
(1986) 06 GAU CK 0010
In the Gauhati High Court
Case No : Civil Revision No. 11 of 1986

Shri Sishir Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 03-06-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 10, 115

Citation : (1986) 2 GLR 83

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : A.K. Bhowmick, for the Appellant; A. Chakraborty, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—The Plaintiff-Petitioner was appointed as Assistant Teacher by the Director of Education, Tripura and since 1977 he was serving in the said capacity at Joynagar High School, Agartala. On 3.5.84 he was transferred by the Director of School Education to Kamalchhara High School, Sonamura, representation was submitted against the said transfer but the Petitioner was released on 31.1.85 from the said School. Hence a suit was filed on 16.4.85 before the learned Munsiff, Sadar, Agartala challenging the said transfer and a petition for temporary injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure, for short, "Code of Civil Procedure" was also filed and an ex-parte interim order was obtained on 17.4.85. However, on 30.7.85 after hearing both the parties the learned trial court rejected the prayer for injunction. In appeal the learned Additional District Judge, West Tripura, Agartala passed an order on 16.9.85 directing the maintenance of status quo as on 12.9.85. Ultimately on 16.12.85 the appeal was dismissed and hence the present petition u/s 115 CPC along with a petition for stay was filed before this Court. The State filed a counter affidavit against the petition for stay.

2. The Plaintiff-Petitioner challenged the transfer order on three grounds namely,

that the Director of School Education was not competent to issue the impugned order of transfer as the Petitioner was appointed by the Director of Education, that the order of transfer was arbitrary and that the said order was issued in violation of the guidelines framed by the Government of Tripura regarding transfer of employees. In the counter affidavit of the State Government it has been stated that Director of School Education was competent as the Office of the Director of Education was bifurcated and the Director of Education was re-designated as Director of School Education, that the transfer being a condition of service the said transfer order was validly made by the competent authority and that as the learned lower courts did not commit any mistake of fact or law there is no occasion for invoking the revisional jurisdiction of this Court.

3. Mr. A.K. Bhowmick, learned Counsel for the Petitioner contended that it is a fit case for exercising revisional jurisdiction of this Court and in support of his contention he placed reliance on Kshitish Chandra Bhowmick AIR 1985 Gauhati 55. In my opinion this decision is not relevant for the instant case as it is not a case u/s 10 Code of Civil Procedure.

4. In Manick Chandra Nandy Vs. Debdas Nandy and Others, the Hon"ble Supreme Court considered the scope of Section 115 CPC and held that the exercise of revisional jurisdiction is confined to questions of jurisdiction. While in a first appeal the Court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts for those of those subordinate court. Their Lordships further held that a plea of limitation concerns the jurisdiction of the Court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the Court. The Hon"ble court observed:

In determining the correctness of the decision reached by the subordinate Court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate Court has decided such a collateral question rightly, the High Court cannot, however, function as a Court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate Court unless any such finding is not in anyway borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.

5. Now I have to consider the case in the light of the law laid down by the Apex court in Manik Chandra Nandy (supra).

6. The principles governing grant of injunction are well settled and for obtaining an order of injunction a person has to satisfy the court on the following points: namely; that he has a prima facie case to go to trial, that the balance of

convenience lies in his favour and that he will suffer irreparable injury if the injunction is refused. In *Protiva Debi and Others Vs. Zilla Parishad, Howrah*, it was held that exercise of jurisdiction in breach of provisions of Order 39, Rules 1 and 2 CPC makes it a case where the court had exercised its jurisdiction if not illegally at least with material irregularity and the order granting injunction would be open to challenge in revision. With respect I agree with the law laid down by the Calcutta High Court and hold that the High Court would be justified in exercising its revisional power if the injunction was granted ignoring the above principles as the order of the lower court would amount to exercising its jurisdiction with material irregularity.

7. From the judgment of the learned trial court I find that the learned Court on the basis of materials available on record considered all the three points and held that the Plaintiff-Petitioner could not make out a *prima facie* case; that the balance of convenience was in favour of the Defendants and that the Plaintiff-Petitioner would not suffer any irreparable loss. The learned Court gave a clear finding that the Plaintiff-Petitioner would not suffer any financial loss as transfer was a condition of service. The learned court was of the opinion that the transfer order could not be treated as *malafide* or arbitrary as it was issued for the sake of administrative reasons and for the interest of the students. I need not re-assess the evidence on record. Nothing has also been brought to my notice to show that the findings of the learned lower court were not supported by the evidence on record or manifestly contrary to evidence or palpably wrong. I am satisfied that in refusing to grant injunction, which was a matter of discretion of the learned lower court, the learned Munsiff acted in a judicial manner.

8. Mr. Bhowmick, learned Counsel for the Petitioner has drawn my attention to the judgment of the learned lower appellate court to show that the learned court dismissed the appeal without considering the findings of the learned trial court on all the three points, I have gone through the judgment and I find that the learned lower appellate court came to the definite finding that the Plaintiff-Petitioner would not suffer any irreparable loss or injury if the impugned order of transfer was not stayed. I am, therefore, of the opinion that the contention of Mr. Bhowmick has no substance.

9. On perusal of the judgment of the learned lower appellate court I find that the learned court came to the finding that granting of injunction would be redundant as the Plaintiff-Petitioner was released from the School on 31.7.85 i.e. before the order for maintaining status quo as on 12.9.85 was passed. In *Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others*, it was held that "injunction is granted only to restore the status quo and not granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted". Relying on the above decision the same view was also expressed in *Ramchandra Tanwar AIR 1971 Raj 292*. I respectfully agree with the law laid down by Calcutta and Rajasthan High Courts and I am further of the opinion that same principle will also be applicable in respect of pending appeal. Before the status quo order

was passed by the learned lower appellate court the Plaintiff-Petitioner was released from his post and as such I am of the view that the learned lower appellate court was justified in refusing to grant injunction as it would have amounted to establishing a new state of things that is, bringing back the Plaintiff-Petitioner to the post from which he was released.

10. From what has been stated above, I hold that this is not a fit case for exercising jurisdiction u/s 115 CPC and as such the petition is liable to be dismissed, which I hereby do.

11. In the result, the petition is dismissed. No costs.