

State of M. P.

Vs

Mangilal Sharma

Civil Appeal No. 3237 of 1990

(Sujata V. Manohar, D. P. Wadhwa JJ)

18.12.1997

JUDGMENT

D. P. WADHWA, J. –

1. The State of Madhya Pradesh has come in appeal against the judgment dated 29-4-1988 of the Division Bench of the Madhya Pradesh High Court dismissing its writ petition filed under Article 226 and 227 of the Constitution. The writ petition had been filed challenging the order of the Civil Judge, Neemuch executing a declaratory decree and that of the Additional District Judge, Mandsaur upholding in revision the order of the Civil Judge. This Court while granting special leave petition had stayed the operation of the impugned order of the High Court as well as that of the executing court.

2. The respondent was employed as a Clerk, Grade I, in the Irrigation Department of the appellant and was posted at Gandhi Sagar. He was transferred to Jabalpur. He handed over his charge at Gandhi Sagar. The respondent represented that due to acute illness of his father he might be transferred to Mandsaur, a place near his hometown to enable him to look after his father. His request was not acceded to. This led the respondent to submit his resignation. He was not informed if the resignation had been accepted. There was some correspondence in late sixties but there was no clear reply from the appellant if resignation of the respondent had been accepted. All this period the respondent did not join his duty and remained present at his hometown. This led the appellant to assume that the respondent had voluntarily resigned from his service as he continuously remained absent from his place of taking over the charge of his post for more than five years. Thus, according to the appellant the service of the for declaration against the appellant that he continued to be in service which was decreed on 1-10-1982 by the Civil Judge, Class II, Neemuch. The decree passed in or the respondent is as under :

It is ordered and decreed that - (a) The plaintiff's suit is decreed with costs and this is declared that plaintiff is still in continuous service of defendant and his service are not terminated. The defendant will also the cost of the suit of the plaintiff along with its own cost and that the sum of Rs. 63.50 be paid by the defendant to the plaintiff on account of costs of this suit with interest thereon at the rate of (illegible) per cent. per annum from this date of realization.

Given under my hand and the seal of Court this 1st day of October, 1982.

# sd/- A. H. Sheikh Patel Civil Judge, Class II Neemuch - (M.P.)"##

3. Against the judgment and decree of the Civil Judge the appellant filed an appeal before the District Judge, Mandsaur which was dismissed and the second appeal in the High Court was also dismissed by the judgment dated 26-4-1986. The respondent, decree-holder, then filed an execution application in the Court of the Civil Judge, Neemuch. This was to the effect that the respondent be awarded all the consequential benefits, salary, dearness allowance, promotion etc. of the service and also cost of the application. The appellant opposed the application on the grounds that the court did not pass any decree of reinstatement of the decree-holder on the post or for payment of any salary to him and that in the suit the decree-holder had not prayed for reinstatement and for arrears of his salary. It was also submitted before the executing court by the appellant that since the decree-holder had remained absent from his duty, he was not entitled to any salary on the basis of the principle of "no work no salary". The objections filed by the appellant, it would appear, were dismissed by the executing court. A revision against that order was also dismissed by the Additional District Judge, Neemuch by order dated 11-1-1988. The appellant then filed a writ petition in the High Court of Madhya Pradesh which, as noted above, was dismissed. This led the appellant to come to this Court.

4. It appears to us that the courts below did not go by even the basic principles of law. A suit for mere declaration to any legal character is maintainable under Section 34 of the Specific Relief Act, 1963, though it has been held that the section is not exhaustive. There is a proviso to the section which bars any such declaration where the plaintiff, being able to seek further relief, omits to do so. Section 34, in relevant part, is as under :

"34. Discretion of court as to declaration of status or right. - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

5. Normally in a case like the present one the plaintiff when seeking relief of declaration that he continues to be in service would also seek consequential reliefs of reinstatement and arrears of salary. This the respondent as plaintiff did not do so as the Government not being a private employer would certainly respondent a mere decree of declaration. This in fact the appellant did and the respondent has been reinstated. Moreover, once the government servant is appointed to his post or office, he acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules which may be framed by the Government. The legal position of a government servant is more one of status than of contract. In *Roshan Lal Tandon v. Union of India* (AIR 1967 SC 1889 : (1968) 1 LLJ 576) this Court observed that the hallmark to status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties and that the emoluments of the government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is, therefore, quite clear that the appellant has rightly reinstated the respondent in service as the decree gave a declaration to his legal status of having remained a government servant throughout as if the order of termination of service never existed. It was not necessary for the respondent to seek relief of arrears of salary in a suit for declaration as he may be satisfied with a mere relief for declaration that he continues to be in service. Of course if he afterwards claims arrears of salary in a suit for the period prior to the relief of declaration he may face the bar of Order II Rule 2 of the Code of Civil Procedure.

6. A declaratory decree merely declares the right of the decree-holder vis-a-vis the judgment-debtor and does not in terms direct the judgment-debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears of salary the executing court could not issue any process for the purpose as that would be going outside or beyond the decree. The respondent as a decree-holder was free to seek his remedy for arrears of salary in the suit for declaration. The executing court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree. It is not that if in a suit for declaration where the plaintiff is able to seek further relief he must seek that relief though he may not be in need of that further relief. In the present suit the plaintiff while seeking relief of declaration would certainly have asked for other reliefs like the reinstatement, arrears of salary and consequential benefits. He was, however, satisfied with a relief of declaration knowing that the Government would honour the decree and would reinstate him. We will therefore assume that the suit for mere declaration filed by the respondent-plaintiff was maintainable, as the question of maintainability of the suit is not in issue before us.

7. Mr. Gambhir, learned counsel for the respondent, has been unable to show as to how a decree for declaration which the respondent got could at all be executable. It was, therefore, submitted by him that once the court gave a declaration about the legal status of the respondent that he was still in continuance of service of the appellant and his services were never terminated, the necessary consequence would be that the respondent should be granted arrears of salary and other consequential benefits by the appellant unlike in a case which was governed by law of contract between the parties. It is difficult to accept this proposition as the provisions of law contained in Section 34 of the Specific Relief Act are specific and in that case even declaration could not have been granted as it could be said that the respondent was able to seek further relief than a mere declaration of his legal status and which he omitted to do so. In *State of Punjab v. Krishan Dayal Sharma* (AIR 1990 SC 2177) the plaintiff obtained a decree that he was entitled to be promoted from the post of Inspector of Police to that of Deputy Superintendent of Police with effect from the date when his juniors were promoted and further claimed relief for all consequential benefits, rights and privileges. The suit was decreed and in the execution application filed by the plaintiff in addition to the benefits flowing from the decree, he also claimed compound interest at the rate of 12% per annum on the amount found due to him. The claim of interest was allowed by the executing court. This Court noticed that the decree which was put to execution did not contain any order or direction for the payment of any interest on the amount which was payable to the decree-holder consequent to the declaration made by the Court decreeing a suit. It was also not disputed that no relief for interest had been claimed by the decree-holder in his suit nor any such claim was discussed or awarded by the Court decreeing the suit. This Court held that the executing court was bound by the terms of the decree and could not add or alter the decree on its notice of fairness or justice. The Court further observed that no doubt the courts had power to award interest on the arrears of salary or pension or other amount to which a government servant was found entitled to having regard to the facts and circumstances of the case but that power could not be exercised by the executing court in the absence of any direction in the decree. In *Parkash Chand Khurana v. Harnam Singh* ((1973) 2 SCC 484 : AIR 1973 SC 2065) one of the contentions raised by the appellants before this Court was that the award in question was merely declaratory of the rights of the parties and was, therefore, inexecutable. The Court observed as under : (SCC pp. 490-91, para 18)

"This contention is based on the wording of clause 7 of the award which provides that on the happening of certain events the respondents 'shall be entitled to take back the possession'. We are unable to appreciate how this clause makes the award merely declaratory. It is never a precondition of the executability of a decree that it must

provide expressly that the party entitled to a relief under it must file an execution application for obtaining that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights of the parties. It is a clear intendment of the award that if the appellants defaulted in discharging their obligations under the award, the respondents would be entitled to apply for and obtain possession of the property."

8. In *Prakash Chand v. S. S. Grewal* (1975 Cri LJ 679 : (1974) 1 SLR 647 (FB)(P&H)) the petitioner had a decree in his favour declaring his dismissal from service to be illegal, void and of no effect. The Punjab Government did not reinstate him nor paid him the arrears of salary. He, therefore, filed a writ petition for taking contempt of court proceedings against certain officials of the State Government. The Court held as under :

"A declaratory decree, in my opinion, cannot be executed as it only declares the rights of the decree-holder qua the judgment-debtor and does not, in terms, direct the judgment-debtor to do or to refrain from doing any particular act or thing. Since there is not command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decree-holder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favour."

9. In our view, it is a correct statement of law except that it may not be fully applicable in the case of a government servant who acquires a status and his service conditions are governed by statutory rules as noticed above.

10. We are, therefore, of the opinion that the courts below did not exercise their jurisdiction properly and the respondent could not have sought execution of the declaratory decree when no relief was granted to him towards arrears of salary and other consequential benefits.

11. The appeal is allowed with costs, impugned order of the High Court as well as orders of the courts below are set aside and the execution application filed by the respondent is dismissed.