

P. Sarathy vs State Bank Of India on 12 May, 2000

Author: S.Saghir Ahmad

Bench: S.S.Ahmad

PETITIONER:

P. SARATHY

Vs.

RESPONDENT:

STATE BANK OF INDIA

DATE OF JUDGMENT: 12/05/2000

BENCH:

S.S.Ahmad, G.B.Pattanaik

JUDGMENT:

S.SAGHIR AHMAD, J.

The appellant was appointed as a Clerk in the State Bank of India (for short, 'the respondent') in 1962. In July, 1977, he was promoted to the post of Branch Manager but on 8th of September, 1980, he was placed under suspension. On 31st of July, 1981, a chargesheet was issued to him which was followed by a regular departmental proceedings and ultimately on 11th of January, 1983, the appellant was removed from service. This order was challenged by the appellant in an appeal filed before the Local Board of the Bank on 21st of February, 1983 but by order dated 18th of May, 1983, the appeal was dismissed. The appellant, thereafter, filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (for short, 'the Act') on 21st of July, 1983. The appeal was filed with the Deputy Commissioner of Labour (Appeals), Madras. This appeal was dismissed on 1st of September, 1987 on the ground that the provisions of Tamil Nadu Shops and Establishments Act, 1947 were not applicable to the nationalised Banks as held by the Madras High Court in *Management of Bank of India vs. C.V. Raman*, 1984 (2) Lab.L.J. 34. This judgment was upheld by this Court on 21st of April, 1988 and is since reported in (1988) 3 SCC

105. It was because of this decision that the appellant's S.L.P.(C) No. 14963 of 1987 against the order of 1st of September, 1988 by which the appeal was rejected by the Deputy Commissioner of Labour (Appeals) was dismissed. It was at this stage that the appellant instituted regular suit No. 11099/88 in the City Civil Court, Madras for a declaration that the removal of the appellant was illegal, ultra vires and invalid. He prayed for a decree for reinstatement with consequential benefits. This suit was dismissed by the trial court by its judgment dated 20th of April, 1994. The trial court further

held that the suit was not within limitation. The first appeal filed, thereafter, by the appellant was allowed on 7th of March, 1995 by the VIII Addl. Judge, Madras with the finding that the suit was not barred by limitation and that the order of dismissal passed against the appellant was bad. The respondent, thereafter, filed a second appeal which was allowed by the Madras High Court on 9th of August, 1996 with the finding that the suit was instituted in the Civil Court beyond the period of limitation prescribed under the Limitation Act. The High Court did not go into the merits of the case. It is in these circumstances that the present appeal has been filed. The only question which falls for our consideration in this appeal is whether the suit instituted by the appellant in the City Civil Court, Madras on 28th of September, 1988 was within time. This suit was filed for the declaration that the order dated 11th of January, 1983, by which he was removed from service, was bad in law. The normal period of limitation within which the suit could have been filed is three years under Article 58 of the Limitation Act, 1963. There is another Article, namely, Article 113 which is a residuary Article which provides a period of limitation of three years for filing a suit for which no period of limitation is provided elsewhere. In order to bring a suit within the period of limitation, the appellant claimed benefit of Section 14 of the Limitation Act on the ground that he had represented to the Local Board and, thereafter, filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 and was, therefore, prosecuting "civil proceedings" in a court with due diligence. It is claimed that the entire period during which those proceedings were pending has to be excluded and if this is done, the suit will be well within limitation. Learned counsel for the respondent has, on the contrary, contended that the benefit of Section 14 can be given only if the proceedings were "civil proceedings" and were pending in a court. It is contended that the Appellate Authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 is not a court and, therefore, the benefit under Section 14 could not be legally given to the appellant whose suit had been rightly held to be beyond time by the trial court as also by the High Court. Section 41 of the Act provides as under:- "41. Notice of dismissal.--(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. (2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer. (3) The decision of the appellate authority shall be final and binding on both the employer and the person employed." A perusal of the above provision will show that when a person is dismissed from service, he has a right of appeal to such Authority and within such time as is prescribed under the Act. Rule 9 and 9-A of the Tamil Nadu Shops and Establishment Rules, 1948 are quoted below to indicate the manner in which the appeal has to be heard and the powers of the Appellate Authority which are exercisable by him in disposing of the appeal :- "9. Appeals under section 41(1)--(1) The Deputy Commissioner of Labour in their respective areas assigned to them by the Commissioner of Labour shall be the authorities for the purposes of hearing appeals under sub-section (2) of section 41 of the said Act : Provided that the Commissioner of Labour may, by order in writing, on the representation made by either of the parties in this behalf or on his own accord, withdraw any case under this Act, pending before an authority and transfer the same to another authority for disposal. Such authority to whom the case

is so transferred may, subject to the special direction in the order of transfer proceed either de-novo or from the stage at which it was so transferred. (2) Any appeal under sub-section (2) of section 41 shall be preferred by the person employed within thirty days from the date of service of the order terminating the service with the employer, such service to be deemed effective if carried out either personally or if that be not practicable, by prepaid registered post to the last known address when the date of such service shall be deemed to be the date when the letter would arrive in ordinary course of post. Provided that an appeal may be admitted after the said period of thirty days if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period. (3) The procedure to be followed by the appellate authority (Deputy Commissioner of Labour), when hearing appeals preferred to him under sub-section (2) of section 41 shall be summary. He shall record briefly the evidence adduced before him and then pass orders giving his reasons therefor. The result of the appeal shall be communicated to the parties as soon as possible. Copies of the orders shall also be furnished to the parties, if required by them. 9-A. Re-hearing of appeals.--(1) In any appeal preferred under the Act, if the employer or his representative fails to appear on the specified date, the appellate authority may proceed to hear and determine the appeal ex-parte. (2) In any appeal preferred under the Act, if the appellant fails to appear on the specified date, the appellate authority may dismiss the appeal. (3) Notwithstanding anything contained in sub-rules (1) and (2), an order passed under either of those sub-rules may be set aside and the appeal reheard on good cause being shown within one month of the date of the said order, notice being serviced on the opposite party of the date fixed for such rehearing." It is not disputed that the appeal filed before the Deputy Commissioner of Labour (Appeals), Madras was within time. Deputy Commissioner of Labour (Appeals), Madras, which is the Authority constituted under the Tamil Nadu Shops and Establishments Act, 1947 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer, was valid or it was passed in violation of any statutory rule or principles of natural justice. Under Section 41(3), the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour (Appeals) may not be a "civil court" within the meaning of the Code of Civil Procedure but it is definitely a "court". This appeal was dismissed on 1st of September, 1987 on the ground that the provisions of Tamil Nadu Shops and Establishments Act, 1947 were not applicable to Nationalised Banks as held by the Madras High Court in the judgment since reported in 1984 (2) Lab.L.J. 34. This judgment was rendered during the pendency of the appeal before the Deputy Commissioner of Labour (Appeals), Madras. Sub-section (1) of Section 14, Limitation Act, provides as under:- "(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it." It will be noticed that Section 14 of the Limitation Act does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in Section 14 should be a "civil court". Any Authority or Tribunal having the trappings of a court would be a "court" within the meaning of this Article. In *Thakur Jugal Kishore Sinha vs. The Sitamarhi Central Co-operative Bank Ltd.* and another, AIR 1967 SC 1494, this Court, while considering the question under the Contempt of Courts Act, held that the Registrar under the Bihar and Orissa Co-operative Societies Act was a court. It was held that the Registrar had not

merely the trappings of a court but in many respects he was given the same powers as was given to an ordinary Civil Court by the Code of Civil Procedure including the powers to summon and examine witnesses on oath, the power to order inspection of documents and to hear the parties. The Court referred to the earlier decisions in *Bharat Bank Limited vs. Employees of Bharat Bank Ltd.*, 1950 SCR 459 = AIR 1950 SC 188; *Maqbool Hussain vs. State of Bombay*, 1953 SCR 730 = AIR 1953 SC 325 and *Brajnandan Sinha vs. Jyoti Narain*, 1955 (2) SCR 955 = AIR 1956 SC 66. The Court approved the rule laid down in these cases that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has FINALITY and AUTHORITATIVENESS which are the essential tests of a judicial pronouncement. In *Pritam Kaur vs. Sher Singh*, AIR 1983 Punjab and Haryana 363, the proceedings before the Collector under the Redemption of Mortgages (Punjab) Act (2 of 1913) were held to be civil proceedings. It was held that the "court", contemplated under Section 14 of the Limitation Act, does not necessarily mean the "civil court"

under the Code of Civil Procedure. It was further held that any Tribunal or Authority, deciding the rights of parties, will be treated to be a "court". Consequently, benefit of Section 14 of the Limitation Act was allowed in that case. This decision was followed by the Himachal Pradesh High Court in *Shri Bansi Ram and others. vs. Shri Khazana*, AIR 1993 Himachal Pradesh 20. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an Authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, was a "court" within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time. It was for these reasons that we have allowed this appeal by our short order dated 28th of July, 1998 for which the reasons are recorded by us in detail.