

INTEGRATED RURAL DEVELOPMENT AGENCY

A

v.

RAM PYARE PANDEY

FEBRUARY 24, 1995

[J.S. VERMA AND K.S. PARIPOORNAN, JJ.]

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Service Law—Contract of employment—Termination of service—Relief of reinstatement or backwages cannot be granted except in rare and exceptional cases—Claim for damages—Maintainable.

The respondent-plaintiff was appointed as Junior Clerk in the Integrated Rural Development Agency, a body registered under the Societies Registration Act, having its own Articles of Association. His service was terminated. He filed a suit and prayed for the grant of a declaration that the termination order was illegal and void and it was passed in violation of the rules governing the appellant. The suit was dismissed. The Court held that the appointment of the respondent was temporary and the termination order was not illegal or void. Appeal filed against the order was dismissed. The plaintiff filed Second Appeal. The High Court quashed the order of termination while holding that the termination of the service of the respondent was against the mandate of Rule 13(b) and so it was illegal. The concurrent judgments of the courts below were reversed. The High Court directed reinstatement of the respondent in service with arrears of salary from the date of termination. This appeal had been filed against the judgment of the High Court.

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Allowing the appeal, this Court

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HELD 1.1. The Intergrated Rural Development Agency is one registered under Societies Registration Act. It has its own Articles of Association. It has framed its own rules thereunder. The relationship between the Agency and the respondent was based on contract and was purely one of master and servant. [324-F]

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1.2. In the ordinary case of master and servant, the repudiation or the wrongful dismissal puts an end to the contract, and a claim for damages arises. There cannot be specific performance of a contract of service. Such relief can be granted on sound legal principles only in rare

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A and exceptional cases. [324-H, 325-C]

Vine v. National Dock Labour Board, (1956) 1 AER 1; *Nandganj Sehori Sugar Co. Ltd. Rai Bareli and Anr. v. Badri Nath Dixit and Ors.*, [1991] 3 SCC 54 and *Ridge v. Baldwin*, (1963) 2 AER 66 (HL), referred to.

B 1.3. In the instant case, the relief of reinstatement could not be granted. By affording the relief of reinstatement or backwages, the courts will, in fact, be granting specific performance of contracts of service, which can be done only in the exceptional or rare cases. [326-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3006 of 1995.

From the Judgment and Order dated 22.3.93 of the Allahabad High Court in S.A. No. 2163 of 1983.

D A.K. Srivastava for the Appellant.

S.A. Gilani and P.K. Jain for the Respondent.

The Judgment of the Court was delivered by

E PARIPOORNAN, J. Special leave granted.

F 2. The defendant in O.S. No. 1204 of 1981, in Munsiff Court No. 3, Deoria, is the appellant. The plaintiff in the suit is the respondent. The appellant - Integrated Rural Development Agency - is a body registered under the Societies Registration Act. It has its own Articles of Association. The respondent-plaintiff was appointed as Junior Clerk in the Integrated Rural Development Agency on 14.5.1980 against a permanent vacancy. His service was terminated on 6.6.1980. Thereupon, the respondent filed a suit and prayed for the grant of a declaration that the termination order was illegal and void and it was passed in violation of the rules governing the appellant. The learned Munsiff held that the appointment of the respondent was temporary and the termination order was not illegal or void and dismissed the suit. The respondent-plaintiff filed an appeal before the VI Additional District Judge, Deoria - Civil Appeal No. 186 of 1982. By judgment dated 29.4.1983 the appeal was dismissed. Thereafter, the respondent plaintiff filed Second Appeal No. 2163 of 1983 in the High Court of

H Allahabad. Katju, J., By Judgment dated 22.3.1993, held that the termina-

tion of the service of the respondent was against the mandate of Rule 13(b) and so the termination order dated 6.6.1980 was illegal. The concurrent judgments of the courts below were reversed and the learned Judge further directed that the appellant will be reinstated in service and also will be entitled to arrears of salary from the date of termination. Aggrieved by the aforesaid judgment of the learned Single Judge the Integrated Rural Development Agency – defendant in the suit – has filed this appeal by special leave.

3. We heard Mr. A.K. Srivastava, learned counsel for the appellant and Mr. S.A. Gilani, learned counsel for the respondent.

4. The order of appointment of the respondent is quoted at page 21 of the paper book, which is as under :-

"S/shri Mohan Prasad and Gorakh Nath on being promoted to the posts of Stenographer and Accountant respectively, the following employees who are working as work-charged for the last four months are hereby appointed as Clerks in the pay-scale of Rs. 200-320 with effect from 14.5.1980. They shall be entitled to receive Dearness Allowance and other allowances as approved by the Government. Their appointment is temporary and their services can be terminated at any time.

1. Shri Ram Pyare Pandey S/o Late Kushahar Pandey, r/o Village Pipraich, P.O. Deoria.
2. Shri Krishan Kumar Shukla, s/o Shri Ram Subnag Shukla, r/o Sindhi Mill Colony, Deoria.

Sd/-
District Development Officer/
Project Officer, Deoria."

(Sri Ram Pyare Pandey is the respondent herein).

In exercise of the powers vested under section 20 (a) of the Articles of Association, the Governing Body of the appellant had framed its own rules regarding the conduct of business and office procedure. Rule 13 of the said rules is to the following effect :-

A "13. PERIOD OF THE OFFICE OF THE EMPLOYEES :

The period of office of an employee of the Agency shall *not be determined* until :-

B (a) His resignation has been accepted in writing by the authority competent to his successor or

(b) The services of the Employee can be terminated with *one months notice from either side.*"

C Katju, J., after having held that notwithstanding the terms of appointment order to the effect that the services of the respondent can be terminated at any time, rule 13(b), quoted above, requires one month's notice to be given before termination and that the rule should prevail, which renders the termination order dated 6.6.1980 illegal and void. In consequence, the learned Judge directed reinstatement of the respondent in service, with arrears of salary. We are of the view that the respondent is not entitled to either reinstatement or arrears of salary from the date of termination. The learned single Judge was wholly in error in affording the relief of reinstatement and back wages. We will state our reasons for the aforesaid conclusion.

E 5. 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 v. National Dock Labour Board*, (1956) 1 AER 1, which was approved in appeal by the House of Lords in 1956 3 AER 939 :

G "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."

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Delivering the judgment of three member Bench of this Court in *Nandganj Sihori Sugar Co. Ltd. Rae Bareli and another v. 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 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. C.K. 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. Baldwin*, (1963) 2 AER 66 (H.L.), 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

A them."

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 reinstatement or backwages, 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 *Nandgaj Sihori Sugar Co. Ltd., Rae Bareli and another v. Badrinath Dixit and others* (supra).

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C 6. 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.

A.G.

Appeal allowed.