

RAM SAHAN RAI

v.

SACHIV SAMANAYA PRABANDHAK AND ANR.

FEBRUARY 21, 2001

[G.B. PATTANAIK AND B.N. AGRAWAL, JJ.]

Service Law

Constitution of India—Article 12—District Cooperative Bank—An instrumentality of State—Order of dismissal by employee—Not following the mandatory provisions of law—Held, invalid.

Civil Procedure Code, 1908—Specific Relief Act, 1963—Suit for enforcement of contract of personal service—Held, not barred when order of dismissal passed in gross violation of natural justice.

The Appellant filed a suit for declaration that the order of his removal from service was illegal, arbitrary, null and void and without jurisdiction and the same may be set aside and for a declaration that he was continuing in service and for all other consequential benefits. He contended that he was appointed as a Clerk in Defendant No. 2 Bank and was posted in the accounts section, that while he was on leave and had left the bank after handing-over charge to one V, the Acting Secretary, who was not competent to frame any charges against him, issued a set of charges, alleging mis-conduct of serious nature for illegal absence from duties and finally, it was indicated that the plaintiff has been removed from service on finding him guilty of the charges, without holding any inquiry and without affording an opportunity to the plaintiff to defend himself. Defendant No. 2 filed a written statement, denying the assertions made in the plaint and further stated that continuous absence from duty without permission was a gross mis-conduct, which was established in the proceeding and, therefore, the order of termination was valid. The defendant No. 2 did not participate in any proceedings. The suit was ultimately dismissed. The Appellant preferred an appeal and even though the defendants were served, they never contested and ultimately the appeal was heard *ex parte*. The lower Appellate Court rejected the contention that the Acting Secretary did not have the power of passing an order of termination, but it held that the order of termination casting stigma being based on a set of charges of serious misconduct on the part of the delinquent, it was obligatory

A for the competent authority to follow the procedure prescribed for inflicting major punishment and since in the case in hand, no charge-sheet was served and no show cause notice was given, principles of natural justice and fair play had not been followed, the impugned order is illegal, invalid and inoperative and cannot be sustained. The Respondent-bank then moved the High Court in
B Second Appeal. The Second Appellate Court though agreed with the findings of lower Appellate Court, set aside the Judgment and decree of the lower Appellate Court on a finding that the suit was essentially one for enforcement of a contract of personal service and such a suit must be held to be not maintainable in the Civil Court, relying upon a decision of this Court. In
C Appeal to this Court, the Appellant contended that the U.P. State Co-operative Land Development Bank has been held by the Court to be an instrumentality of the State and an authority under Article 12 and it is controlled by the State Government and service conditions of the employees, particularly in regard to the disciplinary proceedings, are statutory in nature, that if an
D order of termination of an employee of such bank is found to have been passed without compliance of the principle of natural justice and without following the procedure prescribed by law, then the said order is null and void and, therefore, employee's right could be enforced notwithstanding the fact that service is one of contract, that the relationship between the plaintiff and defendant-bank being employment under a statutory body, which statutory body had acted in breach of mandatory obligation imposed by the statute, the
E ultimate order is null and void and as such the plaintiff was entitled to the declaration sought for and the High Court committed serious error in interfering with the judgment of the lower Appellate Court, and that the order of dismissal passed by the statutory authority being a nullity for non-compliance of the principle of natural justice as well as for not following the procedure provided for imposing of a major penalty, the declaration sought
F for could be granted notwithstanding the contract of employment and, therefore, the impugned judgment must be held to be unsustainable in law. The respondent contended that the relationship between the employer and the employee being one of purely contract, the same cannot be enforced by the Civil Court, even if the order of termination is illegal and the High Court,
G therefore was justified in holding that the Civil Court could not have granted the specific relief of contract of service.

Disposing of the Appeal, the Court

HELD : 1. An examination of different provisions of the rules, bye-laws
H and regulations, unequivocally indicate that the State Government exercises

all-pervasive control over the Respondent bank and its employees and the service conditions of such employees are governed by statutory rules, prescribing entire gamut of procedure of initiation of disciplinary proceedings by farming a set of charges and culminating in inflicting of appropriate punishment, after complying with the requirements of giving a show cause and an opportunity of hearing to the delinquent. The defendant bank is undoubtedly an instrumentality of the State. [1150-F-G]

U.P. State Co-Op. Land Development Bank Ltd. v. Chandra Bhan Dubey & Ors., [1999] 1 SCC 741, referred to.

2. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee, it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross violation of principle of natural justice, then the third exception to the general principle that contract of personal service cannot ordinarily be specifically enforced, would apply and, therefore, the conclusion of the High Court must be held to be erroneous in the facts and circumstances of the present case. [1150-H; 1151-A]

S.R. Tiwari v. District Board, Agra, 196 Executive Committee of Vaish College; *Shamli and Ors. v. Lakshmi Narain & Ors.*, [1976] 2 SCC 58 and *Sirsi Municipality*, case [1973] 1 SCC 409, relied on.

Integrated Rural Development Agency v. Ram Pyare Pandey, [1995] Supp. 2 SCC 495, distinguished.

3. The High Court committed serious error of law in interfering with the judgment and decree of the lower Appellate Court. The impugned judgment and decree of the High Court in Second Appeal No. 683 of 1996 is set aside and the judgment of the 1st Additional District Judge, Ghazipur is affirmed and consequently, the suit is decreed. [1151-D]

[The Court observed that though the plaintiff would be allowed his continuity of service and any other benefits, flowing from such continuity of service, but he will not be entitled to any salary from the date of his termination on 15.4.1987 till the judgment of the lower Appellate Court dated 9.9.1992.] [1151-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3162 of 1997.

From the Judgment and Order dated 10.10.96 of the Allahabad High H

A Court in S.A. No. 683 of 1996.

Rakesh U. Upadhyay for the Appellant.

Sunil Gupta and Pramod Dayal for the Respondents.

B The Judgment of the Court was delivered by

C **PATTANAİK, J.** Plaintiff is the appellant and assails the Judgment of the learned Single Judge of Allahabad High Court in Second Appeal No. 683 of 1996. The plaintiff filed the suit for declaration that the order of his removal from service dated 15.4.87 was illegal, arbitrary, null and void and without jurisdiction and the same may be set aside and it may be declared that the plaintiff is continuing in service and for all other consequential benefits. It was alleged in the plaint that he was appointed as a Clerk in the District Co-operative Bank, Defendant No. 2 and was posted in the accounts section. He had taken leave on medical grounds and had left the bank after handing-over charge to one Virendra Nath. The Acting Secretary, who according to the D plaintiff was not competent to frame any charges against him, issued a set of charges, alleging the mis-conduct of serious nature for illegal absence from duties and finally it was indicated that the plaintiff has been removed from service on finding him guilty of the charges, without holding any inquiry and without affording an opportunity to the plaintiff to defend himself. The E defendant No. 2 did file a written statement, denying the assertions made in the plaint and further stated that continuous absence from duty without permission was a gross mis-conduct, which was established in the proceedings and, therefore, the order of termination was valid. Though the defendant No. 2 filed a written statement, but thereafter did not participate in the proceedings. The suit however was ultimately dismissed. Against the judgment and decree F of the trial Judge, the plaintiff preferred an appeal and even though the defendants were served, but they never contested and ultimately the appeal was heard *ex parte*. The lower appellate Court rejected the plaintiff's contention that the Acting Secretary did not have the power of passing an order of termination. But it came to the conclusion that the order of termination G casting stigma being based on a set of charges of serious misconduct on the part of the delinquent, it was obligatory for the competent authority to follow the procedure prescribed for inflicting major punishment and since in the case in hand, no charge-sheet was served and no show cause notice was given and as such the principle of natural justice and fair play had not been followed, the impugned order is illegal, invalid and inoperative and cannot be H sustained. The lower Appellate Court also took into consideration the

averments made in the written statement, which made a reference to a serious charge of misappropriation and fabrication of the account books. On consideration of the relevant provisions of the U.P. Co-operative Societies Act as well as the service rules framed thereunder, the lower Appellate Court came to hold that the mandatory provisions, not having been complied with, the order of termination is vitiated. With these conclusions, the appeal having been allowed, the defendant-bank moved the High Court in Second Appeal. The Second Appellate Court agreed with the findings of the lower Appellate Court that no disciplinary proceedings had been taken and the circumstances indicated in the written statement, culminating in order of termination had never been brought on record, and, therefore, the order of dismissal was rightly held to be without jurisdiction and contrary to Regulation 85 by the lower Appellate Court. But having agreed with the findings of the lower Appellate Court that the order of dismissal is illegal and invalid, the same not having been passed after complying with the prescribed procedure under law, the High Court set aside the Judgment and decree of the lower Appellate Court on a finding that the suit is essentially one for enforcement of a contract of personal service and such a suit must be held to be not maintainable in the Civil Court. In coming to this conclusion, the learned Judge relied upon the decision of this Court in the case of *Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.*, [1976] 2 SCC 58.

Mr. Rakesh U. Upadhyay, the learned counsel, appearing for the appellant, contended before us that the U.P. State Co-operative Land Development Bank has been held by this Court to be an instrumentality of the State and an authority under Article 12 and it is controlled by the State Government and service conditions of the employees, particularly in regard to the disciplinary proceedings, are statutory in nature. This has been so held by this Court in the case of *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.*, [1999] 1 SCC 741. The defendant-Bank stands on the same footing as the U.P. State Co-operative Land Development Bank and an order of termination of an employee of such bank if is found to have been passed without compliance of the principle of natural justice and without following the procedure prescribed by law, then the said order is null and void and, therefore, employee's right could be enforced notwithstanding the fact that service is one of contract. Mr. Upadhyay further contended that in view of law laid down by this Court in *S.R. Tiwari v. District Board, Agra*, [1964] 3 SCR 55, indicating the instances under which an employee could obtain a declaratory judgment that the dismissal was wrongful and in the case in hand, the relationship between the plaintiff and defendant-bank being

A employment under a statutory body, which statutory body had acted in breach of mandatory obligation imposed by the statute, the ultimate order is null and void and as such the plaintiff was entitled to the declaration sought for and the High Court committed serious error in interfering with the judgment of the lower Appellate Court. Mr. Upadhyay also stated that the Constitution Bench decision in *Sirsi Municipality*, case [1973] 1 SCC 409 fully supports his contention and the order of dismissal passed by the statutory authority being a nullity for non-compliance of the principle of natural justice as well as for not following the procedure provided for imposing of a major penalty, the declaration sought for could be granted notwithstanding the contract of employment and, therefore, the impugned judgment must be held to be unsustainable in law.

Mr. Sunil Gupta, appearing for the respondent on the other hand relied upon the judgment of this Court in *Integrated Rural Development Agency v. Ram Pyare Pandey*, [1995] Supp. 2 SCC 495, and submitted that the relationship between the employer and the employee being one of purely contract, the same cannot be enforced by the Civil Court, even if the order of termination is illegal and the High Court, therefore, was justified in holding that the Civil Court could not have granted the specific relief of contract of service.

In view of the rival submissions at the Bar, the first question that arises for consideration is, what is the status of the defendant- District Co-operative Bank? The status of the said bank is no doubt of a Co-operative Society, registered under the U.P. Co-operative Societies Act, 1965 and is constituted under the U.P. Co-operative Land Development Bank Act, 1964. But an examination of different provisions of the rules, bye-laws and regulations, unequivocally indicate that the State Government exercises all-pervasive control over the bank and its employees and the service conditions of such employees are governed by statutory rules, prescribing entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges and culminating in inflicting of appropriate punishment, after complying with the requirements of giving a show cause and an opportunity of hearing to the delinquent. This being the position and in view of the judgment of this Court in *U.P.State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.*, [1999] 1 SCC 741, the conclusion is irresistible that the defendant bank is undoubtedly an instrumentality of the State. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee, it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross

violation of principle of natural justice, then the third exception to the general principle that contract of personal service cannot ordinarily be specifically enforced, as indicated in *S.R. Tiwari's*, case [1964] 2 SCR 55 which has also been relied upon in *Vaish Degree College*, case [1976] 2 SCC 58 would apply and, therefore, the conclusion of the High Court must be held to be erroneous in the facts and circumstances of the present case. The decision of this Court in *Integrated Rural Development Agency*, [1995] Supp. 2 SCC 495 will have no application at all, as in that case the agency in question was held not to be an instrumentality of the State nor the State had any control over the affairs of the society and in such a case, therefore, the relationship of master and servant is purely one of contract and in that case, the relief of specific performance of contract of service cannot be granted. But the aforesaid decision in our considered opinion, is of no application to the facts and circumstances of the present case. In the aforesaid premises, we have no hesitation in coming to the conclusion that the High Court committed serious error of law in interfering with the judgment and decree of the lower Appellate Court. We, therefore, set aside the impugned judgment and decree of the High Court in Second Appeal No. 683 of 1996 and affirm the judgment of the 1st Additional District Judge, Ghazipur, and consequently, the suit is decreed.

We, however, further hold that though the plaintiff would be allowed his continuity of service and any other benefits, flowing from such continuity of service, but he will not be entitled to any salary from the date of his termination on 15.4.1987 till the judgment of the lower Appellate Court dated 9.9.1992.

This appeal is accordingly allowed with the aforesaid directions and observations. There will however be no order as to costs.

VM.

Appeal disposed of.