

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2085 of 2018(O&M)
Date of Decision-21.12.2018

Hitachi Plant Technologies India Pvt. Ltd. ... Petitioner
Versus

Sanjib Kumar Jena and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Suhail Sehgal, Advocate
for the petitioner.

Mr. Sanjib Kumar Jena,
respondent No.1 in person.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 26.02.2018 passed by Civil Judge (Junior Division), Gurugram vide which the application under Order 7 Rule 11 CPC filed by the defendant/petitioner for rejection of plaint was dismissed.

[2]. Respondent/plaintiff filed a suit for declaration and consequential relief of permanent injunction with the following prayers:-

I. declare termination letter dated 16.03.2017 invalid and illegal.

II. order lifting of corporate veil, to unearth real position of respondents;

III. allow the plaintiff to work regularly in the respondent organization and the other group companies with whom the plaintiff is a regular shared resource;

IV. arrange for alternate job in any of the respondent's other units in India or overseas;

V. pay past salary and all other dues immediately;

VI. pay salary and dues regularly and timely in compliance with the law;

VII. to instruct all the respondent's functional heads and Managers of the plaintiff to adhere to the laws of the land, do not threat the plaintiff or exercise any coercion in any manner, shape or format.

[3]. Defendant/petitioner is a private limited company. Defendant/petitioner filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the plaintiff/respondent was appointed as 'AGM' by the defendant-Company vide appointment letter dated 03.09.2012. Plaintiff has been terminated under Clause 17 of the appointment letter by giving notice period of 60 days and also by making the payment of salary for the said period. Defendant claimed that the suit is barred in terms of Section 41 (e) read with Section 16 of the Specific Relief Act and thus, the suit is also barred under Order 7 Rule 11(d) CPC.

[4]. Trial Court dismissed the application even while considering that the contract of personal nature cannot be specifically enforced, but the Court opined that an opportunity of hearing must be given to the plaintiff.

[5]. I have heard learned counsel for the petitioner and the respondent No.1 in person.

[6]. Respondent No.1 was enrolled as an Advocate with Bar Council of Delhi with an enrolment No.D/1997/2004. This fact has not been denied by respondent No.1, however, he contended that he had never practiced in a Court of law.

[7]. As per appointment letter dated 03.09.2012, respondent No.1 was appointed as Assistant General Manager/Strategy-Marketing Division Grade (M2). Clause No.17 of the aforesaid letter i.e. "Termination of Contract" is to the following effect:-

"a) During the probationary period, either party may terminate this contract by giving one (1) day written notice or salary in lieu of such notice period. It is clarified that this notice may be given at any time before the expiry of the probationary period. After confirmation of your appointment, either party may terminate this appointment by giving 60 (sixty) days notice in writing or payment of salary in lieu of such notice period.

b) The employee shall be forthwith terminated by IGHT without notice in any of the following circumstances;

(i) is absent without information for more than seven (7) consecutive days or in case of regular absenteeism.

(ii) commits any act of dishonesty, fraud, willful disobedience, misbehavior or breach of code of conduct.

(iii) misconduct include (but are not limited to) abusive or inappropriate behavior, assault, fighting, fraud, or the commission of any criminal offence involving dishonesty.

c) On termination of his appointment under the Contract (or any amendment hereto);

(i) The employee shall forthwith deliver to IGHT all documents, papers, materials, credit cards, company assets and other property of IGHT which may then be in his possession and also will immediately surrender to IGHT all notes, data, manuals, documents, records, data bases, programs, blueprints, memoranda, specifications, customer lists, financial reports, and all other physical forms of expression incorporating or containing any confidential information;”

[8]. Notice of termination was issued to the respondent under the aforesaid Clause No.17 of the appointment letter, whereby the petitioner notified its intention to terminate the employment of the respondent with immediate effect on account of corporate restructuring which the company was undergoing with its associates and group companies. The compliance of notice period of 60 days was made.

[9]. Learned counsel for the petitioner submitted that a contract of personal service cannot be specifically enforced and the Court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. This general rule of law is subject to three well recognized exceptions i.e.

(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 of violation of the mandatory provisions of the statute.*

[10]. In support of his contention, learned counsel for the petitioner relied upon **Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, AIR 2004 SC 1373, CR No.6064 of 2002 titled Madan Lal Vs. The Meham Coop. Sugar Mills Limited and others decided on 04.03.2015, Lekh Raj Khurana Vs. Union of India (UOI) AIR 1971 SC 2111, Apollo Tyres Ltd. Vs. C.P. Sebastian, JT 2009(8) SC 182 and Executive Committee of Vaish Degree College, Shamli and others, AIR 1976 SC 888** and contended that the Civil Court will have no jurisdiction under Section 14 of the Specific Relief Act. The suit for declaration that the order of termination of service was bad and the plaintiff should be reinstated in service with back-wages cannot be specifically enforced in the civil suit as a contract of service is precluded from being enforced in a Civil Court and the bar of the suit can be seen from the provision in terms of Section 14 of the Specific Relief Act. The service of the plaintiff was not regulated by any protection under Article 311 of the Constitution of India and the same cannot be a subject matter of judicial intervention by reinstatement. It was not a case of a contract of employment

between employee and a Corporation established by statute by Act of Parliament or a State Legislature. It was not a case of rights and duties of the workmen and the Management which are regulated under Industrial Disputes Act. Civil Court will have no jurisdiction in respect of enforcement of contract of personal service and no declaration can be given and the suit is barred under Section 14(b) of the Specific Relief Act.

[11]. The present case does not fall in any of the three exceptions as culled out by the Hon'ble Apex Court in **Pearlite Liners Pvt. Ltd.'s case (supra)**. Defendant/petitioner is not a statutory body. There is no statute governing the service conditions of the plaintiff. The case of the plaintiff is not a case of public employment so as to attract Article 311 of the constitution of India. The case is of private employment which could be governed by the terms of the contract between the parties. As per terms of the appointment letter, the services of the plaintiff were dispensed with. Any interference by the Civil Court would amount to enforcing a contract of personal service which cannot be granted under the law. Such a suit cannot be allowed to continue and should be thrown at the very inception as the Civil Court has no jurisdiction to grant relief which cannot be formed part of the trial.

[12]. In **Lekh Raj Khurana's case (supra)**, the Hon'ble Supreme Court pointed out that under the general rule of master

and servant, in the absence of any protection conferred by Article 311 of the Constitution of India, rule of natural justice cannot be invoked. A contract of personal service includes termination of service as well. A suit challenging the order of termination is barred under Section 14(b) of the Specific Relief Act. Plaintiff is not a workman as defined under Industrial Disputes Act, 1947.

[13]. It is a settled principle of law that when there is a termination of a contract of service, a declaration qua subsistence of contract cannot be granted in the absence of circumstances where a public servant has been dismissed from service in contravention of Article 311 of the Constitution of India or where reinstatement is sought of a dismissed worker under the Industrial Law or where a statutory body has acted in breach of mandatory obligations imposed by the statute. There cannot be any other exception against the aforesaid general rule.

[14]. The effort made by respondent No.1 in person to contend that supervisory jurisdiction of the High Court under Article 227 of the Constitution of India cannot be invoked as the impugned action is not a decree, cannot be appreciated. Respondent relied upon **Chandrasekhar Singh and others Vs. Siya Ram Singh and others, 1979 AIR 1, Second Appeal (MD) No.678 of 2014** titled **A. Jawaharlal Vs. Thayammal** decided on 09.04.2015 by the Madras High Court, **Appeal (Criminal) of 725** titled **State through Special Special Cell, New..... Vs. Navjot**

Sandhu @ Afshan Guru and others decided on 09.05.2003 by the Supreme Court and **CRP (PD) Nos.1020, 1021 and 1022 of 2009 and M.P.No.1 of 2009** titled **The Ootacamund Club Vs. H.S. Mehta** decided on 01.10.2009 by Madras High Court.

[15]. The ratio of aforesaid judgments cannot be applied to the facts of the present case. In the aforesaid cited judgments, the powers of the High Court under Article 227 of the Constitution of India have been explained on the basis of individual facts of the case. The parameters on which the aforesaid cases have been decided cannot be disputed. It is also a settled principle of law that extraordinary supervisory jurisdiction of the High Court cannot be invoked when efficacious remedy is available to the petitioner. The order dismissing the application for rejection of the plaint is not a decree and therefore, the order is not appealable in terms of Order 43 Rule 1 CPC. The facts involved in the aforesaid precedents do not cover the controversy in question in any manner.

[16]. The expression “law” occurring in Order 7 Rule 11 (d) includes judicial decisions of the Hon’ble Apex Court. The authoritative pronouncement of the Hon’ble Apex Court is the law of land. The law declared by Hon’ble Apex Court under Article 141 of the Constitution of India is the law of land. Law includes not only legislative enactments, but also judicial precedents.

Reference can be made to **Virender Kumar Dixit Vs. State of**

U.P., 2014(9) ADJ 506 and Bhargavi Constructions and another Vs. Kothakapu Muthyam Reddy and others, 2017(4) RCR (Civil) 359.

[17]. In view of dictum laid down by the Hon'ble Apex Court in **Pearlite Liners Pvt. Ltd.'s case (supra)** which was followed in **Apollo Tyres Ltd. case (supra)** which in turn followed by the High Court in **Madan Lal's case (supra)** would form the law of land and the controversy in question is decided to the hilt that a contract of personal service cannot be specifically enforced through a Court by a declaratory suit unless and until three well recognized exceptions are attracted to the general rule of law. The case of the plaintiff does not fall in any of the exceptions as culled out in **Pearlite Liners Pvt. Ltd.'s case (supra)**.

[18]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 26.02.2018 passed by Civil Judge (Junior Division), Gurugram is hereby set aside. Plaint is ordered to be rejected.

**(RAJ MOHAN SINGH)
JUDGE**

21.12.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No