

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APD/8/2023
WITH
CS/64/2011

ASIM TALUKDAR
VS
AXIS BANK LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 23rd July, 2025

Appearance:

Mr. Shamim Ahamed, Adv.

Mr. Arka Maiti, Adv.

Mr. Aniruddha Singh, Adv.

Mr. Roshan Pathak, Adv.

... for the appellant.

Mr. Jayanta Kumar Mitra, Sr. Adv.

Mr. Asit De, Adv.

Mr. Sourjya Roy, Adv.

... for the Axis bank.

1. The relationship between the appellant and the respondent no.1 bank is of master and servant. It has been fairly admitted by learned Counsel appearing on behalf of the plaintiff that the suit is not specifically enforceable under Section 14(1)(c) of the Specific Relief Act, 1963. The contract of employment does not fall within the three exceptions for which the appellant even if he succeeds in the suit would be entitled to reinstatement. However, it cannot be disputed that if the procedure followed for dismissal of the plaintiff is not in accordance with the principles of natural justice or fair procedure or is arbitrary and based on no evidence, the plaintiff is entitled to a declaration that the

termination is illegal or wrongful and can claim damages for such wrongful dismissal.

2. The observation of the learned Single Judge that since there is no written contract between the parties, the dispute cannot be resolved with reference to any terms and conditions governing the relationship between the parties does not appear to be the correct proposition of law as in the master-servant relationship in absence of any contract of employment, the fairness in the procedure for dismissal of a permanent employee is required to be gone into as an employer is required to follow a fair procedure before dismissing a permanent employee. The common law right to claim damages is not foreclosed by reason of the decision of the learned Single Judge that the contract of employment is not specifically enforceable.
3. Moreover, it appears that a letter of appointment has been issued in favour of the plaintiff and, accordingly, there was no contract of employment appears to be an inadvertent error made by the learned Single Judge in arriving at the conclusion.
4. The issues with regard to the misconduct, beginning from (III) to (XI) are the relevant issues that are required to be decided even if the plaintiff has failed to establish that the contract is not specifically enforceable under Section 14(1)(c) of the Specific Relief Act, 1963. While we affirm the judgment of the learned Single Judge with regard to non-enforcement of the personal contract of service, the other issues are required to be decided on the basis of the evidence already on record.

5. Accordingly, the appeal is allowed in part.
6. The learned Single Judge is requested to re-hear the suit and decide the issues as mentioned above on the basis of the existing pleadings and evidence and after giving opportunity of hearing to the parties.
7. The appeal is, thus, disposed of.
8. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)