
(1988) 04 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 117 of 1987

Palakole Cooperative Sugars Ltd. and Another

APPELLANT

Vs

P. Narsimha Raju and Others

RESPONDENT

Date of Decision : 26-04-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 94

Citation : (1988) 04 AP CK 0001

Hon'ble Judges : P. Kodan Daramayya, J

Bench : Single Bench

Advocate : S. Parvatha Rao, for the Appellant; P. Ramakrishna Rao, for the Respondent

Final Decision : Allowed

Judgement

P. Kodan Daramayya, J.—This batch of six revisions petitions raises an interesting question of law. It is admitted by both counsel that though the suits are different, the pleadings are identical and the question raised is the same.

2. The plaintiffs who are the employees of the first defendant-society filed six different suits challenging the proceedings initiated by the Management by issuing a notice on 2.12.1985 to conduct an enquiry on 11.12.1985 into their conduct. Pending these suits, a temporary injunction was sought under Order XXXIX Rule 1 CPC, not to conduct the proceedings of enquiry. The plaint proceeded to state that an enquiry into the conduct of the plaintiffs was already made on 16.2.1981 but the present enquiry initiated under the impugned notice, dated 2.12.1985 by the Management is wholly illegal, unjust and hence liable to be set aside by the Civil Court and pending adjudication, they sought a temporary injunction restraining the management from making the enquiry. The trial court granted an injunction as prayed for. Aggrieved by the said order of the trial court, dated 18.2.1986, the Society filed an appeal. The appellate court modified the order stating that the enquiry can be conducted by any person other than the third defendant, but the society is not entitled to take any action

on such enquiry till the disposal of the suit. Thus, it seen except an enquiry can be conducted as per the notice issued by the society, no action can be taken pending the suit. Against the order of the appellate court, the present revision petitions are filed.

3. Sri Section Parvatha Rao, contended that the Civil Court has no jurisdiction to interdict the disciplinary proceedings and the remedy of the plaintiffs is to seek redress either under industrial law or claim damages for wrongful termination. The management has inherent power to take disciplinary action and the Civil Court cannot interdict such proceedings. He further emphasized the fact that granting of an injunction when the Civil Court has no right to enforce the service constitutes abuse of process of the court.

4. This is refuted by the Learned Counsel for the plaintiffs saying that the court below on a careful consideration of the material came to the conclusion that the previous orders of enquiry are well founded and the present proceedings initiating a fresh enquiry is unjust and such course can be interdicted by the Civil Court.

5. The sole point for determination is whether the Civil Court can grant an injunction restraining the Management from taking a disciplinary action. I am clearly on the opinion that the court below has misdirected itself and the proceedings before it are clearly misconceived. It is fairly well-settled that the jurisdiction of the Civil Court in the case of contract of service is only to grant damages if there is a wrongful termination of service. In the absence of any constitutional embargo or a statutory provision, the Civil Court has no power to interdict the disciplinary proceedings. In fact it must be remembered that the proceedings under Order XXXIX are supplementary proceedings contemplated u/s 94 CPC. If the Civil Court cannot grant redress of reinstatement or enforcing the contractual service, it cannot grant the relief of injunction restraining the management from taking the action more so when the proposed action is only an enquiry into the conduct of the employee. The Civil Court has no right to enforce the contract of personnel service and the well recognised exceptions are noticed by the Supreme Court in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, :

From the two decision of this Court referred to above, the position in law is to at no declaration to enforce a contract of personnel service will be normally granted. But there are certain well recognised exceptions to this rule and they are: To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311, (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals, (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute.

6. Thus, it is seen except in the case of a constitutional right envisaged under Article 311 or the statutory prohibition the Civil Court has no power to redress

termination of contract of personal service. Such relief can be granted under the Industrial Law by a Labour or Industrial Tribunal if the employment is governed by such law. Barring these cases, the Civil Court has no power to interdict. When the Civil Court is not competent to set aside the order of termination of the service it cannot exercise the power to interdict the proceedings of disciplinary action. This view of mine is supported by the Bombay High Court in *Nanded Zilla Parishadv. Haji Mohd. Ibrahim* ILR 1978 (Bom) 186. Accordingly, I hold that the Civil Court has no jurisdiction to interdict the disciplinary proceedings when in particular the employment is not protected by the constitutional provision or his services are not protected by any statute. Vide: *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, . Further when the impugned proceedings before the Civil Court are not even final order of termination of service but only proceedings initiating an enquiry into the conduct the employees, the Civil Court has no jurisdiction to interdict those proceedings and the power of the Civil Court under Order XXXIX cannot be invoked as a supplementary proceedings to adjudicate the claim in the main suit.

7. If we apply the above principle to the present case, it is clear that the first defendant-society wants to make an enquiry against the plaintiffs conduct who worked as field-man. It is on the strength of their report some loans were distributed and their reports were found to be not in the interest of the society and the previous report of the officer given on 16.2.1981 is binding or not, and the second enquiry is well founded or not, it is not possible for the Civil Court to interdict these proceedings making a fresh enquiry if an action is taken it can be questioned either under the Industrial Law if the employees are governed by the Industrial Law, or before the Civil Court for damages if the action is found to be illegal. Viewed from any angle, the Civil Court has no jurisdiction to interdict the disciplinary proceedings sought to be taken by the management against their employees. In view of this irrespective of the merits of the contention of the employees the plaintiffs herein, I am satisfied that the discretion given by the lower appellate court even in modified form is wholly illegal and unsustainable.

8. In the result, the revision petitions are allowed and the applications filed by the plaintiffs restraining the defendant-society from taking disciplinary action in pursuance of the notice, dated 2.12.1985 shall stand dismissed. I make no order as to costs.