

# **S.Kumar vs The Institute Of Constitutional And ... on 29 September, 1983**

**Equivalent citations: 1984 AIR 59, 1984 SCR (1) 153, AIR 1984 SUPREME COURT 59, 1984 LAB. I. C. 3, 1984 BLJR 207, 1984 UJ (SC) 135, 1984 SCC (L&S) 18, (1984) 48 FACLR 341, (1984) 1 LAB LN 94, 1983 (4) SCC 516, (1983) 2 SERVLJ 520**

**Author: R.S. Pathak**

**Bench: R.S. Pathak, Y.V. Chandrachud, Sabyasachi Mukharji**

PETITIONER:

S.KUMAR

Vs.

RESPONDENT:

THE INSTITUTE OF CONSTITUTIONAL AND PARLIAMENTARY STUDIESAND

DATE OF JUDGMENT29/09/1983

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

CHANDRACHUD, Y.V. ((CJ)

MUKHARJI, SABYASACHI (J)

CITATION:

1984 AIR 59 1984 SCR (1) 153

1983 SCC (4) 516 1983 SCALE (2)918

ACT:

Civil Procedure-Proceedings commenced-Change in cause of action-Whether proceedings can be maintained on the original cause of action.

Civil Procedure-Amendment of plaint-When to be done.

HEADNOTE:

The appellant who was found guilty of a charge in an enquiry was served with a notice to show cause why he should not be dismissed from service. A second charge was also framed against the appellant. The appellant filed a suit for declaration and an injunction and obtained an ex parte order restraining the respondent and its officers from dismissing

him. The Subordinate Judge dismissed the suit as not maintainable. The appellant filed an appeal before the Senior Subordinate Judge. In reply to the stay application it was stated that the stay application had become infructuous as the appellant had been dismissed from service. The Senior Subordinate Judge dismissed the appeal. The appellant filed a second appeal in the High Court and during the pendency moved an application for amendment of the plaint. The High Court rejected the amendment application and dismissed the appeal. In this appeal the appellant urged that among the reliefs claimed in his amendment application filed in the High Court he had included the relief for declaring the order of dismissal invalid. The appellant filed an application praying for amendment of the plaint by the inclusion of such a relief.

Dismissing the appeal,

HELD: The appeal is not maintainable.

Once an order of dismissal was passed against him, a different cause of action arose and it was not possible for the appellant to maintain the proceedings on the original cause of action. The original reliefs claimed in the suit consisted of a decree of declaration that the proceedings taken against the appellant upto the framing of the second charge on October 15/16, 1975 were invalid, and a decree for perpetual injunction restraining the respondents from dismissing the appellant. At no stage upto the dismissal of his second appeal did the appellant attempt to include a relief in his plaint against the order of dismissal. On the contrary, the reliefs sought to be included through the amendment application filed in the High Court proceeded on the assumption that the appellant was still continuing in service. [156 E-F; B-C]

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The Court is constrained to reject the application praying for leave to amend the plaint inasmuch as it is for the first time throughout this protracted proceeding commencing with the institution of the suit in 1975 that the appellant is now seeking to include the relief although he had come to know several years ago that he had been dismissed. No circumstance has been shown explaining why the appellant should be permitted at this late stage to amend the plaint. It has also not been established by the appellant that if a suit is a filed now against the order of dismissal it would be within the period of limitation. [156;H 157 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2613 of 1980.

Appeal by Special leave from the Judgment and Order dated the 18th April, 1980 of the Delhi High Court in Regular Second Appeal No. 33 of 1977.

Petitioner in Person.

Anand Prakash, C.S. Vaidyanathan, Probir Chowdhry Ms. Laxmi Anand and Samir Prakash for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave is directed against a judgment of the High Court of Delhi dismissing the appellant's second appeal.

The appellant was appointed in 1968 to the post of Research Officer of the Institute of Constitutional and Parliamentary Studies, New Delhi, as a society registered under the Societies Registration Act, 1860, and was later designated as Assistant Director. Subsequently, he was given additional charge of the Library of the Institute. In March, 1974 the appellant submitted a bill of Rs. 350 to the Institute claiming reimbursement of medical expenses incurred by him in the delivery of a child to his wife during the previous month. The Institute, however, framed a charge on November 5, 1974 against the petitioner, alleging that he was attempting to draw the sum by tendering a false bill. A member of the Executive Council of the Institute was appointed to enquire into the charge and the appellant participated in the enquiry proceedings. During the pendency of the proceedings the appellant appealed to the Executive Council of the Institute to change the Enquiry officer but, it is alleged by the appellant, while the appeal was pending consideration the appellant received a Memorandum dated July 17/18, 1975 from the Executive Chairman of the Institute placing the appellant under suspension. The Enquiry officer completed his report on August 9, 1975 holding that the charge of presenting a false bill was proved against the appellant. On October 15/16, 1975 a second charge was framed against the appellant alleging that he was guilty of disobeying an officer order requiring him to hand over charge of the Library. The appellant was also served with a notice of the same date, along with a copy of the enquiry report, requiring him to show cause why he should not be dismissed from service. The appellant then filed a suit for declaration and injunction in the Court of the learned Subordinate Judge, Delhi on November 15, 1975 and obtained an ex-parte order restraining the Institute and its officers from dismissing him. When the matter came on for final disposal on August 24, 1976 the learned Subordinate Judge dismissed the suit without trial on the preliminary point that it was not maintainable. He expressed the view that the appellant's remedy lay in damages and not in a suit for declaration. The appellant appealed, and during the pendency of the appeal the learned Senior Subordinate Judge passed an order dated August 28, 1976 declining to grant an-ex-parte stay order. On September 3, 1976 the Institute filed a reply stating that the stay application had become infructuous as the appellant had been dismissed from service. The appeal filed by the appellant was dismissed by the learned Senior Subordinate Judge on January 22, 1977, who endorsed the view of the trial court that the remedy of the appellant lay in damages instead of by a suit for declaration. The appellant filed a second appeal in the High Court of Delhi. During the pendency of the appeal he moved an application for amendment of the plaint. On April 18, 1980 the High Court rejected the amendment application and also dismissed the second appeal. And now this appeal.

The appellant attempted to place his case before us on its merits, but strong objection was taken by the respondents to the maintainability of the appeal on the ground that the order dismissing the appellant had not been challenged by him, that the order had become final and that the continued existence of the order constituted an impediment to the consideration of the reliefs claimed in the suit. The appellant strenuously urged that the appeal continues to survive, and he attempted to establish that among the reliefs claimed in his amendment application filed in the High Court he had included a relief for declaring the order of dismissal invalid and, he said, the amendment had been wrongly refused. Shortly before concluding his submissions in this Court, he filed an application in this appeal praying for amendment of the plaint by the inclusion of such relief.

We have examined the record of the case and we find that at no stage upto the dismissal of his second appeal did the appellant attempt to include a relief in his plaint against the order of dismissal. On the contrary, the reliefs sought to be included through the amendment application filed in the High Court proceeded on the assumption that the appellant was still continuing in service, for we find that one of the reliefs specifically mentioned in the amendment application was:

"(c) "A decree for perpetual injunction he granted to the plaintiff against the defendants, restraining the defendants from dismissing the plaintiff from the post of Assistant Director and Incharge of the Library of the Institute and taking any action on the basis of the enquiry report or show-cause notice and holding any second enquiry on the basis of the second charge-sheet or taking any action whatsoever in these matters."

Plainly, once an order of dismissal was passed against him, a different cause of action arose and it was not possible for the appellant to maintain the proceeding on the original cause of action. The original reliefs claimed in the suit consisted of a decree of declaration that the proceedings taken against the appellant upto the framing of the second charge on October 15/16, 1975 were invalid, and a decree for perpetual injunction restraining the respondents from dismissing the appellant.

The appellant contended that the order of dismissal had not been served on him and, therefore, no occasion had arisen for challenging the order. It was alleged that an unsigned copy of an order of dismissal had been received by him and nothing more. We cannot accept the contention, because we find ample evidence on the record indicating that the appellant treated the order served on him as an effective order and that otherwise also he was aware that he had been dismissed. Indeed, he took proceedings in court charging the respondents with contempt of court for passing an order of dismissal while his suit was still pending.

As regards the application now filed before us praying for leave to amend the plaint, we are constrained to reject it inasmuch as it is for the first time throughout this protracted proceeding commencing with the institution of the suit in 1975 that the appellant is now seeking to include the relief although he had come to know several years ago that he had been dismissed. No circumstance has been shown explaining why the appellant should be permitted at this late stage to amend the plaint. It has also not been established by the appellant that if a suit is filed now against the order of dismissal it would be within the period of limitation.

Upon the aforesaid considerations, we are of opinion that the present appeal is liable to be dismissed as not maintainable.

We find it unnecessary to enter into the question whether the charge framed against the appellant, on the basis of which he has been dismissed, stands proved. We express no opinion in the matter.

While concluding, we may record that the appellant claims arrears of pay from the Institute. We believe it would be just and proper that the Institute should examine the claim of the appellant, and if it finds that any amount is due to the appellant it should make payment thereof with all reasonable expedition. It is hoped that in this regard the Institute will not seek the advantage of any technical objection, including the period of limitation.

In the result, the appeal is dismissed as not maintainable. There is no order as to costs.

H.S.K.

Appeal dismissed.