

(1980) 04 CAL CK 0005
In the Calcutta High Court
Case No : F.A. No. 90 of 1979

Siten Bose

APPELLANT

Vs

Anandabazar Patrika (P) Ltd. and Others

RESPONDENT

Date of Decision : 11-04-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, 9
Industrial Disputes Act, 1947 — Section 33C(2)
Specific Relief Act, 1963 — Section 21, 34, 42
West Bengal Payment of Subsistence Allowance Act, 1969 — Section 2(f)

Citation : 84 CWN 545

Hon'ble Judges : S.M. Guha, J;N.C. Mukherjee, J

Bench : Division Bench

Advocate : Sudhis Das Gupta, R.K. Ghosh and Partha Sarathi Sengupta, for the Appellant; Sailendra Bhusan Bakshi and Kalyanmay Sengupta, for the Respondent

Final Decision : Allowed

Judgement

S.M. Guha, J.—This appeal is directed against the judgment and decree passed by Shree S. R. Roy, Judge, Bench 12, City Civil Court, Calcutta, dismissing the suit filed by Shri Siten Bose against Ananda Bazar Patrika (P) Ltd. and others for declarations and permanent injunction. The facts of the case relevant for our purpose may, in brief, be stated as follows :

The plaintiff had been working for gain as Proof Reader in the Department of Hindusthan Standard under defendant No. 1, having been appointed as such on or about 3rd May, 1966. The plaintiff was guided by the certified Standing Orders of the defendant no. 1 and the rules framed under the Central Act 45 of 1956. He was duly confirmed in the regular scale of payment for working Journalists, Group IV of "A" Class Newspapers under the said Act.

2. On or about 28th August, 1971, while going to his place of work the plaintiff was arrested by the police on suspicion. This was duly intimated by the plaintiff to the defendant nos. 1 and 2. Thereafter being released on bail on 5.1.1972 he

got himself medically treated and after recovery reported for duty on 10th January, 1972. Thereafter, he had to apply for leave again due to ill health with effect from 12.1.1972 and after recovery from his illness he reported for duty on 26.4.72, but defendant nos. 1 and 2 wrongfully and illegally did not permit him to join. Thereafter, defendant no. 4 issued him a charge-sheet dated 10th June, 1972 and he was asked to appear before defendant no. 4 on 14.6.1972 for showing cause why he should not be dismissed from service for his alleged unauthorised absence for the period from 28.8.1971 to 9.1.1972 and from 12.1.72 to 24.5.1972. In compliance thereof the plaintiff showed cause in writing on 14.6.1972.

3. By his letter dated 15.6.1972 defendant no. 4 intimated the plaintiff that a domestic enquiry would be held against him to be presided over by the defendant no. 3. According to the plaintiff, the holding of the alleged enquiry was illegal and there was also no scope for any such enquiry and that the charge-sheet submitted against him was also illegal, inoperative and invalid.

4. On 8th August, 1973 the plaintiff commenced the suit for declarations that he was still in service of the defendant no. 1, that the purported charge-sheet was mala fide, inoperative and void and for a further declaration that the purported suspension order was illegal, void and inoperative and that the purported enquiry by defendant no. 3 was illegal and invalid; and for permanent and mandatory injunctions.

5. The suit was contested by the defendants on a joint written statement. It was asserted that defendant no. 1 being the employer had right to start disciplinary proceeding and to suspend the plaintiff pending enquiry. It was further pleaded that as no enforceable legal or contractual right was violated, the plaintiff was not entitled to any relief in the suit and the suit as framed was not maintainable.

6. On trial the learned trial Judge held that in the present suit the plaintiff having prayed for a declaration that he was still in service and was entitled to draw full pay, allowance etc. was not entitled to a declaration that he was still in service and such prayer, according to the learned Judge, was totally misconceived. As to the prayer for declaration that the impugned suspension order was illegal, void and inoperative and also the enquiry which was being held against him to investigate into the charges, the learned Judge observed that in his opinion the plaintiff had no remedy far less to speak of any relief from the Civil Court of the nature as prayed for. The plaintiff was under suspension pending a domestic enquiry and was drawing his subsistence allowance and it was well settled that an order of interim suspension could be passed against the employee while an enquiry was pending into his conduct even though there was no such term in the contract of employment or in the rules. It was observed by him that the alleged right of the plaintiff originated in or flowed from a contract and such a right could not form the subject-matter of a declaration u/s 34 of the Specific Relief Act, 1963. Thus the suit was dismissed.

Being aggrieved by the said judgment and decree of dismissal the plaintiff has come up in appeal.

7. Mr. Sudhis Dasgupta, the learned Advocate for the appellant while assailing the judgment of the learned Lower Court points out at the outset that the plaintiff would be satisfied only with the declaration that the purported suspension of the plaintiff was illegal, void, inoperative and invalid and not binding on the plaintiff. He made it clear that he would not press any other point.

8. Under the Standing Orders for working Journalists framed by Ananda Bazar Patrika (P) Ltd. -- habitual absence without leave for more than ten consecutive days would be a misconduct and a working Journalist may be suspended during the period of any enquiry against him and an order of suspension shall be in writing and may take effect immediately on delivery to the working Journalists. Thus such a Journalist may be suspended during the pendency of an enquiry against him. But in this case the plaintiff challenged the very order of suspension. According to Mr. Dasgupta the order of suspension having not been done in accordance with the rules, was illegal and the employee would be entitled to the benefits, as if he was in service. Reliance is placed by Mr. Dasgupta on the decision of a Division Bench of this Court in *Ashoka Marketing Ltd. vs. Ranada Sundar Paul*, reported in 1977 Lab. I. C. 1615. It is also argued by Mr. Dasgupta that the Civil Court is the only forum wherein an employee can challenge an illegal and invalid order of suspension. He refers to the decision of a Division Bench of Allahabad High Court in the case of *The Workers India Match Co. Ltd. vs. Rameshwar Prasad*, reported in 1971 Lab. I.C. 1447. As to the jurisdiction of the Civil Court it is observed by their Lordships that it is not barred in relation to a suit by an industrial worker for declaration that his dismissal was illegal especially when the matter of dismissal had not acquired the character of an industrial dispute. A suit by an industrial employee for declaration that his dismissal is void on the ground that it is in contravention of Standing Orders is not barred either by section 21 or section 42 of the Specific Relief Act. If the rights of the parties are based on the contract of service entered into between them, the power of section 21 is attracted but if they are controlled by statutory obligations such as are created by Standing Orders which override the terms of the contract of service, the case enters the realm of law and section 21 is not attracted. It is further held that a suit to have an act done in contravention of a statute pronounced void and (c)f no effect is not barred by section 42.

9. Mr. Sailendra Bhusan Bakshi, the learned Advocate for the respondent, on the other hand, contends that u/s 33C(2) of the Industrial Disputes Act a Civil Court has no jurisdiction to entertain a suit of the nature filed by the plaintiff but it was only the Labour Court which can go into the question in controversy between the parties. It is contended by him that whether an order of suspension was legal or not could be enquired into by a Labour Court, as the plaintiff being a journalist was governed by section 33C(2) of the Industrial Disputes Act. In reply it is pointed out by Mr. Dasgupta that a point involving validity or otherwise of the

order of suspension would be outside the speedy remedy contemplated by section 33C(2) of the Industrial Disputes Act. Such an important question, according to him, could not be expected by Labour Court to deal with in a proceeding u/s 33C(2). Reference is made to the decision in Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, . It is held that the right to the benefit which is sought to be computed must be an existing one that is to say already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. The Labour Court has only jurisdiction to interpret an award or settlement on which workmen's right rests. Benefit provided by statute or scheme made therein falls within section 33C(2). Subsequently, it is held by the Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, that a proceeding u/s 33C(2) of the Industrial Disputes Act is a proceeding, generally, in the nature of execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. As to the validity of order of suspension according to the Supreme Court, it falls outside the scope of section 33C(2) as the question is not one which the Labour Court could be expected to deal with in a proceeding u/s 33C(2).

10. In this case the question whether the alleged order of suspension was legal or valid rested on the interpretation of certain documents or papers. Such a controversy in our opinion, could not be referred to an industrial tribunal. Again the question whether an order of suspension is valid or not, is not apparently an industrial dispute. It is rightly pointed out by Mr. Dasgupta that such a dispute could not be referred to an industrial tribunal as an industrial dispute.

Thus we would hold in agreement with Mr. Dasgupta that it is not the Labour Court but the Civil Court which has jurisdiction to entertain a suit of such a nature.

11. Mr. Bakshi defending the judgment of the learned Lower Court, also argues that the present suit would be barred under the provision of section 34 of the Specific Relief Act, 1963. Mr Dasgupta at once points out that such a plea was not taken in the trial Court. With reference to the decision in Mst. Rukhmabai Vs. Lala Laxminarayan and Others, , it is contended that a plea u/s 42 (section 34) of the Specific Relief Act should be raised at earliest time. Mr. Dasgupta also relies on the decision in Duttatraya Ram Rao Chorghade vs. Sakunalabai, reported in AIR 1956 Nag 95, wherein it is held that the defendant cannot make out a new case in appeal and call upon the Court to refuse the plaintiffs the relief of declaration and dismiss her suit.

12. On merit that such a suit would not be barred u/s 34 of the Specific Relief Act, Mr. Dasgupta cites the decision in the case of Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others, . It is held therein that

section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have power to grant such a decree independently of the requirements of the section. It follows, therefore a suit by the plaintiff worshipper for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of section 42 of the Specific Relief Act, 1899. It is further held by their Lordships that a declaration of this character, namely, that the compromise decree is not binding upon the deity is in itself substantial relief and has immediate coercive effect. A declaration of this kind falls outside the purview of section 42 of the Specific Relief Act and will be governed by the general provisions of the CPC like section 9 or Order 7 Rule 7.

13. Mr. Bakshi on behalf of the respondent distinguishes the case referred to by Mr. Dasgupta from the one in hand. It is contended that in that case since the worshipper did not exercise the deity's power of suing to protect its own interest, they are not entitled to recover possession of the property improperly alienated by the Shebait but they can be granted a declaratory decree that the alienation is not binding on the deity. But in the present case according to Mr. Bakshi, the plaintiff could have sought for other reliefs" besides one for declaration that the order of suspension was illegal, inoperative and invalid and not binding on the plaintiff. We cannot be in agreement with Mr. Bakshi because of the fact that the order of suspension has already taken place and the plaintiff has nothing to prevent and as such no prayer for consequential relief would arise. It is contended that the plaintiff could as well make prayer for recovery of arrears of salary. Undoubtedly, the plaintiff has not done so. It has already been found that the cognizance of the suit by the Civil Court has not been barred either expressly or impliedly. We have also found that the suit as framed is of civil nature, and as such the Civil Court would have jurisdiction to try the Suit. In this case the defendants assert that the plaintiff has been debarred from joining his duties under an order of suspension which is disputed by the plaintiff as invalid one. Thus the plaintiff is not in a position to claim further relief than a bare declaration sought for. The plaintiff cannot ask for reinstatement in service, as he claims to be still in service. He also need not claim arrears of salary etc. because such relief will follow from the declaration sought for. Again it is held by their Lordships of the Supreme Court in the case reported in Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others, that section 42 (corresponding to section 34 of the present Act) is not exhaustive. Moreover it is also held by Gujrat High Court that the section has no application to a suit for declaration that a Government order is unlawful and void-- Vohara Abbasali Mahomadalli Lakhawala Vs. The State of Gujarat, .

14. It is also contended by Mr. Bakshi that the plaintiff cannot challenge the order of suspension taking advantage of subsistence allowance during the period of suspension. The plaintiff, according to Mr. Bakshi, cannot approbate and reprobate at the same time. Reliance is placed on the decision of Nagubai Ammal and Others Vs. B. Shama Rao and Others, . It would appear from the record that

during the pendency of the suit the plaintiff made a prayer without prejudice to his rights and reliefs sought for in the suit, making the defendant liable for payment of subsistence allowance, It would not stand to reason that the plaintiff would be debarred from challenging the order of suspension because on his prayer the Court allowed him subsistence allowance during the pendency of the suit. Thus, the point raised by Mr, Bakshi is without any merit.

15. Now let us come to the merit of the case namely, whether the plaintiff was placed under suspension by a legal and valid order of suspension. The case of the plaintiff is that he went to the office to join his duty on 26.4.1972 on submitting an application supported by a fit certificate. The defendant nos. 1 and 2 wrongfully and illegally obstructed him and prevented him to join his duty on that day without showing any reason whatsoever and similarly on subsequent dates. Thereafter, the plaintiff submitted representations on 24.5.1972 and 2.6.1972. But only on 10.6.1972 the defendant sent a letter purported to be charge-sheet asking the plaintiff to appear on 14.6. 1972 at 4 P: M. at the enquiry proceeding on the same day. The plaintiff is also said to have sent a registered notice dated 14.5. 1973 through his Advocate demanding arrears of pay and allowance etc. In reply to it the defendant NO. 2 sent a reply dated 7. 6. 1973 to the said Advocate in which he for the first time stated that the plaintiff was charge-sheeted on 10. 6. 1972 and pending enquiry was also suspended. It is stated by the plaintiff that defendant nos. 1 and 2 having kept illegally the plaintiff away from office without any reason whatsoever since 26. 4. 1972 were attempting to take the plea of purported suspension to avoid the consequences of their illegal action in the above circumstances the plaintiff wanted a declaration that the purported suspension of the plaintiff was illegal, inoperative and invalid and not binding on the plaintiff.

16, The letter dated 10th June, 1972 written by [ho defendant to the plaintiff is annexure "A" to the plaint. It is a reply to the letter written by the plaintiff on 24.5.1972 and 2.6. 1972. It is stated therein that the management has decided to hold an enquiry regarding plaintiff's absence from 28. 8. 1971 to 9. 1. 1972 and then from 12. 1. 1972 to 24. 5. 1972 on the result of which the question of allowing him to join his duties would be Considered According to Mr. Bakshi this letter dated 10th June, 1972 was in fact, an order of suspension with effect from 10. 6. 1972 This letter does not state with effect from what date the plaintiff was placed under suspension. It only states that on the result of the enquiry the question of allowing the plaintiff to join his duties would be considered. Mr. Baksh then refers to section 2(f) of the West Bengal Payment of Subsistence Allowance Act, 1969. Under it suspension means an interim decision of an employer as a result of which an employee is debarred temporarily from attending his office and performing his function in the establishment where he is employed. Undisputedly, the plaintiff was being debarred from attending his duties since 26.4.1972. Thus, in fact, the plaintiff was debarred from attending his office long before 10.6.1972 under which the decision of the employer is said to be communicated. Again there was nothing to show that the Personal Manager, who wrote the letter dated

10th June, 1972 was authorised to do so by the decision of the employer. Mr. Bakshi puts in the resolution dated 25.11.72 of the Directors' meeting wherein all the charge-sheet and suspension orders issued by the Supervisor hence before were ratified and confirmed.

17. According to Mr. Dasgupta such subsequent ratification could not affect the rights of the plaintiff who was not a party to such deliberation. In support of his argument he relies on the decision of Glaxo Laboratories (I) Ltd., Aligarh vs. Glaxo Staff Association 1974 Lab. I.C. 765. It is held therein that if the rights of third parties are affected, the principal's ratification of the Agent's act cannot validate the action which was initially without Any authority. Accordingly, we are of the opinion that the letter dated 10.6.1972. purporting to be an order of suspension having been issued initially without any authority must be held to be illegal, invalid, inoperative and not binding on the plaintiff.

18. In the result, the plaintiff-appellant succeeds. The appeal is accordingly allowed but considering the circumstances without costs. The judgment and decree passed by the learned Court below is set aside. The plaintiffs suit is decreed in part. The plaintiff would be entitled to a declaration that the purported suspension of the plaintiff was illegal, void, inoperative and invalid and not binding on the plaintiff. Oral application for leave for appeal to the Supreme Court is made and is rejected.

N.C. Mukherji, J.

I agree.