

(1996) 05 AHC CK 0161
In the Allahabad High Court
Case No : Second Appeal No. 922 of 1990

Smt. Satyawati Goswami

APPELLANT

Vs

Smt. Uma Rani and Others

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80
Constitution of India, 1950 — Article 311
Specific Relief Act, 1963 — Section 14
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16F, 16FF, 16GG

Citation : (1996) AWC 612 Supp

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Janardan Sahai, G.N. Verma and A.N. Verma, for the Appellant; M. Mishra, V.S. Saxena and Pradeep Verma, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—This second appeal has been filed by the Defendant No. 4-- Smt. Satyawati Goswami against the judgment and decree dated 17.6.1990 of Civil Judge, Mathura.

2. The brief facts are that the Plaintiff Smt. Uma Rani filed a suit for declaration that it may be declared that she is permanent Lecturer in Social Science in Sukhada Girts Inter College, Brindaban District Mathura with effect from 5.12.1975 and that the Defendant Nos. 1 to 3 be directed to fix the salary of the Plaintiff in the scale of Lecturer.

3. The case of the Plaintiff Smt. Uma Rani was that she was appointed Lecturer in Sukhda Shiksha Mandir Girls Inter College, Brindaban, District Mathura on 5.12.1975 and this appointment was approved by Divisional Inspector of Girls College, Agra on 28.1.1976. She drew her salary in the Lecturer grade up to 15.11.1976. In view of the 5th Removal of Difficulties Order, the Plaintiff became permanent Lecturer. The 5th Removal of Difficulties Order came into force on

24.9.1976, and according to para 3 of the said order the Plaintiff will be deemed to have been appointed in substantive capacity w.e.f. 5.12.1975. The Manager of the Institution Defendant No. 5 illegally without any reason terminated the Plaintiffs aforesaid services on 16.11.1976 and appointed the Appellant-Smt. Satyawati Goswami-Defendant No. 4, a teacher in L. T. grade in the said College, as Lecturer. It was alleged that Smt. Satyawati Goswami was never selected and appointed in accordance with the Act and the Rules nor approval of her appointment was sought from the Divisional Inspector of Schools (Girls). It is also alleged that Smt. Satyawati Goswami did not complete 5 years in L.T. grade hence she was not entitled to be appointed as Lecturer. The Plaintiff made representation to the authorities and ultimately on 1.2.1983 she was told that nothing can be done in her case hence after serving a notice u/s 80, CPC she filed a suit.

4. The suit was contested by the Defendants 1 and 2 on the ground that the Plaintiffs services were terminated on 16.11.1976 and she was never appointed on permanent basis. Smt. Satyawati Goswami was appointed on 16.11.1976 as ad hoc Lecturer and that the Plaintiff is not entitled to the benefit of Order No. 5 of Difficulties Removal Order dated 27.11.1976. It was also pleaded that because no appeal was filed by the Plaintiff in the Department she is not entitled to any relief.

5. In a separate written statement Defendants 4 and 5 also contested the suit and alleged that the Plaintiff was appointed on ad hoc basis on 5.12.1976 for 6 months as Lecturer and that the said appointment terminated on 15.11.1976. It was also pleaded that the suit is barred by limitation. The Plaintiff was appointed on 1.1.1977 again in the L.T. grade and she was drawing salary in this grade hence the suit is barred by estoppel.

6. The trial court dismissed the suit but the First Appellate Court reversed the judgment and decree of the trial court and decreed the suit.

7. In this appeal at the time of admission, no substantial question of law was framed. In the memo of appeal 7 substantial questions of law have been framed. But in my opinion, only question Nos. 2, 3, 4 and 6 can be treated as substantial questions of law.

8. Learned Counsel for the parties were heard at length. At first the learned Counsel for the Appellant argued that the suit is not maintainable hence it should have been dismissed by the two courts below. The learned Counsel for the Respondent, on the other hand, contended that this plea was neither raised in the written statement nor in the memo of appeal nor any substantial question of law was formulated, hence no permission can be granted to argue on this plea.

9. I have gone through the written statement of Defendants 4 and 5. in para 14, it is pleaded that the suit of the Plaintiff is not legally maintainable. Where was thus plea in the written statement that the suit is not legally maintainable. Issue No. 6 was also framed by the trial court to the same effect. Question No. 6

formulated in the memo of appeal has a little confusion and it is only to the effect that the suit is not maintainable being barred by limitation. In view of the aforesaid pleadings permission can be granted to the Appellant to argue on maintainability of the suit. Even u/s 100, Code of Civil Procedure, the High Court can grant permission for reasons to be recorded in writing to argue any other substantial question of law arising in the second appeal. For the aforesaid reasons permission has been granted to the Appellants learned Counsel to be heard. Heard at length on the maintainability of the suit.

10. In view of the aforesaid discussion question No. 6 formulated in the memo of appeal has to be dealt from two angles. It is to be seen whether the suit is barred by limitation. The appellate court has rightly held that the cause of action for filing the suit accrued on 1.2.1983 when the Plaintiff was told by the authorities that nothing can be done in her matter. The suit was filed on 20.4.1983. It was thus a suit which was filed within limitation and it cannot be dismissed being barred by time. This plea has, therefore, no substance.

11. The next point to be determined is whether the suit is legally maintainable or not. Learned Counsel for the Appellant argued that in view of Section 14(b) of the Specific Relief Act, the suit is not maintainable because no specific performance of contract of personal service can be granted. Several cases were cited by the learned Counsel for the Appellant in support of his contention namely Ravi Roadways Vs. Asia Bi and Others, and AIR 1980 SC 1422. The leading case on the subject is the decision of the Supreme Court in Executive Committee of Vaish Degree College v. Laxmi Narain 1976 Lab IC 576. It was held by the Supreme Court that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists. An employee after having been removed from service cannot be deemed to be in service against the will and consent of the employer. It was, further held that this rule, however, is subject to three well-recognised exceptions:

1. Where a public servant is said to be removed from service in contravention of provisions of Article 311 of the Constitution of India.
2. Where a worker is sought to be reinstated on being dismissed under the Industrial Law, and where a statutory body acts in breach of the statute.
3. Where a statutory body acts in breach or violation of the mandatory provisions of the statute.

12. Learned Counsel for the Appellant vehemently argued that except in the aforesaid three cases contract of personal service cannot be specifically enforced. No further contended that exceptions 1 and 2 are apparently not applicable in the Instant case. According to him exception No. 3 is also not applicable because the Managing Committee of an educational institution is not a statutory body and even if termination order passed by the Executive Committee or by the Committee of Management is in violation of mandatory provisions of the statute,

the decree for specific performance cannot be granted. After giving anxious consideration to the above contention, it is held that the argument cannot be accepted. The reasons are that in the first place the suit is not for specific performance of contract of personal service. in the second place, the contract alleged to have been entered by the management with the Plaintiff is not a contract of personal service nor a personal contract. Thirdly, It is also not a case where the Plaintiff has been out of service and after dismissal she wanted declaration that she should be deemed to be in continuous service. On the other hand, she still continues in service in the L.T. grade. Consequently, it cannot be said that it is a case where the courts are going to impose a teacher against the wishes of the employer and to reinstate such teacher. Further, there is no agreement of contract between the Plaintiff and the management. The appointment of the Plaintiff is regulated by statutory provisions and in terms, of the statute the appointment of a teacher is a statutory appointment. The service conditions of the teachers are governed by the Statutory Rules. The Managing Committee are under obligation to discharge the public duty to act in accordance with the Statutory Rules while dealing with the teachers.

13. In subsequent decisions the Supreme Court has always distinguished a situation where the statutory agreement is there or there is a statutory appointment. In *Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora*, , the services of teachers were terminated in violation of provisions of the U.P. Intermediate Education Act. It was held by a Division Bench of the High Court that the writ petition of the Petitioners was not maintainable. The Supreme Court allowed the appeal and declared that the Appellants continue to be in service of the College and are entitled to all the benefits flowing from this declaration including the salary and allowances as If there was no break in service.

14. In *Rajendra Prasad v. Kayastha Pathshala* AIR 1987 SC 1644, the second appeal challenging the order of suspension passed against the Plaintiffs was dismissed on the ground that such declaration would tantamount to enforcing a contract of personal service. The Supreme Court set aside the judgment on the ground that the suspension of the Plaintiff was in violation of the mandatory provisions of the Act.

15. In *Integrated Rural Development Agency Vs. Ram Pyare Pandey*, , the Supreme Court reaffirmed the explanation carved out in *Nandganj Sihori Sugar Co. Ltd., Rae Bareli and another Vs. Badri Nath Dixit and others*, .

16. It is thus apparent that the Supreme Court has clearly carved out an exception to the general propositions laid down in the *Executive Committee of Vaish Degree College* case (supra) where a private body has acted in violation of statutory provisions. The exception, therefore is that generally where statutory body acts in breach or violation of mandatory provisions of the Statute, the specific performance can be ordered. But Statutory body is not confined to body created under the Statute but also to a body which has acted in violation of

statutory provisions.

17. There is a clear and distinct demarcation between statutory body and non-statutory body. A body is said to be a statutory body when It is created under some Statute. A non-statutory body is one which is not created by any Statute. A non-statutory body may be private body. A private body may employ a servant of Its volition and dismiss the same provided such private body is not governed by any Statute. On the other hand, If a private body whose actions are regulated by Statute and which is to act according to statutory rules. It cannot terminate the services of the employee arbitrarily. A private body is governed by the provisions of the statute and being under obligation created under some Statute, cannot be permitted to function arbitrarily. If such private body acts arbitrarily, its actions are covered within the exception No. 3 aforesaid.

18. In view of this exception, if the Committee of Management or Executive Committee which is not expressly a statutory body but a private body has acted in violation of statutory provisions, the court can grant specific performance. The Executive Committee or Committee of Management has to act in accordance with the statute. The appointment of teacher is to be made in accordance with the provisions of the statute and not on the sweetwill of the management. If such appointment is contrary to the provisions of the Act and the Rules and the termination is also in violation of the Act and the Rules, declaration as well as specific performance can be ordered.

19. In Sachidanand Dubey and Ors. v. Committee of Management 1996 Lab IC 341, the same view was taken by this Court and the exceptions so interpreted was likewise interpreted.

20. In the instant case, the main relief was declaration that the Plaintiff is permanent Lecturer with effect from 5.12.1975 on the allegation that she was appointed in accordance with the Statute and was entitled to statutory benefits and that her termination order was illegal and appointment of another teacher on the same post was also illegal. Such declaration can be granted in the civil court in view of exceptions explained and interpreted above. The suit is, therefore, maintainable and It cannot be dismissed being not maintainable.

21. I do not find force in the contention that the suit is not maintainable rather a writ petition should have been filed. The averments in the plaint certainly make out the case to be suit of civil nature within the definition of Section of CPC and such suit is not barred by any statutory law or law laid down by the Supreme Court. If such a suit is not barred by law, it could be entertained by the civil court and the Plaintiff could not be compelled to file a writ petition.

22. It was also contended that damages should have been claimed and not declaration. This contention also cannot be accepted. Declaration was the proper remedy and if the declaration is granted, consequential benefits will follow, namely, the Plaintiff may be entitled to salary and allowances in the Lecturer grade and thus there would be no necessity for the Plaintiff to claim damages.

For the reasons given above, it is held that the suit is maintainable.

23. The next question for consideration is whether the lower appellate court committed error in conferring benefits of 5th Removal of Difficulties Order to the Plaintiff and the next allied question is whether the provisions of Section 16GG were not applicable to the case of the Plaintiff-Respondent. In my opinion, the findings of the lower appellate court on this point are perfectly in accordance with law and require no interference. Certain dates are material to test the correctness of the above finding. Admittedly, the Plaintiff was appointed on 5.12.1975 as Lecturer in Social Science. It is not disputed that the Plaintiff possessed requisite qualification for the post. It is also not in dispute that there was clear and substantive vacancy against which the Plaintiff was appointed. It is said that the appointment was ad hoc appointment and it ended on 16.11.1976. It is thus admitted that upto 15.11.1976, the Plaintiff continued to serve as Lecturer in Social Science.

24. Section 16GG of U.P. Intermediate Education Act, 1921 provides that notwithstanding anything contained in Sections 16E, 16F and 16FF, every teacher of an institution appointed between August 18, 1975 and September 30, 1976 (both dates inclusive) on ad hoc basis against a clear vacancy and possessing prescribed qualifications or having been exempted from such qualifications in accordance with the provisions of this Act, shall, with effect from the date of commencement of this section, be deemed to have been appointed in a substantive capacity, provided such teacher has been continuously serving the institution from the date of his appointment up to the date of commencement of this section.

25. This section came into force with effect from 21.4.1977. It is thus clear that the Plaintiff was appointed on ad hoc basis as Lecturer between 18.8.1975 and 30.9.1976, La, on 5.12.1975. Her services were terminated on 16.11.1976. This break in service did not take place between 18.8.1975 and 30.9.1976. Of course, this break in service occurred between 15.11.76 and 21.4.1977 but this break has to be Ignored in view of the Explanation to Section 16GG of the Act which provides that the period during which any break in service of a teacher has occurred between the date of his ad hoc appointment and the date of commencement of this section for any reason not arising out of his misconduct or his own volition shall be disregarded. Admittedly, the Plaintiffs services were not terminated on the ground of her misconduct or her own volition. As such, this period of break has to be ignored. During the period of break, in view of the proviso to the Explanation of Section 16GG, the Plaintiff may not be entitled to salary and allowances between 16.11.1976 to 21.4.1977. It is thus clear u/s 16GG of the Act that by operation of law the Plaintiff will be deemed to have been appointed in substantive capacity and there remains no force in the contention that the appointment was ad hoc or temporary. Section 16GG was, therefore, rightly applied by the lower appellate court. The services of the Plaintiff could not be terminated. A division Bench of this Court in Durga Shanker

Dixit v. Marwari Vidyalaya Inter College and Ors. 1984 ACJ 528, has also taken the same view that such teacher shall be deemed to continue in service and his services could not be terminated.

26. Similarly, the benefit of 5th Removal of Difficulties Order issued on 27.11.1976 was also rightly granted by the lower appellate court. Under Clause III of this order if a teacher appointed prior to June 1975, with approval of the District Inspector of Schools, continued till 15.11.1976, he would be treated as a teacher appointed in substantive capacity. Therefore, by this order, the services of the Plaintiff were not only continued but the same became substantive.

27. Besides this, in replication para 7, it is mentioned that in her letter dated 13.7.1977 addressed to the District Inspector of Schools, the Principal Smt. Prabha Sharma, opposed the promotion of the present Appellant Smt. Satyawati Goswami and supported the case of the Plaintiff-Respondent. In Para 9 of the replication, it is mentioned that in Writ Petition No. 6732 of 1978 Uma Rani v. State of U.P. decided on 20.3.1980, it was held that the appointment of Uma Rani shall be deemed to have taken place on 5.12.1975 as Lecturer in Social Science. In para 12 of the replication, it is pleaded that the Manager of the College, namely, Defendant No. 5 filed an affidavit in the Supreme Court on 3.2.1982 in which he admitted that the Plaintiff was appointed as Lecturer on 5.12.1975 in substantive capacity.

28. For the aforesaid reasons, it can hardly be said that benefit of 5th Removal of Difficulties Order was wrongly granted to the Plaintiff. It was also contended that since the Plaintiff Uma Rani and Smt. Satyawati Goswami both were granted L.T. grade under the orders of the Mandaliya Balika Vidyalaya Nirikshika, Agra and further because the said order contained in Annexure 1 to the rejoinder-affidavit was not challenged, the suit is not maintainable. This contention also cannot be accepted because it was rightly urged from the side of the Respondent that the said telegram communicating the said order was in the nature of interim order and it need not have been challenged and failure to challenge this order cannot debar institution of the suit.

29. No other point was pressed. The appeal is devoid of any merit and is bound to fail.

The appeal is hereby dismissed with costs.