

Bindraban Vs. the State of Himachal Pradesh and ors.

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Court : Himachal Pradesh

Decided On : Jun-02-1953

Reported in : AIR1953HP103

Judge : Chowdhry, J.C.

Acts : [Constitution of India](#) - Articles 226 and 311; ;Specific Relief Act, 1877 - Section 21

Appeal No. : Writ Petn. No. 2 of 1952

Appellant : Bindraban

Respondent : The State of Himachal Pradesh and ors.

Advocate for Def. : B. Sita Ram, Adv. for Respondents Nos. 2 and 3

Advocate for Pet/Ap. : H.S. Doabia and; Amar Chand Sud, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Chowdhry, J.C.

1. This is a petition under Article 226 of the Constitution by one Bindraban directed, against the State of Himachal Pradesh, the Director of Industries

Himachal Pradesh as liquidator of the Solan Electric Supply Company Ltd. and the Limited Company itself which is under liquidation. The petitioner was employed in 1940 as an accountant in the Company, and it appears that he was also confirmed on that post. After the Company had gone into voluntary liquidation the liquidator by his letter dated 22-10-1951 framed three charges against the petitioner and asked him to show cause within seven days why his services be not terminated, It was added in the letter that it will be open to the petitioner to submit his explanation and to adduce such evidence in his defence as he may desire.

The petitioner submitted his explanation on 26-10-1951, but the liquidator terminated his services by his communication dated 10-12-1951 on the ground that the explanation submitted by the petitioner was unsatisfactory. The first two charges were with regard to the petitioner having absented himself from duty on two occasions without leave, and the third was a general charge of disobedience and misbehaviour towards his immediate superior, the Engineer-in-charge and Secretary of the Company. It was stated by the liquidator in his aforesaid letter dated 10-12-1951 terminating the petitioner's services that the petitioner had deliberately absented himself without leave, & that he had lodged a false complaint with the police against his immediate superior.

The contention of the learned counsel for the petitioner was that the liquidator had recorded no finding with respect to the third charge, and that he had not given opportunity to the petitioner to adduce evidence in respect of any of the charges. The reliefs claimed in the petition are that the order of termination of the petitioner's services be quashed, the petitioner be reinstated and the respondents be ordered to pay him remuneration for the entire period upto his reinstatement.

2. A preliminary objection was taken by Sri B. Sita Ram, the Advocate appearing for respondents 2 and 3. It may be stated here in passing that Sri B. Sita Ram said that he did not represent respondent 1, the State of Himachal Pradesh, and that there was nobody else representing the State. The case therefore proceeded ex parte against the State. The preliminary objection of the learned counsel for the respondents was that the petitioner had no right to claim any relief under Article 226 of the Constitution since he held no civil post within the intendment of Article

311, which has been specifically mentioned by the petitioner in his petition as the provision under which he questions his dismissal.

Now, it appears that the majority of the shares of the Limited Company are held by the State of Himachal Pradesh, so that it may be said at the most that the State controls the affairs of the Limited Company. That does not however mean that the State owns the Company, as contended by the learned counsel for the petitioner. It follows therefore that any employee of the Company cannot be described as a person holding a civil post under the State of Himachal Pradesh. It is not open therefore to the petitioner to question his dismissal with-in the provisions of Article 311 of the Constitution.

3. The learned counsel for the petitioner then referred to Para. 5 of the petition wherein the order of termination of the petitioner's services has been characterized as arbitrary and against the principles of natural justice, equity and good conscience. It was therefore argued that even irrespective of Article 311 the petitioner is entitled to claim relief by invoking the extraordinary jurisdiction of this Court under Article 226 if the above allegations be true. In support of this contention the learned counsel cited the following observations of Kapur J. in--Dr Mukand Lal v. The Municipal Committee of Simla', AIR 1953 Punj 88 at page 94 (A): 'Even in the absence of any rules, the principle of natural justice should come into play i.e. the maxim 'audi alteram partem'--no man shall be condemned unheard--would be applicable. It was held in--'Cooper v. Wandsworth Board of Works', (1863) 8 L T 278 (B) and in a long line of cases where this case was followed that although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature. If the petitioner was to be discharged which in this case really means removal from service for an alleged misconduct, he should in all fairness have been given an opportunity to clear his character.' These observations were however made in connection with the bye-laws of the Simla Municipality under one of which the Civil Service Rules Punjab were applied in relation to the removal, dismissal etc. of the municipal employees. The observations in question therefore do not support the general proposition propounded by the learned counsel for the petitioner that even where the conditions of service of a person are not governed

by any statute he is entitled to the benefit of the maxim 'audi alteram partem'. On the contrary, there is good ground for holding that writ petition should not issue in favour of a party, like the present petitioner, the terms of whose services are founded on a contract.

4. The terms of the petitioner's services are embodied in his letter of appointment dated 10-6-1949, whereunder he was appointed as an accountant on a certain salary and with certain amenities, and after confirmation either side was to give three months notice or salary in lieu of notice to terminate the service. The Company reserved to itself the right to terminate the services without notice for misconduct, inefficiency and misbehaviour. It is thus manifest that the parties are governed by contract in the matter of the petitioner's services. It is well-established however that a contract of personal service is not specifically enforceable, and this is not because the legal remedy of damages is open to the aggrieved party, but because the Court does not possess the means and ability of enforcing its decrees. 'Frith v. Frith', (1906) A C 254 at p. 261 (C).

That being so, it is clear that if the petitioner had filed a suit against the respondent for the aforesaid relief of reinstatement it would have been dismissed. Can the petitioner then obtain that relief by means of a writ petition under Article 226? The answer to this question must obviously be in the negative, for it is one of the cardinal principles governing writ petitions that none will issue where either the party claiming it has not the legal right to it, or there is no corresponding legal duty cast upon the respondent to perform the act for which the writ is claimed. From what has been stated above it is clear that in the matter of the petitioner's reinstatement he has neither the right to it nor has the respondent the duty to reinstate him. I therefore hold that this petition, so far as the relief of reinstatement is concerned, is wholly misconceived. As regards the prayer for recovery of arrears of remuneration, that cannot be granted to the petitioner because he has the alternative remedy of claiming it by a suit. The petition is accordingly dismissed, and the petitioner is directed to pay Rs. 40/- as costs of the contesting respondents 2 and 3.