Union Of India vs Pandurang Kashinath More on 28 April, 1961

Equivalent citations: AIR 1962 SUPREME COURT 630, 1961 2 LABLJ 427 1961-62 21 FJR 5, 1961-62 21 FJR 5

Bench: P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.C.D. Gupta

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           CASE NO.:
Appeal (civil)  579 of 1960

PETITIONER:
Union of India

RESPONDENT:
Pandurang Kashinath More

DATE OF JUDGMENT: 28/04/1961

BENCH:
P.B. GAJENDRAGADKAR & A.K. SARKAR & K.N. WANCHOO & K.C.D. GUPTA & N.R.
AYYANGAR

JUDGMENT:
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JUDGMENT 1962 AIR (SC) 630 The Judgment was delivered by : SARKAR SARKAR, J. : The respondent was employed as a mistry in a telephone workshop belonging to the appellant, the Union of India. There appears to have been a strike in the workshop and thereafter on July 9, 1949, for what reason it does not appear from the record, the respondent was put under detention under the Bombay Public Security Measures Act. On July 21, 1949, the manager of the workshop suspended the respondent from duty with effect from the date of his detention. The order of suspension stated that the respondent was not entitled to any subsistence allowance during the period of suspension. On March 29, 1950, the manager passed in order terminating the service of the respondent with effect from July 9, 1949, the date on which he was suspended. He was given one month's pay in lieu of notice. The respondent was released from detention on October 25, 1950, by an order made by the High Court at Bombay. He had been in detention from July 9, 1949, till October 25, 1950, during which period the orders suspending him and terminating his service were passed.

2. After his release, the respondent started proceedings under the Payment of wages Act for arrears of his dues from the appellant, as a result of which he obtained payment of subsistence allowance for the period during which he had been suspended.

3. The respondent had also made a representation to the manager for reinstatement after he had been released. This representation was rejected. He there upon filed a suit in the Bombay City Civil Court and out of this suit the present appeal arises. In that suit he contended that the orders of his suspension and termination of service were laid for various reasons but only two of them are relevant for the purpose of this appeal. He first said that the orders were in violation of Art. 311 of

the Constitution as he had not been given proper opportunity to show cause why they should not be made. He also said that the order terminating his service violated Arts. 14 and 16 of the Constitution as he had been "arbitrarily picked up and sacked." He claimed that the orders should be declared void and illegal and also claimed a decree for Rs. 4, 896/- on account of arrears of salary from March 30, 1950, till the date of the suit.

4. The trial Court held that he was a temporary employed and the termination of his service being in terms of the contract of his employment, no. question as to a violation of Art, 311 of the Constitution arose. It appears to have been conceded in the trial Court that if Art. 311 "is not made applicable to the case of the Plaintiff, Arts. 14 and 16 cannot apply to the plaintiff's case."

In this view of the matter the trail Court dismissed the suit, having rejected the other points raised by the respondent.

5. The respondent appealed to the High Court at Bombay. The High Court affirmed the findings of the trial Court that the respondent was a temporary employee and that there had been no. violation of Art. 311, The High Court however held that "the Plaintiff's plea that he was arbitrarily picked out and sacked remained unanswered in the further Written Statement of the Defendant, and, therefore, the allegation must be taken to be admitted."

The respondent's plea above referred to was added to the plaint by an amendment and hence the reference to the further written statement. The High Court gave an opportunity to the appellant to amend the written statement but the appellant did not avail itself of that opportunity. In the view that the appellant had admitted the allegation that the respondent had been arbitrarily picked out and sacked, the High Court held that Art. 16 of the Constitution had been violated. The High Court hereupon allowed the appeal and made the declaration sought by the respondent and also passed a decree in his favour for Rs, 12, 157/- on account of salary up to September 9, 1957. The Union has appealed from this judgment.

6. Two questions arise, First, as to Art. 311. It was said that even a temporary servant may claim the benefit of it if the termination of his service was by way of punishment and that the termination of the respondent's service was really by way of punishment for he had not been paid the subsistence allowance during the period of his suspension by the appellant and he obtained it only after he had taken proceedings under the Payment of wages Act. This contention is, in our view wholly unfounded. We do not think that the refusal to pay the subsistence allowance indicates that the termination of service was by way of punishment. It is clear that the such refusal was due only to a misreading of the relevant rules by the appellant's officers. The withholding of subsistence allowance during the period of suspension had no. connection with the termination of service and did not follow as a consequence of it at all. As regards the order of suspension, it is sufficient to say that Art. 311 is not concerned with the suspension from service,

7. The other question turns on Art. 16 of the Constitution. The provision of this article to which we were referred, is contained in CI. (1) which is in these terms :

> "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

The contention of the respondent is that" matters relating to employment"

> include matters concerning termination of employment. It is said that this article provides that there shall be no. inequality of treatment in the termination of the service of any employee of the Government. This interpretation of the article is disputed by the appellant. It is however unnecessary to pronounce finally on this dispute for the purpose of this case and we will proceed on the assumption that that article might be violated by an arbitrary and discriminatory termination of service.

8. The arbitrary and discriminatory nature of the termination of service must however first be established before the article can have any application. As we have earlier stated, the High Court thought that on the pleadings the appellant must be taken to have admitted that the termination of service was arbitrary and discriminatory. The High Court did not on the evidence find as a fact that such was the position. We have looked at the evidence ourselves and found nothing to support the conclusion that there has been any discrimination. All trial appears from the evidence led in the case, is that many employees junior to the respondent had been retained in service while his service had been terminated. This, in our view is entirely futile for establishing discrimination. We have earlier stated that the respondent had been detained under the Bombay Public Security Measures Act. It does not appear whether the employees junior to the respondent had been similarly detained. As a person detained legally under a statement, the respondent might legitimately have been put in a separate class and treated differently from others not so detained. Further, as a result of the detention, the appellant was deprived of the benefit of the respondent's services for a considerable period. That also put him in a separate class. The evidence does not show, that the junior employees referred to were otherwise in the same class as the respondent. In these circumstances, the fact that the service of the respondent was terminated while employees junior to him were retained in service does not by itself prove unequal treatment and, there is nothing else on which the respondent has relied to establish discrimination.

9. The real question is, was the High Court justified in its conclusion that as the pleadings stood, the appellant must be deemed to have admitted that the respondent had been "arbitrarily picked up and sacked", that is to say, had been subjected to hostile discrimination. It is necessary now to refer to the pleadings. In the plaint the following statements occur :

> "The plaintiff submits that orders for suspension and removal or dismissal are illegal and void and ineffective in law for the following reasons : -
>
> .....
>
> (g) The order of removal is in violation of Arts.14 and 16 of the Constitution inasmuch as the plaintiff was arbitrarily picked up and sacked."

In the written statement this allegation in the plaint was dealt with in the following words :

> "The defendant denies that the order of removal is in violation of Arts. 14 and 16 of the Constitution."

The High court thought that this was not a sufficient denial. We are unable to agree with that view.

10. First, we do not think that the plaint contains a sufficient allegation of discrimination. It is well known that when an improper conduct is alleged, it must be set out with all particulars. In Wallingford v. Mutual Society [1880] 5 A.C. 685 (697) Lord Selborne observed, "With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice."

We think what was said about fraud would equally apply to any improper conduct : see Bharat Dharma Syndicate v. Harish Chandra, 64 Ind App143 (147); 1937 AIR(PC) 146 (148)).

11. The principle behind this rule is clear. To take the present case, if a pleading is considered sufficient where it is merely stated that there has been arbitrary discrimination, it is impossible for the other side to meet it adequately unless he knows in what manner the discrimination is said to have been made. Thus if the discrimination had been because between A and B who were similarly situated, and A had been preferred, then that should have been stated. It would then be possible for the other side to say either that A and B were not similarly situated or that the act complained of did not amount to a discrimination for any other reason. In the absence of the particulars all that the opposite side could do would be simply to deny that there had been discrimination and this is what the appellant had done in its written statement in this case. We think that when the appellant in its written statement said that there had been no. violation of Arts. 14 and 16, it meant that there had been no. arbitrary or hostile discrimination as alleged in the plaint, otherwise of course the written statement would be meaningless. In such a state of the pleadings it could not be said that the appellant had admitted that there had been discrimination.

12. Therefore it seems to us that on the pleadings of this case it would be proper to hold that there had been no. allegation by the respondent of any hostile discrimination. If, however, the plaint is to be construed as containing a sufficient allegation of discrimination, the written statement should be understood as denying it. A plaintiff cannot complain if general allegations made by him in the plaint are answered by equally general allegations in the written statement. If the respondent therefore, was allowed to make the case of hostile discrimination, it would have been the Courts duty to read the written statement as containing a denial of this allegation and to see that the respondent established by evidence such discrimination. We have earlier referred to the evidence and held that it was not so established at all.

13. The result then is this. If the respondent is not allowed to raise a case of discrimination, then no. question of violation of Art. l6 would arise. Likewise, no. such question would arise if the respondent is permitted to make that case for he failed to establish it on the evidence.

14. We think therefore, that the appeal must succeed. Accordingly, we set aside the decree passed by the High Court and restore that of the trial Court. The appellant has not asked for any costs of the appeal and there will be no. order as to costs.