

RSA No.993 of 1996 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.993 of 1996 (O&M)

Date of Decision: 11.03.2015

Dr. Partap Singh Kundu

.... Appellant

Versus

Mahant Chand Nath & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr. Ram Kumar Malik, Sr. Advocate with
Mr. Ramandeep Singh, Advocate, for the appellant
Mr. R.Kartikeya, Advocate, for respondents No.1 to 3.

HEMANT GUPTA, J. (ORAL)

This order shall dispose of RSA Nos.993 and 2101 of 1996 having similar facts and raising identical substantial question of law i.e. Whether an employee of a privately managed institution governed by Haryana Affiliated Colleges (Security of Service) Act, 1979 (hereinafter referred as 'the Act') can maintain suit for declaration impugning his termination before the Civil Court? However, for the facility of reference, the facts are being taken from RSA No.993 of 1996.

In the said case, the plaintiff-appellant challenged the communication dated 01.06.1985, whereby his services were terminated. The plaintiff asserted that he was appointed as Demonstrator with respondent-institute on 21.10.1972. He resigned from the said post but subsequently he was appointed as lecturer on 16.10.1973 and was promoted as Assistant

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Professor. His services were terminated on 01.06.1985 after the previous Mahant, who was managing the respondent-institute, died on 06.01.1985. It was alleged that services of the appellant were terminated without holding an inquiry under the Act, therefore, the termination in violation of a statute, is illegal.

Learned trial court dismissed the suit holding that the respondent is a minority institute and is not governed by the Act. It also noticed that the suit is only for declaration and that such suit is not maintainable. In appeal, learned First Appellate Court upheld the issue that respondent is a minority institute and relied upon judgment reported as Smt. J.Tiwari Vs. Smt. Jawala Devi Vidya Mandir & others, AIR 1981 SC 122 to hold that the rights and obligations of an employee of a private institution are governed by the terms of a contract and that under the terms of contract, the employment of the plaintiff were liable to be terminated with three months notice and that even if it is illegal termination, the plaintiff can claim damages. The plaintiff did claimed damages but subsequently he gave up the relief of damages. Therefore, finding no merit in the appeal, the appeal was dismissed. Still aggrieved, the plaintiff-appellant filed the present appeal before this Court.

Learned counsel for the plaintiff-appellant relies upon a Single Bench judgment of this Court in CWP No.20900 of 2012 titled as 'Management Board of Ansal Institute of Technology of Charanjiv Charitable Trust, Gurgaon Vs. State of Haryana and others' decided on 26.11.2013, to contend that the contract to render personal service can be enforced in respect of an employee protected by the Act.

On the other hand, learned counsel for the respondent relies upon Supreme Court judgment in Executive Committee of Vaish Degree College, Shamli & others Vs. Lakshmi Narain & others, (1976) 2 SCC 58 to contend that even if there is a violation of a statute; still the remedy for the plaintiff against the wrongful termination is for damages. The plaintiff has given up his relief for claim of damages, therefore, the suit is not maintainable and his termination cannot be said to be unjustified.

I have heard learned counsel for the parties and do not find any merit in the appeal. The plaintiff was engaged by a private but an affiliated institute. The question as to whether a contract of personal service can be specifically enforced came up for consideration before Supreme Court in a judgment reported as Dr. S. Dutt Vs. University of Delhi, 1959 SCR 1236, the Hon'ble Supreme Court held to the following effect:

“11. We are in entire agreement with the view expressed by the High Court. There is no doubt that a contract of personal service cannot be specifically enforced. Section 21 clause (b) of the Specific Relief Act, 1877, and the second illustration under this clause given in the section makes it so clear that further elaboration of the point is not required. It seems to us that the present award does purport to enforce a contract of personal service when it states that the dismissal of the appellant “has no effect on his status”, and “He still continues to be a Professor of the University.” When a decree is passed according to the award, which if the award is unexceptionable, has to be done under Section 17 of the Arbitration Act after it has been filed in Court, that decree will direct that the award be carried out and hence direct that the appellant be treated as still in the service of the respondent. It would then enforce a contract of personal service, for the appellant claimed to be a Professor under a contract of personal service, and so offend Section 21(b).”

In, Executive Committee of Vaish Degree College, Shamli case (supra), the Court considered the difference between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. It was found that the respondent is not a statutory body. In the present case as well, the respondent does not owe its existence to a statute. The institution has a separate existence of its own without any reference to the statute concerned, but is merely governed by the statutory provisions. Thus, it cannot be said to be a statutory body. The Act contemplates that the services of an employee cannot be terminated without approval of the Director. Still further, in the said case, Section 25(c)(2) of the Agra University Act dealt with the manner of termination of services such as that of the plaintiff contemplating that every decision of the management of the affiliated college leading to dismissal or removal from service a teacher shall be reported forthwith to the Vice Chancellor and subject to provisions to be made by the statutes shall not take effect until it was approved by the Vice Chancellor. The Court held as under:

“18. On a consideration of the authorities mentioned above, it is, therefore, clear that a 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. This rule, however, 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 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.

20. Assuming for the sake of arguments, but not deciding that this decision has extended the scope of the exceptions, so that the appellant Executive Committee though a non-statutory body will still be bound by the statutory provisions of law, let us see what is the position.

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It is common ground that the procedure enjoined in sub-section (2) of Section 25-C of the Agra University Act was not at all followed by the Executive Committee and there can be no doubt that the Executive Committee has been guilty of this default. The question remains whether even if there has been a violation of the mandatory provisions of the statute, should we in the exercise of our discretion grant a declaration or an injunction to the plaintiff/respondent in the peculiar facts and circumstances of the present case? It is well settled that a relief under the Specific Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted. Mr Ramamurthi, learned Counsel for the plaintiff/respondent submitted that the question of discretion would arise only in case where the High Court or this Court is acting in a writ jurisdiction and not in a suit. We are, however, unable to agree with this argument because the exercise of discretion is spelt out from the provisions of the Specific Relief Act and the common law and it applies as much to the writ jurisdiction as to other actions at law.

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27. It seems to us that neither the First Additional Civil and Sessions Judge nor the High Court, while decreeing the plaintiff's suit, considered this aspect of the matter whether this was a fit case in which the discretion should have been exercised in favour of the respondent. It is manifestly clear from the authorities discussed above that the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the court according to sound legal principles and *ex debito justitiae*. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these

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circumstances, while exercising its discretionary powers the court must keep in mind the well settled principles of justice and fairplay and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum.”

In similar circumstances, in a judgment reported as Hindu College Vs. Sadhu Ram Saini, (1997) 11 SCC 471, the Hon'ble Supreme Court observed as under:

“3. Shri Goel has submitted that the High Court was in error in holding that the relief of reinstatement in service could be granted to the respondent on the view that the case falls within the exception to the rule that a contract of personal service cannot be specifically enforced. The submission is that merely because the college is affiliated to the University does not confer a statutory status on it so as to entitle the respondent to obtain the relief of instatement in service. We find merit in this contention of the learned counsel. The college cannot be regarded as a statutory body on the basis of its affiliation to the University and the High Court was in error in holding that the case falls within the exception to the rule that a contract of personal service cannot be specifically enforced. The relief of reinstatement in service could not be given to the respondent in the facts of this case. The respondent was, however, entitled to compensation for loss of pay and allowances due to wrongful termination of his services.”

Recently, in Secretary, A.P.D. Jain Pathshala & others Vs. Shivaji Bhagwat More & others, (2011) 13 SCC 99, the Hon'ble Supreme Court held as under:

“32. Even assuming that the committees constituted under the Shikshan Sevaks Scheme were quasi-judicial tribunals, they cannot direct reinstatement nor direct that the employees are deemed to continue in service by declaring the termination to be bad. It is well settled that courts would not direct reinstatement of service nor grant a declaration that a contract of personnel service subsists and that the employee even after removal is deemed to be in service. [See S. Dutt

Vs. University of Delhi AIR 1958 SC 1050.] The three recognized exceptions to the said rule are: (i) where a public servant having the protection of Article 311 of the Constitution is dismissed from service in contravention of the provision; (ii) where a dismissed workman seeks reinstatement before Industrial Tribunals/Labour Courts under the industrial law; and (iii) where a statutory body acts in breach or violation of the mandatory obligation imposed by a statute. (See Vaish Degree College Vs. Lakshmi Narain (1976) 2 SCC 58.) The direction of the High Court in its order dated 5-8-2008 that when the Grievance Committee holds that the termination is bad, the Shikshan Sevak is deemed to continue on the rolls of the management is therefore erroneous and liable to be set aside.”

Similar is the situation in the present case. Thus, even if, there is termination of services of an employee of an affiliated institution, the issue is as what remedies are available to aggrieved person. The plaintiff is an employee of a private institution, which is not a State. The remedy of reinstatement is available only to an employee of a State or an instrumentality or agency of the State or to a workman governed by the Industrial Disputes Act. Therefore, the relief of reinstatement cannot be claimed by the employees of a privately managed affiliated institute.

In Management Board of Ansal Institute of Technology of Charanjiv Charitable Trust, Gurgaon case (supra), the order under challenge was that of an appellate authority constituted under the Act setting aside the termination order. In the aforesaid case, the writ Court found that Tribunal has no right to set aside the order of termination without giving an opportunity of hearing. In view of the said finding, this Court has not interfered with the order of setting aside the order passed by the Tribunal in its writ jurisdiction. The said judgment is clearly distinguishable, which was

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directed against an order passed by the Tribunal, which was constituted under the Act.

In the present appeal, the plaintiff-appellant has invoked the jurisdiction of the Civil Court to enforce the contract of personal service. Such contract of a personal service in a private institute cannot be specifically enforced. The remedy is to claim damages for wrongful termination. But the plaintiff has given up the same.

In view of the above, I do not find that any substantial question of law arises for consideration in the present appeals. Consequently, both the appeals are dismissed.

11.03.2015
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(HEMANT GUPTA)
JUDGE