
(2011) 03 DEL CK 0541

In the Delhi High Court

Case No : Regular Second Appeal No. 135 of 2004 and CM No. 1445 of 2010

Shri Ram Kumar Gupta

APPELLANT

Vs

The Canara Bank and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2011) 03 DEL CK 0541

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sunil Malhotra, for the Appellant; Ravi Sikri and Vaibhav Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The present appeal has impugned the judgment and decree dated 06.1.2004 which has endorsed the finding of the trial judge dated 7.9.1999 whereby the suit filed by the Plaintiff i.e. Ram Kumar Gupta seeking declaration to the effect that he be treated to be in continuation of service w.e.f. the date of his termination order i.e. the letter dated 18.6.1984; with further prayer that a decree in the sum of Rs. 13,218.57 (arrears w.e.f. 18.6.1984 to 30.11.1984 i.e. the date of the filing suit) along with subsistence allowance be paid in his favour had been dismissed.

2. Plaintiff was appointed as a typist/clerk in 1960 in Pratap Bank Limited, Chandani Chowk Branch. The said bank was amalgamated with the Lakshmi Commercial Bank Ltd (LCB). Plaintiff became an employee with the LCB on 13.6.1975. Plaintiff was promoted to the post Junior Officer at Tri Nagar Branch at a monthly salary of Rs. 1365/- per month; he was on probation for six months which was completed on 13.12.1975. On 12.12.1975 an alleged fraud took place in the branch where the Plaintiff was posted. FIR was lodged; Plaintiff was placed under suspension on 24.12.1975. Thereafter without holding any enquiry, the services of the Plaintiff was terminated. This was a gross violation of rules of

natural justice. LCB was a statutory body and without an enquiry the Plaintiff could not have been terminated.

3. In the written statement, these facts were controverted. It was denied that LCB was a statutory body. Contention was that the employment of the Plaintiff was contractual; he had been terminated by giving him a one month notice; there was no violation of natural justice. Plaintiff was not entitled to any relief.

4. On the pleadings of the parties on 18.11.1987 the following six issues were framed:

1. Whether the suit has not been properly valued as alleged in preliminary objection No. 2 in the W.S. OPD

2. Whether the suit of the Plaintiff is liable to be dismissed against the Canara Bank as alleged in the preliminary objection No. 3 in the W.S. OPD

3. Whether the plaint is liable to be rejected as alleged in preliminary objection No. 4 in the W.S. OPD

4. Whether the Plaintiff is entitled to the declaration as prayed for. OPP

5. Whether the Plaintiff is entitled to the amount claimed. OPP

6. Relief.

5. On the basis of the oral and documentary evidence led before the trial judge suit of the Plaintiff was dismissed. Trial judge relied upon the judgment of the Apex Court report in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, . to conclude that in view of the guidelines laid down by the Supreme court, the Defendant is not a statutory body as it is not the creation of any statute. It further held that even after the amalgamation of the LCB with the Canara Bank there was no liability on the Canara Bank as Plaintiff was not an employee of the transferor bank on the said date. Suit of the Plaintiff was accordingly dismissed.

6. In appeal this finding was endorsed. The first appeal court was of the view that the Defendant did not fall into any of the three exceptions created by the Supreme Court in the judgment of Vaish Degree College (supra); suit for specific performance of a contract of personal service was not maintainable.

7. Learned Counsel for the Appellant has vehemently urged that both the Courts below had erred in applying the ratio of the judgment of Vaish Degree College (supra) in the present case. Attention has been drawn to the scheme of amalgamation. It is pointed out that after the scheme of amalgamation of the LCB with the Canara Bank which had been effected on 23.8.1985, the transferee bank i.e. the Canara Bank had agreed to take over all its liabilities including contingent/future liabilities. The scheme had in fact been implemented with retrospective effect i.e. w.e.f. 24.4.1985; the Canara Bank was bound to honour its commitment and re-instate the Plaintiff in its services; dismissal of the

applicant without holding an enquiry was a gross violation of natural justice. To support these arguments reliance has been placed upon S.K. Poddar Vs. Chairman, Punjab National Bank, Bhikaji Cama Place, , M.N. Prasad Vs. Board of Directors of Rayalaseema Grameena Bank and Another, as also Jagdish Mitter Maini Vs. Canara Bank and Another, It is pointed out that even in the judgment of Vaish Degree College (supra), the Court had deemed it fit to grant compensation to the applicant although the relief of enforcement of a contract of a personal service had been disallowed. It is pointed out that applying the ratio of the said judgment the applicant is entitled to compensation in the alternate. It has lastly been pointed out that the provident fund dues of the Appellant have also not since been paid to him a direction be issued to the Defendant corporation to pay the said dues. Gratuity is also payable.

8. Arguments have been countered. It is pointed out that a suit in the present form i.e. a suit for seeking declaration which is in fact an enforcement of a contract of personal service is not maintainable and this proposition is fully covered by the judgment of Vaish Degree College (supra) on which both the two fact finding courts have relied. It is further pointed out that the provident fund dues of the Plaintiff had never been agitated by him till 2005; admittedly the service of the Plaintiff had been terminated in 1984; he has woken up to ask for his dues after 25 years; that apart on specific direction of this Court after verification it has been submitted that no dues in fact are payable to the applicant.

9. This is a second appeal. It has been admitted and on 03.3.2011 the following Substantial question of law has been formulated:

Whether the finding in the impugned judgment dated 06.1.2004 relying upon the ratio of the judgment of the Apex Court reported in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, . as also on other counts is not a perverse finding. If so, its effect.

10. Certain facts are undisputed. Plaintiff had been appointed as a typist/clerk in the erstwhile bank i.e. the Pratap Bank Limited in 1960. The Pratap Bank Limited was merged with the LCB. LCB had thereafter amalgamated with the Canara Bank; this was vide scheme of amalgamation dated 23.8.1985. Plaintiff had been promoted to the post of Junior Officer at the Tri Nagar Branch on 13.6.1975. He had completed his six months probation period on 13.12.1975. The fraud had taken place in the branch of the Plaintiff on 12.12.1975 pursuant to which he was suspended on 24.6.1975. He was finally terminated from his services in 1984. Admittedly no enquiry had been conducted before termination of his services.

11. The plaint discloses that the present suit is a suit for declaration and recovery of Rs. 13,218.57; in the prayer clause a decree of declaration has been sought that the Plaintiff be deemed to be continued in service w.e.f. the date of termination i.e. 6.8.1984; arrears of salary have also been claim in the aforenoted sum.

12. The Apex Court in Vaish Degree College (supra) had held as follows:

A contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions - (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute. Per majority, the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the Plaintiff cannot claim it as of right. The relief has to be granted by the Court according to sound legal principles and *ex debito justitiae*. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the Court must keep in mind the well settled principles of justice and fair play and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum.

In this case the services of the principal of the Vaish Degree College were under question. Plaintiff had prayed that the Defendant university be restrained from interference with his duties as principal of the college. In this context the fine distinction between an institution created by a statute and an institution although not created by a statute but governed by certain statutory provisions for the proper maintenance and administration of the institution had been culled out. Apex Court relying upon the observation of the C.J. Lord A.N. Ray in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, had *inter alia* held as follows:

It is therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

Relief had accordingly been denied to the Plaintiff in this case. A sum of Rs. 21,000/- which had already been deposited by the Appellant under the orders of the Court had been directed to be paid over to the applicant.

13. In the present case both the fact finding Courts after examination of the scheme of amalgamation had held that the

(i) Defendant was not covered by the provision of Article 311 of the Constitution of India.

(ii) services of the Plaintiff was not governed by the Industrial Law and

(iii) Defendant was not a statutory body.

In this view of the matter by rightly applying the ratio of the Vaish Degree College (supra) it had been concluded that a contract of personal service cannot be enforced. There is no infirmity in this finding. It calls for no interference. Reliance by the learned Counsel for the Respondent on Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, also endorses this proposition. This judgment had also relied upon the proposition of law laid down in Vaish Degree College (supra) to hold:

It is a well-settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. An employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two. This general rule of law is subject to three well-recognized exceptions: (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the industrial law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute.

14. The judgment of S.K. Poadar (supra) is inapplicable; this was on the issue that after the Hindustan Commercial Bank had merged with the Punjab National Bank, whether the PNB was liable to dispose of the statutory appeal which has been filed by the employee before the HCB. The judgment of M.N. Prasad (supra) was a case of no evidence before the disciplinary authorities, for the said reason the said order was set aside in a writ petition. How and in what manner the ratio of the said judgment is application is totally unexplained. The judgment of Jagdish Mitter Maini (supra) had held that the employee was entitled to benefit of continuity of service till the conclusion of the disciplinary proceedings. This judgment is also inapplicable.

15. The alternate submission of the learned Counsel for the Appellant that in the event that this Court does not find favor with the submission of the Appellant that he should be re-instated the relief of granting an adequate compensation be sympathetically considered. This argument also has no merit. This Court has already held that a suit of the nature filed by the Plaintiff was not maintainable. The relief of declaration and injunction is a discretionary relief. This has been disallowed. In the Vaish Degree College (supra) an amount of Rs. 21,000/- had been lying deposited in the court under its orders; this amount was found to be a

fair and just amount to be released in favour of the applicant. It was in the peculiar facts of that case. No special consideration has been made out by the Appellant for the grant of any compensation. The prayer in the plaint also did not seek any compensation. This submission is accordingly rejected. Gratuity is also not payable.

16. There is no merit in the appeal. It is dismissed.

CM No. 1445/2010

17. The Appellant has claimed release of provident fund. Admittedly this claim was made for the first time in the year 2005 i.e. after 24 years of the date of his dismissal which was w.e.f.18.6.1984. An application to the said effect had been made before the Court. The number of the provident fund had not been furnished by the Appellant. Department, however, had been instructed to inspect the record and inform the Court if any provident dues are payable to the Appellant. On 07.1.2011, it had been recorded on behalf of the Respondent that inspection of the record revealed that the name of the applicant R.K. Gupta is not available in the record and no amount is payable to him. The Respondent, on affidavit, has so stated. Application being without any merit is dismissed