SUPREME COURT OF INDIA

Bholanath J. Thaker

Vs.

State of Saurashtra

C.A.No.170 of 1954

(Mehr Chand Mahajan, C.J.I., B. K. Mukherjea, Vivian Bose, N. H. Bhagwati And T. L. Venkatarama Ayyar, JJ.)

04.05.1954

JUDGEMENT

BHAGWATI, J. :

1. This appeal on a certificate under Article 133 (1) (a) of the Constitution arises out of the appellant's suit for compensation against the Saurashtra State for his premature retirement from service.

2. On the 2nd August 1936 the appellant was appointed officiating Sarnyayadhis in the Wadhwan State on a monthly salary of Rs. 150. He was confirmed on the 20th September 1936 and continued to serve the Wadhwan State till the administration of the State was made over to the Saurashtra Government on the 16th March 1948. The Ruler of the Wadhwan State appointed in 1946 a Committee to frame rules for the conditions of service and for pensions and other matters regarding the services. The Committee made its report on the 22nd November 1947 and on the recommendations of the Committee the Ruler of the Wadhwan State promulgated on the 3rd February 1948 Dhara (Act) No. 29 of St. 2004 which came into force with effect from the 1st January 1948. Section 5 of this Dhara fixed the superannuation age for the State Civil servant at 60 and the Appellant thus became entitled to remain in service till he completed his age of 60 years.

3. The Rulers of the Kathiawar States including the Wadhwan State entered into a covenant for the formation of the United States of Kathiawar on the 24th January 1948. Under Art. 6(1) of the Covenant the Ruler of each Covenanting State agreed as soon as may be practicable and in any even not later that the 15th April 1948 to make over the administration of his State to the Raj Pramukh and thereupon all the rights, authority and jurisdiction belonging to the Ruler pertaining or incidental to the Government of the Covenanting State were to vest in the United States of Kathiawar and all similar duties and obligations of the Ruler were to devolve on the United States of Kathiawar and were to be discharged by it.

4. The Raj Pramukh took his oath of office on the 15th February 1948 and on the 1st March 1948 promulgated an ordinance being Ordinance No. 1 of 1948 continuing in force all laws, ordinances, Acts, rules, regulations etc. having the force of law in the Covenanting State until repealed or amended under the provisions of the ordinance.

5. The ruler of the Wadhwan State made over the administration of the State to the Saurashtra

Government on the 16th March 1948 and a proclamation was issued on the said date by the Saurashtra Government declaring that whatever rights, jurisdiction and authority were with the Thakore saheb (Ruler) with respect to the said State were then vested in the Saurashtra Government and the duties and obligations with regard to the Ruler's own State passed to the Saurashtra Government and the Saurashtra State would fulfil the same.

6. Under Article 16(1) of the Covenant the United States of Kathiawar had guaranteed either the continuance in service of the permanent members of the public services of each of the Covenanting States on conditions which would not be less advantageous than those on which they serving before the date on which the administration of the State was made over to the Raj Pramukh or the payment of reasonable compensation.

7. By an order dated the 29th June 1948 the Appellant was retired by the Saurashtra State on the ground that he had passed the age of superannuation which was taken at 55 years, on payment of three months' leave salary and a monthly pension of Rs. 40-13-0. The Appellant accepted the amount of the leave salary, that is Rs. 716-4-0 and pension under protest and without prejudice to his claim for compensation on the ground that under the Wadhwan State Service Rules he was entitled to continue in service till the completion of 60 years of age. On the 21s April 1949 the Appellant filed a suit in the Court of the Civil Judge, S.D. Surendranagar against the Saurashtra State claiming a sum of Rs. 20,000 being the amount to which he was entitled as compensation by reason of his premature compulsory retirement.

8. The claim of the Appellant was contested mainly on the ground that after the Ruler of the Wadhwan State had entered into the Covenant on the 24th January 1948 it was not competent to him to enact any law, rule or regulation which would bind the Saurashtra State. It was also contended that no suit lay against the Saurashtra State in the Municipal Courts inasmuch as the action of the Saurashtra Government amounted to an act of State.

9. The trial Court rejected these defences and passed a decree in favour of the Appellant in the sum of Rs. 18,409-2-0. An appeal was taken to the High Court and the High court reversed the decree of the Trial Court and dismissed the Appellant's suit with costs throughout.

10. The High Court negatived the contention of the Saurashtra State that the action of the State amounted to an act of State and that the Municipal Courts had no jurisdiction to entertain the Appellant's claim, as also the further contention that the suit was barred under Article 363 of the Constitution. The High Court, however, was of the opinion that the Ruler of the Wadhwan State had no legislative competence after he had entered into the Covenant on the 24th January 1948 to enact the Dhara No. 29 of St. 2004 and that therefore the Appellant's claim for compensation on the footing that he was entitled to continue in service till the age of 60 years was unsustainable.

The High Court was also of he opinion that even on the footing of the retiring age being 60 years what had been granted by the Saurashtra Government to the Appellant was most liberal and far in excess of what he would have received from the Wadhwan State because of Ruler of the Wadhwan State had at all times a right to retire him during his pleasure and the Appellant could not have insisted on remaining in service till the age of 60.

11. The learned Solicitor-General appearing for he Respondent before us frankly conceded that he could not support the judgment of the High Court on the ground of the legislative incompetence of the Ruler of the Wadhwan State to enact the Dhara No. 29 of 2004. He however resisted the claim

of the Appellant on the grounds - (1) that the guarantee contained in Article 16 of the Covenant which was sought to be enforced by the Appellant could not be enforced in the Municipal Courts and the suit of the Appellant was therefore incompetent; and (2) that the amount of compensation awarded by the Trial Court to the Appellant was far in excess of what he was entitled to.

12. As regards the first ground the learned Solicitor-General contended that the entering into of the Covenant by the Rules of the Kathiawar State was an act of State and that the Municipal Courts were not competent to entertain any disputes arising out of the Covenant. He also relied upon Article 363 of the Constitution which bars interference by Courts in any disputes arising out of certain treaties and covenants.

13. The Ruler of the Wadhwan State in the exercise of his legislative capacity passed the Dhara No. 29 of St. 2004 which gave the Appellant certain statutory rights. Even though the Ruler may have had the power to repeal this enactment he did not do so and therefore so long as the Dhara remained in force the Appellant was entitled to the benefit of it and could have enforced his rights under it in the State Courts either against the State itself or at any rate against such of the officers of the State as wrongfully withheld his salary or wrongfully dismissed him.

When the Wadhwan State merged with the Saurashtra State and again when it acceded to the Dominion of India all the existing laws continued until repealed. It follows that the Appellant's right under the Dhara No. 29 of St.2004 were still good and could have been enforced in the Municipal Courts until either repealed or repudiated as an act of State. These rights were carried over after the Constitution when the Indian Republic was formed with this important difference viz, that as the Appellant then became an Indian citizen the repudiation 'as an act of State' was not any longer possible. The only way therefore to defeat his rights was by legislation if that could be done under the Constitution.

There was in fact no such legislation and therefore his rights remained and the Municipal Courts would be entitled to examine the contract and apply the Dhara No. 29 of St. 2004 and enforce whatever right the Appellant had under that Dhara and his contract of service. (See art 300 (1) and Art. 372 (1) of the Constitution). The covenant could be looked at to see whether the new sovereign had waived his rights to ignore rights given under the laws of the former sovereign. The terms of the Covenant showed that the existing laws were to continue and whatever the rights of the Appellant were under the existing laws were available for enforcement to the Appellant and there was no bar to the Municipal Courts entertaining a suit to enforce such rights.

14. In this view of the matter Art. 363 of the Constitution could not be invoked the Respondent. There was no dispute arising out of the Covenant and what the Appellant was doing was merely to enforce his right Under the existing - laws which continued in force until they were repealed by appropriate legislation. This ground therefore could not avail the Respondent.

15. As regards the second ground, the learned Solicitor-general urged before us that under the terms of the guarantee incorporated in Article 16 of the Covenant it was open to the Saurashtra State to Compulsorily retire the Appellant on payment of reasonable compensation. He urged that that compensation could not be any more than what the Appellant would have been entitled to receive from the Ruler of the Wadhwan State if he had continued in his service at the time when he was compulsorily retired by the Saurashtra State. It was pointed out that the services of the Appellant with the Wadhwan State were during the pleasure of the Ruler of the State and that the Ruler of the State could have compulsorily retired him without being liable to pay him any compensation

whatever and that therefore the position of the of the Appellant was no better so far as the Saurashtra State also was converned. We do not accept these contentions.

Even though the tenure of the Appellants' service with the Ruler of the Wadhwan State was initially during the pleasure of the Ruler, the Ruler put a fetter upon his powers to dispense with the services of the Appellant when the Dhara No. 29 of St. 2004 was enacted by him. This obligation of the Ruler passed to the Saurashtra State on the making over of the administration of the Wadhwan State to the Raj Pramukh on the 15the March 1948 and the Saurashtra State also could not dispense with the services or compulsorily retire the Appellant before he attained 60 years of age.

If the Saurashtra State chose to compulsorily retire the Appellant it could only do so on payment of reasonable compensation and in arriving at the figureof reasonable compensation the Saurashtra State would have to take into consideration the tenure of the Appellant's service with the Wadhwan State which entitled him to continue in such service until he attained his age of 60 years. This was one of the circumstances to be taken into account when determining the amount of reasonable compensation to be awarded to him. We have been taken through the portion of the Trial court's judgment which deals with the amount of compensation and we are of the opinion that the amount of compensation awarded by the Trial Court to the Appellant was justified under the circumstances. This ground also does not avail the Respondent.

16. The amount of pension, viz, Rs. 43-11-0 per month which was granted by the Saurashtra State to the Appellant was not the subject-matter of the suit. The amount of compensation clamed by the Appellant was over and above the said amount of pension and the Trial Court adjudicated upon such compensation. The Appellant's rights in regard to the pension were not at all affected by the amount of compensation awarded by the Trial Court to him. The Appellant will therefore continue to receive the amount of pension in addition to whatever compensation has been awarded to him, by the Trial Court.

(7) The result, therefore, is that the appeal will be allowed, the decree passed by the High court set aside and the decree passed by the Trial Court in favour of the Appellant restored with cost throughout.

Appeal allowed

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