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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14.12.2023

+ RSA 49/2023

BALBIR SINGH

..... Appellant

Through: Mr. Ravindra S. Garia, Mr. Shashank Singh, Advocates

versus

BSES YAMUNA POWER LTD

..... Respondent

Through: Mr. Sandeep Prabhakar, Advocate with Mr. Vikas Mehta, Advocate.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This regular second appeal filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC') impugns the judgment dated 03.06.2022 passed by the SCJ – cum – RC, Shahdara District, Karkardooma Courts, Delhi ('First Appellate Court') in RCA SCJ No. 6/2021, titled as '**Balbir Singh v. BSES Yamuna Power Ltd.**', whereby the First Appellate Court dismissed the appeal filed by the Appellant herein i.e., the plaintiff, against the judgment dated 19.11.2018 passed by the ACJ/CCJ/ARC, Shahdara District, Karkardooma Courts, Delhi ('Trial Court') in civil suit bearing CS No. 833/2017.



1.1. The Trial Court had vide judgment dated 19.11.2018 held that the suit for declaration, permanent and mandatory injunction filed by the plaintiff is not maintainable in view of Section 9 of CPC and Section 14 and 41 of the Specific Relief Act, 1963; and consequently, rejected the plaint under Order VII Rule 11 of CPC.

1.2. The Appellant is the plaintiff and the Respondent is the defendant. For ease of reference, the parties are being referred to by their original rank and status as was before the Trial Court.

1.3. The plaintiff who is presently an employee of the defendant, was earlier an employee of Delhi Vidyut Board ('DVB'). Subsequently, on account of the unbundling of the DVB to various private distribution companies ('DISCOMS'), the Petitioner was transferred to one such DISCOM being the defendant herein.

2. A tripartite agreement as well was executed between the GNCTD, DVB and Joint Action Committee of workers, supervisors, engineers and officers of Delhi Vidyut Board ('Employees Association'), wherein as per clause 3 (b), the employees transferred from DVB continue to be governed and regulated by existing rules and regulations as were applicable to DVB employees, which for the purpose of deciding this appeal are CCS (Conduct) Rules, 1964 ('CCS Rules') and Central Civil Services (Classification, Control and Appeal) Rules, 1965 ['CCS (CCA) Rules'], collectively referred to as ('service rules')

Submissions of the counsel for parties

3. Learned counsel for the Appellant i.e., the plaintiff, states that since the plaintiff has ceased to be a Government servant, the invocation of Rule 5



of CCS Rules, which is only applicable to ‘Government servant’, by the defendant was illegal.

3.1. He states that the status of the plaintiff has ceased to be that of a Government servant upon his appointment as an employee with the defendant. He states that the CCS Rules are only intended to regulate the service conditions of the plaintiff; however, the plaintiff has ceased to be a government employee and therefore, the embargo of Rule 5 of the CCS Rules will not apply to the plaintiff. In this regard, he relies upon the judgment passed by this Court in *Ashok Kumar Raswant v. CBI*¹.

4. In reply, learned counsel for the Respondent i.e., defendant, states that this Court in *Sh. Ashok Kumar Gupta v. GNCTD*² has held that in pursuance to a tripartite agreement dated 09.11.2000 entered into between GNCTD, DVB and the Employee’s Association, since it was agreed that service conditions of employees of DVB will not be changed to their detriment; hence, departmental proceedings are to be initiated, continued and concluded under the CCS(CCA) Rules which stand adopted by the private employer i.e., the defendant.

4.1. He states that this Court in *Sh. Ashok Kumar Gupta* (supra) held that the said Rules shall apply mutatis mutandis to the employees such as the plaintiff herein for the purpose of conducting an inquiry. He states that the said judgment has been upheld up till the Supreme Court (LPA No. 93/2015 dismissed vide order dated 20.02.2015 and the SLP No. 8795/2015 dismissed vide order dated 30.03.2015).

¹ 2009 SCC OnLine Del 215

² 2015 SCC OnLine Del 6898



4.2. He further states that in the interregnum the inquiry initiated by the defendant in pursuance to the show cause notice dated 26.04.2017 stands concluded. He states that in the final order dated 24.11.2019 the plaintiff has been found guilty and a fiscal penalty has been imposed on him.

4.3. He states that the plaintiff has the remedy of assailing the said final order dated 24.11.2019 by way of appeal under the CCS(CCA) Rules.

Findings and analysis

5. This Court has considered the submissions of the learned counsel for the parties and perused the record.

6. The brief background of the plaintiff's case is that he had vide letters dated 19.09.2013 and 29.09.2013, intimated his intention of contesting Dehi State assembly elections to the defendant, to which an objection was raised by the defendant vide letter dated 30.09.2013 stating that the same is prohibited as per Rule 5 of the CCS Rules.

7. The plaintiff by his reply dated 01.10.2013 raised his counter objections to the same as well as applied for 40 days leave. The defendant however, reiterated its stand of the bar under Rule 5 of CCS Rules and consequently, issued show cause notices to the plaintiff, cautioning him from participating in elections. After a long exchange of correspondences with respect to the aforesaid issues, the defendant issued a memorandum dated 28.11.2013 to the plaintiff raising charges of violation of CCS Rules and initiated an inquiry against the plaintiff under CCS (CCA) Rules, wherein one Mr. M.A. Gardke, was appointed as the inquiry officer.

8. The plaintiff raised objections to the appointment of inquiry officer relying on the CCS(CCA) Rules, however, the inquiry was conducted nonetheless, wherein the plaintiff tendered his defense. After the inquiry



stood concluded on 27.03.2015, the plaintiff allegedly received an undated memo in May, 2017, containing therein the inquiry report dated 10.06.2015. The plaintiff by the said undated memo was directed to file his representation, if any, within 15 days. The plaintiff vide letter dated 02.06.2017 objected to the inquiry process relying on Rule 15 (6)(a) of the CCS(CCA) Rules and alleged that the same have become ultra vires and infructuous.

9. In these circumstances, the plaintiff on 24.07.2017 filed the (present) civil suit seeking a permanent and mandatory injunction restraining the defendant from passing any order against the plaintiff on the basis of the finding of the departmental inquiry conducted by Mr. A.K. Garde.

10. As noted earlier, the Trial Court vide judgment dated 19.11.2018 rejected the plaint under Order VII Rule 11 CPC and the same has been upheld by the First Appellate Court vide impugned judgment dated 03.06.2022 holding that the reliefs sought cannot be granted in view of Section 14 and 41 of the Specific Relief Act, 1963.

11. In the considered opinion of this Court, in view of the statement made by the counsels for the parties that during the pendency of the suit and appeal proceedings, the departmental inquiry stands concluded and the final order has been passed on 24.11.2019, the relief of injunctions sought in the suit have become infructuous (Re: *Shipping Corporation of India Ltd. v. Machado Brothers & Ors.*)³. The departmental inquiry dated 26.04.2017, which has been challenged in the suit, stands merged with the final order

³ (2004) 11 SCC 168



dated 24.11.2019. There is admittedly no challenge to the final order dated 24.11.2019 in these proceedings.

12. However, the learned counsel for the plaintiff has submitted that he seeks adjudication from this Court on the binding nature of Rule 5 of CCS Rules between the plaintiff and the defendant and waives his rights to exercise his right of appeal under the CCS (CCA) Rules to challenge the order dated 24.11.2019 on the grounds raised in these proceedings.

13. For ease of reference, the said Rule 5 of CCS Rules has been reproduced as under:

*“(1) No **Government servant** shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity”*

(Emphasis Supplied)

14. The submission of the plaintiff that no inquiry could have been initiated against him for violation of Rule 5 of CCS Rules as he is no longer a Government servant, does not commend to this Court. The phrase ‘Government Servant’ as it appears in the said Rule has to be read as ‘employee’.

15. In this regard, it would be instructive to refer to Rule 6(8) of the Delhi Electricity Reforms Rules, 2001, which pertains to transfer of personnel and clarifies that the existing service conditions i.e., CCS Rules and CCS (CCA) rules shall mutatis mutandis apply. The said Rule 6 (8) reads as under:

“6. *Transfer of Personnel*

...

(7) subject to the provisions of the Act and these rules, the transferee may frame regulations governing the conditions of service of the personnel transferred to the transferees under these rules which shall not in any way be less favourable or inferior to those applicable to them immediately



*before the transfer **and till such time, the existing service conditions of the Board shall mutatis mutandis apply.***”

(Emphasis Supplied)

16. Therefore, from a perusal of the aforesaid, the binding nature of the service rules on the employees of DVB who are employed with the defendant is well settled. Further, this issue is no longer res integra in view of the judgment of this Court in **Ashok Kumar Gupta** (supra), which has been upheld up till the Supreme Court. The relevant extract of the said judgment reads as under:

“4. The argument urged on behalf of the petitioner is without any merit whatsoever because various persons including the petitioner who were erstwhile employees of the DVB, on account of unbundling of the DVB, these services were got transferred from the DVB to various private DISCOMS, one such DISCOM being the respondent no. 2. A tripartite agreement dated 9.11.2000 was entered into between the Government of NCT of Delhi, the DVB and the Employees' Association, whereby, the service conditions of the employees of the DVB were not to be changed to their detriment on the ground that they were in future to be the employees of a private company and not the government company/DVB. As per the tripartite agreement the status of the employees of the erstwhile DVB was to remain the same as was when such employees were working with the DVB. It is by virtue of the rights of the employees of the DVB continuing as per the same status which existed when they were employed with the DVB, hence departmental proceedings are initiated, continued and concluded under the CCS(CCA) Rules which stand adopted by the private employer. Adoption of rules necessarily has to be mutatis mutandis because no doubt the enquiry under the CCS (CCA) Rules, when applied by the government is to be conducted by the government departmental authorities/government persons, however, the same cannot mean that merely because these CCS(CCA) Rules are adopted by the respondent no. 2 with respect to the employees who were the erstwhile employees of the DVB against the employees of respondent no. 2 departmental proceedings can only be commenced and conducted by a government employee and not a private employee of the respondent no. 2. If this argument of the counsel for the petitioner is accepted, it would effectively mean that no departmental proceedings at all can be commenced and carried on by the respondent no. 2 against any of its employees who were the erstwhile employees of the DVB.



5. Petitioner cannot take up two conflicting positions at the same time. Either the petitioner is an employee of a private company on a private contract or he continues in the status of an employee of the DVB in terms of the tripartite agreement and in which latter case he would be bound by the CCS(CCA) Rules as adopted mutatis mutandis by the employer/respondent no. 2. The position is the latter in this case.”

(Emphasis Supplied)

17. The plaintiff has not disputed that the CCS Rules govern the service conditions of the plaintiff during his employment with the defendant. In fact, this is also the finding of the Court in the judgment of **Ashok Kumar Rasvant v. CBI** (supra) relied upon by the plaintiff, wherein this Court held that the petitioner therein had ceased to be public servant upon his transfer to BSES, however he continues to be regulated by the service rules, which have been applied mutatis mutandis by the BSES. The expression mutatis mutandis has been interpreted by the Supreme Court in **M/s Ashok Service Centre and Ors. v. State of Orissa**⁴ as under:

“17.Before considering what provisions of the principal Act should be read as part of the Act, we have to understand the meaning of the expression ‘mutatis mutandis’. Earl Jowitt’s The Dictionary of English Law (1959) defines ‘mutatis mutandis’ as ‘with the necessary changes in points of detail’. Black’s Law Dictionary (Revised 4th Edn., 1968) defines ‘mutatis mutandis’ as “with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Housman v. Waterhouse [191 App Div 850 : 182 NYS 249, 251] . In Bouvier’s Law Dictionary (3rd Revision, Vol. II), the expression ‘mutatis mutandis’ is defined as “[T]he necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like”. Extension of an earlier Act ‘mutatis mutandis’ to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act.....”

(Emphasis Supplied)

⁴ (1983) 2 SCC 82



18. Therefore, the submission of the plaintiff that Rule 5 of CCS Rules is otiose and cannot be made applicable to the plaintiff since he is no longer a ‘government servant’ is incorrect. Since, the CCS Rules have been made mutatis mutandis applicable and bind the plaintiff and the defendant, the phrase ‘Government servant’ as it appears in the said Rule 5 of CCS Rules is necessarily to be read as ‘employee’.

19. The plaintiff has admitted that despite being served with a notice by the defendant on 30.09.2013 to refrain from participating in the election, the plaintiff went ahead and took part in the assembly elections. As observed earlier, the plaintiff is bound by the Rule 5 of CCS Rules and therefore, the defendant was well within its rights to initiate disciplinary action for the said violation.

20. With respect to the orders passed by the First Appellate Court and the Trial Court, this Court finds no infirmity in the finding of the said Courts to the effect that the relief of permanent and mandatory injunction sought by the plaintiff in this suit is barred under Section 14(1)(c) (before its amendment on 01.10.2018) and Section 41(e) of the Specific Relief Act, 1963, which reads as under:

“14. Contracts not specifically enforceable.—(1) The following contracts cannot be specifically enforced, namely,—

...

c) a contract which is in its nature determinable;

“41. Injunction when refused. - An injunction cannot be granted-

...

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;”

(Emphasis Supplied)



21. As held earlier, the plaintiff is an employee of the defendant and the contract between the plaintiff and the defendant is admittedly a contract of service which is governed by the CCS Conduct Rules and CCS(CCA) Rules, which has to be read in the context of a 'employee'. The Trial Court in its judgment dated 19.11.2018 has relied on the judgment of this Court in ***J.P. Singh v. Govt. of NCT of Delhi and Ors.***⁵, which is apposite. This Court in the said judgment has upheld the finding of District Court that granting an injunction against holding a departmental inquiry would amount to imposing an employee on an employer or to enforcement of a contract of personal service, which is not permissible under the law i.e., Section 14 and 41 of the Specific Relief Act, 1963.

22. The Supreme Court as well in a catena of judgments has held that a contract of personal service cannot be specifically enforced and injunction cannot be granted to employer from holding an inquiry against the employee, subject to exceptions. (Re: ***Pearlite Liners (P) Ltd. v. Manorama Sirsi***⁶)

23. Therefore, in view of the aforesaid observations, the defendant cannot be restrained from initiating, continuing and concluding an inquiry under the said Rules as held by this Court in ***Ashok Kumar Gupta v. GNCTD*** (supra).

24. This Court however, is not in agreement with the judgment of the Trial Court to the extent it holds that the plaintiff's suit is barred under Section 9 of CPC. In this regard, the Supreme Court in ***Ramendra Kishore Biswas v. State of Tripura and Ors.***⁷, has held that the jurisdiction of the

⁵ 2012 SCC OnLine Del 4405

⁶ (2004) 3 SCC 172

⁷ (1999) 1 SCC 472



civil court is not ousted in view of the CCA Rules. The relevant extract of the said judgment reads as under:

"5. The opinion expressed by the learned Single Judge to the effect that in view of the CCA Rules, the jurisdiction of the civil court is ousted from dealing with an order passed by the disciplinary authority which can be questioned under the Service Rules and that even after recourse is had to the departmental proceedings, recourse can only be to file a writ petition is palpably erroneous. The learned Single Judge readily accepted the ouster of jurisdiction of civil courts to deal with service matters without proper consideration of the matter. Indeed, it is appropriate to relegate a person to exhaust departmental remedies when he approaches the court without exhausting departmental remedies under the Service Rules but to hold that the civil court had no jurisdiction while hearing a second appeal, after the matter has been litigated in civil courts for more than five years was, to say the least, not proper. The learned Single Judge ought to have decided the case on its own merits and not made a short-cut of it. The appellant could not have been non-suited on the ground that he had failed to take recourse to proceedings under the CCS (CCA) Rules, 1965 against the order of dismissal."

(Emphasis Supplied)

25. Therefore, the findings of the Trial Court to the limited extent that the suit of the plaintiff is barred under Section 9 of CPC is incorrect.

26. This Court is of the opinion that no substantial question of law has arisen for consideration in the present appeal. The arguments raised by the Appellant do not raise any question of law much less a substantial question of law.

27. This second appeal is accordingly dismissed and the impugned judgment of the First Appellate Court is upheld. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 14, 2023/msh/aa

[Click here to check corrigendum, if any](#)