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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.336 of 2007

K.R.Dayananda

..Appellant/Plaintiff

Vs.

1.The Headmaster,
Lawrence School,
Lovedale, Ootacamund

2.The Lawrence School,
rep.by Headmaster,
Lovedale, Ootacamund.

..Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 25.07.2006 passed in A.S.No.18 of 2006 on the file of the Subordinate Court, Nilgiris at Ootacamund, reversing the judgement and decree dated 08.09.2005 passed in O.S.No.201 of 2004 on the file of the District Munsif Court, Ootacamund.

For Appellant : Mr.S.Kinston Jerold

For Respondents : Mr.T.Poornam

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 25.07.2006 passed in A.S.No.18 of 2006 on the file of the Subordinate Court, Nilgiris at Ootacamund, reversing the judgement and decree dated 08.09.2005 passed in O.S.No.201 of 2004 on the file of the District Munsif Court, Ootacamund.

2.The second appeal has been admitted on the following substantial question of law:

"1.Whether the judgment and decree of the Lower Appellate Court is vitiated by its failure to consider the provisions contained in Section 2(1)(3) of the Industrial Disputes Act which clearly excludes the jurisdiction of Industrial Disputes Act in respect of Teachers?



2. Whether the judgment and decree of the Lower Appellate Court is vitiated by its failure to consider the question of jurisdiction not having been raised in the written statement of the respondents and non-framing of necessary issues on the question of jurisdiction and in the absence of evidence on the question of jurisdiction?"

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5. The suit has come to be laid by the plaintiff against the defendants for the reliefs of declaration that the order of termination dated 06.05.2003 passed by the first defendant is illegal, arbitrary, void and therefore, a nullity and that, the plaintiff continues in service as Master in Kannada language in the defendants' school and consequently, sought for the reinstatement of the plaintiff as permanent Master to teach Kannada in the defendants' school and for the relief of permanent injunction restraining the defendants from interfering with or dispossess the plaintiff or the members of his family from the house in his occupation excepting under due process of law and for seeking salary, other emoluments and damages due to the plaintiff.

6. In brief, according to the plaintiff, he had been inducted as the Master to teach Kannada language in the defendants' school and his service had also been confirmed and owing to the misunderstanding between him and the headmaster of the defendant's school, according to the plaintiff, his service had been retrenched by the defendants and consequently, he had been terminated from service by the defendants' school by way of the impugned order dated 06.05.2003 without providing any opportunity to the plaintiff to put forth his case and also in violation of the principles of equity, natural justice and good conscience and as the order of termination issued by the defendants is against law, arbitrary and illegally exercised, and seeking the appropriate reliefs with reference to the same as abovestated, the plaintiff has come forward with the suit.



7.The defendants resisted the plaintiff's suit contending that the defendants' school is a society registered under the Registration of Societies Act, 1860 before the Registrar of Societies, Delhi Administration, Delhi on 27.02,.1975 and the object of the defendants' school is to impart quality education to boys and girls, who are studying therein and no doubt, did not dispute the induction of the plaintiff as a Master for teaching Kannada Language in the defendants' school and his confirmation thereupon, however, would contend that as per the powers conferred upon the defendants' school, as the post of Master in teaching Kannada language is found to be redundant and unnecessary, accordingly, exercising the powers conferred on them, according to the defendants, the plaintiff's service had been retrenched and accordingly, the plaintiff had been terminated from the service as per the rules and regulations of the defendants' school and the same cannot be questioned by the plaintiff in any manner and further, according to the defendants, the house has been provided to the plaintiff only as a condition of service and on the termination from his service, he is not entitled to occupy the quarters given to him and further, according to the defendants, the contract of personal service entered into the plaintiff and the defendants' school cannot be enforced in law by the plaintiff and the plaintiff cannot seek the claim of reinstatement and other benefits and if at all, in case the plaintiff is entitled to seek that the order of termination of his service is unjustified, at the most, he is entitled only to seek the relief of damages and nothing more and accordingly, it is stated that the order of termination of the service is just and fair and cannot be assailed of on any ground and the plaintiff is therefore not entitled to seek the reliefs prayed for and sought for the dismissal of the plaintiff's suit.

8.Based on the materials placed on record and the appreciation of the same, the trial Court was pleased to accept the plaintiff's case and granted the reliefs in favour of the plaintiff as prayed for. On appeal, the first appellate Court holding that the Civil Court has no jurisdiction to entertain the suit, accordingly, set aside the judgment and decree of the trial Court and dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred by the plaintiff.

9.The only point that has to be determined in this matter is, whether the plaintiff is entitled to maintain the suit questioning the termination of his service from the defendants' school. The plaintiff is found to have been terminated from the service by the defendants' school on account of determining that



the post of Master for imparting Kannada language is unnecessary, considering the strength of the students opting to study Kannada language in the defendants' school and accordingly, exercising the powers conferred on the school, it is the case of the defendants that they had determined to terminate the service of the plaintiff on the ground of retrenchment as provided by the rules and regulations of the defendants' school marked as Ex.B2 and in such view of the matter, according to the defendants, the plaintiff is not entitled to seek and obtain the reliefs prayed for and the plaintiff is not entitled to enforce the contract of personal service between him and the defendants' school and the civil Court has no jurisdiction to entertain such a suit.

10.The first appellate Court is found to have discountenanced the plaintiff's case on the footing that the civil Court has no jurisdiction to entertain the suit for granting the reliefs prayed for by the plaintiff and furthermore, determining that the plaintiff should have approached the Labour Court under the Industrial Dispute Act and in this connection, the first appellate Court seems to have relied upon the decision of the Apex Court reported in (2006) 1 Supreme Court Cases page 61 (Rajasthan SRTC and another Vs.Ugma Ram Choudry) and accordingly, proceeded to dismiss the plaintiff's suit.

11.Contending that the Civil Court has the jurisdiction to entertain the plaintiff's suit and grant the reliefs as prayed for, the plaintiff counsel would rely upon the decisions reported in CDJ 2001 MHC 1135 (Vellore Municipality represented by its Commissioner, Officer Lane, Vellore Vs. D.Dennisan and others), CDJ 2001 SC 121 (Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak), CDJ 2001 SC 2503 (Management of Som Vihar Apartment Owners Housing Maintenance Society Limited Vs. Workmen C/o.Indian Engineering and General Mazdoor) and CDJ 1963 SC 306 (University of Delhi & Another Vs. Ram Nath & Others). In the decision reported in CDJ 2001 MHC 1135 (Vellore Municipality represented by its Commissioner, Officer Lane, Vellore Vs. D.Dennisan and others), it is found that the dispute is with reference to the dismissal of the employees by the Vellore Municipality, a Statutory Body, in CDJ 2001 SC 121 (Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak), the dispute is pertaining to the termination of service of the plaintiff therein as a clerk in the District Co-operative Bank, in CDJ 2001 SC 2503 (Management of Som Vihar Apartment Owners Housing Maintenance Society Limited Vs. Workmen C/o.Indian Engineering and General Mazdoor), the issue is as regards the entitlement of Dearness Allowances and other allowances as decided by the Industrial



Tribunal Court and in CDJ 1963 SC 306 (University of Delhi & Another Vs. Ram Nath & Others), the issue is as regards the retrenchment of the service of the employees of the University of Delhi. In the last decision, it is seen that the Apex Court has held that the work of imparting education carried on by the Educational Department like the University of Delhi is not an Industry within the meaning of Industrial Dispute Act, considering the definition of Industry, employer and employee as defined in the abovesaid Act.

12. In so far as this case is concerned, it is found that the plaintiff is questioning his order of termination by the defendants' school and in other words, the plaintiff is trying to enforce the personal contract of service entered into between him and the defendants' school. As abovenoted, the defendants' school is found to be a registered society and is governed by the rules and regulations thereof. As could be seen from the memorandum of association and the rules and regulations formed by the defendants' school marked as Exs.B1 & B2, it is found that the Headmaster of the defendants' school is empowered to terminate the service of permanent employee like the plaintiff and as provided under Rule 4.11 of Ex.B2, it is found that the Headmaster is entitled to terminate the services of any permanent member on the ground of retrenchment or continued unsatisfactory performance of duties by giving him three months notice in writing or three months pay and allowance in lieu thereof. Accordingly, it is found that by way of Ex.A6 order, the plaintiff's service had come to be retrenched by the defendants' school on the ground of surplus.

13. The defendants have taken the specific plea that the plaintiff is not entitled to enforce the contract of service entered into with them and accordingly, the civil Court would not be entitled to grant the reliefs as prayed for by the plaintiff. According to the defendants, if at all, the plaintiff has got any grievance on account of his removal from service, if the same is found to be unjust, he would be entitled only to seek damages, if any. In this connection, it is seen that in the decision reported in AIR 1981 Supreme Court 122 (J.Tiwari vs. Jawala Devi Vidya Mandir and others), it has been held that in respect of the educational institution registered under the Societies Registration Act, the termination though unlawful, the person who had been terminated from service is entitled to only decree for damages and not to a declaration of continuing in service and the position of law, with regard to the same, as outlined in abovesaid decision, is extracted as follows:

"Specific Relief Act (47 of 1963), S.34 - Educational institution



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registered under Societies Registration Act (1860) - Termination of Principal - Termination though unlawful, principal entitled only to decree for damages and not to a declaration of continuing in service.

Rights and obligations of an employee of a private institution are governed by the terms of the contract entered into between the parties. Where under those terms the principal's services were liable to be terminated on three months' notice, all that he would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of his services he continued to be in service.

The regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to the institution which is registered under the Societies Registration Act (1860). And if the provisions thereof are violated by it, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not, however, mean that the institution is a public or a statutory body. F.A. o.323 of 1961, D/- 17-5-1966 (All), Affirmed; AIR 1976 SC 888, Rel.on.

Cases Referred: Chronological Paras AIR 1976 SC 888: (1976) 2 SCR 1006.

"4. We are unable to accept the contention strenuously advanced before us by the appellant's learned counsel that respondent 1 is a public body or a statutory authority and therefore the appellant would be entitled to obtain a declaration that she continued to be in the service of respondent 1 since the order terminating her services has been



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found to be unlawful. The regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to respondent 1 and if the provisions thereof are violated by respondent 1, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not, however, mean that respondent 1 is a public or a statutory body, Respondent 1 is a private institution which is registered under the Societies Registration Act 1860. It was established by one Nand Lal, a retired Deputy Collector, who named it after his wife Smt. Jwala Devi. The Society was established for the purpose of managing the institution.

5. Exhibit 1 is an agreement dated January 1, 1953 between the appellant and respondent 1 Clause 10 of that agreement reads thus:

"When the Principal/Head Master/ Head Mistress has been confirmed, neither the Principal /Head Master/Head Mistress nor the committee, subject to the provision of Clause 7, shall terminate this agreement except by giving to the other three calendar months' notice in writing to take effect from the eighth day of the succeeding month, or by paying to the other a sum equivalent to three times the monthly salary which the Principal Head Master/Head Mistress is then earning".

Clause 7 which is referred to in Cl.10 confers power on the Committee of the institution to dismiss the Principal or the Head Mistress on the ground of insubordination, deliberate neglect of duty, serious misconduct and the commission of an act which constitutes a criminal offence. It may be assumed for the purpose of argument that the



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resolution dated May 24, 1958 which was passed by the Executive Committee of respondent 1 terminating the service of the appellant is unlawful for want of three calendar months' notice as provided in Cl.10 of the agreement. By the second paragraph of Clause 10, which it is unnecessary to extract fully, it is provided that before giving a notice of termination to the Principal, the Society should consult the Inspectress of Schools, should give full reasons for discharging the Principal and that the notice of termination "should only be valid" if the Inspectress approves of it. We may further assume that since this procedure was not followed by the Society, the order of terminating the appellant's services is unlawful. But the appellant is an employer of a private institution and their mutual rights and obligations are governed by the terms of the contract, Exhibit 1 which was entered into by them in 1953. Since under those terms the appellant's services were liable to be terminated on three month's notice, all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service. The judgment of this Court in Executive Committee of Vaish Degree College, Shamli V. Lakshmi Narain (1976) 2 SCR 1006: (AIR 1976 SC 888) is a direct authority for this conclusion."

14. Similar is the view taken by the Supreme Court in the decision reported in 1995 Supp (2) Supreme Court Cases 495 (Integrated Rural Development Agency Vs. Ram Pyare Pandey), wherein also, the termination of an employee under the Registered Society, not constituted under statute nor owned or controlled by, nor being an instrumentality of the State Government, was considered, in such view of the position, the relationship between such a society and its employee is based on contract and is purely Master and Servant relationship and accordingly, held that there cannot be any specific performance of a contract of service between the employee and the Master and the position of



law with reference to the same has been outlined in the abovesaid decision as follows:

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"6. The appellant - Integrated Rural Development Agency - is one registered under [Societies Registration Act](#). It has its own Articles of Association. It has framed its own rules thereunder. There is no plea or material or proof that the appellant - Integrated Rural Development Agency - is one constituted under statute or is owned or controlled by the State Government or an instrumentality of the State. The relationship between the appellant - Integrated Rural Development Agency - and the respondent is based on contract and is purely one of master and servant. As stated by Jenkins, L.J., in his dissenting judgment, in *Vine vs. National Dock Labour Board* (1956 (1) AER 1), which was approved in appeal by the House of Lords in *Vine V. National Dock Labour Board* 1956 (3) All ER 939:

"In the ordinary case of master and servant, however, the repudiation or the wrongful dismissal puts an end to the contract, and a claim for damages arise. It is necessarily a claim for damages and nothing more. The nature of the bargain is such that it can be nothing more."

Delivering the judgment of three member Bench of this Court in [Nandganj Sihori Sugar Co. Ltd. Rae Bareli and another vs. Badri Nath Dixit and others](#) (1991 (3) SCC 54), Thommen, J. stated the law thus:-

"A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages (See [Section 14](#) read with [Section 41](#) of the Specific Relief Act; see *Indian Contract and Specific Relief Acts* by Pollock and Mulla, 10th Edn, page 983). The grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any



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statutory requirement, courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public servant dismissed from service in contravention of [Article 311](#) of the Constitution; reinstatement of a dismissed worker under the Industrial Law; a statutory body acting in breach of statutory obligations, and the like. ([S.R. Tiwari v. District Board, Agra](#) (AIR 1964 SC 1680); [Executive Committee of U.P. State Warehousing Corporation v. Chandra Kiran Tyagi](#) (1969 (2) SCC 838); [Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain](#) (1976(2) SCC 58); see Halsbury's Laws of England, 4th Edn., Volume 44, paragraphs 405 to 420)."

Similarly in [Ridge v. Ballwin](#), [1963 (2) All ER 66], Lord Reid stated the law emphatically thus:

"The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them. " (emphasis supplied)

7. In the light of the above principles, it follows that the relief of reinstatement could not be granted in the present case. By affording the relief of



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reinstatement or back wages, the courts will, in fact, be granting specific performance of contracts of service, which can be done only in the exceptional or rare cases referred to in the Judgment of this Court in [Nanddganj Sihori Sugar Co. Ltd., Rae Bareli and another vs. Badrinath Dixit and others](#) (1991) 3 SCC 54.

8. In the result, the relief of reinstatement of the respondent in service and also arrears of salary from the date of termination, are improper and unjustified in law. The reliefs so granted are hereby set aside. The appeal is allowed. In the circumstances, there shall be no order as to costs."

15. In the decision reported in AIR 1973 Supreme Court 855 (Sirsi Municipality by its President Sirsi, V. Cecelia Kom Francis Tellis), it has been held under what circumstances, the personal contract of service could be enforced in a Civil Court and the position of law with reference to the same is outlined as below:

"15. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the [Law of Specific Relief Act](#).

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under



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Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statutes. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

19. The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant."

16. In the decision reported in AIR 1976 Supreme Court 888 (Executive Committee of Vaish Degree College, Shamli and others V. Lakshmi Narain and others), as regards the enforcement of contract of personal service and the grant of the reliefs of declaration and injunction with reference to the same, the



principles of law had been outlined as follows:

"(B). Specific Relief Act (1063), Sections 14, 10, 34, 36 - Contract of personal service - Enforceability of - Relief of deduction and injunction - Grant of - Exercise of discretion - Duty of Court - S.A.No.2973 of 1972, D/- 30-7-1974 (All), Reversed.

Per H.R.Khanna and S.M.F.Ali JJ.- 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 recognised exceptions - (i) where a public servant is sought to be removed from service in contravention of the provisions of [Art. 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.

Per Majority; 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 circumstances, while exercising its discretionary powers the Court must keep in mind the well settled principles of justice and fair play 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.

When the Executive Committee of a College registered under Registration of



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Co-operative Societies Act and affiliated to a University is not a statutory body and without the approval of the Vice-Chancellor as required by Section 25-C of the Agra University Act the services of the plaintiff as Principal of the College are terminated on ground of his habitually and perpetually remaining absent from his duties without permission, such a case does not fall within any of the aforesaid exceptions to the rule of non-enforceability of contract of service and hence, prima facie the plaintiff is not entitled to any declaration or injunction. In view of the special and peculiar circumstances of the case, it was held not to be a proper exercise of discretion to grant a decree for declaration and injunction in favour of the plaintiff. Decision of Full Bench and that of single Judge in S.A.No.2973 of 1972, D/- 30-7-1974 (All), Reversed.

17. Similar is the view expressed by the Apex Court in the decision reported in AIR 2008 Supreme Court 2594 (State Bank of India & Ors. V. S.N.Goyal), and the position of law is outlined as follows:

Re: Question (i) - Enforcement of a contract of personal service

"11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in [section 14](#) of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:



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(i) where a civil servant is removed from service in contravention of the provisions of [Article 311](#) of the Constitution of India (or any law made under [Article 309](#));

(ii) where a workman having the protection of [Industrial Disputes Act, 1947](#) is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief - damages or reinstatement with consequential reliefs - is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : [Dr. S. Dutt vs. University of Delhi](#) AIR 1958 SC 1050; [Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi](#) 1970 (2) SCR 250; [Sirsi Municipality vs. Cecelia Kom Francies Tellis](#) 1973 (3) SCR 348; [Executive Committee of Vaish Degree College vs. Lakshmi Narain](#) 1976 (2) SCR 1006; [Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir](#) AIR 1981 SC 122; and [Dipak Kumar Biswas vs. Director of Public Instruction](#) AIR 1987 SC 1422).

12. In this case the appellant is a statutory body established under the [State](#)



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Bank of India Act, 1955 and the contract of employment was governed by the State Bank of India Officers Service Rules, which are statutory rules framed under section 43(1) of the said Act. The respondent approached the civil court alleging that his removal from service was in violation of the said statutory rules. When an employee of a statutory body whose service is terminated, pleads that such termination is in violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in service is maintainable and will not be barred by section 14 of the Specific Relief Act."

18. In the light of the abovesaid position, when it is found that the plaintiff by way of the present suit is only seeking to enforce the personal contract of service, which he had with the defendants' school and when such personal contract of service cannot be enforced by a Civil Court, whether the order of termination of the plaintiff is unjust and unlawful and furthermore, when it is found that the plaintiff's service had been terminated on the ground of retrenchment and the said power is granted in favour of the defendants' school, in such view of the matter, following the abovesaid decisions relied upon by the defendants' school, the reliefs sought for by the plaintiff not found to be enforceable, as such, on that ground, it is found that the plaintiff is not entitled to maintain the suit and accordingly, though the first appellate Court is found to have dismissed the plaintiff's suit on the determination that the plaintiff is to seek his remedy as provided under the Industrial Disputes Act, however, considering the status of the defendants' school and the employment of the plaintiff under the defendants' school by way of contract and the plaintiff is endeavouring to enforce the said contract, which cannot be legally sustained as above pointed out by the Apex Court, in such view of the matter, it is found that the plaintiff's suit cannot be sustained.

19. Inasmuch as the grant of quarters to the plaintiff is provided in continuation of his service and when his service has been terminated, the plaintiff is not entitled to seek the retention of the quarters thereof and in such view of the matter, the relief of permanent injunction sought for by the plaintiff against the defendants' school to restrain them from



interfering with the possession of the quarters is found to be not acceptable and when as abovenoted, the plaintiff is not entitled to enforce the contract of service qua the defendants' school as per law, the relief of permanent injunction sought for by the plaintiff cannot be granted.

20. On the abovesaid reasons, the plaintiff's suit is found to be not maintainable. The substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff and in favour of the defendants.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1. The Subordinate Judge,
Nilgiris at Ootacamund.

2. The District Munsif,
Ootacamund.

Copy to : The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to M/s.S.K.Rakhunathan, Advocate Sr.No. 44571

+1 cc to M/s.T.Pooram, Advocate SR.No.44606

AKM/05.11.19/17P-6C /

Judgment made
in S.A.No.336 of 2007