

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.261/2010

1. Vidarbha Irrigation Development Corporation, through its Chief Engineer, Nagpur, Tahsil & District Nagpur.
2. The Executive Engineer, Gose Khurd, Left Bank Canal Division, Wahi, Tah – Pauni, District Bhandra.
3. The Executive engineer, Tekepar Lift Irrigation Division, Ambadi, Post – Silli, Tah & Distt. Bhandara.

.....APPELLANTS

...V E R S U S...

Arvind s/o Ramrao Chakole,
 aged about 46 yeas, Occ. Service,
 r/o Zilla Parishad Colony, Ganeshpur,
 Bhandara, Tah. & Distt. Bhandara.

...RESPONDENT

 Mr. Uday A. Gosavi, Advocate for appellants.
 Ms Ayushi H. Dangre, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : 31.07.2023

JUDGMENT PRONOUNCED ON : 18.08.2023

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The appellant – Vidarbha Irrigation Development Corporation, through its officers, have preferred the present appeal, being aggrieved by the judgment and decree dated 20.02.2010, passed by the District Judge – I, Bhandara in Regular

Civil Appeal No.102/2006, arising out of judgment and decree dated 08.03.2006 passed by Civil Judge Senior Division, Bhandara in Regular Civil Suit No.187/2001. The suit filed by respondent – plaintiff was decreed and the appeal came to be dismissed.

The appellants shall be, hereinafter, referred to as the “defendants” and the respondent as the “plaintiff”.

3. The plaintiff had filed a suit for declaration and permanent injunction contending that the order dated 17.11.2000 passed by the Executive Engineer, Gosekhurd Left Canal Division, Wahi is illegal. The injunction sought was that the defendants be restrained from recovery of the amount from the plaintiff.

4. The plaintiff was working as Engineer and was posted at Ambadi under the office of the defendant no.3 – Executive Engineer, Tekepar Left Irrigation Division, Ambadi. He was on field duty and was in possession of Pentex Automatic Level with stand and levelling staff. He had kept the said instrument in the hut of the Watchman employed with the contractor namely Reddy Brothers & Company. On that day, the plaintiff had carried out certain measurements and other works. Once the measurement work was done, these instruments were kept in godown on 27.03.1999.

5. It was the case of the plaintiff that he was constrained to do so, since there was no labour or other official person who could carry the same to the headquarters which was situated at 15 km. from the site. The official was not provided despite several requests from the plaintiff. The plaintiff, therefore, kept the measurement instruments at the godown of the contractor. At the night of 27.03.1999, there occurred fire in the godown and these instruments along with other articles were burnt. The incident was reported to the head office and burnt instruments were deposited in the office. A show cause notice was issued to the plaintiff vide notice dated 13.08.1999, calling upon him to show cause why value of the said instruments should not be recovered from him on the ground of negligence. The said notice was replied. The defendant no.3 – Executive Engineer, however, vide the impugned order, directed the recovery of the amount of Rs.33,465/- from the plaintiff. The plaintiff responded stating therein that he was never negligent. The incident was an accident and was an act of God and requested to review the order. He further stated that no legal inquiry has been caused and, therefore, the said order should be revoked. The plaintiff apprehended recovery of the amount and hence this suit. The defendants resisted the claim by filing the written statement. One of the

objections was that the civil court has no jurisdiction and the appropriate forum was the Maharashtra Administrative Tribunal (MAT). Both the courts below have held that the civil court will have jurisdiction to try and entertain the suit.

In view of the subsequent developments, the plaintiff has amended the suit and sought order of refund of recovery amount, which the courts below have granted.

6. The appeal has been admitted on the following substantial questions of law.

“Whether the civil court had jurisdiction to decide the matter in respect of recovery of an amount sought by the appellant–V.I.D.C. from the respondent for the destruction of certain instruments as it would pertain to service of the respondent as a State Government Servant?”

7. Learned counsel for the defendants has invited my attention to the cross-examination of the plaintiff. He has deposed that his first appointment was with the Irrigation Department of the State Government. Subsequent to his appointment in the Irrigation Department, the defendant no.1 – VIDC was formed. He was working in the VIDC on deputation. He is a State Government employee.

Thus, there is no scope to doubt the plaintiff's status of being State Government employee.

8. Mr. Gosavi, learned counsel for the defendants has invited my attention to the judgment passed by the first appellate court. Learned counsel for the defendants raised a contention that the plaintiff has admitted the guilt in the departmental inquiry and deposited cost of Tarpolin of Rs.1495/-. The plaintiff's counsel in defence argued that the defendants' witness DW1 has admitted that no departmental inquiry was conducted against the plaintiff and defendant no.2 has started deducting the amounts from the salary without giving him any opportunity.

9. The appellate court held that there was no inquiry and that the present dispute will not lie before the MAT. The first appellate court then noted that the trial court had framed a preliminary issue of jurisdiction. It was answered against the defendants. The first appellate court noted that the defendants have not challenged the findings of the trial court on the preliminary issue of jurisdiction. The first appellate court also noted from the evidence that the defendants have deducted the amount of Rs.26,760/- from the salary of the plaintiff, without giving him any opportunity of being heard. The defendants have not followed the principles of natural justice and the plaintiff was left with no other alternative but to file suit which, according to the first appellate court, was definitely maintainable.

10. Learned counsel for the plaintiff has supported the aforesaid findings. She has relied upon the judgment of the MAT in Original Application No.419/2017, Shri Ravindra Harishchandra Jadhav Vs. Deputy Chief Accountant and Finance Officer, Zilla Parishad, Thane and Ors. Decided on 28.07.2022. The applicant therein had challenged the order passed by the Deputy Chief Accountant and Finance Officer, Zilla Parishad, Thane directing the recovery of amount of Rs.4,00,000/- paid in excess to the applicant. The applicant was appointed as Draftsman in Zilla Parishad. He got retired in the year 2014. While in service, excess payment was made to him towards pay and allowances. The respondent – Zilla Parishad raised an objection as regards jurisdiction of the tribunal to entertain the original application. The contention put forth by the applicant was that the Zilla Parishad works under the control of the State Government and, therefore, the tribunal can entertain the application even in absence of notification under Section 15(2) of the Administrative Tribunals Act, 1985.

11. The tribunal considered the definition of ‘Government Servant’ as defined under Section 2(b) of the Maharashtra Civil Services (Conduct) Rules, 1979, which reads thus:

“2.Definitions:

(a)

(b) “Government servant”, means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra and includes a Government servant whose services are placed at the disposal of a company; corporation, organization, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State.”

12. The tribunal held that the applicant admittedly, was not appointed by the State Government nor was he placed at the disposal of the Zilla Parishad by the State Government and, therefore, he cannot be said to be the Government Servant so as to raise the grievance before the tribunal in absence of notification under Section 15(2) of the Administrative Tribunals Act, 1985.

13. To my mind, the judgment will not be of any assistance to the plaintiff. Rather, it goes against him. In fact, the definition of the ‘Government Servant’, as defined under Rule 2(b) is itself an answer to the substantial question of law involved in the present appeal.

14. As pointed out by Mr. Gosavi, learned counsel for the defendants, the initial appointment of the plaintiff was with

Irrigation Department. He was placed at the disposal of the defendant no.1 – Corporation. Therefore, he would be a Government Servant as defined by the Rules of 1979.

15. The incident involved in the present case, though is of fire but then the plaintiff carried blame of negligence in discharging official duty. The order impugned itself indicates that the charge against the plaintiff was of negligence and, therefore, recovery of the price of instrument was directed.

16. That being so, the question as regards the deficiency in service or negligence in discharging duty was involved. Therefore, the only remedy available was to approach the MAT. The civil court will not have jurisdiction in terms of Section 28 of the Administrative Tribunals Act, 1985. Whether the impugned order was passed after conducting the departmental inquiry, whether the plaintiff admitted the negligence, is the dispute amenable to the jurisdiction of the MAT and not to the civil court.

Both the courts below, therefore, committed error in applying the settled principles of law.

17. The counsel for the plaintiff has then referred to the judgment of the Hon'ble Apex Court in the case of Rajasthan State

*Road Transport Corporation and Ors. Vs. Bal Mukund Bairwa.*¹

The Supreme Court held that the question in regard to the jurisdiction of civil court must be addressed having regard to the fact as to which the right and the obligations are sought to be enforced for the purpose of invoking the order excluding the jurisdiction of the civil court.

18. The counsel contends that the dispute being of recovery of amount, the civil court will have jurisdiction. This argument, however, overlooks the fundamental fact that the recovery was based on the negligence of duty by the plaintiff while in service and, therefore, is related to the service conditions of the plaintiff. Thus, the facts in the present case, themselves, indicate that the remedy was to challenge the impugned order before the MAT and not before the civil court. The substantial question of law is answered accordingly, resulting into following order.

19. The second appeal is allowed. Judgment and order dated 20.02.2010 passed by the learned District Judge, Bhandara in Regular Civil Appeal No.102/2006, so also judgment and decree dated 08.03.2006 passed by learned Civil Judge Senior Division, Bhandara in Regular Civil Suit No.181/2001, are quashed and set

¹ MANU/SC/0181/2009

aside. The plaintiff, however, is at liberty to approach the Maharashtra Administrative Tribunal and the time spent by him in pursuing the remedy before the civil courts shall be excluded for the purpose of limitation.

The appeal is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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