

PETITIONER:

NANDGANJ SIHORI SUGAR CO. LTD., RAE BARELI AND ANR.

Vs.

RESPONDENT:

BADRI NATH DIXIT AND ORS.

DATE OF JUDGMENT 24/04/1991

BENCH:

THOMMEN, T.K. (J)

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THOMMEN, T.K. (J)

SHETTY, K.J. (J)

YOGESHWAR DAYAL (J)

CITATION:

1991 AIR 1525

1991 SCC (3) 54

1991 SCALE (1) 794

1991 SCR (2) 468

JT 1991 (2) 338

ACT:

Specific Relief Act, 1963: Sections 14 and 41-Contract for employment-Whether enforceable against employer-Damages-Whether a remedy for breach of personal contract.

HEADNOTE:

The first respondent instituted a suit for mandatory injunction to enforce a contract alleged to have been entered into between him and the appellants, officers of the second respondent Corporation, for appointment to the post of Instrumentation Foreman in the appellants' company, and for consequential reliefs. He contended that he had been sponsored by the Chairman and Managing Director of the second respondent Corporation, which was the holding company of the appellants' company by his two letters for appointment as an Apprentice Engineer in terms of a scheme formulated by the Government of India. The appellants and the second respondent denied the existence of any contract.

The trial court dismissed the suit. However, on appeal, the first appellate court decreed the suit and directed the first appellant to appoint the first respondent to the post of Apprentice Engineer under the scheme sponsored by the Government of India. This was confirmed, in appeal, by the High Court, which held the first respondent was entitled to be appointed to the post of Instrumentation Foreman with effect from the date on which the former incumbent of that post had resigned.

In the appeal before this Court, on behalf of the appellants it was contended that there was no evidence of the contract having been entered into by the appellant with the first respondent; nor was there any evidence of a scheme of the Government of India, which entitled him to be appointed to any post in the appellants' company, and that, in any view, he was not qualified for appointment as an Apprentice, much less to the higher post of Instrumentation Foreman.

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On behalf of the first respondent it was contended that the letters addressed by the second respondent in his capacity as Chairman, and Managing Director of the holding

company, to the appellants, the officers of the subsidiary company, made it obligatory on the part of the latter to appoint him in terms of the Government of India scheme, as so found by both the first Appellate court and the high Court.

Allowing the appeal, this Court,

HELD: 1.1 A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages. The grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public servant dismissed from service in contravention of Article 311 of the Constitution; reinstatement of a dismissed worker under the Industrial Law; a statutory body acting in breach of statutory obligations, and the like. [475-E]

B.N. Tiwari v. District Board, Agra, AIR 1964 SC 1680; U.P. State Warehousing Corporation v. C.K. Tyagi, [1970] 2 SCR 250 and Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors., [1976] 2 SCR 1006, referred to.

Indian Contract and Specific Relief Acts, by Pollock & Mulla, Tenth Edn., page 983 and Halsbury's Laws of England. Fourth Edn., Volume 44, paragraphs 405 to 420, referred to.

1.2 In the instant case, neither from the plaint nor from the evidence is it possible to identify and conclude contract to which the first respondent is a party or which he can enforce. There is no specific plea or evidence as regards the particulars of the scheme of the Government of India in terms of which he seeks relief whether it is a statutory scheme, and if so, what are the provision relied on by him and whether a duty is cast on the appellants and a benefit is conferred on persons like the first respondent. Assuming that such a scheme existed or any such contract bound the parties, it would be violative of all basic norms of law to decree a suit for specific performance of a contract of personal service. [472E-G]

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1.3 Courts do not ordinarily enforce performance of contracts of a personal character, such as a contract of employment. Subject to certain well defined categories of exceptions, law does not permit, and the Specific Relief Act does not contemplate, the enforcement of a contract of a personal nature by a decree for specific performance. The facts of the instant case do not fall within the exceptions. [472A, 474D]

Rigby v. Connol, [1880] 14 ChD 482, 487 and Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Ors., [1976] 2 SCR 1006 at 1020, referred to.

Cheshire, fifoot and Furmston's Law of Contract, 11th ed., p. 614 and Halsbury's Laws of England Fourth Edition, Volume 44, at page 407, referred to.

1.4 Even if there was a contract in terms of which the first respondent was entitled to seek relief, the only which was available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts. Assuming that a contractual relationship arose consequent upon the letters addressed by the second respondent to the first appellant, the first respondent was

a total stranger to any such relationship, for no relationship of a fiduciary character existed between the first respondent and the second respondent or the appellants. Neither on principles of law or equity nor under any statute did the first respondent acquire an enforceable right by reason of the letters exchanged between the appellant and second respondent, nor did he have private of any kind to their relationship. No collateral contract to which he was a party did arise on the facts of this case and at no time was the second respondent acting as his agent. There is no express or implied contract which is enforceable by him. [475-H, 476-B]

In the circumstances, the decrees of the High Court and the first appellate Court are set aside and that of the trial court is restored.[476D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3644 of 1989.

From the Judgment and Order dated 10.10.1988 of the Allahabad High Court in S.A. No. 194 of 1987.

Yoeswar Prasad and Mrs. Shobha Dikshit for the Appellants.

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B.D. Agarwala, Gopal Subramaniam, Ms. Bina Gupta, Arvind Verma, Ms. Monika Mohil, R.K. Srivastava and P. Misra for the Respondents.

The Judgment of the Court was delivered by THOMMEN, J. This appeal is by defendants 1 and 2 in a suit for mandatory injunction. The appellants are officers of Nandganj Sihori Sugar Co. Ltd., Rae Bareli, of which the third defendant, the U.P. State Sugar Corporation Ltd. (the second respondent herein) is the holding company. The State of Uttar Pradesh (the third respondent) is the fourth defendant. The plaintiff, Badri Nath Dixit (the first respondent), instituted the suit for mandatory injunction to enforce a contract alleged to have been entered into between the plaintiff and defendants 1 & 2 for appointment of the plaintiff to the post of Instrumentation Foreman in the defendants company and for consequential reliefs. The plaintiff contended that he had been sponsored by the Chairman and Managing Director of the third defendant, by his letters dated 18 October, 1982 and 14 December, 1982 for appointment by defendants 1 & 2 as an Apprentice Engineer in terms of a scheme formulated by the Government of India, but such appointment was not made by defendants 1 & 2. The plaintiff prayed for an injunction compelling defendants 1 & 2 to appoint him to the post of 'Instrumentation Foreman', which post, according to him, was at the time of the suit lying vacant. In effect, what the plaintiff seeks is a decree to compel the specific performance of a contract of personal service.

Defendants 1 to 3 filed a joint written statement denying the allegations. They stated that there was no contract, as alleged, and there was no vacancy for any post to which the plaintiff was qualified to be appointed. They further stated that the plaintiff had been conditionally offered appointment as a Fitter Trade Apprentice, subject to his possessing the requisite qualifications and his selection by the Apprentice Board, Kanpur. The plaintiff was not qualified and was, therefore, not selected. They further contended that neither as an Apprentice nor as Instrumentation Foreman was

the plaintiff qualified to be appointed. The suit was dismissed by the trial court. However, on appeal by the plaintiff it was decreed by the learned Additional District Judge who directed defendant 1 to appoint the plaintiff to the post of Apprentice Engineer under the scheme sponsored by the Government of India. This decree was confirmed in appeal by the High Court by the impugned judgment. The High Court further held

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that the plaintiff was entitled to be appointed to the post of Instrumentation Foreman with effect from the date on which the former incumbent of that post had resigned.

Counsel for the appellants (defendants 1 & 2) submit that there is no evidence of the alleged contract having been entered into by the defendants with the plaintiff; nor is there any evidence of a scheme of the Government of India which entitled the plaintiff to be appointed to any post in the defendants' company. Counsel states that, in any view, the plaintiff was not qualified for appointment as an Apprentice and much less to the higher post of Instrumentation Foreman.

The plaintiff's counsel, however, submits that the letters addressed by the third defendant in his capacity as Chairman and Managing Director of the holding company to defendants 1 & 2, the officers of the subsidiary company, made it obligatory on the part of the latter to appoint the plaintiff in terms of the Government of India scheme. It was so found by the first Appellate Court and the High Court. That finding is not liable to be impeached in the present proceeding. He says that the defendants are, therefore, liable to be compelled by means of a mandatory injunction to honor the offer held out by them to the plaintiff, who is entitled to enforce the contract founded on such offer by seeking specific performance of it.

We are surprised that the first Appellate Court and the High Court should have proceeded on the assumption that any enforceable contract existed. Neither from the plaint nor from the evidence is it possible to identify and conclude a contract to which the plaintiff is a party or which the plaintiff can enforce. The defendants deny the existence of any contract or any other relationships which gives the plaintiff any cause of action against the defendants. There is no specific plea or evidence as regards the particulars of the alleged scheme of the Government of India in terms of which the plaintiff seeks relief. Whether it is a statutory scheme, and if so what are the provisions relied on by the plaintiff, and whether a duty is cast on the defendants and a benefit conferred on persons like the plaintiff, is neither pleaded nor spoken to in evidence. Assuming that any such scheme existed or any such contract bound the parties, to have decreed a suit for specific performance of a contract of personal service on the facts alleged by the plaintiff, was to violate all basic norms of law. Courts do not ordinarily enforce performance of contracts of a personal character, such as a contract of employment. In the words of Jessel M.R.:

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"The courts have never dreamt of enforcing agreements strictly personal in their nature, whether they are agreements of hiring and service, being the common relation of master and servant ..." [Rigby v. Connol, [1880] 14 ChD 482, 487; see Cheshire, Fifoot and Furmston's Law of Contract, 11th ed., p. 614]."

In the joint written statement filed by defendants 1

to 3, representing the holding and subsidiary companies, the alleged contract has been clearly denied. We fail to see how the letters addressed by the Chairman of the holding company to the officers of the subsidiary company advising the appointment of the plaintiff to a post which he was found to be not qualified to hold could have resulted in any contract between the defendants of the one part and the plaintiff of the other part. Assuming that the letters written by the Chairman of the holding company were in the nature of a direction which a subsidiary company was compelled to carry out, we fail to see how on the facts of this case, the plaintiff, who had no privity whatever to a contract, assuming there was a contract, could enforce any right under it. In the first place, the letters sent by the Chairman of the holding company are merely in nature of an advise giving rise to no contractual relationship. Even if the advise is taken to be of the character of a direction which the subsidiary company is bound to comply with, any obligation arising from such direction is not enforceable at the instance of a total stranger. The Chairman was in no sense acting as a trustee of the plaintiff and no relationship of a fiduciary character whatever is alleged or proved to have existed between them. Assuming that the then Chairman was personally interested in the plaintiff, that was not an interest which is legally enforceable against the defendants. Such predilection on the part of the Chairman of a holding company, whatever be its impact on the subsidiary company, does not give rise to any actionable claim. There is no evidence, whatsoever, as to the existence of a Government scheme, apart from a reference to it in the Chairman's letter. The plaintiff has not shed any light upon it. The defendants have not admitted any such scheme. Even if a scheme existed, there is no evidence that it was enforceable at the instance of a person seeking its benefit. Nor has the plaintiff pleaded estoppel or adduced any evidence to support any such contention.

In the absence of any specific plea or evidence as regards the nature and other particulars of the scheme, it is preposterous that the courts below should have thought it fit to issue a mandatory injunction to compel the performance of the alleged contract of service in terms

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of or pursuant to an unknown scheme. Subject to certain well defined categories of exceptions, the law does not permit, and the Specific Relief Act does not contemplate, the enforcement of a contract of a personal nature by a decree for specific performance. The facts of this case do not fall within the exceptions. Assuming that the fact alleged by the plaintiff to be true-as stated earlier, there is no evidence whatever to support them-the plaintiff is not entitled to any relief other than damages in the even of his being in a position to prove that he has been damaged by reason of the defendants' failure to carry out the obligations arising under what he calls a contract.

In Halsbury's Laws of England, Fourth Edition, Volume 44, at page 407, it is stated:

"407. Contracts for personal work or services.- A judgment for specific performance of a contract for personal work or services is not pronounced, either at the suit of the employer or the employee. The court does not seek to compel persons against their will to maintain continuous personal and confidential relations. However, this rule is not absolute and without exception. It has been held that an employer may be restrained from

dismissing an employee in breach of contract if there is no loss of confidence between employer and employee or if (at least in a contract of employment to carry out a public duty) the employee has been dismissed in a manner which does not comply with statutory or contractual regulations governing dismissal. No court may, whether by way of an order of specific performance of a contract of employment or an injunction restraining a breach or threatened breach of such a contract, compel an employee to do any work or attend at any place for the doing of any work.

This principle applies not merely to contracts of employment, but to all contracts which involve the rendering of continuous services by one person to another, such as a contract to work a railway line..."

(emphasis supplied)

As stated by this Court in Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi and Ors., [1976] 2 SCR 1006 at 1020:

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"....a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions; (i) where a public servant is sought to be removed from service in contravention of the provisions of Art.311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute."

(emphasis supplied)

A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages. (See section 14 read with section 41 of the Specific Relief Act; see Indian Contract and Specific Relief Acts, by Pollock & Mulla, Tenth Edn., page 983). The grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public servant dismissed from service in contravention of Article 311 of the Constitution; reinstatement of a dismissed worker under the Industrial Law; a statutory body acting in breach of statutory obligations, and the like. (B.N. Tiwari v. District Board, Agra, AIR 1964 SC 1680; U.P. State Warehousing Corporation v. C.K. Tyagi, [1970] 2 SCR 250; Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors., [1976] 2 SCR 1006 see Halsbury's Laws of England, Fourth Edn., Volume 44, paragraphs 405 to 420.)

On the facts of this case, the High court was clearly wrong in issuing a mandatory injunction to appoint the plaintiff. Even if there was a contract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific

performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts. Assuming that a contractual relationship arose consequent upon the letters addressed by the third defendant to the 1st defendant, the plaintiff was a total stranger to any such relationship, for, on the facts of this case, no relationship of a fiduciary character existed between the plaintiff and

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the third defendant or other defendants. Neither on principles of law or equity nor under any statute did the plaintiff acquire an enforceable right by reason of the letters exchanged between the first and third defendants. The plaintiff had no privity of any kind to their relationship. No collateral contract to which the plaintiff was a party did arise on the facts of this case. At no time was the third defendant acting as an agent of the plaintiff. There is no express or implied contract which is enforceable by the plaintiff. (See Halsbury's Laws of England., Fourth Edn., Volume 9, paragraphs 334 to 342).

The plaintiff's counsel suggests that the claim is justifiable on the basis of legitimate expectations for appointment. There is no specific plea or evidence to support any such contention. Whatever expectations might have arisen from the letters of the third defendant, they could not have in law given rise to any right enforceable by specific performance.

For all these reasons we hold that the plaintiff's suit for mandatory injunction, on the facts of the case, was rightly dismissed by the trial court and wrongly decreed by the first Appellate Court and the High Court. We set aside the decrees of the High Court and the first Appellate Court and restore that of the trial court. The plaintiff's suit shall accordingly stand dismissed and the defendants' appeal allowed with costs throughout.

N.P.V.

Appeal allowed.

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