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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15th February, 2022

+ C.R.P. 1/2019 & CM APPL. 272/2019

THE JAMMU & KASHMIR BANK LTD. Petitioner

Through: Mr. Pallav Saxena, Mr. Syed Arsalan,
Mr. Prateek Khaitan, Mr. Chatanya
Sharma, Mr. Shitij Chakravarty and
Mr. Sikander Hyatt Khan, Advocates.

versus

AVTAR KRISHAN BHAT Respondent
Through: Mr. Anil Kumar Chandel & Ms.
Preeti Gupta, Advocates.
(M:9910102835)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through video conferencing.
2. The present revision petition challenges the impugned order dated 9th August 2018 in **CS No. 142/2018** titled ***Avtar Krishan Bhat v. The Jammu & Kashmir Bank ltd.*** passed by the 1d. ADJ-02 (North-West) Rohini Courts, Delhi (*hereinafter “Trial Court”*). Vide the said order, the application moved by the Petitioner/Defendant (*hereinafter “Defendant Bank”*) under Order VII Rule 11 CPC has been dismissed by the Trial Court. Thereafter, the suit has proceeded, issues have been framed in the matter and the Trial Court has proceeded with the recording of evidence.
3. The background of the case is that the Respondent/Plaintiff- Mr. Avtar Krishan Bhat (*hereinafter “Plaintiff”*) was employed as a Probationary Officer with the Defendant Bank in the year 1989 and he was thereafter, promoted from time to time. Finally, he was posted as Branch Manager in Ghaziabad branch in



June 2013. It is the case of the Plaintiff that he was fulfilling his duties honestly and diligently. However, vide the suspension order bearing no. CHQ/DD/2014-224 dated 17th November 2014 the Plaintiff was placed under suspension. Later, he was terminated vide termination letter dated 12th February 2015. According to the Defendant Bank, the termination was issued on the basis of Rule 262 of the Jammu and Kashmir Bank Limited Officers Service Rules, 2000 (*hereinafter "Rules"*).

4. The case of the Plaintiff is that he had worked with diligence and honesty for a period of 26 years with the Defendant Bank. He has given various reasons to argue that the termination done by the Defendant Bank was *mala fide*. As per the plaint, the Plaintiff claims that even if the termination was under Rule 262 of the Rules, he was entitled to get retirement benefits on the basis of service rendered by him. The Plaintiff is stated to have made repeated representations to the Defendant Bank to review the termination order which did not bear any fruit. Accordingly, he filed the present suit seeking declaration and various other monetary reliefs.

5. The stand taken by the Defendant Bank before the Trial Court was that the suit itself was not maintainable. According to the Defendant Bank, the Plaintiff's suit was nothing but enforcement of contract of personal service, which was not specifically enforceable in view of section 14(1)(b) and 41 of the Specific Relief Act, 1963 (*hereinafter "SRA"*). The Defendant Bank, accordingly, filed an application under Order VII Rule 11 CPC before the Trial Court seeking rejection of the plaint. Vide a short order, the Trial Court dismissed the said application in the following terms-

*"Application filed on behalf of the defendant u/o 7
Rule 11 CPC stating therein that the suit is not*



maintainable because it is related to the contract of personal services.

The application is flimsy. The suit would have been barred had it been for the enforcement of the contract of service contract but the suit is on the contrary based upon the breach of the service contract. The plaintiff is seeking that his termination was illegal and hence he is seeking recovery of salary and other service benefits. The application is without force and I am dismissing the same without seeking its reply.”

6. Mr. Saxena, ld. Counsel appearing for the Defendant Bank, submits that the suit is for enforcement of a contract of service. The Plaintiff was guilty of discounting more than 200 fake and fictitious Letters of Credit (LCs) leading to loss of more than Rs.32 crores to the Defendant Bank. Accordingly, the Bank had to take extreme steps of terminating him from service. He submits that in terms of the judgment of the Supreme Court in ***Jitendra Nath Biswas v. Empire of India and Ceylon Tea Co. and Ors., 1989 3 SCC 582***, the only remedy for the Plaintiff can be a suit for damages and he cannot file a suit for specific performance of contract. He submits that accordingly, the manner in which the present suit has been structured would show that the Plaintiff is seeking back wages, pension and other monetary benefits including promotion, as though he had continued in service. Thus, the plaint, as structured, would not be maintainable in his submission.

7. On the other hand, Mr. Anil Kumar Chandel, ld. Counsel appearing for the Plaintiff, submits that the present suit is not one for specific performance of contract of service. The prayers would make it clear that it is primarily for seeking declaration and damages. The manner in which the



prayer is worded is merely to show the quantification of damages and nothing more. He relies upon the judgment of the Delhi High Court in *Intertek India v. Priyanka Mohan, [C.R.P. 215/2019, decided on 27th September, 2019]*. He submits that the termination by the Defendant Bank was itself *mala fide*, inasmuch as per Rule 262 of the Rules, the employee is entitled to retirement benefits, which has also been denied to the Plaintiff.

8. This Court has heard the counsels for the parties and perused the record. The first and the foremost issue on which there is no dispute is that the Plaintiff was working in a managerial capacity. Thus, the Plaintiff cannot invoke the provisions of the Industrial Disputes Act, 1947 (*hereinafter “ID Act”*). It is in this backdrop that the maintainability of the suit would have to be considered. The pleadings in the plaint are as under:

“11. That the malafide of the action of the Defendant is evident from the fact that even as per the aforesaid Rule 262, the Plaintiff is entitled to the retirement benefits alongwith pension, as he has already completed more than 20 years in service, however, the Defendant has not even granted any pension to the Plaintiff till date. The Plaintiff has not accepted his termination and till date has not encashed the Demand Draft/Pay order sent along with the letter of termination.

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13. That the termination of the Plaintiff is highly stigmatic, which has not only deprived the Plaintiff from his service benefits, but has also deprived him to seek any employment somewhere else and as is continuously been affecting the life and liberties of the Plaintiff and his family.

14. That since the Defendant has illegally terminated the services of the Plaintiff, therefore, the Defendant is liable to pay damages



to the Plaintiff. The Plaintiff is entitled to the monetary benefits in terms of the back wages, will all the applicable increments. Further the Plaintiff is also entitled to pension, as per rules, after the age of superannuation. The Plaintiff is entitled to the following amount, till date.

S.NO.	Particulars	Amount (in Rs.)
1	Unpaid Salary, from December, 2014 till date	Rs.95609 X 38 Months = Rs.36,33,142/-
2	Grade Revision of 15%, done in Dec., 2014, made applicable retrospectively from September, 2012	Rs.14341 X 65 months = Rs.9,32,165/-
GRAND TOTAL		Rs.45,65,307/-.

15. That the Plaintiff is also entitled to the future salary, till the age of superannuation/retirement, alongwith the pension, from such date, which he would have otherwise received, had his services not been illegally terminated, alongwith the other service benefits, which are not in his knowledge or which would be notified by the Defendant in future. It is submitted that since the termination of the Plaintiff is stigmatic, therefore, the Plaintiff is not been able to earn the aforesaid amount, anywhere else, despite best of his efforts. Besides the aforementioned the Plaintiff is also entitled to compensation for the mental agony and harassment undergone, due to the illegal actions of the Defendant.”

9. The reliefs sought in the plaint are as under:



"a) Pass a decree of declaration, thereby declaring the Service Rule 262 of the Officers Service Manual, 2000 to be null and void and accordingly, the termination of the Plaintiff to be also null and void;

Pass a decree of declaration, thereby declaring the letter of termination, dated 12.02.2015 of the Defendant, to be null and void and consequent termination of the employment/services of the Plaintiff to be null and void;

b) Pass a money decree, for an amount of Rs.52,66,788/- (Rupees Fifty Two Lakhs Sixty Six Thousand Seven Hundred & Eighty Eight only, in favour of the Plaintiff and against the Defendant;

c) Pass a money decree, for the pendent lite and future damages/salary, @ the rate of Rs.1,09,950/- (Rupees One Lakh Nine Thousand Nine Hundred & Fifty only) per month, alongwith the applicable increments and other benefits, which would become applicable, from time to time, till the date of his superannuation, as per rules, in favour of the Plaintiff and against the Defendant;

d) Pass a decree for pendente lite and future interest @ 12% per annum, on the amount payable by the Defendant to the Plaintiff, from the date of the amount becoming due till its actual payment, in favour of the Plaintiff and against the Defendant;

e) Pass a decree of mandatory injunction, thereby directing the Defendant to grant the pension benefits of the Plaintiff, from the date of his superannuation i.e., 60 years, or any other appropriate date, which this Hon'ble Court deems otherwise fit and proper;"

10. A perusal of the above extracts of the plaint would show that primarily there is a challenge to Rule 262 of the Rules and declaration is



sought to the effect that the termination is illegal. The dictum of *Jitendra Nath Biswas (supra)* is not applicable in the present case as it was held by the Supreme Court in the facts of that case that the jurisdiction of the civil court was excluded because the ID Act was applicable and thus, an effective remedy was available to the workman under the ID Act. The relevant observation of the Supreme Court are as under-

“Xxx Xxx Xxx

It is therefore clear that this Act i.e. Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances therefore there is an apparent implied exclusion of the jurisdiction of the civil court. In Dhulabhai's case a five-Judges Bench of this Court considered the language of Section 9 and the scope thereof in respect of exclusion of jurisdiction and it was observed:

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intention becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.



It is therefore clear that the scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies which are available under this Act and for which a complete procedure and machinery has been provided in this Act."

11. In the opinion of this Court, the Plaintiff cannot be stated to be having an alternative remedy in the present case to challenge the termination in view of the non-applicability of the provisions of the ID Act. Thus, a civil suit challenging the termination would be maintainable in these facts.

12. Insofar as the monetary reliefs are concerned, a perusal of the paragraph 14 of the plaint would show that the Plaintiff claims that the Defendant is liable to pay damages, however, it thereafter goes ahead to claim monetary benefits in terms of back wages, grade pay revision, and retirement benefits. The question as to whether this would constitute damages or would be in the form of back wages and other service benefits, would be an issue that the Trial Court would have to adjudicate, if the declaratory relief sought by the Plaintiff is granted. At this stage, the case of the Plaintiff that it is the computation of damages and the case of the Defendant that it is a case for back wages, cannot be rejected simply on the ground that the plaint is not maintainable in an application under Order VII Rule 11 CPC. As per paragraph 14 of the plaint the Plaintiff claims that the Defendant is liable to pay the damages to the Plaintiff. The claim of back wages obviously, as is granted under the ID Act, cannot be sought or granted in a civil suit. The only relief that the Plaintiff can seek is for declaration and damages. If the Trial Court is of the opinion that the relief sought could be considered as damages, only then the Trial Court can consider the same.



This would also be permissible for consideration only if the Plaintiff succeeds in the relief of declaration which is sought for by him.

13. Insofar the pensionary benefits are concerned, the Trial Court would have to adjudicate the question as to whether under the Rule 262 of the Rules, even in case of termination in these facts, the Plaintiff would be entitled to retiral benefits including pension etc., or not.

14. All these issues would have to be considered by the Trial Court on the basis of evidence. At the present stage, the Bank's case that the Plaintiff is seeking specific performance of a contract of service and hence the plaint is not maintainable in terms of Section 14 & 41 of the Specific Relief Act, 1963, cannot be entertained inasmuch as the Plaintiff is obviously not seeking to be reinstated into service. The suit would have been one seeking enforcement of contract of service if either the Plaintiff was seeking direction for reinstatement or if the Defendant Bank was seeking relief that the employee should join back the service. However, the present suit is completely distinct from a suit seeking specific performance of a contract of personal service. The judgment of the Supreme Court in *Jitendra Nath Biswas (supra)*, which observes that the reliefs of reinstatement and backwages could not be sought in a civil proceedings, applies in the context of a case where the provisions of the ID Act were applicable.

15. In the present case, the Plaintiff being an officer may not be entitled to claim to be a Workman under the ID Act, and thus, hence, sought to seek his remedy under Section 9 CPC. Under these circumstances, this Court is of the opinion that the judgment in *Priyanka Mohan (supra)* would be applicable wherein the Court observed as under:



"10. I am unable to accept the contention of learned counsel for the petitioner. Respondent had filed the subject Suit claiming that termination is illegal. In paragraph 1 of the plaint respondent had described herself as an ex-employee which indicates that respondent had accepted that she is no longer in services. The respondent throughout the plaint has made averment that her services were terminated illegally. Reference in particular may be had to paragraphs 1, 24 and 27 where she has categorically stated that the notice of termination is illegal.

11. No doubt, the expression 'null and void' would imply non-est, however, if prayer (a) were to be interpreted in the manner in which learned counsel for the petitioner contends, the same would imply that the termination is non est and respondent/plaintiff continues in services, but that is not what the Respondents seeks.

12. A meaningful reading of the Plaintiff shows that the respondents has not sought any re-instatement in service but had claimed that the termination in illegal and hence null and void.

13. Learned counsel for the respondent before the trial court categorically stated that the respondent did not seek any re-instatement.

14. Even if prayer (a), as framed, could not be granted, respondent could claim damages etc. for wrongful termination in case respondent is able to establish that the termination is illegal or contrary to any settled principles and that is what the respondent has sought in prayers (b) to (d).



15. In case the contentions of learned counsel for the petitioner were to be accepted, then respondent/plaintiff would be left remediless. On the one hand, as an employee, she cannot claim the relief of reinstatement and on the other hand the employee she is stated to be barred from claiming any damages. That can never be the intention of the law.

16. It is also a settled position that under order 7 Rule 11 CPC, a plaint cannot be dissected and rejected in part. The plaint has to be rejected as a whole or not at all. ”

16. In the facts and circumstances of this case, the plaint would not be liable to be rejected. The only question would be as to which are the reliefs which the Plaintiff would be entitled to. The same would be considered by the Trial Court after considering the relief of declaration, which has been sought in the Plaintiff by the Plaintiff. Obviously, the Plaintiff's claim for back wages could only be considered as an indicator for the computation of damages and nothing more.

17. With these observations the present revision petition, along with all pending applications, is disposed of.

18. Needless to add, none of the observations made in this order and in the impugned order would affect the final adjudication of the suit. The contentions of the parties i.e., the Defendant Bank and the Plaintiff are left open to be adjudicated in the trial.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 15, 2022/dk/sk