

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2009

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

S.A.No.100 of 2003

The Special Officer,
The Rasipuram Silk Handlooms
Weaver Cooperative Production &
Sales Society Limited,
Registered Number MS.A 18,
No.4 & 5, Nagendra Street,
Rasipuram Post, Namakkal District.

(Cause Title accepted-Vide
Order dated 9.1.2003 made in
C.M.P.No.18934 of 2002)

.. Appellant/Appellant/
Defendant

Vs.

K.Raja

.. Respondent/Respondent/
Plaintiff

Second Appeal filed under section 100 of CPC against the judgment and decree dated 28.6.2002 in A.S.No.132 of 2002 on the file of the Principal District Court, Namakkal, against the judgment and decree dated 21.3.1997 in O.S.No.368 of 1992 on the file of the District Munsif Court, Rasipuram.

For appellant : Mr.J.R.K.Bhavanandam

For respondent: No appearance

JUDGMENT

The appellant-defendant has filed the Second Appeal against the judgment and decree dated 28.6.2002 in A.S.No.132 of 2002 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 21.3.1997 in O.S.No.368 of 1992 on the file of the District Munsif Court, Rasipuram.

2. The averments in the plaint are as follows:

The respondent-plaintiff appeared for the interview for the post of Attender on 23.12.1991, vide appellant-defendant's letter dated

20.12.1991. His name was nominated along with others, to the defendant, by the Assistant Director, Employment Office, Salem. He was appointed as Attender. He received the appointment order dated 4.2.1992 from the defendant. He joined duty on 5.2.1992 as an Attender in the appellant-defendant-Society. He remitted a security deposit of Rs.1,000/- on 17.2.1992. He was working sincerely, honestly and worked to the utmost satisfaction of his superiors. The respondent-plaintiff belongs to Backward Community. His appointment order does not contain any details as to whether he was appointed under Backward Community quota or in excess of Backward Community quota. The shortfall, if any in the Most Backward Community quota can be rectified by the appellant-defendant by recruiting more persons from the Community concerned, but without any fault on the part of the plaintiff, he was told by the appellant-defendant on 29.9.1992 that his services were terminated, alleging that there was a shortfall in the MBC quota. The respondent-plaintiff was recruited as per the Rules prescribed under the provisions of the Tamil Nadu Co-operative Societies Rules, 1988, through the District Employment Exchange. The respondent-plaintiff had already discontinued his B.A. Degree course on 5.2.1992 in order to join the above post. Without his fault, the defendant is trying to terminate the plaintiff's services. The above action is highly illegal, unconstitutional and in gross violation of the defects due to reservation polity of the Government and those who have already been selected, have to be regularly appointed by creating additional post. Hence, the plaintiff filed the suit for injunction against the defendant restraining him from terminating the services of the appellant-defendant. But after filing of the written statement, the plaintiff amended the plaint for declaration that the alleged order dated 29.9.1992 terminating the plaintiff from the services from 30.9.1992 on the ground that his appointment was made on 4.2.1992 in excess of quota for BC or against the quota for MBC, is arbitrary, null and void and also sought for mandatory injunction to direct the defendant to reinstate the plaintiff in service from 30.9.1992. He prayed for a decree.

3. The gist and essence of the written statement filed by the defendant are as follows:

The civil suit is not maintainable. This Court has no jurisdiction. The plaintiff was already terminated from service on 30.9.1992. He was appointed as Attender. There is no necessity to give any details as to on what basis he was appointed. On 29.9.1992 itself, the order of termination has been passed, and the plaintiff was aware of the same. He was terminated in accordance with law. There were two vacancies in the Attender post and by the order passed on 11.11.1991 and 16.11.1992, a letter has been addressed to the District Employment Officer to forward the eligible candidates. It was categorically stated that the post is only temporary and likely to be continued beyond one year. The appellant-defendant received the list of candidates and then only, interview was conducted. The

plaintiff as well as one Sakthi Doss were selected and they were appointed. On 10.4.1992, they received letter from the District Employment Office, stating that they are not following the communal rotation. Since Sakthi Doss has been appointed in the Open Competition quota, and the respondent-plaintiff, who is in the BC category, was appointed under MBC quota and hence, he was terminated from service. A resolution was passed on 29.9.1992 and termination order was passed. He refused to receive the termination order and he has not attended the Office on 30.9.1992. So, the termination order has been communicated through Certificate of Posting. The plaintiff is entitled to file appeal under the Tamil Nadu Co-operative Societies Act before the Registrar and hence, he prayed for dismissal of the suit.

4. After amendment of the plaint, the defendant filed additional written statement. The gist of the same is as follows:

The plaintiff is not entitled for declaration and mandatory injunction. The Civil Court has no jurisdiction. Since he was terminated on 29.9.1992 and he filed amendment only in 1996, and hence, the suit is barred by limitation. The suit has been filed against the President of Rasipuram Silk Handloom Weavers Co-operative Production and Sale Society. The suit is not maintainable. The suit ought to have been filed against the Secretary. Hence, he prayed for dismissal of the suit.

5. The trial Court, after considering the averments both in the plaint and in the written statement, has framed four issues and six additional issues and considering the oral evidence of P.W.1, D.W.1, Exs.A-1 to A-5 and Exs.B-1 to B-8, decreed the suit as prayed for in the plaint. The defendant preferred appeal and the learned first appellate Judge, after considering the arguments, has framed four points for determination and confirmed the judgment and decree of the trial Court and dismissed the appeal. Against that, the present Second Appeal has been filed by the defendant.

6. At the time of admission of the Second Appeal, the following substantial questions of law were framed for consideration:

"(i) Whether the jurisdiction of Civil Court is expressly barred under Section 156 of Tamil Nadu Cooperative Societies Act and Industrial Disputes Act, since the termination of the respondent from service attracted the definition of Industrial Dispute under Sec.2(k) of the Industrial Disputes Act which meant any dispute or difference between employees and employers, or between employers and workmen or between workmen which is connected with the employment or non-employment or the terms of employment or with the condition of labour of any person.

(ii) Whether the provisions of Sec.9 CPC bars the

filing of the suit in Civil Court and that the question of employment or non-employment was not civil in nature?

(iii) Whether the finding of the lower Court is perverse on failure to appreciate oral or documentary evidence regarding wrong appointment of the respondent for the post of Attender ignoring communal reservation well protected under Article 15 of the Constitution of India?

(iv) Whether the termination of service of the respondent was not in violation of principles of natural justice?

(v) Whether the Civil Court has jurisdiction to try the suit of the nature and decide upon the violation of principles of natural justice?

(vi) Whether the claim introduced by the amendment of plaint beyond the period of 3 years was barred by limitation and that the amendment was subject to limitation?"

7. The respondent as plaintiff filed the suit for declaration that since he was appointed as Attender as per the order dated 4.2.1992, and since he belongs to Backward Community, and as there was an excess in the BC category and shortage in MBC category, he was terminated from service and hence, he has come forward with the suit for declaration that the termination order is null and void and also for mandatory injunction to direct the appellant-defendant to give reinstatement.

8. The appellant as defendant resisted the suit stating that the Civil Court has no jurisdiction and they followed the procedures and then only they terminated the respondent-plaintiff and hence, they prayed for dismissal of the suit.

9. The trial Court, after framing necessary issues and considering the oral and documentary evidence, came to the conclusion that the termination order is null and void and granted the decree as prayed for in the plaint. Against that, the defendant preferred appeal and the first appellate Court has concurred with the findings of both the trial Court and dismissed the appeal. Against that, the present Second Appeal has been preferred by the appellant-defendant.

10. Learned counsel for the appellant-defendant would contend that the Civil Court has no jurisdiction and the respondent-plaintiff ought to have worked out his remedy only before the Registrar of Co-operative Societies or in Labour Court and not before the Civil Court. Moreover, the appellant-defendant has specifically stated that they have followed the procedures laid down under the provisions of the Tamil Nadu Co-operative Societies Act and they ought to have followed the communal rotation, but since there was an excess in the BC quota, on communal rotation, to accommodate the MBC quota candidate, the respondent-plaintiff was terminated. So, all the process had been done in accordance with law. The trial Court and the

first appellate Court has come to the wrong conclusion that the Civil Court has jurisdiction to entertain the suit. The learned counsel for the appellant-defendant further submitted that since the termination order has been issued on 29.9.1992, but the respondent-plaintiff made amendment only on 6.6.1996 after three years, the suit itself is not maintainable and is barred by limitation. He prayed for allowing the Second Appeal.

11. It is pertinent to note that the respondent-plaintiff has not appeared, even though he received the summons from this Court.

12. Substantial question of law (i), (ii) and (v):

First, we have to decide whether the Civil Court has jurisdiction to entertain the suit. The admitted facts are that as per Ex.B-1, the appellant-defendant has received an official memorandum for filling up of two posts of Attenders and so, on 11.11.1991, the appellant-defendant addressed a letter to the Employment Officer to call for the list of eligible candidates and in turn, the appellant-defendant received a list from the Employment Exchange as per Ex.B-3. Then, they conducted interview as seen from Ex.A-1 and the respondent-plaintiff received the same and attended the interview on 23.12.1991. He was appointed as per Ex.A-2 appointment order, dated 4.2.1992. He also paid the security deposit as per Ex.A-3 on 17.2.1992. So, from 5.2.1992 onwards, the respondent-plaintiff is in service till 29.9.1992.

13. It is also admitted fact that as per Ex.B-4, on 10.4.1992, the appellant-defendant has received the letter, stating that the appointment of two Attenders has not been made in accordance with the communal rotation maintained by the Government and so, the appellant-defendant was directed to remove one person and appoint one MBC candidate in that vacancy. It is also not disputed as the respondent-plaintiff has made such averment in the plaint. In pursuance of the said letter, another letter dated 14.5.1992-Ex.B-5, also has been received by the appellant-defendant and in that letter also, it was clearly stated that the rotation Nos.21 and 22 has been made for MBC and Open Competition candidates in the same place. In pursuance of the same, as seen from Ex.B-6 dated 29.9.1992, the resolution has been passed to remove the respondent-plaintiff and the order has been issued as per Ex.A-5.

14. At this juncture, learned counsel for the appellant-defendant relies on Section 156 of the Tamil Nadu Co-operative Societies Act, which deals with bar of jurisdiction of the Civil Court, and Section 156 reads as follows:

"Section 156: Bar of jurisdiction of Civil Courts--
Notwithstanding anything contained in any other law for the time being in force, no order or award passed, decision or action taken or direction issued under this Act by an Arbitrator, a Liquidator, the Registrar or an officer

authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court and no injunction shall be granted by any Court in respect of anything which is done or intended to be done by or under this Act."

15. While considering Section 156, it is true that the termination order has been passed by the appellant-defendant. But it was not issued for certain acts of commission or omission. But here, the termination order has been passed only on the basis of the letter received from the District Employment Officer for not following the communal rotation while giving appointment. So, the termination order has not been passed in accordance with the provisions of the Tamil Nadu Co-operative Societies Act. In the abovesaid circumstances, I am of the view that the Civil Court is not barred under Section 156 of the Tamil Nadu Co-operative Societies Act. Since the Civil Court is not barred under Section 156 of the Tamil Nadu Co-operative Societies Act, no appeal is entertainable under the provisions of the Tamil Nadu Co-operative Societies Act. For the above reasons, the termination of the respondent-plaintiff cannot also not be termed as 'industrial dispute' under the provisions of the Industrial Disputes Act.

16. While it is appropriate to consider Section 9 of the Civil Procedure Code, as per which, the Civil Court has jurisdiction. Section 9 of the CPC reads as follows:

"Section 9: Courts to try all civil suits unless barred: The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

17. As already stated, the respondent-plaintiff has challenged the termination order, which has not been passed for the acts of commission or omission by the respondent-plaintiff, but passed only the basis of the letter received from the District Employment Exchange, stating that at the time when the respondent-plaintiff and another person, by name Sakthi Doss, were appointed, the communal rotation has not been followed, and of them, one was appointed under Open Category quota and another was appointed under MBC quota, but since the respondent-plaintiff who was a BC category candidate, he was removed from service by way of issuance of the termination order. In such circumstances, the Civil Court has jurisdiction to entertain the suit. It is pertinent to note that a suit will lie for declaration that the removal of a person from the Chairmanship of the District Board, by the State Government, was illegal and also for injunction restraining the interference with the work as Chairman and that the said suit is maintainable.

18. The first appellate Court has considered the decision of this Court reported in AIR 2000 Noc 82, Madras, (A-1663 Aundipatti Co-operative Stores Ltd. Vs. The Dist. Munsif, Pariyakulam and others), wherein, it was observed as follows:

"The Tamil Nadu Co-operative Societies Act, 1983 is self contained Code wherein regarding the co-operative activities alien influence is averted giving powers to such co-operative officials to effectively deal with in order to streamline the co-operative activities wherever it is required and wherever it is necessary. While such being the scope and application of the said Act even so far as its general activities are concerned, it is unimaginable that a suit could be entertained in the civil Courts regarding disciplinary proceedings instituted against its officials. Since always it is the special Act which prevails on the general provisions of law and the subject being one which is directly covered under the Act and Rules, the bar of jurisdiction of Civil Courts created under S.156 of the Act undoubtedly prevails and in application of the same, it should be decided that the suit as instituted regarding disciplinary proceedings against its officials and the orders of injunction granted therein and all such acts perpetrated on the part of the respondent should be declared null and void and unenforceable in law as they are quite repugnant to S.156 of the Act from the very institution of the suit itself."

19. Moreover, it is pertinent to note that before issuance of the termination order, no notice has been issued to the respondent-plaintiff. The principles of natural justice has not been followed. He shall be terminated only after giving him a fair opportunity to put forth his defence and after reasonable notice before termination. When the basic right of the respondent-plaintiff is infringed and if he was arbitrarily terminated without following due process of law, the Civil Court can always step in to protect the right of the individual. As per the decision of this Court reported in 1997 (1) CTC 4 (Somasundaram Vs. Liyakat Ali and another), which was relied on by the first appellate Court, the Civil Court has jurisdiction.

20. So, I am of the opinion that the first appellate Court, in paragraph 14 of its judgment, has dealt that the Civil Court has jurisdiction and when once the fundamental right of the individual is affected, the Civil Court can interfere and set right the defects. Hence, I concur with the findings of the first appellate Court.

21. Substantial question of law (vi):

Learned counsel for the appellant-defendant would contend that even though the respondent-plaintiff was terminated on 29.9.1992, and he filed the suit in time, but he amended the plaint only on 6.6.1996, for a declaration that the termination order is illegal, and hence, the suit is barred by limitation.

22. As per Article 58 of the Limitation Act, to obtain any other declaration, the limitation period is three years, when the right to sue first accrues. Learned counsel for the appellant-defendant would contend that as per Ex.A-5, the termination order has been issued on 29.9.1992, but he made the amendment in the plaint only on 6.6.1996 and hence, the suit is clearly barred by limitation. The abovesaid argument does not merit acceptance, because, when once the amendment in the plaint has been carried out, it relates back to the original date of the filing of the suit. The suit was filed on 1.10.1992. So even though the amendment has been made on 6.6.1996, the amendment reverts back to the date of filing, i.e. 1.10.1992 and hence, the suit is well within time and hence, the suit is not barred by limitation.

23. Substantial questions of law (iii) and (iv):

Even though other substantial questions of law have been raised, learned counsel for the appellant-defendant has not advanced any argument on the substantial questions of law (iii) and (iv). As already discussed, after the appellant-defendant has got the list of candidates as per Ex.B-3, the respondent-plaintiff was called for interview, as seen from Ex.A-1, and he attended interview and he received the appointment order as per Ex.A-2 and in Ex.A-2, it was stated as follows:

"பார்வை 2-ல் கண்டுள்ள பட்டியலில் அனுப்பப்பட்ட நபர்களின் பட்டியலின் படி 23.12.91 திங்கட்கிழமை முற்பகல் உடன் ஆள் நேர்முக தேர்வுக்கு ஆஜரான நபர்களில் திரு.கே.ராஜா 10420/87 என்பவர் எஸ்.எ.18, இராசிபுரம் பட்டு கைத்தறி நெசவாளர் கூட்டுறவு உற்பத்தி டி விற்பனை சங்கம் லிமிடெட்டின் உடன் ஆள் பணிக்கு தேர்வு செய்யப்பட்டு 5.2.92 ந் தேதி முதல் பணியமர்த்தப்படுகிறார். பார்வை 1-ல் கண்ட உதவி இயக்குநர் கைத்தறி மற்றும் துணி நூல் திருச்செங்கோடு அவர்களது உத்தரவுக்குட்பட்டு இவருக்கு பிரதிமாதம் ரூ.300/- (ரூபாய் முன்னூறு மட்டும்) ஒட்டு மொத்த சம்பளமாக வழங்கப்படும்.

இவர் பணியில் சேரும் நாளிலிருந்து ஓராண்டு காலத்திற்கு தகுதிகாண் பருவத்தில் வைக்கப்படுகிறார்."

24. In the abovesaid Ex.A-2 appointment order, it was not stated that he was appointed temporarily and it was stated that the

respondent-plaintiff will be kept under probation for one year. So, in pursuance of Ex.A-2 appointment order, the respondent-plaintiff joined duty on 5.2.1992. He also deposited security deposit as seen from Ex.A-3, on 17.2.1992. Before he was terminated from service, he was not given opportunity. As already stated, he has not committed any misconduct or any act of omission or commission. The case of the appellant-defendant is that only communal rotation has not been followed and so, on receipt of the letter from the District Employment Office, as per the instructions, the appellant-defendant was forced to terminate one person and since Sakthi Doss has been appointed in OC category, and since the respondent-plaintiff belongs to BC category, and since the post has to be given only to MBC candidate, the respondent-plaintiff was terminated. Even in his written statement, the appellant-defendant would contend that the appointment is only temporary. On a perusal of the appointment order, it is seen that the respondent-plaintiff was not appointed temporarily, but regarding the probation period of the respondent-plaintiff has only been stated, i.e. it reads that, "இவர் பணியில் சேரும் நாளிலிருந்து ஓராண்டு காலத்திற்கு தகுதிகாண் பருவத்தில் வைக்கப்படுகிறார்." But, it is not the case of the appellant-defendant that the respondent-plaintiff committed any irregularity.

25. In the above circumstances, since the respondent-plaintiff has not committed any wrong, he will not be liable to be terminated from services, and before termination, opportunity has also not been given. Hence, I am of the view that the respondent-plaintiff is entitled for declaration that the termination order is null and void.

26. In Ex.A-5 termination order, it was stated that since Raja was appointed in the place of MBC category, but he belongs to BC category, and so, he was terminated from service from 30.9.1992 in pursuance of the letter received from the District Employment Officer and in that letter, the authority has not stated anything about the performance of the respondent-plaintiff.

27. In the abovesaid circumstances, it is to be held that the appellant-defendant has not followed the procedures and issued the termination order. The trial Court and the first appellate Court have considered all the above aspects and came to the conclusion that the selection itself not being in accordance with the communal rotation basis and for that, the respondent-plaintiff could not be terminated. I concur with the findings of both the Courts below. There is no perversity in the judgment and decree passed by both the Courts below. Both the Courts below have considered all the materials and came to the correct conclusion.

28. Hence, the judgment and decree passed by both the Courts below are hereby confirmed. The respondent-plaintiff is entitled to a declaration and mandatory injunction as prayed for in the plaint. Two

months' time is granted to the appellant-defendant to reinstate the respondent-plaintiff.

29. With the above observations and direction, the Second Appeal is dismissed. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

CS

To

1. The Principal District Judge, Namakkal.
 2. The District Musnif, Rasipuram.
 3. The Section Officer, V.R. Section, High Court, Madras.
- + 1 cc to Mr.J.R.K.Bhavanandam, Advocate, SR 71222

BVN (CO)
RH (21.1.10)

Judgment in
S.A.No.100 of 2003

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