

PETITIONER:
INTEGRATED RURAL DEVELOPMENT AGENCY

Vs.

RESPONDENT:
RAM PYARE PANDEY

DATE OF JUDGMENT 24/02/1995

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
VERMA, JAGDISH SARAN (J)

CITATION:
1995 SCC Supl. (2) 495 JT 1995 (3) 119
1995 SCALE (2) 7

ACT:

HEADNOTE:

JUDGMENT:
PARIPOORNAN, J.:
1. Special leave granted.
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 the 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 Allahabad. Katju, J., by Judgment dated 22.3.1993, held that the termination 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 reserved and the learned Judge fur-

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ther 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 payscale 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 Rain Pyare Pandey S/o Late Kushahar Pandey, r/o Village Pipraich, P.O. Deoria.

2. Shri Krishan Kumar Shukla, s/o Shri Ram Subhag 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:-

" 13.PERIOD OF THE OFFICE OF THE EMPLOYEES:

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

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

b) The services of the Employees can be terminated with one month's notice from either side. "

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 affording the relief of reinstatement and back wages. We will state our reasons for the aforesaid conclusion.

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

"

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."

Delivering the judgment of three member Bench of this Court in Nandganj Sihori Sugar Co. Ltd. Rae Bareilly and another vs. 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. Th

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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. Ballwin, [1963 (2) AER 66 (H.L.)],

"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. 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 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

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exceptional or rare cases referred to in the Judgment of this Court in Nanddganj Sihori Sugar Co. Ltd., Rae Bareilly and another vs. Badrinath Dixit and others (supra).

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.

JUDIS