
(1971) 02 AHC CK 0009
In the Allahabad High Court

Western India Match Co. Ltd.

APPELLANT

Vs

Rameshwar Prasad

RESPONDENT

Date of Decision : 22-02-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 311
Specific Relief Act, 1963 — Section 21, 42

Citation : (1971) 2 LLJ 386

Hon'ble Judges : Hari Swarup, J;B.D. Gupta, J

Bench : Division Bench

Judgement

Hari Swarup, J.—This is defendant's appeal arising out of a suit for declaration that the order passed by the defendant on 3-10-1958 dismissing the plaintiff from service was void, illegal and inoperative.

2. The facts leading to the suit in brief are as follows:--

The plaintiff was employed as a retail salesman with the defendant, the Western India Match Company Ltd. On 7th of August, 1947, the plaintiff was taken in employment on certain terms. He was confirmed in service on 1st January, 1948. Certain standing orders were framed in respect of the employment of the workmen by the company under the Industrial Employment (Standing Orders) Act and were duly certified. On 3rd of October, 1958, the defendant company served on the plaintiff a notice, exhibit 17, terminating the services of the plaintiff. The said notice reads as follows:

We are in receipt of your letter No. 107 of the 1st instant making baseless allegations against the management.

Since you have failed to carry out our instructions and have not reported for duty at Allahabad as directed in our letter No. 131 of the 1st instant, we hereby give you one month's notice terminating your services.

Please return to us all the company's property, files, statistics, stationery etc.,

lying with you per bearer along with a detailed list. You may call on us any working day for settlement of your dues.

3. The plaintiff instituted the suit for the relief already mentioned.

4. The suit was contested by the defendant, inter alia, on the ground that the civil Court had no jurisdiction to entertain the suit or grant the relief claimed in the suit and that the order terminating the services of the plaintiff was in accordance with law and the services had been validly terminated. The trial Court dismissed the suit. The plaintiff went up in appeal and the learned civil Judge negated the pleas of the defendant and decreed the suit.

5. In this Court, learned Counsel for the appellant has raised three contentions in support of his pleas, viz., (1) that the relief claimed in the suit could not be granted in view of Section 21 of the Specific Relief Act and in the alternative of Section 42 of the Act; (2) that the jurisdiction of the civil Court was barred by the exception contained in Section 9, CPC; and (3) that on merits the decision of the lower appellate Court was erroneous as the order terminating the services of the plaintiff was in accordance with the terms of the contract of service and also in terms of the Standing Order No. 20 which was applicable to the case, the order being one of termination and not dismissal from service.

6. Taking the last point first, there is no controversy that the standing orders are in operation and were in operation on the date on which the impugned notice of termination was served on the plaintiff. The terms and conditions of service of the plaintiff will therefore be controlled not only by the terms of the contract of service, but also by the standing orders to the extent they supersede such terms of the contract or cover a field not covered by the contract of service. The relevant standing orders are Standing Orders 20, 23 and 24. The relevant portions thereof run as follows:--

20. Termination of employment and notice thereof to be given by employer and clerk--The employment of any permanent clerk may be terminated by one month's notice or one month's pay in lieu of notice unless otherwise provided for in specific agreement. The reasons for termination shall be recorded in writing and shall be communicated to the clerk, if he so desires, at the time he is discharged unless such communication, in the opinion of the manager, may directly or indirectly lay the company and the manager or the person signing the communication, open to criminal or civil proceedings at the instance of the clerk

23. Suspension or dismissal for misconduct for acts or omissions--The following acts or omissions shall be treated as misconduct:--

(a) Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful or reasonable order of a superior?.

24. (ii) No order of dismissal or suspension shall be made unless the clerk concerned is informed in writing of the alleged misconduct or is given an opportunity to explain the circumstances alleged against him. In awarding the

punishment under this standing order the manager shall take into account the gravity of misconduct, the previous record, if any, of the clerk, or any other extenuating or aggravating circumstance that may exist.

7. The Court below has recorded a finding that the impugned order amounted to an order of dismissal within the meaning of Standing Order 23/24 and not an order of termination simpliciter as contemplated by Standing Order No. 20. This finding is based principally on the admission of Sri Satya Prakash, who had appeared as a witness for the defendant and who had issued the impugned order. Satya Prakash had clearly stated that he had terminated the services of the plaintiff for insubordination and disobedience. We are therefore satisfied that the letter by which the services were terminated had given the reasons of termination as being insubordination and disobedience of orders. In the context of the evidence, the words "since you have failed to carry out our instructions and have not reported for duty at Allahabad as directed in our letter No. 131" can mean nothing else than that the services of the plaintiff were dispensed with for the reason that the employee had not obeyed the orders issued by the employer and had thereby committed acts of insubordination and was guilty of disobedience of orders. The termination of the services of the plaintiff was therefore clearly for misconduct contemplated by Standing Order 23.

8. Learned Counsel for the appellant has contended that the order was in effect an order of termination and simply because reasons for the order were given, its nature could not change and the order of termination of service could not be deemed to be an order of dismissal within the meaning of Standing Order 23. We are unable to interpret the order in this manner for the simple reason that an order induced by a finding of misconduct must be an order of dismissal and it cannot get converted into an order of termination simpliciter merely by the employer's tendering one month's salary in lieu of notice as required by Standing Order 20. The purpose of Standing Orders 23 and 24 was to protect an employee against the dismissal by the employer for reasons of misconduct or insubordination without affording him an opportunity of being heard in respect of the alleged acts of misconduct or insubordination. It is true that the motive for termination of services of an employee is irrelevant and the services of the employee can be terminated even if the motive for termination is in fact based on a misconduct contemplated by Standing Order 23. But if the conduct of the employee instead of remaining in the background in the mind of the employer as a motive for the order is brought to the forefront and is proclaimed in the order itself as the basis of termination of service, it ceases to remain a mere motive and becomes the actual ground or reason for dispensation of service. What is material is the order which is communicated and if it contains the ground of termination as misconduct of the employee it would make the order an order of dismissal from service.

9. In *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, it was held that the reasons communicated by the

employer to the employee can be used for challenging the correctness of the order. They can, therefore, be looked into for determining whether the order was an order of termination simpliciter or of dismissal and removal. The reasons are given for the benefit of the employee and the requirement of giving reasons by itself cannot bring the case within the ambit of Standing Order 20 if in fact the reasons for which services are dispensed with are themselves those contemplated by Standing Order 23. We see no error of law in the finding of the Court below on this point. In the present case, the order which has been communicated speaks out the ground as misconduct and shows that the order was one of dismissal and not of termination. The employer had come to the conclusion that there had been a disobedience of the orders and insubordination by the employee. This conclusion could have been arrived at only if the employer had adjudicated it in accordance with the procedure laid down in Standing Order 24. It is not denied by the defendant that this procedure was not followed in the present case. The employer in arriving at this finding of misconduct of the plaintiff had thus committed violation of Standing Order 24 read with Standing Order 23 and the impugned order must be held to be bad as violating Standing Orders 23 and 24.

10. Coming to the second point, we find no substance in the contention that the suit is barred by the exception contained in Section 9 of the Code of Civil Procedure. The suit is admittedly of a civil nature and there is no provision of law which may expressly bar the jurisdiction of a civil Court to entertain such a suit. The contention is that if the order could be treated as an order of dismissal of an industrial workman, the dispute would be cognizable by an Industrial Tribunal and therefore the civil Court would be impliedly precluded from adjudicating upon the legality of the impugned order. It may be noted here that no plea was taken by the appellant in the written statement in the trial Court that the dismissal of the plaintiff had given rise to an industrial dispute. There is also no material for holding that the dispute had at any stage acquired the character of an industrial dispute; as such the matter could not have been adjudicated upon by an Industrial Tribunal and the suit cannot, therefore, be said to be barred by the exception contained in Section 9, CPC.

11. The chief contention of learned Counsel for the appellant is that the suit for the relief claimed in the plaint was barred by Section 21(b) of the Specific Relief Act as the declaration sought by the plaintiff would tantamount to a decree directing reinstatement of the plaintiff and thereby enforcing specific performance of a contract of personal service. Reliance has been placed in this connection on cases reported in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, and Bank of Baroda Ltd. Vs. Jeewan Lal Mehrotra, . In the case of the U.P. Warehousing Corporation the Supreme Court laid down that:--

Contract for personal service will not be enforced by an order of specific performance nor will it be open for a servant to refuse to accept the repudiation

of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of a contract. This is the normal rule and that was applied in *Barbaras* case [1958] 1 All E.R. 322 and *Francis* case [1962 63] All E.R. 633. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and he continues to be in service, as it will not then be a mere case of a master terminating the service of a servant. This was the position in *Vine*'s case [1956] 3 All. 939.

In the *Bank of Baroda* case (*supra*) following observations in the *Warehousing Corporation* case (*supra*) the Court pointed out three exceptions to the Bar against granting of such a declaration and held that such a declaration could in appropriate cases be granted (1) where a public servant has been dismissed from service in contravention of Article 311(2) where reinstatement is sought of a dismissed worker under the industrial law by labour or Industrial Tribunals; and (3) where a statutory body has acted in breach of a mandatory obligation imposed by the statute. learned Counsel for the appellant, relying on the *Bank of Baroda* case (*supra*) urged that the Supreme Court in that case had held that even in a case of "illegal" termination the only remedy of the employee was to file a suit for damages. His contention is that as there had been a violation of the principles of natural justice in the conduct of domestic enquiry by the management, the order should be deemed to be void and inoperative as it was in breach of principles of natural justice. We have looked into the record of the case which went to the Supreme Court and we find that the complaint of the plaintiff in the suit was that he had been dismissed in breach of the term of what is popularly known as the "Sastry Award". The defence was that the enquiry was held in accordance with the procedure laid down under the Sastry Award. The Court came to the conclusion that the domestic enquiry was not fair and hence the dismissal was not "legal". The Industrial Disputes (Banking Companies) Act of 1955 on which the learned Counsel relied for contending that Sastry Award had statutory force, was enacted in order only to continue the operation of the Sastry Award as modified by the decision of the Appellate Tribunal. The enactment did not cloak the Sastry Award with any statutory authority, nor did it change the status of the Award. It continued to retain the qualities of an industrial award which is of the nature of a decree of Court and does not have any statutory force. This was also the view taken in the case of *K.M. Mukherji v. Secretary and Treasurer, State Bank of India* [1967] Indian Factories and LR 1419. Another case relied upon by learned counsel is *A.L. Nomani v. Commissioner, Gorakhpur* [1967] A.L.J. 431. It was a case in which the exercise of power by the Commissioner was u/s 40 of the U.P. Municipalities Act and the order was held to be null and void as principles of natural justice were not observed. No cases have been cited before us in which it may have been laid down that an order passed by a non-statutory body will become null and void if it

is passed without observance of the principles of natural justice. The principles of natural justice come into play only when the powers are being exercised quasi-judicially by a statutory body or some authority authorised to exercise such powers. They do not apply to a case where a private employer terminates the services of an employee under the terms of a contract or under an award which has no statutory force. This view finds support from the observations in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, , to the effect that:--

The law is now well-settled that a writ of certiorari will lie to control such a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice or commits any error apparent on the face of the records, provided that on a true construction of the statute creating such body, it can be said to be a quasi-judicial body entrusted with quasi-judicial functions.

Hence when the Supreme Court observed in the *Bank of Baroda* case (supra) that "although in a case of illegal termination or dismissal the respondent could have claimed damages but he could not have asked for or be granted a declaration that he should be treated as if he was still in service", it must have meant that the termination was wrongful and null and void. Even though the present case may not fall within any of the three exceptions, as the plaintiff by virtue of standing order got a statutory status and there was a violation of the provisions of the standing orders while his services were terminated, the principle of law laid down in the case of *Warehousing Corporation* (supra) which was followed in the *Bank of Baroda* case (supra) would apply to the present case and the plaintiff will be entitled to the declaration sought.

12. Looking at the provisions of Section 21, Specific Relief Act itself, it is clear that Section 21 applies to cases based on contract only. Once the case goes out of the realm of contract and enters the realm of law the prohibition of Section 21(b) does not come into operation. If the rights of the parties are based on a contract of service entered into between them, the provisions of Section 21 may be attracted, but if they are controlled by the statutory obligations such as are created by standing orders which override the terms of the contract of service, the case enters the realm of law and provisions of Section 21 cannot be attracted.

13. Faced with this position of law, learned Counsel for appellant contended that the standing orders did not amount to statutory terms of employment but only defined the terms of contract itself between the employer and the employee. We are, however, unable to accept this contention. In our opinion, standing orders framed under the Industrial Employment (Standing Orders) Act have got statutory force as the said statute had been enacted with the sole purpose of bringing into existence the standing orders. But because the standing orders in respect of different industrial workers had to be commensurate with varying conditions of service to suit needs of particular employment, no fixed standing orders could possibly be enacted and hence the procedure has been prescribed

by the statute for bringing into operation the standing orders which may control the terms and conditions of service of employees in different industrial establishments. The decision in the case of *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, , had proceeded on the footing that standing orders were statutory terms of employment between the industrial establishments and their employees. The same position was reiterated in the decision in *Workmen of Dewan Tea Estate and Others Vs. The Management*, , in which it was observed that "the standing orders which had been certified under the Industrial Employment (Standing Orders) Act became part of the statutory terms and conditions of service between the industrial employer and his employees." Again, in the case of *Workmen employed in B. & C. Mills, Madras v. The Management of B. & C. Mills* [1969] (19) F.L.R. 253, the Supreme Court reiterated that the standing orders which had been certified under the Industrial Employment (Standing Orders) Act became part of the statutory terms and conditions of service between the industrial employer and his employees and they will govern the terms between the parties. As such, a suit for declaration will not be barred by Section 21 of the Specific Relief Act.

14. Even otherwise, the provisions of Section 21 of the Specific Relief Act could not be attracted to the present case, as what the plaintiff had claimed was not the enforcement of any contract but a declaration that the impugned Act of the defendant was void. It was held in the case of *AIR 1950 81 (Privy Council)* , that where a resolution merely prevented the dismissal of the managing agent or termination of his appointment in violation of the articles of association of the company, it did not have the effect of enforcing a contract of personal service. In the case of *High Commissioner for India v. I.M. Lal* 75 I.A. 225, it was held by the Judicial Committee of the Privy Council that the declaration of statutory invalidity of an act was a thing entirely different from enforcing a contract of personal service. In the present case, the plaintiff has not sought the enforcement of any contract and therefore the provisions of Section 21 of the Specific Relief Act cannot be attracted.

15. Dealing with the provisions of Section 42 of the Specific Relief Act, the Supreme Court in the case of *Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others*, , approved the observation of Lord Macnaghten in *Fischer v. Secretary of State for India*, 26 Indian Appeal 16, and further observed that:--

Now, in the first place it is at least open to doubt whether the present suit is within the purview of Section 42 of the Specific Relief Act. There can be no doubt as to the origin and purpose of that section. It was intended to introduce the provisions of Section 50 of the Chancery Procedure Act 1852 (15 and 16 Vic. c. 86) as interpreted by judicial decision. Before the Act of 1852 it was not the practice of the Court in ordinary suits to make a declaration of right except as introductory to relief which it proceeded to administer. But the present suit is one to which no objection could have been taken before the Act of 1852. It is in

substance a suit to have the true construction of a statute declared, and to have an act done in contravention of a statute rightly understood, pronounced void and of no effect. That is not the sort of declaratory decree which the framers of the Act had in their mind.

The present case is also one in which the plaintiff is seeking that the order passed by the defendant in breach of the standing orders be pronounced void and of no effect. Hence the provisions of Section 42 will not be attracted to this case and the relief claimed cannot be denied to the plaintiff on the basis of Section 42 of the Specific Relief Act.

16. In the case of Bihar State Road Transport Corporation Vs. State of Bihar and Others, , the Supreme Court, dealing with a case of violation of the standing orders, observed that if the termination of the services of the employee was in breach of a standing order the order of termination would never become operative and the employee would be deemed to be continuing in service of the employer. The decree of the Court below must, therefore, be held to be valid.

17. In the result, the appeal fails and is dismissed with costs.