

Ramendra Kishore Biswas

Vs

State of Tripura and Others

Civil Appeal No. 6080 of 1998

(CJI Dr. A. S. Anand, V. N. Khare, M. Srinivasan JJ)

04.12.1998

JUDGMENT

1. Leave granted.

2. The appellant was proceeded against departmentally when the Enquiry Officer found him guilty of the charges framed against him and submitted his report dated 17-11-1992 to the disciplinary authority. After issuance of show-cause notice to the appellant seeking his reply, the disciplinary authority agreed with the Enquiry Officer and dismissed the appellant from service vide memo dated 12-2-1993. The order of dismissal was put in issue by the appellant by instituting a civil suit for declaration that the order of dismissal from service was void and illegal and that the appellant was entitled to be reinstated. On 21-8-1995, the suit was dismissed. The appeal filed by the appellant before the learned District Judge, however, succeeded and on 30-7-1996, the learned District Judge allowing the appeal declared that since proper procedure had not been followed and the appellant had been denied the facility of a Defence Assistant after his earlier Defence Assistant had ceased to act for him, the order of dismissal was illegal. The appellate court, however, granted liberty to the respondent to continue with the departmental enquiry after providing the appellant with a Defence Assistant of his choice from the stage at which his earlier Defence Assistant had ceased to act as Defence Assistant and to proceed therefrom. The respondent filed an appeal against the judgment and decree of the learned District Judge while the appellant filed cross-objections. On 21-3-1997, the second appeal filed by the respondent was allowed. The learned Single Judge of the High Court referred to Rule 24 of the CCS (CCA) Rules, 1965 and opined that in view of those provisions, the jurisdiction of the civil court had been taken away. The learned Single Judge went on to hold that where recourse is had to departmental proceedings, the order of the appellate authority against an adverse order of the disciplinary authority, could only be the subject-matter of challenge in a writ petition and that the jurisdiction of the civil court to deal with a matter of this type through a civil suit stood ousted.

3. It is against the above judgment and order of the learned Single Judge of the High Court that the present appeal has been filed by special leave.

4. We have heard Mr. P. K. Goswami, learned Senior Counsel on behalf of the appellant and Ms. Sumeet Kaur, learned counsel on behalf of the respondents.

5. The opinion expressed by the learned Single Judge to the effect that in view of the CCA Rules, the jurisdiction of the civil court is ousted from dealing with an order passed by the disciplinary authority which can be questioned under the Service Rules and that even after recourse is had to the departmental proceedings, recourse can only be to file a writ petition is palpably erroneous. The

learned Single Judge readily accepted the ouster of jurisdiction of civil courts to deal with service matters without proper consideration of the matter. Indeed, it is appropriate to relegate a person to exhaust departmental remedies when he approaches the court without exhausting departmental remedies under the Service Rules but to hold that the civil court had no jurisdiction while hearing a second appeal, after the matter has been litigated in civil courts for more than five years was, to say the least, not proper. The learned Single Judge ought to have decided the case on its own merits and not made a short-cut of it. The appellant could not have been non-suited on the ground that he had failed to take recourse to proceedings under the CCS (CCA) Rules, 1965 against the order of dismissal.

6. Again the opinion expressed by the learned Single Judge to the effect :

"It is my firm conviction that in the present case, the civil court cannot make a declaration under Section 34 of the Specific Relief Act, 1963 as its jurisdiction has been taken away by the special rules, i.e., the CCS (CCA) Rules, 1965. Under the circumstances, it means a civil court does not have jurisdiction in respect of matters which are entertained and decided by the statutory tribunal in conformity with the powers conferred by the enactment."

is clearly erroneous and cannot be sustained. Service Rules, neither expressly nor by implication, have taken away the jurisdiction of the civil courts to deal with service matters. The opinion of the learned Single Judge does violence both to the Code of Civil Procedure, the Specific Relief Act and the Service Rules. As a matter of fact it appears to us that the learned Single Judge failed to exercise the jurisdiction vested in him while non-suited the appellant. It, therefore, appears appropriate to us to allow this appeal, set aside the order of the learned Single Judge and remit the matter to the High Court for a fresh decision of the regular second appeal and the cross-objections on their own merits. The appeal, therefore, succeeds and is allowed. The RSA and cross-objections are remitted to the High Court for fresh disposal on merits in accordance with law.

7. We clarify that nothing said hereinabove shall be construed as any expression of opinion on the merits of the case.

8. The parties shall bear their own costs in this appeal.