

(1970) 12 DEL CK 0007

In the Delhi High Court

Case No : Letter Patent Appeal No. 103D of 1966

Union of India

APPELLANT

Vs

R.P. Dhir and Others

RESPONDENT

Date of Decision : 14-12-1970

Acts Referred:

Citation : (1970) ILR Delhi 433

Hon'ble Judges : H.R. Khanna, C.J.;V.S. Deshpande, J

Bench : Division Bench

Advocate : S.S. Chadha, for the Appellant;

Judgement

H.R. Khanna, C.J.

(1) This appeal under Clause 10 of the Letters Patent by the Union of India and Director of Education, Delhi Administration is directed against the judgment of the learned Single Judge reversing on second appeal the decisions of the Court below and remanding the suit brought by R, P. Dhir respondent for being decided on merits in accordance with law.

(2) The respondent an employee of the Education Directorate, was promoted to the post of Assistant Superintendent in July, 1953. Notice" of termination of his services was served upon the respondent in June, 1954, and his services were terminated with effect from July, 12, 1954. The respondent thereupon brought a suit against the appellants for a declaration that the order of his removal from service was illegal, arbitrary, mala fide and inoperative, and that he was still in the employment of the defendants.

(3) The appellants contested the suit. A preliminary objection was raised on behalf of the appellants that in view of the proviso to section 42 of the Specific Relief Act, 1877, the declaration sought by the respondent could not be granted.

(4) Following preliminary issue was framed by the trial Court : Whether the suit in the present form is maintainable ?

(5) The issue was decided by the trial Court against the respondent and the decision was affirmed on appeal by the Additional Senior Subordinate Judge. On second appeal the learned Single Judge referred to a judgment dated February 8, 1960 of Falsha, J., (as he then was). and in view of that judgment reversed the decisions of the Courts below. The suit was accordingly remanded to the trial Court for being decided on merits in accordance with law.

(6) We have heard Mr. Chadha on behalf of the appellants and are of the view that there is no merit in the appeal. According to Mr. Chadha, the suit for declaration, as brought by the respondent was not maintainable u/s 42 of the Specific Relief Act, 1877. as the respondent had omitted to seek further relief for recovery of arrears of salary. The material part of section 42 of Specific Relief Act. 1877, which corresponds to section 34 of the Specific Relief Act. 1963 (47 of 1963), reads as under:

"42.Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

PROVIDED that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

(7) The above section enables a person, who is entitled to any legal character, or any right as to property, to institute a suit against a person denying, or interested to deny, his title to such character or right. The object of the section is to remove the cloud which might be cast upon the legal character of the plaintiff or on his right to property. It is designed to make clear what is a present doubtful and which it is necessary to make clear. Another object of the section is to perpetuate and place on solid and lasting foundations the testimony regarding the legal character and title, lest the passage of time might obliterate it or result in its disappearance.

(8) It is not disputed that a suit for declaration in respect of his wrongful termination of services by a government employee is maintainable, but it is urged on behalf of the appellants that if the government employee does not, in addition to the relief for declaration, ask for the further relief for recovery of arrears of salary, the suit would be liable to dismissal because of the proviso to the above-mentioned section. According to the said proviso, no court shall make the declaration, referred to in the earlier part of the section, if the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The object of the proviso is to avoid multiplicity of suit and to prevent a defendant being vexed twice in respect of a relief which could; have been sought by the plaintiff in the first suit for declaration.

(9) Before, however, a suit for bare declaration can be held to be not maintainable because of the proviso, it has to be shown that the plaintiff was;

able to seek a further relief than a mere declaration of title and he omitted to do so. The words "further relief" do not mean every kind of relief that may be prayed for; what they contemplate is, a relief arising from the cause of action on which the plaintiff's suit is based. The further relief, referred to in the section, is such without which the declaration claimed would be ineffective, infructuous and unworkable. (See in this connection- Chellammal and Others Vs. Aiyamperumal Kudumban and Others, , and Lt. Col. G. S. Dutta v. Union of India Air 1966 J.&K. 104 . Keeping the above test in view, let us examine the question as to whether it is essential for a government servant, whose services have been terminated, to sue also for recovery of arrears of salary in addition to the relief for declaration about the wrongful termination of his services. It is well established that the relationship between the government and its servant is not like an ordinary contract of service between a master and servant, but is in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of those duties society has an interest. (Roshan Lal Tandon Vs. Union of India (UOI),). As the plaintiff-respondent was deprived of that status as a result of the termination of his services, he sought a declaration that his removal from service was illegal and he was still in the employment of the defendants. There was, in our opinion, no legal bar to the grant of such a declaration. The entitlement to salaries was an essential incident of and natural consequence following from the retention of the plaintiff-respondent in government service. As such, it was, in our view, not necessary for the respondent to ask for further relief for payment of arrears of salary. It also cannot be said that the relief for declaration would be not effective or be otherwise infructuous unless the plaintiff claims arrears of salary. The cause of action for the relief of declaration is the wrongful termination of the service of the plaintiff while .that for recovery of arrears of salaries is the non-payment of the salary which became periodically payable to the plaintiff during the time he was in service. The two causes of action are distinct and should not be mixed up; and though the former cause of action, viz., one for -relief of declaration, may have effect and impinge upon the latter cause of action for relief for recovery of salary, it does not follow there from that there is an impediment in the grant of relief of declaration about wrongful termination of services without granting relief for payment of arrears of salaries. We may in this context refer to the case of The High Commissioner for India and another v. I. M. Lall 1948 Pc 121. The plaintiff-respondent in that case claimed a declaration that the order of his removal from service was wrongful and ultra virus of the defendant and that he was a member of the India Civil Service and had a right to continue in it. The Hight Court granted a declaration to the plaintiff that the order removing him from office was wrongful, void illegal and inoperative and that he was still a member of the Indian Civil Service. On appeal the Federal Court varied the decree of the High Court by substituting a declaration that the plaintiff was wrongly dismissed from the Indian Civil Service. The case was remitted to the High Court for taking such action in regard to any application to be made by or

on behalf of the plaintiff for leave to amend to claim damages as to the High Court should deem right. On further appeal to the Judicial Committee their Lordships modified the order of the Federal Court and granted a declaration that the order purporting to dismiss the respondent from Indian Civil Service was void and inoperative, and that the respondent remained a member of the Indian Civil Service. The order of the Federal Court for remitting the case to the High Court was set aside. I. M. Lall's case is thus an authority for the proposition that a suit for declaration by a government servant in respect of the termination of his services is maintainable. It is no doubt true that the Judicial Committee also observed in that case that the respondent could not claim his arrears of pay. Those observations do not now hold good in the case of government servants in view of the decision of the Supreme Court in the case of *The State of Bihar v. Abdul Majid* 1954 Scr 786. It was held by their Lordships of the Supreme Court that the rule of English law that a civil servant cannot maintain a suit against the State or against the Crown for the recovery of arrears of salary does not prevail in India and it has been negated by the provisions of the statutory law in India. The decision of the Supreme Court did not deal with the question of the maintainability of a suit for declaration and so far as that aspect of the matter is concerned the view taken by the Judicial Committee goes against the contention advanced on behalf of the appellant.

(10) In *Manninkal Krishna Kurup Vs. Swamiyar Avergal and Another*, the plaintiff, who had been dismissed from service, brought a suit for declaration that the order of his dismissal was void and for an injunction directing the defendant to reinstate him in office with back wages. The Courts below dismissed the plaintiff's suit. On second appeal Raman Nayar, J. held that the courts below were right in declining to order the plaintiff's reinstatement with back wages but the suit for declaration was held to be maintainable.

(11) In *Fakir Chand Audhikari and others v. Anudha, Chunder Bhattacharji and other* 2nd 14 Cal. 586, a Division Bench of the Calcutta High Court considered the question whether a claim for arrears of rent is "further relief" within the meaning of the proviso to section 42 of the Specific Relief Act in a suit for declaration of title to land and answered it in the negative. The learned judges observed :

" THE" further relief referred to in the proviso is, we think, "further relief in relation, to the legal character or right as to any property which any person is entitled to, and whose title to such character or right any person denies or is interested in denying. The recovery of arrears of rent in this case would only determine that during the years in respect of which the arrears were recovered the relation of landlord and tenant had existed between the parties that the rent was so much, and that it had not been paid."

(12) The above observations would lend support to the view that in a suit for declaration relief for periodic payments need not be sought.

We, dismiss the appeal. As no one has appeared on behalf of the respondents, we make no order as to costs.