
(2009) 01 PAT CK 0107
In the Patna High Court
Case No : C.R. No. 1944 of 2008

The Union of India and Others

APPELLANT

Vs

B.D. Yadav

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2009) 3 PLJR 294

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. For the reasons mentioned in the application (IA. No. 6784 of 2008), the delay in filing of this Civil Revision application is hereby condoned.

2. Coming to the merits of this case, this Court would not find that here is a classic case where the plaintiff-opposite party having already played his first innings in the Andhra Pradesh High Court has again tried to repeat the same thing before Buxar Civil Court even when no part of cause of action has arisen within the territorial jurisdiction of the Buxar Civil Court.

3. It has to be only noted that the petitioner was serving in Central Industrial Security Force (C.I.S.F.) and was posted in the State of Andhra Pradesh. The plaintiff-opposite party was dismissed from service on 27.6.1984 on the ground of certain misconduct. He thereafter, had filed his appeal and when the appeal was also rejected he had filed a writ application in the Andhra Pradesh High Court being Writ Petition No. 7136 of 1988. The said writ petition was dismissed on merit as would be reflected from the following passage of the judgment:--

"The petitioner was recruited as a constable in the Central Industrial Security Force. While he was working at Visakhapatnam disciplinary proceedings were initiated in the year 1983 by the Commandant of the unit. Two charges were

framed against him. One was that he left the barracks without the permission or authority of the superior officer and the other is that he misbehaved with the daughter of one Sri Denudu with an evil intention on the night of 13/14th July, 1983. The enquiry officer found the petitioner guilty of the charges framed against him. The disciplinary authority imposed the punishment of reduction of pay scale and directed that he will not be entitled to any increments during the period of reduction. However, the second respondent issued notice as to why the punishment should not be enhanced. After going through the explanation given by the petitioner, the second respondent held that the punishment imposed was too inadequate and passed the order of removal vide order dt. 27.6.84. The petitioner preferred an appeal against the said order of removal to the Director General, the first respondent. The said appeal was dismissed on 1.6.1984. Aggrieved by the said order present writ petition is filed.

Having gone through the material on record, I do not find any substance in the writ petition. It cannot be disputed that the second respondent had jurisdiction to enhance the punishment proposed by the disciplinary authority i.e. Commandant. The contention that the punishment imposed is grossly disproportionate to the charges framed against the petitioner is untenable. The charges were very serious involving moral turpitude inasmuch as the petitioner misbehaved with a girl at night time. Attempt made in this petition to challenge the finding of fact is unsustainable. In the writ proceedings it is not open for this court to reassess the evidence. The parameters of writ jurisdiction are well known. There is no merit in this petition.

The writ petition is accordingly dismissed.

No cost."

4. Admittedly, the said judgment cannot be said to be dismissal of a writ petition in limine inasmuch as the writ petition was decided on merits by Andhra Pradesh High Court. It is in fact unfortunate that the facts of the aforesaid writ petition which was filed in the year, 1988 by the plaintiff-opposite party before Andhra Pradesh Court was altogether suppressed by him in the plaint of the present Title Suit No. 57/1993 in Buxar Civil Court wherein he very cleverly had mentioned about the first writ petition of the year, 1984 filed in the Andhra Pradesh High Court but did not choose to say a word with regard to the second writ petition which was definitely pending when the suit was filed in Buxar Civil Court in the year. 1993.

5. What still is more both shocking and surprising, is that the Court below has kept the suit pending for last 15 to 16 years even when it had the full opportunity to go through paragraph No. 14 of the plaint which in no uncertain terms had by itself revealed that no part of cause of action had taken place within the territorial jurisdiction of Civil Court of Buxar. It is so because the petitioner was employed and posted in Andhra Pradesh and his entire service span continued in the State of Andhra Pradesh and was also dismissed from

service while posted at Visakhapatnam Port in the year, 1984 in the State of Andhra Pradesh. The appeal also was dismissed by the Director General of C.I.S.F. in Andhra Pradesh way back in the year, 1984 and when the writ petition realizing that entire cause of action for the plaintiff-opposite party had arisen only in Andhra Pradesh was filed by the petitioner in Andhra Pradesh High Court.

6. This Court would find it difficult to even accept any of the explanation being now offered by the counsel for the plaintiff-opposite party that since plaintiff-opposite party had his permanent home in the district of Buxar, he had a right to maintain a civil suit in Buxar Civil Court. As noted above no part of cause of action had arisen in the territorial jurisdiction of Buxar Civil Court and therefore the Court below was required to go into this question at the very initial stage by taking into consideration the averments made in the plaint and rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure.

7. That having not been done when this fact was pointed out by the defendants-petitioners by filing an application it was still more unfortunate that the Court below failed to even apply the principle of res judicata inasmuch as the same issue with regard to same termination order had already been gone into between the same parties in aforementioned judgment of the Andhra Pradesh High Court and has held in the impugned order that the suit was not barred by res judicata. The approach and the effort of the Court below while passing the impugned order is very casual and pedantic.

8. Be that it may, it is plain and simple that the suit in hand is simply was not maintainable in Buxar Civil Court as no part of cause of action has arisen within the territorial jurisdiction of Buxar Civil Court and in any event the relief being sought in the suit were plainly and squarely barred by the principle of res judicata, in view of the inter parte judgment of the Andhra Pradesh High Court in a writ petition filed by the plaintiff-opposite party for exactly same cause of action and same relief.

9. That being so, there is a clear and apparent jurisdictional error in exercise of jurisdiction by the Court below in passing the impugned order and the same is accordingly set aside and consequently the suit itself is hereby dismissed. With the aforesaid observations and directions this Civil Revision Application is allowed. There would be however no order as to costs.