

the importation of any article (that is) the growth, produce of manufacture, of any foreign country". Under this clause each party is bound to give to the other party commercial advantages it may give to a third State, whether by legislation or treaty. Such a clause precludes special reciprocity treaties.

The general form of the most-favoured-

nation clause is illustrated by Article 8 of the treaty between the United States and Switzerland of 1850. "In all that relates to the importation, exportation and transit of their respective products, the United States of America and the Swiss Constitutions shall treat each other, reciprocally, as most-favoured-nation, union of nations, State or society."

## REMEDIES IN CONTRACTUAL SERVICE

*By*

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The subject of remedies in contractual service covers a large number of important matters such as those pertaining to the specific kinds of remedies, the institutions where the remedies may be resorted to and the principles according to which the Courts would grant the remedies. During the formative periods of Common Law the remedy provided under a Contract of Service was one of Damages only. This remedy was granted by the Courts afterwards in respect of other kinds of contracts also. But the rigidity of Common Law was such that the Judges found it difficult to invent any new kind of remedy. The Courts of Equity however expanded the scope of contractual remedies by providing new kinds of remedies first in the sphere of mercantile contracts then in the sphere of certain other relations which were based upon contracts.

This article has the object of discussing the two kinds of remedies in contractual service which were granted by the Courts of Common Law and Equity and which even today are granted by the Courts under the Statute in our country.

*I. Remedy of Damages:* Damages are the pecuniary compensation payable by one

person to another for injury, loss or damage caused by the one to the other by breach of legal duty, normally by breach of contract. They are distinguished into general damages, *i.e.*, compensation for the loss presumed to flow from a breach of contract, and special damages, *i.e.*, compensation for particular losses not presumed but which in fact have followed in particular case; the latter must be specially claimed and strictly proved. Damages are also classified as liquidated and unliquidated damages. Liquidated damages are agreed on by the parties as payable in the event of breach of duty by the party in breach. Damages are called unliquidated when they are unascertained, until they are fixed by the judgment of the Court. The underlying principle of damages is restitution, *i.e.*, to restore, so far as money can do, the plaintiff to the position he would have been in if the contract with him had been duly implemented. In a few cases exemplary or punitive damages are awarded not merely to compensate the plaintiff but to punish the defendant because of the outrageous nature of his conduct.

In the case of vitiating elements present in the transaction the remedy of damages can be claimed at Common Law where the defendant is under a duty to exercise

reasonable care in making a statement to the other party in negotiating the contract but makes a fraudulent misrepresentation.

In the case of breach of contract the remedy of Damages is the only remedy available at Common Law. The injured party can recover such damages as may fairly and reasonably be considered as arising naturally or such damages as may reasonably be supposed to have been in the contemplation of both parties as the probable result of the breach of contract when they entered into the contract.

In India, the remedy of damages for breach of contract is granted by the Courts according to the provisions of Sections 73 to 75 of the Indian Contract Act, which read as follows:

“Section 73: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damages sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

*Explanation:* In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

*Section 74:* When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or as the case may be, the penalty stipulated for.

*Explanation:* a stipulation for increased interest from the date of default may be a stipulation by way of penalty.

*Exception:* When any person enters into any bail-bond recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of the Central Government or of any Provincial Government give any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the sum mentioned therein.

*Explanation:* A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

*Section 75:* A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

The Contract Act does not contain separate provisions in respect of service contracts, the principles embodied in the above provisions of the Act, and the principles of Common Law embodied in the case-law, are applicable to matters of service contracts.

In *Nagpur Electric and Power Co. Ltd., v. Anand Vishnu Deodar*, Justice Bax of the Nagpur High Court said, “In the case of the

breach of a contract of service' in the absence of anything to show the contrary, such as special damage which can be said to have been in the contemplation of the parties, at the time of the contract, the usual endeavour of the Courts, except in special cases where exemplary damages are permitted is to place the injured party as far as possible in the same position as he would have been had the contract been fulfilled."

*II. The Remedy of Specific Performance:* In English Law, the remedy of specific performance is an equitable remedy granted by the Court to enforce against a defendant the duty of doing what he has undertaken by contract to do. The remedy was developed by Chancery Courts to deal with cases where the remedy of damages at Common Law was not an adequate remedy. The remedy is special and extraordinary in character and the Court has discretion to grant it or to leave the parties their rights at law, though the discretion is exercised on fixed principles in accordance with previous decision. Since the fusion of Law and Equity by the Judicature Act, 1873 jurisdiction to grant the remedy is now vested in all branches of the High Court, but the principles which were followed by the Chancery Courts once are followed by the Courts even at present. So much so, the Courts will not enforce the performance of contracts which were not enforced by the Courts of Equity. The Court will not order specific performance in the following situations:

(i) If the Contract is for personal services, *e.g.*, a contract of employment where one of the parties is employed to paint a portrait or write a book or to sing at a concert; (ii) If the effect of an order would be that the Courts would have to supervise in detail compliance with the order; and (iii) If the contract would not be specifically enforceable against the person asking for specific performance.

In India, the remedy of specific performance is granted by the Courts

according to the provisions of the Specific Relief Act, 1963. Section 14 of the Act describes the kinds of contracts which cannot be specifically enforced. It says, "The following contracts cannot be specifically enforced, namely:

- (a) a contract for the non-performance of which compensation, in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications of the parties, or otherwise from its nature is such that the Court cannot contract which is in its nature determinable;
- (c) a contract the performance of which involves the performance of the continuous duty which the Court cannot supervise.

*III. The Remedy of Injunction:* In English Law, Injunction is an equitable remedy whereby a person is ordered to refrain from doing (restrictive injunction) or ordered to do a particular act or thing (mandatory injunction). Injunctions may also be interlocutory, to preserve the *status quo* until the relevant facts can be ascertained, or Perpetual, based on final determination of the rights of parties and intended permanently to prevent infringement thereof.

In India, the remedy of Injunction is granted by the Courts as per the provisions of Specific Relief Act, 1963. Section 36 of the Act says, "Preventive relief is granted at the discretion of the Court by Injunction, temporary or perpetual".

Temporary Injunctions, according to Section 37, are such as are to continue until a specified time, or until the further order of the Court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908. A perpetual Injunction has been defined in the same

provision as an Injunction which can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Under Section 41 of the Act, an Injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. By sub-section (2) of Section 38 of the Specific Relief Act it is provided that in granting a Perpetual Injunction the Court shall be guided by the principle of law contained in Chapter II of the Act when any such obligation arises from contract. Among the contracts of which the dependent on the personal qualification or volition of the parties. Such contracts cannot be specifically enforced and an Injunction cannot be granted to prevent the breach thereof. Acting upon these determining contracts with their employees where the service to be rendered by the latter was service of a personal nature, *eg*, a contract to work at railway line and keep the engines and rolling stock in repair, a contract to act as manager of a tea estate.

Section 42 of the Specific Relief Act, 1963 deals with the remedy of Injunction to perform negative agreements. It says, "Notwithstanding anything contained in clause (a) of Section 41, where a contract comprises an affirmative agreement to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement."

A negative agreement is an agreement of service operative during the period of contract binding the servant to serve his employer exclusively, or that he would not engage himself in a trade or business or would not get himself employed by any other master where he would perform similar duties. Even

if specific performance is not possible in a certain case, an Injunction can in a proper case be given under Section 42 of the Specific Relief Act.

IV. *The Remedy of Rescission*: It is an equitable remedy providing for termination of contract by the parties or one of them. It may be done by agreement, or by one party who is entitled to do so by reason of the repudiation or material default of another, or by reason of the contract having been induced by fraud or misrepresentation by the other party. It is effected by taking proceedings to have the contract judicially set aside or by giving notice to the other party of his intention to treat the contract as having come to an end.

In India, the remedy of rescission may be granted by the Court in terms of provisions of Specific Relief Act, 1963. Section 27(1) of the Act enumerates the situation in which this remedy may be granted. It says:

"Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely; (a) where the contract is voidable or terminable by the plaintiff; (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff.

Notwithstanding anything contained in sub-section (1) of Section 27 the Court may refuse to rescind the contract: (a) where the plaintiff has expressly or impliedly ratified the contract, or (b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself) the parties cannot be substantially restored to the position in which they stood when the contract was made; or (c) where the parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value, or (d) where only a part of the contract is sought to be rescinded and

such part is not severable from the rest of the contract.

V. *The Remedy of Declaration*: In English Law, A Declaratory Judgment is judicial declaration of the rights of a party without reference to their enforcement, or a decision on a state of facts which has not yet arisen. The declaration must relate to some legal right and confer some benefit on the plaintiff; the Courts will not answer merely academic doubts. The power to make a declaratory order is discretionary.

In India, the remedy of Declaratory Decree is granted by the Courts in terms of the provisions of Specific Relief Act, 1963. Section 34 of the Act says:

“any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.”

For a long time the Courts had refused to grant the relief of Declaration in contracts of personal service, in *U.P. Warehousing Corporation Ltd. v. Chandra Kiran Tiwari*, (1970) 2 SCR 250, the employee had challenged his dismissal order and prayed for a declaration for re-instatement on the ground that the relationship was one of personal service. Speaking through Justice *Vaidyalingham* the Supreme Court held that a Declaration to enforce a contract of personal service will not normally be granted except in three cases: (i) where there is dismissal from service in contravention of Article 311 of the Constitution; or (ii) the dismissal of a worker is under Industrial Law or the Labour Law, or (iii) when a statutory body acts in breach

of a mandatory obligation imposed by the Statute. It was held that the dismissal order in the instant case was made in breach of a regulation contrary to the terms and conditions of the relationship between the employee, but it was not in breach of any statutory obligation because the Act does not guarantee any statutory status to the employee nor does it impose any obligation upon the employer to continue the employee in service.

But the authority of the ruling in *Tyagi* case was eroded by later decisions of the Supreme Court, particularly the pronouncement of the Court in *Skydive Singh v. Bhagatram*, AIR 1975 SC 1331. In this case, the Supreme Court said, “There is no substantial differences between a rule and a regulation as both are subordinate legislation under powers conferred by the Statute. A regulation framed under a Statute applies uniform treatment to everyone or to all members of the same group or classes, the Oil and Natural Gas Commission, the Life Insurance Corporation, and the Industrial Finance Corporation are all required by the statute to frame regulations, *inter alia*, for the purpose of duties, conduct and conditions of service of officers and other employees. These regulations impose an obligation on the statutory authorities who cannot deviate from the conditions of service. Any deviation will be enforced by the legal sanction of a Declaration by the Courts to invalidate actions which are in violation of the rules and regulations.”

It is now a settled proposition of law that a suit for Declaration by a Government Servant who has been wrongly dismissed is maintainable. The Court can declare that the order of the authority dismissing an employee is inoperative and void and that the employee continues in employment.

VI. *The Remedy of re-instatement*: In some cases earlier it had been held that the Courts have no power to re-instate a Government Servant. But afterwards the trend changed. In *Sarangathan v. State of Manipur*, AIR 1956



Mani 35, the order of dismissal was set aside by writ of *certiorari* and the petitioner was deemed to be in service. In *Hiro Litaram Chabbani v. State*, 1958 SC 325, also the Court passed orders reinstating the Government Servant who had been wrongfully dismissed. In *Mangal Sain v. State*, AIR 1959 Punj. 58, the Court held that a writ in the nature of *mandamus* could be issued to compel the restoration of a person to office of which he had been wrongfully dispossessed provided such office was of a public nature.

VII. *The Remedies in writ jurisdiction:* By virtue of the provisions of Articles 32 and 226 of the Constitution, the Supreme Court and the High Courts may, in the exercise of their writ jurisdictions, enforce the Fundamental Rights and other rights of the civil servants. For example, they may grant the remedy of *mandamus* where there is violation of the rights guaranteed under Articles 14, 15 and 16 in matters of appointment to public offices or in matters relating to service conditions. In disciplinary matters, the remedy of *mandamus* is granted to quash the order of the disciplinary authority where the order is in contravention of the mandatory rule relating to service conditions, or the order is *ultra vires* being in contravention of Article 14 of the Constitution.

Likewise, the Courts may grant the remedy of *certiorari* where the administrative proceedings do not observe the principles of Natural Justice or deny 'reasonable opportunity' to the civil servant in any proceeding taken against him. The writ of *prohibition* is granted to restrain disciplinary proceedings where the charge upon which such proceedings are founded is unconstitutional or an order passed against the civil servant is "mala fide" or the proceedings lack initial jurisdiction.

### III. WRIT JURISDICTION EMPLOYED TO ENFORCE CONTRACTUAL OBLIGATIONS:

While the right to enter into a contract is guaranteed by various provisions of the

Constitution like Articles 19.20; 21 *etc.*, the rights arising under a contract are not Fundamental Rights. Hence, a writ is not generally maintainable for the enforcement of rights arising under a contract. But this is not an absolute rule.

In *Daki Chinna Gumbalu v. State of Orissa*, AIR 1992 Orissa 189, the Court observed... "It cannot be said as an absolute rule that in no circumstance a writ application for issue of *mandamus* can lie the right involved flows from a contract. That would be circumscribing the extraordinary jurisdiction of the writ Court which was intended by the founding fathers to function as sentinel always on the alert. Where without any authority of law, by an executive fiat rights are trampled arbitrarily, a writ Court cannot and should not shut its door to the aggrieved party. Where valuable civil rights are taken away without any authority of law or by violation of the principles of natural justice a High Court cannot fold its hands and look on as a helpless onlooker asking the party to approach a Civil Court. Where there are disputed questions of fact, evidence has to be led by the parties and it would be necessary to scan and assess the same, it is a different matter; the ultimate remedy and suit should be followed. Whether extraordinary jurisdiction should be exercised in a matter is in the discretion of the High Court. Where a person has been deprived of his civil right by executive fiat without any justification in law it would be futile to contend that the High Court should refuse to exercise jurisdiction under Article 226 of the Constitution."

The most celebrated example of the writ jurisdiction exercised by the Court in the matter of service contracts is the case of *Central Inland Water Works Ltd. v. Brojonath Ganguly*, AIR 1986 SC 1586. In this case, a clause in a contract of service affecting a large section of employees was assailed in a writ petition on the ground that it was void under Section 23 of the Indian Contract Act being opposed to Public Policy.

On behalf of the employer Corporation which had all the features of 'the State', it was submitted that the clause in question was part of the contract entered into by the Corporation in the Court of its trade activities and the Court therefore should not interfere with it. It was further submitted that if the employees felt aggrieved they could at best file a suit for the redressal of their grievance in the Courts of ordinary civil jurisdiction, but not a writ petition

under the extraordinary jurisdiction of the High Court under Article 226 of the Constitution.

The Supreme Court held the impugned rule of contract as void. It observed that the writ petition was maintainable to review the contract on the basis of its being opposed to Public Policy and its being violative of Article 14 of the Constitution of India.

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## ENVIRONMENTAL POLLUTION AND REFORMS

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The word "ENVIRON" is derived from French term "Environer" which means "to surround". From this word, the most well know term today. "Environment" is formulated and has become world famous. The word "Environment" in its etymological sense gives the meaning "Surroundings" especially the material and spiritual influences which affect the growth, development and existence of living being". In its wider sense, environment is a combination of the various physical and biological elements that affect the life of an organism.

Ecology is connected with environment. Ecology is a branch of biology concerned with the relation between organisms and their environment. Ecology is a balanced environment used for a natural or artificial environment.

### Environmental Pollution

Environment is God gift, water, air, soil are the most important things for living beings. Since the starting of existence of living being,

physical and biological processes have been continuing in the environment. However, this normal environmental processes are adversely affected by the contamination by human beings by excess use of natural resources and human resources. The invention of latest technology has caused the establishment of industrialization and urbanization. The modern techniques paved the ways for abundant environmental pollution in the shape of industrial wastages.

### Various Sources of Environmental Pollution

There are several hundreds factors causing environmental pollution. The earth, forests, lakes, seas, air, ozone layer *etc.*, are being polluted everyday. The rate of environmental pollution is increasing day by day. The main sources can be classified into three categories.

1. Natural Environmental Pollution
2. Population growth
3. Industrialization