

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1742-1743 OF 2010
(Arising out of SLP(Civil)Nos.17501-17502 of 2007)

State of West Bengal & Anr.

... Appellants(s)

Versus

Kamala Prasad & Ors.

... Respondent(s)

JUDGMENT

K.S. Radhakrishnan, J.

Leave granted.

2. These appeals are directed against the Division Bench judgment of the Calcutta High Court dated 14.06.2007 in MAT No.380/2006 and MAT No. 1114/2007 directing the appellants to treat the respondents - writ petitioners as Class III employees as declared by the Civil Court and to disburse them arrears of pay and other service benefits.

3. Writ petitioners, employees of Bhowanipore Education Society College, Kolkata, a private college recognized and aided by the Government of West Bengal, had initially filed a Civil Suit TS No.

86/1984 before the Third Additional Munsiff Court, Alipore, seeking a declaration that they are Laboratory Assistants, belonging to the category of Class-III employees entitled to the benefits and privileges attached to those posts and also for a mandatory injunction directing the defendants to pay all monetary benefits with effect from 03.10.1975 treating them as Class-III employees and also for a declaration that their demotion to class IV posts is illegal and void. The College and the appellants herein were parties to the suit.

4. The Civil Court, relying upon the provisions of the Calcutta University, First Statute 1979 decreed the suit on 1.10.1994 declaring that the respondents are class III employees, entitled to all benefits and privileges attached to the post of Laboratory Assistants and their demotion to class IV posts is illegal. The Court also granted a mandatory injunction directing the defendants to pay all dues attached to the posts from 03.10.1975 till the date of the judgment within a month.

5. Some of the decree holders instead of filing an execution petition preferred to file a Writ Petition CO No.8472 (M) of 1995 before the Calcutta High Court for a direction to the appellants herein to treat them as Class-III employees as declared by the Civil Court and pay them salary and other benefits and some others approached the execution

court by filing T. Ex. Case No.2/1997 for executing the decree. Appellants herein also preferred Miscellaneous Case No.18/2000 in the above execution petition challenging the executability of the decree passed in TS No.86/1984 contending that the executing court did not have the jurisdiction to execute the decree. The Miscellaneous Case No.18/2000 was allowed by the executing court holding that the decree passed in TS No.86/1984 was not executable and that the executing court did not have the jurisdiction to execute the decree. It held that a private employer's action cannot be questioned by the employees in a civil court having regard to Section 34 of the Specific Relief Act, 1963 and Section 9 of the Civil Procedure Code. The order was challenged before the Calcutta High Court in revision with an application for condonation of delay but the delay was not condoned and hence the appeal was dismissed on 08.12.2003.

6. Appellants herein did not challenge the decree dated 01.10.1994 by filing an appeal. Strangely, they filed a suit being TS No.250 of 1995 before the Fourth Civil Judge (Junior Division) for a declaration and permanent injunction against the employees (plaintiffs in T.S. No. 86/1984), challenging the validity and legality of the decree passed in TS No.86 of 1984. The suit was dismissed as not maintainable by the Court vide its order dated 30.09.1999.

7. The 3rd respondent herein, in the meantime, had filed a writ petition No.5345 of 2000 claiming monetary benefits available to Class-III employees, which was disposed of by the Calcutta High Court on 06.06.2000 directing the authorities to consider his request and pass appropriate orders, however his request was rejected by the appellants in the month of September 2000.

8. The respondent Nos. 1 and 2 herein then filed a writ petition no.15360(W) of 2000 which was re-numbered as WP(Crl.) 7002(W) of 2002 before the Calcutta High Court to treat them as Class-III employees based on the declaration made in TS No.86/1984 and to pay them the salary and other benefits in the revised scale and also for other consequential benefits. The writ petition was heard along with C.O. No. 8472 of 1995 by a learned single judge of the Calcutta High Court who took the view that the appellants herein are legally bound by the declaration made by the Civil Court that the respondents are Class-III employees and the same is binding on the State Government. Holding so, both the writ petitions were disposed of by the learned single judge on 19th December, 2005 directing the State Government and its authorities to grant relief to the respondents by treating them as Class-III employees as declared by the Civil Court and pay them all consequential benefits with retrospective effect.

9. The above mentioned judgment was challenged by the appellants herein before the Division Bench of the Calcutta High Court. It was contended that since the civil court had held that the decree was not executable, the learned single judge had committed an error in granting the reliefs by entertaining the writ petition under Article 226 of the Constitution of India. The court noticed that the civil court had given a declaration that the Writ Petitioners were Class-III employees and that the State Government and the college did not challenge that decree instead they filed a suit challenging the decree passed by the civil court which was dismissed. The Court therefore took the view that appellants are bound to honour that declaration and not to nullify it. The Bench, therefore, directed to treat the respondents as Class-III employees and to pay the arrears of pay and other benefits.

10. Learned counsel for the appellants submitted that the High Court has committed a grave error in granting relief by entertaining both the writ petitions under Article 226 of the Constitution of India especially when the executing court has refused to execute the decree holding that a civil court cannot execute the said decree. Learned counsel also submitted that though the appellants were parties to the civil suit in TS 86 of 1984 the same could not be effectively contested on merits and that the respondents were not entitled to get the reliefs as prayed for in

the writ petitions. Learned counsel further submitted that the High Court has committed a grave error in directing implementation of the civil court's decree without adjudicating the questions on merits. Referring to the judgment of this Court in *Ghan Shyam Das Gupta vs. Annant Kumar Sinha* (1991) 4 SCC 379, counsel submitted that the remedy available under Article 226 is not to supersede the modes of obtaining the relief before a Civil Court. Reference was also made in *Shankar Ramchandra Abhayankar vs. Krishnaji Dattarayyay Bapat* (1969) 2 SCC 74 and *Jharia vs. State of Rajasthan* (1983) 4 SCC 7 and submitted that if there are two modes of invoking the jurisdiction of the High Court and if one of those modes have been exhausted, it is not proper and sound exercise of jurisdiction or discretion to grant relief in the other set of proceedings in respect of the same decree of the subordinate court.

11. Learned counsel for the respondents on the other hand contended that though some of the respondents had tried to execute the decree of the civil court by filing an execution petition the same could not be executed since the declaration given by the decree was not within the scope of Section 34 of the Specific Relief Act or Section 9 of the CPC and hence the only course open to the respondents was to approach the High Court to seek reliefs based on the declaration made

by the civil court. Learned counsel also submitted that the High Court was not acting as an executing court while granting the reliefs but was giving due weight to the declaration given by the Civil Court while exercising its discretion under Article 226 of the Constitution of India. Learned counsel submitted that the decisions cited by the appellants are of no assistance as far as the present case is concerned.

12 We notice that the High Court was mainly concerned with the question whether the declaration made by the civil Court that the respondents are Class-III employees be taken into consideration while granting the reliefs prayed in the writ petition. The High Court noticed that the judgment rendered by the Civil Court in T.S. No. 86/94 was not appealed against by the appellants and the same had attained finality. Further, the suit filed by the appellants against the respondents was also dismissed. In such circumstances the High Court took the view that the appellants are bound to honour the decree passed by the civil court and not to nullify it.

13. The High Court, in our view, has rightly held that while directing consideration of the claims of the respondents herein, as Class –III employees, the court is not executing the Civil Court's decree but only recognizing the fact that the Civil Court has declared their status as Class-III employees, which is binding on the appellants. Further, the

decisions cited by the appellants are not applicable to the facts of this case, since the High Court was not acting as an executing court while giving the above-mentioned directions especially when the respondents were working in an aided college, whose salary and other benefits had to be borne by the State.

14. We, therefore, find no error in the direction given by the High Court. Appeals lack merits and, are, accordingly dismissed.

.....J.
(R.V. Raveendran)

.....J.
(K.S. Radhakrishnan)

New Delhi;
February 16, 2010