitioners may be directed to pay to him to salary for the period from 3rd of February, 1999 to till date.

6. Reply to this application has been filed by the petitioner and in para No. 2 thereof it is mentioned that the amount of Rs. 5660/- has been paid on 24th of May, 2000. Thus amount has been paid after filing of this application i.e. beyond the period granted by the learned trial court for payment thereof under its order dt. 4.12.1999.

7. In the application u/s 151 of the C.P.C. filed on 31.8.2000 a prayer has been made for payment of the salary. In this application it is admitted by the plaintiff respondent that the Cheque of Rs. 5660/- has been give. In reply to this application it is stated that it was only a contractual service for a period of six months. After 28th of July, 1999 he did not work nor any work was taken from him. The learned trial court has not decided the application filed by the plaintiff respondent under Order 39 R 2A of the C.P.C. but under the impugned order this application filed u/s 151 of the C.P.C. in those proceedings has been decided and the order has been passed for payment of the salary to the plaintiff respondent for the period exceeding the period of contractual period of service.

8. The learned counsel for the plaintiff respondent raised a preliminary objection that this reviser petition is not maintainable. Truly speaking what it is contended by the learned counsel for the plaintiff respondent prima facie, appears to be correct but the learned counsel for the plaintiff respondent appears to be oblivious of the provisions of Article 227 of the Constitution of India.

9. The learned trial counsel I am constraint to observe, has passed this order totally contrary to what he has ordered earlier on 4.12.1999. In the application for grant of temporary injunction the learned trial court though, initially granted the ad-interim temporary injunction but finally under order dated 4.12.1999 the application filed under Order 39 Rule 1 & 2 of the C.P.C. has been dismissed. He

filed the suit with the grievance that the Corporation is dispensing with his services before completion of the contractual period. The learned trial court did not find any prima facie case in favour of the plaintiff respondent. The learned trial court accepted that the plaintiff respondent was appointed purely on temporary basis for a period of six months. The suit has been filed against the Corporation for permanent injunction restraining it from dispensing with the services of the plaintiff respondent before completion of the contractual period.

10. I find from the order of the learned trial court dated 4.12.1999 that the application filed for amendment of the suit to incorporate relief for continuation of his services beyond the period of contractual appointment has been rejected. Much before the time this order dated 4.12.1999 has been passed six months period of contractual appointment came to an end but the plaintiff non-petitioner continued to work upto 4th of December, 1999 under the ad-interim relief granted by the learned trial court. The plaintiff respondent worked with the Corporation beyond the period of contractual service under the interim order of the learned trial court till 4.12.1999 the date on which the temporary injunction application came to be rejected and thus accordingly, direction was given for payment of the salary for this period he worked. Thus direction for the payment of the salary for the period from 3.2.1999 to 4.12.1999 is justified in the facts of the case but I fail to see how a prayer made for the payment of the salary beyond 4.12.1999 is justified. Under the Order dated 4.12.1999 it is concluded by the learned trial court that beyond 4.12.1999 the plaintiff respondent has no right to work. Otherwise also it was purely a temporary appointment on contract basis for a fixed term and it comes to an end automatically by efflux of time unless term is extended. The plaintiff respondent failed to produce on record of the learned trial court or before this court any order of extension of period of his contractual service. In the suit after the order dated 4.12.1999, no question does remain of to pass any order in his favour for payment of the salary. Thus, the learned trial court has exceeded its jurisdiction in passing the impugned order. The learned trial court has passed this order contrary to its own earlier order dated 4.12.1999. Not only this the plaintiff respondent filed another contempt petition bearing No. 175/2001 and therein the prayer has been made for punishment to the Officers of the Corporation for committing the contempt of the order impugned in this revision petition.

11. The learned trial court has passed the order impugned in this revision petition to extend the benefits to the plaintiff respondent for which he is not entitled. The plaintiff respondent filed the suit to restrain the Corporation from dispensing with his services before the period of his contractual term i.e. the period of six months. The learned trial court has no jurisdiction to extend this contractual term of period, more so when the Corporation has not extended it.

12. The plaintiff respondent was given ad hoc appointment on contract basis for a period of six months. The fixed term appointment, it is to be stated at the cost or repetition, comes to an end automatically on the expiry of the period for which

it is made and no order of termination of service of the employee is called for. It is really shocking and surprising that the learned trial court has given the extension to the period of appointment which, by efflux of time, has already been come to an end. Though this revision petition is not maintainable, it is a case where in case the order of the learned trial court is allowed to stand, it will not only cause prejudice to the defendant petitioners but it will also occasion failure of justice to them. Apart from this, if such an order is allowed to stand it will be against the public interest also. A person who is given contractual appointment, is allowed to continue beyond the period of his term of contract, he will get the salary etc. by virtue of this order though for which he is not legally entitled.

13. In this view of the matter, I consider it to be a fit case where powers under Article 227 of the Constitution of India are to be exercised. In case the order of the learned trial court is not interfered with and set aside, grave injustice would be done to the Corporation and its Officers. Power under Article 227 of the Constitution of India is permissible to this Court to be exercised in a case of great dereliction of duties and flagrant abuse of the fundamental principle of law and justice where grave injustice is done if the matter is not interfered with. The order passed by the learned trial court is a clear case of great dereliction of duties and flagrant abuse of the fundamental principle of law and justice by the learned trial Court.

14. As a result of the aforesaid discussion the order dated 14.3.2001 of the learned trial court impugned in this revision petition passed in Application No. 37/2000 is quashed and set aside in exercise of the powers under Article 227 of the Constitution of India. The order dated 4.12.1999 has been complied with by the petitioner. Thus the contempt petition filed by the plaintiff-respondent does not survive and same is dismissed. Second contempt petition filed by the plaintiff-respondent for non compliance of the order impugned in this revision now also does not survive and same is dismissed. The learned trial court is directed to decide the suit within a period of three months from the date of receipt of the copy of this order.