(1994) 01 KL CK 0015

In the High Court Of Kerala

Case No : S.A. No. 169 of 1090-C

Rachunathan APPELLANT

Vs

Fertilizers and Chemicals Travancore Ltd. RESPONDENT

Date of Decision : 28-01-1994

Acts Referred:

Citation : (1994) 1 KLJ 446

Hon'ble Judges : T.V. Ramakrishnan, J

Bench : Single Bench

Advocate : S. Parameswaran and K.N. Chandra Babu, for the Appellant; J.B. Koshy and Antony Dominic, for the Respondent

Judgement

T.V. Ramakrishnan, J.—Plaintiff in O.S. No. 277 of 1985 before the Munsiff''s Court, Parur is challenging in this Second Appeal the dismissals of his suit and the appeal filed against such dismissal before the Sub Court, Parur as A.S. No. 156 of 1987. The sole Defendant in the suit, namely, the Fertilizers and Chemicals Travancore Limited is the Respondent in the appeal.

2. The relevant facts are not in dispute and can briefly be stated thus: Plaintiff was selected by the Defendant as a management trainee as per Ext. A-1 letter dated 15th November 1979. At the time of joining the service of the Defendant as a management trainee, Plaintiff executed Ext. A-2 bond dated 1st December 1979 undertaking to undergo training for two years and thereafter to serve the company for five years. Clause (3) of Ext. A-2 bond provided that if the Plaintiff falls or neglects or refuses to complete the training period and to serve the company for five years, he should pay to the company liquidated damages of Rs. 10,000. At the time when the Plaintiff executed Ext. A-2 bond; Ext. A-5 circular issued by the Central Government was in force. The said circular was to the effect that enforcement of bonds executed by the employees of a public enterprise at the time of joining service should not be insisted upon in case executants of such bonds joins a Central Government/State Government, Quasi Government organisations or Anr. public enterprise subject to the condition that

a fresh bond is executed by the employee to ensure that he serves the new employer for the balance of the original bond period. Plaintiff while he was undergoing the training directly applied for the post of Grade A Officer in the Reserve Bank of India on 29th January 1981 pursuant to Ext. A-4 notification dated 10th January 1981. After a written examination and interview Plaintiff was selected and appointed as Grade A Officer in the Reserve Bank of India. Meanwhile, as per Ext. A-3 Plaintiff was placed in the Managerial Cadre of the company after successful completion of the training period On receiving the appointment order, Plaintiff submitted his resignation letter before the Defendant on 29th April 1982 requesting to relieve him with effect from 22nd May 1982. Defendant insisted that the Plaintiff should deposit an amount of Rs. 10,000 as liquidated damages as a condition for accepting the resignation. Such payment was insisted upon mainly on the basis of the terms of the bond and a circular dated 23rd May 1981 issued by the Central Government regarding enforcement of bonds executed by the employees of public enterprises marked in the suit as Ext. A-18. Plaintiff accordingly deposited Rs. 10,000 on 7th May 1982 under protest. Suit has been filed for return of the amount so deposited with interest at the rate of 12 percent per annum from the date of deposit till realisation.

3. In the suit, Plaintiff has inter alia contended that though he has executed Ext. A-2 bond, the terms of the said bond cannot be enforced against him in this case in view of the enabling provisions in Ext. A-5 circular. Ext. A-18 circular which came into force long after the submission of his application to the Reserve Bank of India cannot be applied in his case so as to deny the benefit of Ext. A-5 circular by which himself and the company was bound at the time when he applied for the new job in the Reserve Bank of India

4. As against the above case, it was the case of the Defendant that in the light of the terms of the bond executed by the Plaintiff, the Plaintiff is bound to pay liquidated damages to the extent of Rs. 10,000 if he wants to resign and leave the company before the expiry of the period fixed in the bond executed by him. As a trainee under the company, the Plaintiff has violated the conduct rules while directly submitting his application for the post of Grade A Officer in the Reserve Bank of India He could have applied for the post only through proper channel. As per Ext. A-18 circular which was in force at the time when the Plaintiff submitted his resignation, the Defendant is entitled to enforce the conditions of the bond and insist upon payment of liquidated damages as a condition for accepting the resignation from the company before completion of the period of five years agreed to be completed as per the bond executed by him. Since the Plaintiff has violated the conduct rules and the provisions in Ext. A-18 circular, the Defendant is entitled to enforce the terms of the bond before allowing him to resign from the service of the company before the expiry of five years period after completion of training. Learned counsel for the Respondent has contended that since the Plaintiff has not submitted his application through proper channel as required by the conduct rules which binds him and Ext. A-18 circular, the Defendant is justified in insisting upon the Plaintiff paying liquidated damages as

a condition for accepting the resignation submitted by the Plaintiff before the expiry of five years after the completion of the training period. Both the courts below have upheld the contention of the Defendant and dismissed the suit.

5. The short question that arises for consideration and canvassed before me by the parties to the appeal is whether the Defendant was justified in insisting upon payment of an amount of Rs. 10,000 by the Plaintiff as liquidated damages as a condition for accepting the resignation submitted by the Plaintiff in the facts and circumstances of the case. Two incidental questions may also arise for consideration. The first is whether Ext. A-18 circular can be applied in the case of the Plaintiff. The second question is whether the Plaintiff can be denied the benefit of Ext. A-5 circular on the ground that he has violated one of the conduct rules which required him to forward applications for jobs outside the company through proper channel alone. The relevant provision in Ext. A-5 reads as follows:

It has been now decided that the enforcement of bond should not be insisted upon in the case of an employee of a public enterprise who joins the Central Government, State Government, Quasi Government Organisation or Anr. public enterprise, subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period.

It is the above paragraph in Ext. A-5 which was replaced by Ext. A-18 circular by the following paragraph:

It has been now decided that the enforcement of the bond should not be insisted upon in the case of an employee of a public enterprise who having applied through proper channel during the currency of the bond joins the Central Government, State Government, Quasi Government Organisation or Anr. public enterprise, subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period.

6. There is no dispute about the fact that the Plaintiff was ready and willing to execute a fresh bond as required by Ext. A-5 and Ext. A-18 circulars in favour of the Reserve Bank of India. In fact the Plaintiff has executed a bond for 5 years in favour of the Reserve Bank of India. As such, the plaintiff was entitled to claim the benefit of Ext. A-5 circular and be relieved from the service of the company without effecting any payment as liquidated damages but for the objection raised by the company that he has violated the conduct rules and has not fulfilled the requirements of Ext. A-18 circular.

7. How far the above objections are sustainable in law is the question. It is an admitted fact that at the time when the Plaintiff submitted his application for job in the Reserve Bank of India, Ext. A-5 circular alone was in force. Ext. A-5 is a circular admittedly binding on the Defendant-company. By the time Ext. A-18 circular was issued, Plaintiff has already submitted his application and appeared for the written examination and the interview also. It is thereafter on 23rd May 1981 Ext. A-18 circular was issued by the Central Government restricting the benefit of Ext. A-5 circular only to those cases where applications are submitted

through proper channel. From the very nature of the restriction introduced bv Ext. A-18 circular, it can have application only prospectively and the case of the Appellant cannot be decided by applying the provisions in Ext. A-18 circular. The Appellant cannot be expected to comply with the requirement of Ext. A-18 circular issued long after the date on which he had submitted his application for the job in the Reserve Bank of India. At the relevant time the only requirement to be satisfied by the Plaintiff for claiming the benefit of Ext. A-5 circular which was then in force was the execution of a fresh bond in favour of the new employer as contemplated in that circular. There was no requirement in Ext. A-5 circular that for seeking benefit of that circular one should apply through proper channel. In the circumstances, it has to be held that Ext. A-18 circular can have only prospective operation and the provisions therein cannot be applied to the case of the Appellant as such. The claim put forward by the Appellant in that view is liable to be decided without reference to Ext. A-18 circular. If that be so, the only circular which applies to the case on hand is admittedly Ext. A-5 and a decision has to be taken with reference to the provisions in the said circular.

8. The learned Counsel for the Respondent has, however, advanced a further contention that even if it is held that Ext. A-18 circular has only a prospective operation, the requirement that the application for jobs outside the company should be submitted only through proper channel was embodied in the conduct rules and the new circular has only incorporated that condition as one of the requirements to enable the employees to avoid their liability under the bond. As such, even if it is held that Ext. A-18 has no application to the case on hand, the Plaintiff is not entitled to claim the benefit of Ext. A-5 circular as he has violated the conduct rule which insists submission of application for jobs outside the company only through proper channel. Though the contention is ingenious, I find that for more than one reason the same cannot be accepted as legal. In the light of Ext. A-5 circular which was in force at the relevant time enforceability or otherwise of the bond was bound to be decided solely based upon the terms and conditions of the said circular. I say so because it was a circular issued specifically for the purpose of regulating the enforceability of bonds executed by the employees of public sector undertakings in general. The two-fold object or purpose of the circular was to safeguard the interest of the public enterprises controlled by the Central and State Governments and at the same time to allow the employees working in one public enterprise to migrate to other public enterprises of their choice to improve their prospects in future life. These objects were sought to be achieved by allowing employees to migrate from one enterprise to Anr. without insisting upon satisfying the conditions of the bond executed by them at the time of joining the service subject to certain conditions imposed with a view to safeguard public interest and the interest of the public enterprises as a whole. In fact Ext. A-5 circular was one issued restricting the scope of a more liberal circular of the year 1966 which permitted the employees to migrate from one public enterprise to the other without fulfilling the terms of the bonds executed by them. It was when the Government of India was informed

that inspite of the 1966 circular, employees of the public enterprises who got seeded for All India Services or for Central/State Government services through competitive examinations held by Union or for services under Semi-Government Organisations/public enterprises en the basis of tests/interviews, were being railed upon to pay damages to get themselves released from the bonds executed by them that Government of India issued Ext. A-5 circular. The main purpose sought to be achieved by issuing Ext. A-5 circular was to safeguard the public interest as well as the interest of the employees by giving them freedom to migrate from one public enterprise to Anr., if they are prepared to work for the new employer for the balance period for which they have executed the bond in favour of the original employer. Being a circular issued for the purpose of restricting or regulating the enforce-ability of the bonds executed at the time of joining the service of a public enterprise, with a very laudable object the said circular must be treated as a circular wholly and solely governing the enforceability or otherwise of the bonds executed in cases like the present one. The conduct rules cannot either extend or restrict the scope and effect of Ext. A-5 circular issued specifically for prescribing conditions subject to which alone a public enterprise can enforce bonds executed in its favour by its employees. Accordingly, it has to be held that even if the Plaintiff had violated the conduct rules regarding submission of application for a job in the Reserve Bank of India, still that may not have the effect of disentitling the Plaintiff; from getting the benefit of Ext. A-5 circular. Such a benefit conferred on the employees independent of the conduct rules cannot be deprived solely for the reason that one of the conduct rules has been, violated by the employee.

9. Similarly, the contention must also fail for the reason that a violation of the conduct rules may at best only lead to an action for its violation with penal consequences as provided in the Conduct Rules. It cannot have any effect on the bond executed by the employee except to the extent specifically provided in the bond. There is no case for the Defendant that one of the consequences or punishment prescribed for submitting applications otherwise than through proper channel is payment of liquidated damages to any extent, leave alone Rs. 10,000. In the absence of any stipulation in the bond making the employee liable for payment of liquidated damages for violating the rule regarding submission of application for outside jobs through proper channel alone, the Plaintiff cannot be legally compelled to pay any amount as liquidated damages as a condition for accepting his resignation as has been done in this case.

10. Moreover, there is also no case that action was taken against the Plaintiff for violating the conduct rules and that it is as a punishment the Plaintiff was called upon to pay the liquidated damages of Rs. 10,000.

11. In the light of the above discussion, it has to be held that in the facts and circumstances of the case, the Defendant was not justified in enforcing the terms of Ext. A-2 bond and insisting upon payment of Rs. 10,000 as liquidated damages as a condition for accepting the resignation of the Plaintiff. As such, it

has to be held further that the Defendant is bound to refund the amount of Rs. 10,000 deposited by the Plaintiff. In view of the above findings, it is not necessary to consider the various other contentions raised in the memorandum of appeal.

12. However, I do not think that in the facts and circumstances of the case, a public enterprise like the Defendant in this case should be made liable to pay interest on the amount found liable to be refunded for taking up a particular stand based upon circulars issued by the Central Government. That is especially so in this case where both the courts below have upheld the said stand as legal and justifiable. In the circumstances, I would disallow the prayer for granting interest on the amount of Rs. 10,000 from the date of deposit till this date. However, I would allow the Plaintiff to realise the amount decreed with 12 per cent interest per annum from today till date of realisation in case the Defendant fails to discharge the decree liability on or before 31st March 1994. The Plaintiff is also allowed to realise the costs of the suit in the trial Court.

In the result, the decrees passed by the courts below dismissing the suit will stand set aside. The Plaintiff is granted a decree for realisation of an amount of Rs. 10,000 from the Defendant. Defendant is allowed to discharge the decree liability without interest on or before 31st March 1994. If the Defendant fails to discharge the decree liability either in full or in part on or before 31st March 1994, the Plaintiff will be entitled to realise the amount outstanding as on 1st April 1994 with interest from today till date of realisation. The Plaintiff is also granted a decree for costs in the suit. The appeal is thus allowed. The parties are directed to Lear their respective costs in the First Appeal and in the Second Appeal.

