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Date : 24/08/2025

R. Parthasarathy Vs Anglo French Textiles and Others

Court: Madras High Court

Date of Decision: Aug. 8, 1995

Acts Referred: Anglo-French Textiles Limited (Acquisition and Transfer of Textiles Undertaking) Act, 1986 â€" Section 11(2)
Constitution of India, 1950 â€" Article 14

Citation: (1997) 2 MLJ 553

Hon'ble Judges: Jayasimha Babu, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Jayasimha Babu, J.
The petitioner was an Assistant Engineer, Grade I in the services of the respondent/Corporation which is admittedly a

wholly Government owned Corporation. The petitioner''s case is that the petitioner was working earlier in Anglo French Textiles Limited, and after

that company was acquired under the provisions of Anglo French Textiles Limited (Acquisition and Transfer of Textile Undertaking) Act, 1986

and the undertaking of the Company was vested in the Pondicherry Textiles Corporation Limited, which is a Government owned Corporation, the

petitioner was employed by the said Pondicherry Textiles Corporation Limited, in its unit Anglo French Textiles, initially as a weaving Assistant.

2. The terms and conditions of the petitioners employment were to be determined by the Corporation in view of Section 11(2) of that Act, which

reads as under:

Where services of a person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and who has

been, immediately before the appointed day, employed in the textile undertaking, are in opinion of the Corporation necessary having regard to the

requirement of the units of the corporation formed as a result of reorganisation and reconstruction of the textile undertaking by the Corporation he

shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the

Corporation on such terms and conditions of employment as may be determined by the Corporation.

The employment was under a contract which inter alia provided that the contract would be for a period of two years. The contract was, after the

petitioner"s initial appointment in the year 1986, renewed from time to time the last such renewal having been made in the year 1992. The last

contract as between the petitioner and his employer came to an end by efflux of time on 31.7.1994. He was at that time serving in the weaving "B"

Unit.

3. The petitioner has in this writ petition challenged the intimation sent to him on 30.7.1994 by the employer. The letter reads thus:

This is to inform you that the agreement dated 19th August, 1992 for your engagement as an employee of the Anglo French Textiles of

Pondicherry Textiles Corporation Ltd., shall expire on 31st July, 1994.

The Management of the Corporation is thankful to you for the services rendered. You are requested to contact the Accounts Department for

settlement of your accounts.

4. This writ petition was filed in April, 1995, after about eight months from the date on which that letter was sent to the petitioner.

5. The case of the petitioner is that the respondent-corporation being a Government undertaking and therefore, an instrumentality of the State, was

bound to act in a non-arbitrary manner, and the manner in which the petitioner"s services were terminated the petitioner regards the impugned

letter as an order of termination-contravenes the rule of non-arbitariness and in contravention of Article 14 of the Constitution. The further case is

that even if it was necessary to retrench any employee in that category, the rule of "Last come First Go" should have been adopted and instead of

adopting such a Rule, the respondent-corporation had retained in service some of the juniors to the petitioner, two of whom are impleaded as

respondents 2 and 3, in this writ petition. The petitioner has also contended that the review said to have been carried out by the respondent-

corporation is vitiated, inasmuch as the person who sent the impugned letter viz., the Chairman and Managing Director had participated in that

review, in which several of his subordinates had also participated. It may be mentioned here that the review referred to was carried out by the

respondent-corporation on 2.7.1994, as seen from a copy of the proceedings of said review filed by the respondent-corporation. It is stated

therein, that ""Considering the rationalisation and streamlining of operations already, introduced in the "B" unit, it was agreed that there was no need

for his continued agreement. He may be informed that the agreement with him shall expire on 31.7.1994.

6. Learned Counsel for the petitioner submitted that the action of the respondent-corporation in denying employment to the petitioner in this

manner was wholly arbitrary contravening the petitioner''s right under Article 14 of the Constitution. Learned Counsel pointed out that the

respondent-corporation is owned by the Government and it cannot act in an arbitrary manner and rely on the general law of Master and Servant

without reference to the constitutional rights available to the employees of an instrumentality of the State. Learned Counsel referred to and relied

upon the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly

and Another, in support of his submission that it is contrary to public policy and it would be entirely arbitrary for an instrumentality of the State, to

have an arbitrary power to terminate the employment of any of its employee without assigning any reason whatsoever for effecting such

termination. It was also pointed out in that decision that the bargaining power between the employer and the employee in normal circumstances, is

wholly unequal and the fact that the term was entered into by a contract by such unequal parties would not disentitle the employee to be relieved of

such a term, which would be opposed as public policy as well.

7. Learned Counsel also relied upon the case of The Manager, Government Branch Press and Another Vs. D.B. Belliappa, in support of his

submission that the principle of last come first go would be applicable in public employment, even in cases, where the employee is in temporary

service. Counsel further relied upon the decision of the Supreme Court in the case of Om Prakash Goel v. Himachal Pradesh Tourism

Development Corporation Limited, Shimla and Anr. 1991 S.C.C. (L & S) 911 and the decision reported in D.C. Aggarwal Vs. State Bank of

India and others, , in support of the submission that the participation of the authority who is required to issue the order, in the review, which

preceded the issue of such order, would vitiate that order itself. That was a case, wherein the rules of the State Bank of India had prescribed

certain procedures and guidelines regarding the manner in which the review was to be carried out. The Court found that the competent authority

who was required to act on the recommendations of the committee had himself participated in the review, and therefore, such participation violates

the procedures and guidelines provided and that it was also violative of fair play.

8. As against this submission for the petitioner, learned Counsel for the respondent-corporation submitted that this is a case of contract, the

petitioner is bound by the terms of contract freely entered into by the petitioner and it is not open to the petitioner to contend that even after the

expiry of the term of contract by efflux of time, the contract would be treated as still subsisting, and on that basis treat the petitioner as being an

employee long after he had ceased to be an employee under the contract, which admittedly expired on 31.7.1994. Learned Counsel further

submitted that a contract of persona) service cannot ordinarily be specifically enforced and a Court normally would not give a declaration, that

even after the employee is removed from service he is still deemed to be in service as the contract subsists, and that the three well settled

exceptions to that rule recognised by the Courts are not attracted here-those exceptions being:

(1) Where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution;

(2) Where a worker is sought to be reinstated on being dismissed under the Industrial Law; and

(3) Where a statutory body acts in breach or violation of the mandatory provisions of the statute.

Counsel pointed out that the petitioner is not a public servant and he is not governed by Article 311 of the Constitution; that the petitioner is not a

worker as he belongs to the managerial or officers cadre and he is not governed by the industrial Disputes Act; and that the petitioner cannot claim

any statutory status as he was not in the employment of any statutory corporation nor are his conditions of service laid down by statutory rules. The

petitioner, it was submitted, is an employee of a Government owned company and he was given employment purely in terms of the contract, which

had been renewed from time to time and after the expiry of the period of last such renewal the employer had merely signifies its non-willingess to

enter into a further contract with the petitioner. After the expiry of the last contract, there is no subsisting relationship as master and servant

between the respondent-corporation and the petitioner.

9. Learned Counsel in this context referred to the decision of the Supreme Court, in the case of Nandganj Sihori Sugar Co. Ltd. and Anr. v. Badri

Nath Dixit and Ors. (1991) 2 C.L.R. 135. The court after holding that a contract of employment cannot ordinarily be enforced against an

employer, observed as follows:

The remedy is to sue for damages. The grant of specific performance is purely discretionary and must be refused when not warranted by the ends

of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, Courts do not ordinarily force an

employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in

the case of a public servant dismissed from service in contravention of Article 311 of the Constitution, reinstatement of a dismissed worker under

the Industrial Law and statutory body acting in breach of statutory obligations, and the like.

10. This judgment of the Supreme Court was referred to and followed in the subsequent decision of the Supreme Court in the case of Integrated

Rural Development Agency v. Ram Pyare Pandey (1995) 1 C.L.R. 781, Learned Counsel also referred to the decision of the Supreme Court in

the case of Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, in support of the same proposition.

11. The Court cannot ordinarily enforce the contract for personal service. It is clear in this case that there is no subsisting contract of employment

as between the respondent-corporation and the petitioner. The petitioner cannot be regarded as one governed under Article 311 of the

Constitution. Admittedly he is not a civil servant. He is not a workman, to whom the Industrial Disputes Act is applicable. The petitioner''s

employer is a company registered under the Companies Act and even though he had been working in the Anglo-French Textiles Limited, initially,

and was subsequently appointed in the service of the respondent-corporation, u/s 11(2) of the Anglo-French Textiles Ltd. (Acquisition and

Transfer of Textiles Undertaking) Act, 1986, that section does not stipulate any terms and conditions of employment. The discretion under that

section is given to the respondent-corporation to prescribe such terms and conditions as it thinks appropriate and the respondent-corporation had

chosen to employ the officers on contract basis and that is the system which has been adopted in the case of the petitioner. The petitioner has

entered into a contract with the respondent - corporation and such contract came to an end on 31.7.1994. The petitioner''s case, therefore, does

not come within any of the exceptions to the normal rule that courts will to specifically enforce contracts of personal service. The petitioner''s

remedy can only be by way of damages.

12. Learned Counsel for respondents 2 and 3 submitted, that the petitioner''s contention that juniors to him have been retained in service of the

respondent-corporation is misconceived, as there is no seniority list of such Weaving Assistants and each individual is employed in terms of the

contract and one''s seniority or otherwise does not depend upon as to when the contract was entered into. It was also submitted by the counsel for

respondents 2 and 3, that they are employed in a different section of the mill and they cannot be regarded as juniors to the petitioner, merely

because they entered into service of the respondent-Corporation under contracts, subsequent to the date on which the petitioner''s employment

under the respondent-corporation commenced. The petitioner has not produced before the Court, any seniority list maintained by the corporation,

on basis of which it could be held that the petitioner is senior to the other respondents or that the petitioner''s seniority had been over-looked and

his juniors were retained in his place. The decision of the employer not to renew the petitioner''s contract is not dependant upon the continuance of

the respondents 2 and 3 in employment. The decisions relied upon by learned Counsel for the petitioner, regarding the need to follow the rule of

''last come first go'' is not therefore, of any assistance to the petitioner.

13. As regards the last contention of the petitioner, that the impugned order is vitiated, because of the participation of the Chairman and Managing

Director in the review committee meeting along with his subordinates, that contention also has to be rejected as not being of any assistance to the

petitioner. Petitioner has not shown the existence of any Rule in the Corporation which requires the Chairman to act only in accordance with the

decision of the Review Committee. The decision taken at that review committee was not to enter into a further agreement with the petitioner, and

no subsisting contract was sought to be terminated. A decision not to enter into a fresh contract was communicated to the petitioner by the

Chairman, who was competent to do so.

14. Counsel for the respondent-corporation also pointed out that there has been unreasonable delay on the part of the petitioner in approaching

this Court and therefore petition should be rejected on the ground of laches. It is not necessary to go into that question, as it is found that on merits

of the case pleaded, the petitioner is not entitled to any relief in the facts and circumstances of the case.

15. Petition is dismissed with no order as to costs.