

(1962) 12 MAD CK 0019
In the Madras High Court
Case No : A.A.O. No. 118 of 1960

V. Rajagopal

APPELLANT

Vs

Salem Provident Society (in liquidation) and Others

RESPONDENT

Date of Decision : 18-12-1962

Acts Referred:

Contract Act, 1872 — Section 50

Citation : AIR 1963 Mad 297 : (1963) 33 CompCas 435 : (1963) 76 LW 271 : (1953) 1 MLJ 402

Hon'ble Judges : Kunhamed Kutti, J; Ganapatia Pillai, J

Bench : Division Bench

Advocate : E.R. Krishnan, for the Appellant; V.N. Venkatavardechari, for the Respondent

Final Decision : Dismissed

Judgement

Ganapatia Pillai, J.—This is an appeal against the order of the Additional District Judge, Salem, in I. A. No. 165 of 1956 in O. P. No. 26 of

1948, by which he rejected the claim of the appellant for payment of a sum of Rs. 43,500/- from out of the funds of a company in liquidation.

2. The appellant was employed as Secretary, ex-officio Director of the Salem Provident Society Ltd., ever since its foundation. It was doing

insurance business. In March, 1948, the Superintendent of Insurance applied for the compulsory winding up of the company and obtained an order

for winding up. During the pendency of the application, an Official Liquidator was appointed to take charge of the assets of the company in

October, 1948. On the Official Liquidator taking charge of the business of the company, the petitioner, as the Secretary, had to vacate office. He

therefore came forward with a claim that the termination of his service was

wrongful, and that gave rise to a cause of action for damages, which he estimated at the remuneration he would have drawn from October, 1948, till December, 1955. He fixed the terminus as December, 1955, because in this month the Government nationalised all life insurance business and therefore it became impossible for any private individual or company to carry on the business of life insurance. The amount claimed by him as damages represents the remuneration he would have drawn for this period if the company had not been liquidated but had carried on the business of life insurance. This application was made in October, 1956, sometime after the affairs of the company had been wound up and final orders passed by the liquidation Court settling all claims.

3. The learned Judge in the Court below refused the relief asked for by the petitioner on the ground that the winding up was caused by the mala fide conduct of the petitioner himself in relation to the affairs of the company in that he refused to set right the affairs of the company in spite of repeated reminders from the Superintendent of Insurance. The learned Judge assumed that the termination of the service of the petitioner was wrongful termination which gave rise to a cause of action for damages. We are unable to agree with this assumption.

4. The contract in this case provided for the continuance of the petitioner as Secretary of the company till he was removed by a special resolution passed in a General Body meeting of the members of the company. Article 20 of the Articles of Association of the company provided for the contract of the employment in the case of the petitioner. It stated that in consideration of the services rendered by the petitioner in promoting the Company he was appointed the first Secretary and he was to be an ex-officio director of the of the Company. No period was fixed for the appointment by this Article. However, Article II indicates indirectly that the secretary was to continue in office until he was removed by a special resolution passed by the General Body meeting of the company. In the first place, it will be incorrect to treat the conditions of service of the petitioner as an appointment for life.

Strictly it is an appointment terminable on the passing of a special resolution for the purpose by the general body of the share-holders of the company. The contract in this case came to an end by an event which could not

be prevented by the company. The liquidation was not voluntary liquidation. The proceeding which resulted in the winding up of the company was a compulsory proceeding at the instance of the Superintendent of Insurance. By no stretch of imagination could it be said that the liquidation was brought about by the company itself. In fact, the Company pretested vigorously against being wound up and denied every charge which was levelled against it by the Superintendent of Insurance. The company was not actually insolvent or unable to pay its obligations when its obligations arose.

5. The winding up of an insurance company is contemplated more in the interests of the public and the policy holders than for reason of any interest of the creditors themselves. The funds of an insurance company are in the nature of trust funds and any misapplication of the trust funds would give rise to a cause of action for the winding up at the instance of the Superintendent of Insurance. In a case where a contract of employment is entered into between the company like an insurance company and the petitioner, such a contract cannot be unilaterally put an end to by the company by voluntarily going into liquidation to deny the rights flowing from the contract to the other party. That would be a different thing altogether, and decisions have laid down that in such a case termination of employment would be wrongful. But we have not been shown any authority for the position that when a winding up is compulsory at the instance of a state agency, and despite the protest of the company, the resultant termination of service of the employees of the company would be unlawful termination.

6. In the case of termination of a managing agency contract, by reason of the winding up of a company, a claim for damages for compensation was negatived by a Bench of this Court in *The Associated Industrial Engineers by their Managing Partner, P.V. Padmanabha Naidu Vs. P.A. Jabbar Sahib and Others*, on the ground of the doctrine of frustration. No doubt, the Bench was not concerned in that case with a contract of employment "but was concerned with a contract of agency. Even so, the same principle, in our opinion, would apply, because the contract is pin; an end to and becomes impossible of being carried out thereafter by the happening of a subsequent event which was not in the contemplation of any party when the contract was entered into. In other words, the very basis on which parties

contemplated the carrying into of the contract had ceased to exist

and therefore the doctrine of frustration will apply and as laid down by Section 50 of the Contract Act, the parties would be relieved of the

obligations arising under the contract.

In *Measures Bros. Ltd. v. Measures*, (1910) 3 Ch. 248, the question arose in this form. There was a contract of employment between a company

and one of its directors. One of the terms of the contract was that for a certain period after the termination of the service the director should not

engage in any competing business. The company was wound up, because it failed to pay the debentures, which it was bound to pay. Thereafter,

the director in question who had the benefit of the contract of employment and who lost employment, commenced to carry on a business of his

own again in a similar trade. The representatives of the company in liquidation then started an action for injunction preventing the director from

carrying on the business. It was held since the plaintiff company could not have specific performance of the clause relating to the restriction upon

the director engaging himself in a similar trade after the termination of his service since they were not in a position to perform their own part of the

contract, namely, to engage him in the service of the company, the result was that the company was not entitled to injunction.

This decision has been relied on by the learned Judge in the Court below for the position that the termination of service was wrongful even though it

occurred as a result of the winding up of the company at the instance of the Superintendent of Insurance. This decision is no authority for that

position as it dealt with an entirely different subject, namely, specific performance of a restrictive covenant or a contract of employment after the

employment had ceased.

7. Mr. Gopalaswami Aiyangar, for the appellant, contended that even if the termination was not wrongful, the appellant was entitled to notice

before termination, and having regard to the nature of the office he held, namely, the Secretary of the company, this Court could now grant him six

months salary at least in lieu of notice which he would be entitled to. We do not wish to say anything about the merits of this claim as it was not put

forward before the liquidation Court except that the nature or the basis of the claim is entirely different from the basis of the claim put forward in

the application dealt with by the lower Court.

8. In the result, we are of opinion that the termination of the service of the appellant was not wrongful having regard to the circumstances under

which such termination occurred and it did not give rise to a cause of action for damages for breach of contract. The appeal is therefore dismissed.

The respondent will be entitled to his costs in the appeal.