
(2000) 12 MAD CK 0118

In the Madras High Court

Case No : C.R.P. No. 3391 of 1999 and C.M.P. No. 19031 of 1999

Purushothaman

APPELLANT

Vs

The Head Master and Correspondent Sacred Heart High School

RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2000) 12 MAD CK 0118

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : K. Kannan, for the Appellant; A.K. Kumarasamy, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Purushothaman, the petitioner herein, has filed this Civil Revision Petition against the order of dismissal of an application praying for amendment of the plaint in I.A. No. 1192 of 1994 in O.S. No. 299 of 1990 on the file of the District Munsif Court, Gingee. The petitioner originally filed a suit for permanent injunction restraining the defendant/respondent from terminating his services from the respondent school. After filing of the written statement by the defendant it became known to the petitioner that the defendant took a stand that already the services of the petitioner were terminated by order dated 30.4.1990. Therefore, the petitioner was constrained to file an application for amendment of the plaint before the trial Court praying for declaration that the termination order dated 30.4.1990 passed by the defendant is null and void and also to pay salary to the plaintiff till the plaintiff is re-employed. On the objection raised by the defendant/respondent, the trial Court dismissed the application mainly on the ground that seeking amendment of the plaint with inordinate delay cannot be permitted, as it is barred by limitation. Hence, this revision.

2. Mr. Kannan, the learned counsel for the petitioner, would mainly contend that there was no bar of limitation for bringing an application with such pleading as

the petitioner was not definite while filing the suit that his services were terminated by order dated 30.4.1990.

3. Mr. A.K. Kumarasamy, the learned counsel for the respondent, in justification of the reasonings given by the trial court, would oppose the said contention and submit that the petitioner had admitted even in the plaint that he was informed about the termination. He would also point out that even in the written statement filed by the defendant, it was specifically averred that the services of the petitioner were terminated by order dated 30.4.1990 and as such, the amendment petition raising new cause of action would not be maintainable, especially after expiry of the period of limitation.

4. On going through the petition, typed set and other records, I am of the view that the contention urged by the counsel for the petitioner cannot be countenanced. It is clearly mentioned in the plaint, which was filed on 20.6.1990, that he was informed by the school authority on 4.6.1990 that his services were terminated on 30.4.1990 itself. The written statement filed by the defendant on 7.11.1990 would also clearly reveal the case of the defendant that the services of the plaintiff were terminated on 30.4.1990.

5. Under those circumstances, the petitioner, having come to know about the termination, ought to have filed a suit for declaration that the termination was not valid or at least, filed the application for amendment of the plaint immediately on coming to know about the stand of the defendant through the written statement filed on 7.11.1990. But, curiously, the present application has been filed under Order 6 Rule 17 seeking for the amendment of the plaint on 11.8.1994, after an inordinate delay of 4 years, allowing the period of limitation to expire.

6. In the affidavit filed along with the petition, the petitioner has never whispered any reason for such a huge delay. Moreover, the reason for the amendment also, in my view, may not be valid. That apart, if the amendment petition is allowed, it would not only circumvent the provision relating to the period of limitation, but also allow the party to create a new cause of action. This is not permissible under law.

7. As pointed out by the learned counsel for respondent, the decision reported in (1) Radhika Devi Vs. Bajrangi Singh and others, (2) T.L. Muddukrishanan and another Vs. Smt. Lalitha Ramchandra Rao, and (3) B.K.N. Narayana Pillai Vs. P. Pillai and Another, , amendment of the pleading seeking to take away the right of the opposite party acquired by bar of limitation cannot be allowed. In view of the above, I do not find any merit in this petition and accordingly, the same is dismissed. No costs. Consequently, C.M.P. No. 19031 of 1999 stands dismissed.