

(2000) 05 AHC CK 0178
In the Allahabad High Court
Case No : Second Appeal No. 1604 of 1990

Swatantra Kumar Singh

APPELLANT

Vs

Gorakhpur Kshetriya Gramin Bank and others

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 12, 141, 226, 311
Gorakhpur Kshetriya Gramin Bank Staff Service Regulations, 1980 — Regulation 10(2), 8(2), 9
Industrial Disputes Act, 1947 — Section 2(A), 2(K)
Limitation Act, 1963 — Section 14
Regional Rural Banks Act, 1976 — Section 30, 30(2)
Specific Relief Act, 1963 — Section 14
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 2, 6, 6(1)

Citation : (2000) 3 AWC 2354 : (2000) AWC 2354 : (2000) 3 UPLBEC 2024

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Rakesh Dwivedi, Ashok Bhushan and B.P. Mishra, for the Appellant; Sharad Verma, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—This appeal was preferred against the Judgment and decree dated August 20, 1990 passed by the learned Additional Civil Judge, Gorakhpur in Civil Appeal No. 147 of 1987 reversing the Judgment and decree dated April 8, 1987 passed by Additional Munsif, 7th Court, Gorakhpur in Original Suit No. 575 of 1983. It was decreed and then on appeal it was remanded and thereafter, the said order dated April 8, 1987 passed decreeing the suit. The appeal was allowed only on the question of maintainability on the ground that it was barred u/s 6 of the U. P. Public Services (Tribunal) Act, 1976.

2. Mr. Ashok Bhushan, learned counsel for the appellant had contended that an employee under the Regional Rural Bank is not a public servant within the meaning of Section 2 (b) of the U. P. Public Services (Tribunal) Act, 1976 and as

such, the suit cannot be held to be barred in view of sub-section (1) of Section 6 of the said Act. Mr. Ashok Bhushan had relied on a decision in the case of Prathama Bank, Head Office, Moradabad, through its Chairman Vs. Vijay Kumar Goel and Another, , In support of his contention wherein it was held that an employee of a Regional Rural Bank governed by the Regulation framed thereunder is not a public servant,

3. Mr. Sharad Verma appearing on behalf of the respondent, however, did not address the Court on the said question. On the other hand, he had raised certain other question which will be dealt with at a later stage.

4. So far as the first point raised by Mr. Ashok Bhushan is concerned, it appears from the decision in the case of Prathama Bank (supra) which had dealt with Sections 6 and 2 (b) of U. P. Public Services (Tribunal) Act, 1976 and had held that an employee of Regional Rural Bank is not a public servant and as such, a civil suit filed by him, challenging the disciplinary proceeding and order of termination of his service is not barred u/s 6 of the said Act. While deciding the same, the Apex Court in the said decision had further held that the Regional Rural Bank is an instrumentality of the Government and, therefore, is a State within the meaning of Article 12 of the Constitution of India and relief of reinstatement is available to an employee of a Regional Rural Bank.

5. On the other hand, in this Judgment appealed against, the appeal court had held that the plaintiff is a public servant within the meaning of Section 2 (b) of the U. P. Public Services (Tribunal) Act. 1976 and as such, the suit is barred u/s 6 of the Act. On the face of the decision in the case of Prathama Bank (supra), It is abundantly clear that the finding of the learned lower appellate court cannot be sustained and such, the suit is very much maintainable.

6. It seems that the appeal court did not go into the merit of the case and on the other hand, simply on that question had dismissed the suit.

7. Mr. Sharad Verma, learned counsel for the respondent on the other hand, contended that the suit is also as claimed not maintainable in view of the Section 14 of the Specific Relief Act before the civil court. He had relied on various decisions in order to sustain his submissions. Those decisions will be referred to at appropriate stage. He further contended that even on merit, the plaintiff could not get any relief since the plaintiff was on probation and he was never confirmed and. therefore, his services were terminated on one month's notice under Regulation 10 (2) of the Gorakhpur Kshetriya Gramin Bank Staff Service Regulation. 1980, framed under the Regional Rural Bank Act, 1976, According to him. the said Regulation has no statutory force and that Regulation 9 requires confirmation after probation period is over. While Regulation 10 (2) prescribes termination of service with one month's notice or one month's pay in lieu of notice. Therefore, the civil court cannot grant any relief either for reinstatement or payment of back wages.

8. Mr. Ashok Bhushan. learned counsel for the appellant on the other hand

contended that In view of the decision in the case of Prathama Bank. [supra], this question is no more res Integra, since this question has dealt with Identical question that is involved herein. He further contends that in view of the decision in the case of Vaish Degree College and others v. Laxmi Narain and others AIR 1976 SC 888. a civil suit was held to be maintainable where a Statutory Body acts in breach or violation of the mandatory provision of statute. Therefore, the suit is very much maintainable and the plaintiff is entitled to claim relief. According to him, since after the completion of probation period, the appellant shall be deemed to have been confirmed by implication. He had relied on the decision in the case of M. K. Agarwal v. Gurgaon Gramin Bank and others. : AIR 1988 SC 286.

9. In order to appreciate the situation, it would be necessary to refer the brief facts. In the present "case, the plaintiff was appointed on October 23, 1978. The Regulation 8 (2) prescribes that an employee shall be on probation for a period of one year which shall be extendable upto a period not exceeding six months. Though the period of probation was extended by a period of six months but thereafter, the plaintiff was permitted to continue and his services were terminated under Regulation 10 (2) on March 5, 1983. However, no order of confirmation under Regulation 9 was ever issued. At the same time, the probation was also not extended.

10. It is also contended by Mr. Verma that though the appeal was decided only on the question of maintainability but the matter may not be remanded in view of the legal proposition raised by him as well as the question on merit. Mr. Ashok Bhushan also did not insist that the matter should be remanded for the simple reason that in another appeal by another employee involving similar circumstances, the appeal court had held that the suit was maintainable but reversed the decree on merit and the respondent had taken identical grounds in respect of the other appeal. Therefore, it is desirable that this Court should decide the question on merit as well. Both the learned counsel had accordingly addressed the Court on merit. On these backgrounds, the present case is to be dealt with.

11. Admittedly, the plaintiff is an employee governed by the Gorakhpur Kshetrlya Gramin Bank Staff Service Regulations, 1980, framed u/s 30 of the Regional Rural Banks Act. 1976. Section 30 in the said Act prescribes that the Board of Directors of a Regional Rural Bank may, after consultation with the Sponsor Bank and the National Bank and with the previous sanction of the Central Government by notification in the official Gazette make regulations. not Inconsistent with the provisions of this Act and the Rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act, in sub-section (2) of the said Act, it provides that every regulation so made be forwarded to the Central Government which shall lay the same before each of the House of the Parliament while in Session for a total period of thirty days and only after the House agrees in making any

modification or an annulment by the House, the regulation shall take effect.

12. It thus appears from subsection (2) of Section 30 of the said Act that only when it receives the approval by both Houses of Parliament, the regulation shall take effect. This means that though it is a subordinate legislation delegated to the Board but the same can be legislated by the Board only with the previous sanction of the Central Government and the same shall not take effect until it is placed before both the Houses of Parliament and the same is voted by both the Houses. Thus, by reason of the Involvement of the House in making the regulation effective only after it is approved by the Houses, such regulation assumes statutory character.

13. In such circumstances, the contention of Mr. Ashok Bhushan to the extent that by reason of paragraph 17 of the decision in *Vaish Degree College (Supra)*, the suit is very much maintainable on the basis of the allegations that the employer had breached or violated the statutory provision in terminating the services of the petitioner. The Rural GramIn Bank has since been held to be a State in the decision in the case of *Prathama Bank (supra)* and as such, there cannot be any doubt that it is a statutory body. The regulation having statutory force on the basis of allegation that there was any breach of such regulation in that event, the suit is very much maintainable.

14. Mr. Sharad Verma had relied on the decision in the case of *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, wherein it was held that the standing orders framed under industrial Standing Orders Act do not have any statutory force. But that decision cannot help us in the present circumstances since the standing order framed under the Industrial Employment Standing Orders Act is to be approved by an authority appointed under the said Act embodying the conditions of employment. The standing order is not required to be placed before the Legislature for the purpose of its being effective. Thus, on account of this distinguishable feature, the decision in the case of *Rajasthan State Road Transport Corporation (supra)*, cannot be attracted.

15. In view of the decision in the case of *Vaish Degree College (supra)*, as well as *Prathama Bank (supra)*, it appears that a suit challenging an order of termination is very much maintainable. So far as the *Vaish Degree College* is concerned, there in paragraph 17 it has been pointed out that 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. However, in the said paragraph, the Apex Court had further laid down that the above Rule 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 the 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.

16. Admittedly, in the present case, the plaintiff is not a public servant in view of the decision in the case of Prathama Bank (supra). Similarly, the petitioner has not approached the forum provided under the Industrial Disputes Act and as such, he does not come within the second exception. The petitioner may, however, come within the third exception If it can be shown that the employer being a statutory body had acted in breach or violation of the mandatory provisions of the statute. As I found earlier In view of decision in the case of Prathama Bank (supra), the employer is a statutory body and that the regulation having a statutory force is also a statute. Therefore, now on facts. It is to be examined out as to whether there has been any breach or violation of any mandatory provisions of the statute or not. On the face of this decision which appears to have been slightly diluted by reason of the subsequent decision which was cited by Mr. Sharad Verma. It Is necessary to examine as to how far the decision in Prathama Bank (supra), would come in aid of the plaintiff in the present case. Before examining the ratio decided in the Prathama Bank (supra), we may examine the dilution. If there be any, as contended by Mr. Verma. of the third exception provided in paragraph 17 of the Vafsh Degree College (supra), through various decisions.

17. Mr. Verma had relied on the decision in the case of Vaish Degree College Itself and had contended that unless, there is a breach or violation of mandatory provisions of statute exception three cannot be attracted. He then relied upon the decision in the case of Dipak Kumar Biswas Vs. Director of Public Instruction and Others, , which had followed the decision in the case of Vafsh Degree College (supra), where relief was refused on the ground that the declaration sought by the Lecturer that he continues in the service of the college, would not be granted since refusal though erroneous was not in contravention of any statutory Rules. Thus, it supports the contention of Mr. Verma to the extent that unless there is a breach or violation of the mandatory provisions of the statute, a suit cannot come within the third exception of paragraph 17 of Vaish Degree College (supra). He then relied upon a decision in the case of Nandganj Sihori Sugar Co. Ltd., Rae Bareli and another Vs. Badri Nath Dixit and others, , on which reliance was placed by Mr. Ashok Bhushan as well. Mr. Verma had sought to derive inspiration from the said decision on the self same point which he cited earlier. This decision has also followed the decision in the case of Vaish Degree College (supra).

18. So long as we have examined the decision relied on by Mr. Verma and cited above, has not diluted the proposition laid down in paragraph 17 of the Vaish Degree College (supra). Now Mr. Verma had relied on the decision in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, This decision was given on August 26. 1975, while that of Vaish Degree College was given on December 12. 1975. Therefore. Premier Automobiles (supra), did not have occasion to consider the view taken in the case of Vaish Degree College (supra). Both these decisions are of co-ordinate Bench of equal strength by the Apex Court. At the same time, though the decision in Vaish Degree College was taken after the decision of Premier Automobiles. But the

decision of Premier Automobiles was not considered in Vaish Degree College. In Premier Automobiles (supra), it had proceeded to lay down that in India u/s 9 of the Code, the Courts have subject to certain restriction of jurisdiction to try all suits of a civil nature excepting suits of which their cognizance are expressly or impliedly barred. It had summarized the situation in paragraph 23 after having discussing various decisions in the following manner. The principles applicable to the jurisdiction of the civil court in relation to an industrial Dispute were laid as follows :

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an Industrial dispute arising out of a right or liability under the general common law and not under the Act. the Jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted In a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy is available to them is to get an adjudication under the Act.

19. While elaborating the second principle above, the Apex Court had added that there would be hardly a dispute which would be an Industrial dispute within the meaning of Section 2K of the Industrial Disputes Act and yet it would be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency for example may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute. Even though it may otherwise be an individual dispute. Civil Court therefore, will have hardly any occasion to deal with such case falling under principle (2). Cases of industrial disputes by and large almost Invariably are bound to be covered by principle (3) as stated above.

20. If the proposition laid down in Premier Automobiles and those In Valsh Degree College are compared together in that event, it would be apparent that both have somewhere laid down the exceptions in regard to which civil court may have jurisdiction in enforcing contract of employment which is otherwise barred u/s 14 of the Specific Relief Act. While Vaish Degree College had dealt with the case covered u/s 311 of the Constitution of India and those under the Industrial Law. It had stepped further in respect of the case where the employer being a statutory authority had breached or violated the mandatory provisions of statute, can very well be maintained before a civil court claiming the relief which is otherwise available only before the Industrial Tribunal. Whereas Premier Automobiles had dealt with the question within the exception (ii) provided in paragraph 17 of Vaish Degree College and had elaborated the same. Mr. Ashok Bhushan has based his claim on exception fiit) of paragraph 17 of Valsh Degree College (supra) and he had never argued that his case falls within the exception

(it) of paragraph 17 of Vaish Degree College (supra). Therefore. It is not necessary to elaborate the proposition as has been laid in the Premier Automobiles (supra). On the other hand. Premier Automobiles virtually circumscribes exception (U) of paragraph 17 of the Vaish Degree College to the extent as it has laid down in paragraph 24 adding to the principle (2) laid down in paragraph 23 of Premier Automobiles. Where despite a right both giving rise to a right under the general law as well as the industrial law to the extent that if there is an Industrial law. It has to be before the Industrial Tribunal not before the civil court. Thus, Premier Automobiles has again narrowed down the scope to the extent as has been held in exception (iii) of paragraph 17 of Vaish Degree College (supra). Thus Premier Automobiles has not dealt with the question which Is covered under the third exception of Vaish Degree College (supra).

21. Mr. Verma had then relied on the decision in the case of Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, . In the said decision, a Bench of the Apex Court comprise of two Judges had held that wherever the Jurisdiction of civil court is expresedly or impliedly barred, the civil court will have no Jurisdiction. It cannot be disputed that a contract of employment for personal service could not be specifically enforced and it is clear that except Industrial law under the law of contract and the civil law, an employee whose services are terminated could not seek reinstatement or back wages. At best he could seek relief of damages for breach of contract. It was held in the said decision that it is only the Industrial Disputes Act which confers right to reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Order. Therefore, ultimately, it was held that by reason of the scheme of the Industrial Disputes Act, the Jurisdiction of civil court is excluded by implication in respect of remedies which are available under the said Act for which a complete procedure and machinery has been provided In the said Act.

22. This decision does not help us much since the question of exception (ti) of both Vaish Degree College (supra) and Premier Automobiles (supra) are being dealt with but not exception fill) of Valsh Degree College.

23. Relying on the decision In the case of Rajasthan State Road Transport Corporation and another v. Krishna Kant and others. (1995) 5 SCO 75, Mr. Verma contends that Valsh Degree College stands diluted to the extent as has been summarized in paragraph 35 of the said decision. This decision is also of a Bench of equal strength with the Bench that had decided the Valsh Degree College (supra) and Premier Automobiles (supra). This decision had considered the decision in Premier Automobiles (supra) but does not appear that it had taken note of Valsh Degree College (supra). In paragraph 28 of this decision, it was pointed out that the statement made in principle No. 2 of Premier Automobiles cannot be understood as saying that no industrial dispute can ever be entertained by or adjudicated upon by the civil courts. Such an understanding would not only make the statement of law in principle No. 2 wholly meaningless

but would also run counter to the well-established principles on the subject. Therefore, It must be held that principle No. 2 was In the manner whittled down by paragraph 24 of the said judgment. At the same time, the Apex Court had emphasized the policy of law underlying the Industrial Disputes Acts and the host of enactment's concerning the workmen made by Parliament and State Legislature. It is always in the Interest of the workmen that disputes concerning them should be adjudicated in the forum created by the Act and not in a civil court. The entire policy underlying the vast array of enactments concerning workmen shows that the legislative policy and intendment to the extent that it should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them. It was further held in paragraph 29 of the said decision that dispute involving the enforcement of the rights and liabilities created under the certified Standing Orders has necessarily got to be adjudicated only in the forum created by the Industrial Disputes Act provided, of course, such a dispute amounts to an Industrial dispute within the meaning of Sections 2(K) and 2A of the said Act. The civil courts have no jurisdiction to entertain such suits. Though it was held that the relief claimed on standing orders are partly on general law of contract. Ultimately, the proposition was summed up in paragraph 35 of the said decision which has laid down as below ;

"35. We may now summarize the principles flowing from the above discussion :

(1) Where the dispute arises from general law of contract, i.e.. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "Industrial dispute" within the meaning of Section 2(K) or Section 2A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute Involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute Involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946, which can be called "sister enactments" to Industrial Disputes Act--and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums . created by the Industrial Disputes Act provided they constitute Industrial disputes within the meaning of Section 2(K) and Section 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to

make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The Rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly--i.e.. without the requirement of a reference by the Government--in case of industrial disputes covered by Section 2A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Order framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946, are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

24. A plain reading of the said proposition shows that when a dispute arises from general law of contract, the same may very well be maintained before the civil court even though the same may constitute an Industrial dispute. So far as the other proposition laid down therein in sub-paragraphs 2, 3, 4, 5, 6 and 7 are concerned, may not be of interest at the moment. In as much as in the present case, the dispute does not arise out of any breach of Industrial Standing Order. It is also not an observance or enforcement of any rights or obligation created under the Industrial Disputes Act and that the Regulation cannot be treated to be at par with Industrial Standing Order bereft of statutory force as has been held in the said decision with regard to the latter one. Thus, even the decision in the case of Rajasthan State Road Transport Corporation (supra) has also not diluted exception (iii) of Vaish Degree College as laid down in paragraph 17 thereof. On the other hand, it provides that even if it is an industrial dispute, still then civil court might have Jurisdiction. However, it has not gone into the question as to whether any such civil suit the claim for reinstatement and back wages could be

maintained or not, Though, however, this was so held In paragraph 29 of the said decision but yet that was on the facts and circumstances of the case wherein the Court was called upon to decide the issue on the basis of Industrial Standing Order not on the basis of any other provisions. Thus, fn order to construe the impact of exception (iii) of Vaish Degree College (supra), this decision will not help us since the decision of Vaish Degree College (supra) was not taken into consideration in the said case.

25. Relying on the decision in Chief General Manager, State Bank of India and another v. Sri Kedar Nath Yadav. 1986 VPLBEC 773, of this Court by a learned single Judge, a view was taken that a contract of employment cannot be enforced in a suit before the civil court. But this decision has to be read in the light of Vaish Degree College (supra) which was also not referred to in the said decision. However, in view of the decision of the Apex Court, we cannot take aid of the decision of this Court on the face of it unless it is covered by such decision and could be distinguished from that of the Apex Court. Similarly, the decision In the case of Bhagwan Saraswat v. State Bank of India. Kanpur. 1986 Lab IC 2055. by a learned single Judge of this Court may not be of any help.

26. This discussion as made above, makes it clear that a suit for enforcement of a contract of employment is not maintainable before the civil court if the relief is of reinstatement or back wages on account of assailing an order of termination. But there are some exceptions as laid down In Voish Degree College (supra). So far as the rights arising out of general law also constituting Industrial Disputes are concerned, the choice is of the Suitor, though in Jitendra Nath Biswas (supra). It has been specifically pointed out that civil court cannot grant relief for re-instatement and back wages. The decision in Premier Automobiles has not indicated as to what relief could be had in a suit for enforcement of a contract of employment when the right though flowing from general law yet constituting Industrial Dispute. One of the view taken by the Apex Court is that in such civil suits damages could be asked for but not re-instatement and back wages. Though the decision in Vaish Degree College (supra) has been reiterated in some of the cases and had been followed but it has not been discerned from. On the other hand, there is no question of diluting the exception (iii) in the Vaish Degree College (supra) since this exception had never been considered by any of the other judgment by the Apex Court. Leading cases being that of Premier Automobiles had no occasion to deal with Vaish Degree College (supra) being a Judgment delivered earlier than the later. Similarly Rajasthan State Transport Corporation have also not considered the Vaish Degree College. This had not dealt with the exception mentioned In Vaish Degree College.

27. In the present case, since Mr. Ashok Bhushan had banked upon this exception of Vaish Degree College, let us now examine if this exception has any edge over the other decision particularly Prathama Bank which deals with an identical situation. This decision is also of a Bench comprising of two Judges. In this case, the suit was also held to be maintainable against Regional Gramin

Bank, which was held to be a State as was held in the case of M. K. Agarwal and a suit for re-Instatement against challenging an order of termination of service was held to be maintainable and the decree for plaintiff's re-instatement with consequential service benefits was confirmed. Thus, it appears that when in a suit for enforcement of a contract of employment against statutory authority for violation of mandatory statutory provision relief of re-instatement and back wages is maintainable and the Court is empowered to grant such relief.

28. Now let us examine the question on merit as to whether the plaintiff is entitled to the relief. Thus, the question may be looked into from two angles, one that whether on completion of probationary period even In the absence of any specific order of confirmation, the petitioner's service could be terminated under Regulation 10 (2) of the Regulation. The other angle of vision is that as to whether in the facts and circumstances of the case where certain allegations were made against the plaintiff, the termination could be termed as penalty in disguise.

29. So far as second question is concerned, from the order of termination it does not appear that any stigma was attached. It might be because that certain allegations were raised against the plaintiff but the same were not proceeded with. It is open to the employer either to proceed against an employee with regard to the allegations or it might drop the same and may not proceed. it might consider the question of suitability of an employee to retain in service. If the employment requires performance of various minute duties over which it is very difficult to keep watch at every stage. It is a question which is to be looked into from the angle of the employer who are concerned more with its business than with the employment or welfare of the employees. This question has to be viewed Impartially having been placed oneself in the position of the employer. If the employee loses the confidence, it cannot be compelled to allow the employee to continue under it. If the employer decides to discontinue the service without attaching any stigma and in accordance with the Rules governing the condition of employment, in that event the same cannot be said to be a penalty in disguise if the Rules of the employment permits dispensation of service on certain conditions.

30. In the present case, there is nothing to indicate in the order that any stigma was attached. On the other hand, it was a termination simpliciter under Regulation 10 (2) at best the question of retrenchment as contained in the Industrial Disputes Act can be followed in the present case. It cannot be advanced to any stage beyond that.

31. Now the question is as to whether Regulation 10 (2) could be applied against the plaintiff in the facts and circumstances of the case. In as much as whether Regulation 10 (2) could be applied against a confirmed employee may also be relevant consideration for our present purpose. We may now refer to the first point referred to hereinabove. Regulation 8 (2) prescribes that the probationary period of an employee for one year is extendible for a period not exceeding six

months. Thus, the period of probation has been limited. If Regulation 8 (2) has to be Interpreted, then there is no alternative but to hold or Interpret the period of probation being fixed. It cannot be extended beyond one year six months. Therefore, the only remedy open to the employer was either to confirm or to discontinue the service of the employee on or before the probation period expires. But a provision cannot be read out of context and Independently. It is to be read according to the scheme of the whole regulation having regard to other provisions. The Rule of construction always supports a harmonious construction reconciling the provisions having regard to the intention of the Legislature.

32. In the present case, Regulation 9 provides for confirmation. This provision is also equally positive as Regulation 8 (2). It requires a confirmation. The expression used in the said provision is that an employee shall be confirmed. The word "shall" has to be Interpreted according to Its meaning as was Intended. Normally "shall" means a mandate. This expression is followed by the expression "if in the opinion of the appointing authority". Therefore. In order to confirm, the opinion has to be formed by the appointing authority. Now ff opinion is formed by the appointing authority, an employee could be confirmed. Then it has to be found out through the expression used as to whether the "employee has satisfactorily completed his probation". Therefore, an employee could be confirmed only when he has satisfactorily completed his probation according to the opinion of the appointing authority,

33. When two forceful expressions used one after the other, then both are to be reconciled with each other. One cannot be construed independent of the other. Thus, a combined reading of this provision makes it clear that the probation period is extendtble up to six months after one year in respect of an employee and he would be eligible for confirmation only if in the opinion of the appointing authority he had satisfactorily completed his probation. Expressions "shall be confirmed" Indicates that there should be an overt act of confirmation. Failure to pass an order of confirmation even though the person is allowed to continue after the completion of the probation period does not imply by reasons of the expressed provisions used in the regulation that he would be deemed to have been confirmed. The probation would have been otherwise if the statute was silent with regard to the confirmation or it had made certain other provisions with regard to deeming clause. A combined reading of these two provisions leaves no scope for guess or comprehend confirmation by default. But the question remains as to what would be the period during which a person can be allowed to continue after completion of probation period without confirmation which may be also one of the factor that might weigh with for the purpose of determining the questions as to whether a person can be treated to have been confirmed by default or Implication.

34. In the present case, the plaintiff was allowed to continue around fifty days less than three years. Thus, whether the period of about three years would be constituted to mean that the service of the plaintiff stood confirmed by default.

This question has to be viewed with regard to the provisions contained in Regulation 10 (2) which provides that the Bank may terminate the services of an employee after giving him one months notice or notice pay in lieu thereof. Mr. Verma had relied on the decision In the case of Dhanji Bhai Ramji Bhai v. State of Gujarat AIR 1995 SC 603. In the said case, the probation period was for two years and it was held that on completion of two years, the employee cannot be treated to have been confirmed. In the said case. It was laid down by the Apex Court that continuation of an employee beyond the initial period of probation for some time without being confirmed does not imply that he shall be deemed to have been confirmed. On the other hand, the employer may take some time to formulate his opinion about the suitability of the employee for being confirmed. Mr. Verma, for the same proposition, relied upon the decision In the case of Ram Kishan Bairwa v. Budi Chittorgarh Kshetriya Gramin Bank and another 1992 SCC (Supp 3) 53. which contain identical regulation. Supporting the view taken in the decision cited here proceeding this one. Mr. Verma had relied upon in the case of Jai Kishan v. Commissioner of Police and another 1995 SCC (Supp 3) 364. which had taken the same view. He has also relied on the decision in the case of Director (Production) Heavy Engineering Corporation v. Jaganath Prasad 1995 SCC (Supp 4) 99 , as well as In the case of State of Punjab Vs. Baldev Singh Khosla, and Ashok Srivastava v. NIC 1998 (4) SCC 362. supporting the same proposition.

35. On the other hand. Mr. Ashok Bhushan had relied upon the decision in the case of M. K. Agarwal v. Curgaon Cramin Bank and others : AIR 1988 SC 286. wherein it was held that Regulation 10 (2) confers arbitrary and utiguided powers and is unconstitutional. In the said decision it was held that there was nothing to Indicate as to what would follow in the absence of the expressed confirmation at the end of the maximum period of probation. In the said case. It was held that in such situation, the employees shall be confirmed by implication. Reliance was placed by the Apex Court in the case of State of Punjab Vs. Dharam Singh, and Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others, . On the basis thereof. It had proceeded to hold that Regulation 10 (2) was unconstitutional. Relying on this decision Mr. Ashok Bhushan had contended that in the absence of confirmation by implication, the plaintiff should have been held to be a confirmed employee and that his services could not be terminated by reason of Regulation 10 (2). So far as the decision in Ramjee Bhai (supra) is concerned. It was dealing with an employee who was subject to Article 311 while the decision in the case of Rom Kishan Balrwa (supra) had dealt identical provisions with regard to Grameen Bank. This decision was rendered on January 23, 1992 without noticing the decision in M. K. Agarwal (supra) rendered on 20th of November. 1987, whereas the decision in Jai Kishan (supra) dealt with Central Services (temporary service rules) and that of Baldev Singh Khosla (supra) dealt with Punjab State Co-operative Service (Class-11) Rules. Thus, it appears that so far as Grameen Bank Regulation Is concerned, the same was not within the scope and ambit of the decision. In several cases referred to by Mr.

Verrna except in Ram Kishan Bairwa (supra), the decision in Ram Kishart Bairwa (supra) and that of M. K. Agarwal (supra) were delivered by coordinate Benches of equal strength.

36. When there is a conflict between two decisions of the Apex Court when by reason of Article 141 both decisions are binding on the High Court, three view is permitted, one view is to follow the earlier decisions while other view is to follow the later decisions and the third view is to follow the decision which appears to be more rational and reasonable to the Court. In the present case, the decision in M. K. Agarwal (supra) is earlier in point of time and was not considered by the subsequent decisions. Therefore, it is more necessary that the earlier decisions should be followed. But that cannot be the only criteria for following the earlier decision unless the said decision appears more rational or reasonable. It appears from the reasoning in Ram Kishan Batrwa (supra) that it has not elaborately dealt with point but has come to the conclusion abruptly. Without discussing the question in threadbare as was done in the case of M. K. Agarwal (supra) where the exact question was gone into and had been disclosed with its proper prospective. Therefore, to my mind, the earlier decision appears to be more rational and attractive and. therefore, I prefer to follow the earlier decision in M. K. Agarwal (supra). This question having been concluded by the decision in the case of M. K. Agarwal (supra) to the extent as to what would happen with regard to the continuation of person for a period a little less than three years, he should be deemed to be confirmed by implication as has been held in the said decisions. At the same time. Regulation 10 (2) of the Gurgaon Gramin Bank Service Regulation, 1980, contains identical provisions of Regulation 10 (2) of the regulation with which we are concerned as is quoted in the said decisions. Therefore. I have no alternative but to accept the proposition that the plaintiff shall be deemed to have been confirmed by Implication. While dealing with the said case, It had also held that provisions of the said Regulation 10 (2) was unconstitutional.

37. The fact remains that the decision in M. K. Agarwal (supra) was related to a proceeding under Article 226 and not in a suit. Now what should be the distinction with regard to the facts of this case where it is a suit. So far as the provision with regard to the question of confirmation is concerned. I do not think that it will make any difference whether the decision was given in a case arising out of a proceeding under Article 226 or that of a suit.

38. Now with regard to the question of unconstitutlonallty of Regulation 10 (2) of the Gorakhpur Kshetriya Gramin Bank Staff Service Regulation. 1980, is concerned, though it is identical yet those are contained in two different regulations. This regulation 10 (2) has not been" declared ultra litres. So far as this regulation is concerned, at the same time Regulation 10 (2) of the Gurgaon Co-operative Bank though held to be unconstitutional but was not struck off. It was only a relief that was granted on the ground that it was unconstitutional without striking off the said provisions. In the present case, the Regulation 10

(2) has not been struck off neither had been declared unconstitutional. Then again this question cannot be raised in a suit though it could have been raised through a petition under Article 226 of the Constitution of India. In a suit, this" question could not be gone into so long as the regulation continues. A civil court is not empowered either to declare the provisions unconstitutional or to strike it off or ignore the same. Therefore, even though the High Court is deciding the second appeal but High Court has to keep in its mind its jurisdiction. While deciding second appeal, its jurisdiction is circumscribed by the law relating to the jurisdiction of the civil court. In as much as while deciding the second appeal, it decides as to whether the civil court, namely, the trial court was within its Jurisdiction while dealing with the suit either in directing the same or in dismissing the same or otherwise the High Court do not place itself to higher pedestal than that of an appellate court with regard to the question of jurisdiction of the civil court regarding the subject-matter involved. It has to view in the light in which the civil court is bound to do. It again surpasses the limits of the jurisdiction of competence of the civil court as circumscribed by law. The civil court was dealing with the condition of employment as contained in the said regulation and it has to take regulation as it is and has to deal with it accordingly. Though by reason of Vaish Degree College, even the contract of employment could be enforced despite the Section 14 of the Specific Relief Act by a civil court In respect of an employment with statutory body on the ground or breach of violation of mandatory statutory provision, yet the civil court cannot assume the Jurisdiction which is exercised by the High Court under Article 226 or by the Apex Court under Article 32.

39. Therefore, this question has to be looked into on the basis of the Regulation as it is available to which the plaintiff was subject. The civil court having no jurisdiction to hold the said provision unconstitutional. It has to follow the same. It cannot be held that termination of service under Regulation 10 (2) is void or that resorting to Regulation 10 (2) by the employer would be a breach or violation of mandatory statutory provisions. Even if it is accepted to assume that the plaintiffs service was confirmed, still then since Regulation 10 (2) does not make any difference In between employee on probation or temporary employee or confirmed employee, the confirmation would be Immaterial. It would not be necessary to resort to Regulation 10 (2) if the probation is not extended and the employee is discontinued during the probation or immediately after the expiry of the probation period which could be done without notice. Regulation 10 (2) applies to all kind of service since service has not been qualified in Regulation 10 (2) and has also not defined in Section (2) of the said regulation. Thus, service has to be construed in general terms including all kinds of service temporary or permanent.

40. In the present case, as I have held that even though" there might be some allegation, still then, without proceeding with the allegation, it is open to the employer to terminate the service of an employee and as such Regulation 10 (2) can be validly resorted to. Thus, there has been no violation or breach of

mandatory statutory provision. The present civil suit, therefore, does not come within the third exception of Vaish Degree College. As such no relief could be had in the form of re-instatement and back wages which is outside the dominion of the civil court in view of Section 14 of the Specific Relief Act but for the third exception laid down in paragraph 17 of the Vaish Degree College. A civil suit seeking enforcement of employment would not have been maintainable before the civil court by reason of Section 14 which is consistent view taken by the Court. At the same time, such a civil suit is very much maintainable in a civil court for a declaration that the termination was wrongful and to seek consequential relief of damages. But since it has been found that there has been no violation of mandatory/ statutory provision those question is no more open to be agitated in the suit. However, this restriction will not prevent the plaintiff to seek his remedy in an appropriate proceedings Including those under the Industrial Disputes Act or under Article 226 as the case may be, if he is so advised and the period spent on this litigation would be available to the plaintiff for being excluded u/s 14 of the Limitation Act. In case, if so advised, his cause is espoused before either of the forum, the decision In the suit will in no manner operate as res-judicata in respect of the question with which the Court was concerned. The entire decision is circumscribed, having regard to the scope and ambit of the jurisdiction of the civil court, having regard to Section 14 of the Specific Relief Act which in no manner be an impediment either in a proceeding under Industrial Dispute Act or that of under Article 226 of the Constitution of India.

41. Subject to the observation made above, the appeal fails and is accordingly dismissed. There will however be no order as to cost.