

(2004) 11 AHC CK 0249

Allahabad High Court

Case No: Second Appeal No. 931 of 1986

Lourdes Convent Girls Higher
Secondary School and Another

APPELLANT

Vs

Surat Ram

RESPONDENT

Date of Decision: Nov. 19, 2004

Acts Referred:

- Constitution of India, 1950 - Article 30(1), 311
- Specific Relief Act, 1963 - Section 14, 20, 20(1), 34
- Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 - Section 2, 3
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16FF, 16G, 16G(1)
- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 100, 31

Citation: (2005) 5 AWC 5104 : (2005) 1 ESC 1

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: A.K. Gaur, for the Appellant; H.R. Misra, K.S. Kushwaha, R.P. Srivastava, V.S. Srivastava, Rajendra Kumar and K.S. Rathore, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.

Heard Sri Ashok Kumar Gaur learned Counsel for appellants and Sri K.S. Rathore learned Counsel for plaintiff-respondent.

2. The substantial questions of law raised for consideration in this Second Appeal is whether a suit to declare the order of termination of an employee of a minority educational institution as void and inoperative and for reinstatement is maintainable, in Civil Court; and whether the services of the respondent as an employee could be enforced on the institution by a decree of permanent injunction.

3. The facts giving rise to this Second Appeal are that the plaintiff was employed as a Chowkidar in Lourdes Convent Girls Higher Secondary School, Ghazipur defendant No. 1 of which defendant No. 2 is the Principal. He was confirmed in the service six years before the filing of the suit. The School was recognized and was paying the salary of the teachers and other employees from the grant-in-aid given to the school by the State Government and disbursed through the District Inspector of Schools. On 22.6.1974, the Principal of the school asked the plaintiff to go to Varanasi and get a paper signed for attestation. She thereafter issued instructions to him, not to visit Varanasi on that day. On 1.7.1974, the plaintiff was not allowed to sign the attendance register. On 12.7.1974 once again when the plaintiff went to join the duties, he was told that his services have been terminated, as he had resigned from service on 22.6.1974. The plaintiff stated in the plaint that the Principal and other teachers of the school wanted him to convert to Christian religion and that since he refused to do so, his services were terminated by playing fraud by getting his signature on a blank paper on 22.6.1974. He has sought the relief of a decree to declare that the document, which was got executed from him, as illegal and inoperative and to declare that the plaintiff is an employee of the college with a decree of Rs. 3,394.50 towards the arrears of salary and of Rs. 219/- per month as salary or any other amount to which he is held entitled.

4. The defendants in their joint written statement submitted that the plaintiff worked in the institution from 1966 to 22.6.1974. He submitted the resignation letter dated 22.6.1974 on his own free-will, which was accepted, and thus he had no locus standi to file the suit. The allegations of fraud, coercion and undue influence were denied. It was further stated that after the plaintiff resigned, the college has employed another Chowkidar with effect from 1.8.1974.

5. The trial Court, after taking oral and documentary evidence, including attendance register, pay register and original resignation letter of the plaintiff dated 22.6.1974 (Ext. 1) and the letters addressed by him to the Principal on 13.7.1974 (Ext. 2) and District Inspector of Schools, Ghazipur (Ext. A6), recorded the findings that the plaintiff did not write and sign the resignation letter of his own free-will. The document was got executed from him illegally by deceit, as he was made to sign on a blank paper, and thus the alleged resignation letter is illegal void and inoperative. The trial Court, thereafter decreed the suit by the judgment dated 3.7.1980, declaring the plaintiff to be a permanent employee of the college, setting aside the resignation letter dated 22.6.1974 as illegal and inoperative and for payment of salary @ Rs. 185/- p.m. with effect from 1.7.1974, and also regular salary from the college.

6. The Appeal No. 185 of 1980 against the judgment and decree, was heard by Additional Civil Judge, Ghazipur and was dismissed by his judgment dated 14.4.1986. The appellate Court re-appreciated the evidence, and upheld the findings that the resignation letter was procured by defendant No. 2 by playing fraud upon the

plaintiff, and that he had not signed the document in front of the Principal. The appellate Court also upheld the finding about contradiction in the statements of Sister Alyolora DW-1, and Sister Mary Clareta DW-2 with regard to the reasons for alleged resignation.

7. Sri Ashok Kumar Gaur, learned Counsel for appellant submits that a contract of personal service cannot ordinarily be enforced and, thus, the Civil Court could not have decreed the suit for declaration that the contract subsists, and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employee. He has relied upon Section 20 of the Specific Relief Act, which provides that the jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so, and Section 34 of the Specific Relief Act which gives discretion to the Court to give a declaration of the legal character. Section 20(1) and Section 34 of the Specific Relief Act are quoted as below :

"20. (1) The Jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal."

"34. 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.

Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, he would be a trustee."

8. Sri Gaur has relied upon the judgments of Supreme Court in [Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others](#), ; [Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee](#), ; [Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others](#), ; and Pearlite Liners (P) Ltd. v. Manorama Sirsi. 2004 (1) ESC 116. in support of his submission.

9. The counsel for the appellant has not challenged the concurrent findings recorded by both the Courts below, that the plaintiff had not executed resignation letter dated 22.6.1974 (Ext. 1). and that he was asked to sign blank paper. I have gone through the evidence and find that these findings were recorded after careful consideration of the oral evidence in which DW-1 and DW-2 contradicted themselves regarding the reasons for resignation, and it was established by the plaintiff that he

was made to sign on a blank paper. These findings leave us only with the legal question regarding the enforcement of the service contract against the defendant-appellant.

10. In *Executive Committee of Vaish Degree College, Shamli (supra)* and *Pearlite Liners (P) Ltd. (supra)*, it was held by the Hon"ble Supreme Court that the principle of law, that a contract of personal service cannot ordinarily be specifically enforced, and a Court normally would not give a declaration that the contract subsists and employee continues to be in service, against the will and consent of an employer, is subject to three well recognised exceptions namely (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India, (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law, and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

11. In the present case, the appellant is a minority institution receiving grant-in-aid from the State Government. The salary of all the employees of the institution are paid through the District Inspector of Schools under the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. The College, as a employer, is required to abide by the provisions of the U.P. Intermediate Education Act, 1921, the regulations framed thereunder, and the Payment of Salary Act, 1971. An employee is defined u/s 2(f) to mean a non-teaching employee in respect of whose employment, the maintenance grant is paid by the State Government to the Institution. Section 3 of the Act mandates the payment of salary within time and without unauthorised deductions. The service conditions of an employee of the institution are governed by the regulations framed u/s 16-G of the U.P. Intermediate Education Act, 1921. Section 16FF provides that saving as to minority institution are applicable to a procedure of selection and not for terminating the services of the employees. Regulation 100 of Chapter-III of the Regulations made under U.P. Intermediate Education Act, 1921 provides that the regulation applicable to termination of service in Chapter-III shall also be applicable to the employees of the institution. The Act and the Regulation as such provide for service conditions, and protect the service of the employees of the recognised aided educational institutions against any arbitrary and illegal termination of service.

12. The appellant did not terminate the services of plaintiff respondent on any ground of misconduct and have not claimed protection of Article 30(1) of the Constitution of India, based on a right to administer the minority institution. The relationship between the appellant and the plaintiff-respondent was not based on any written contract. The defendant defended the suit only on the ground that the plaintiff had voluntarily resigned from the service, and has not challenged the concurrent findings recorded by the Courts below that the plaintiff had not voluntarily resigned from the service.

13. In the facts and circumstances of the case, I find that the Courts below did not act illegally or in violation of Section 14(b). Section 20 or Section 34, in granting the discretionary relief of a declaration that the plaintiffs services did not come to an end by the alleged resignation letter and that he was entitled to continue in employment. I do not find any merit in the submission of the counsel for the appellant that the Civil Court did not have Jurisdiction to grant the declaration that the contract is subsists and the employee is continuing in service. I also find that the appellant has not pleaded or argued, the lack of confidence in the respondent.

14. In [Daya Shankar Tiwari Vs. Principal, Smt. Ramwanti Devi, Beni Madho Uchchatar Madhyamik Vidyalaya, Neegaon, Mirzapur and others,](#) , approved in Special Appeal No. 1012 of 1999 in Principal, Rastriya Inter College, Bali Nichlaul, Mahrajganj and Anr. v. District Inspector of Schools, Mahrajganj and Ors. 2000 (1) ESC 704 (All), it has been held by this Court that Sub-section (1) of Section 16G of U.P. Intermediate Education Act, 1921 provides that the conditions of service of every person employed in a recognized institution shall be governed by the Regulations made under the Act. The statute provides framing of Regulation providing conditions of service for every person employed including class-IV employees. Regulation 31 of Chapter III of the Regulations so framed under U.P. Intermediate Education Act, 1921 provides for prior approval in case of certain punishments including termination. Regulation 100 does not categorically make Regulation 31 applicable in case of Class IV employees, but it also does not include Regulation 31 from its applicability to Class IV employees, and, thus, Regulation 31 read with Section 16G (1) of the Act makes it clear that in case of termination of the services of a Class IV employee, prior approval of the Inspector is required:

15. The Second Appeal is consequently dismissed.