

Sri Ramendra Kishore Biswas vs State Of Tripura And Ors on 4 December, 1998

Equivalent citations: AIR 1999 SUPREME COURT 294, 1999 (1) SCC 472, 1998 AIR SCW 3815, 1999 LAB. I. C. 178, 1998 (6) SCALE 454, 1998 (9) ADSC 225, 1999 (1) ALL CJ 571, (1998) 8 JT 402 (SC), 1999 (1) UPLBEC 198, 1998 ADSC 9 225, 1998 (8) JT 402, 1999 SCC (L&S) 295, (1999) 81 FACLR 398, (1999) 2 LABLJ 192, (1999) 1 LAB LN 300, (1999) 1 MAD LJ 138, (1999) 1 MAD LW 245, (1999) 1 SCT 295, (1999) 1 SERVLR 257, (1999) 1 UPLBEC 198, (1998) 9 SUPREME 260, (1998) 6 SCALE 454, (1999) 2 CIVLJ 161, (1999) 1 CURLR 846

Author: M. Srinivasan

Bench: M. Srinivasan

CASE NO.:
Appeal (civil) 6080 of 1998

PETITIONER:
SRI RAMENDRA KISHORE BISWAS

RESPONDENT:
STATE OF TRIPURA AND ORS.

DATE OF JUDGMENT: 04/12/1998

BENCH:
DR. A.S.. ANAND CJ & V.N. KHAKE & M. SRINIVASAN

JUDGMENT:

JUDGMENT 1998 Supp(3) SCR 400 The Judgment of the Court was delivered Leave granted.

The appellant was proceeded against Departmentally when the Inquiry Officer found him guilty of the charges framed against him and submitted his report dated 17th November, 1992 to the Disciplinary Authority. After issuance of show cause notice to the appellant seeking his reply, the Disciplinary Authority agreed with the Inquiry Officer and dismissed the appellant from service vide Memo dated 12th February, 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 21st August, 1995, the suit was dismissed. The appeal filed by the appellant before the learned District Judge, however, succeeded and on 30th July, 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 Inquiry after providing the appellant 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 there from. The respondent filed an appeal against the judgment and decree of the learned District Judge, while the appellant filed cross-objections. On 2.1st March, 1997, the second appeal, filed by the respondent, was allowed. The learned Single Judge of the High Court referred to Rule 24 of the C.C.S. (C.C. & A.) 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 subject matter of challenge in a writ petition and that the jurisdiction of the civil court to deal with the matter of this type through a civil suit stood ousted.

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.

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.

The opinion expressed by the learned single Judge to the effect that in view of C.C.A. 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 court for more than five years was, Jo 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 C.C.S. (C.C. & A.) Rules, 1965 against the order of dismissal.

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 as its jurisdiction has been taken by the special rules i.e.. 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 matter. 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-suiting 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.

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

The parties shall bear their own costs in this appeal.