

(2003) 08 CAL CK 0006

Calcutta High Court

Case No: F.M.A. No. 1671 of 2000

West Bengal Electronics
Industries Development
Corporation Ltd. and Others

APPELLANT

Vs

Dr. K.K. Chakraborty and Others

RESPONDENT

Date of Decision: Aug. 29, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Specific Relief Act, 1963 - Section 14

Citation: (2004) 101 FLR 1136 : (2004) 2 LLJ 933

Hon'ble Judges: Ashok Kumar Mathur, C.J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Anindya Kumar Mitra, R.N. Majumder and S. Sil, for the Appellant; Kalyan Bandopadhyay and Biswarup Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

The respondent No. 1 was the Chief Executive of the appellant No. 1 at the relevant point of time. Disputes and differences arose by and between the management and the respondents No. 1. In the afternoon of January 31, 1994 the respondent No. 1 went on special leave with effect from February 1, 1994. By a letter dated February 22, 1994 (Pages 52-53 of the paper book) the management offered him retirement. Since the respondent No. 1 did not accept such offer, his service was terminated by a letter dated March 23, 1994 (pages 54-55 of the paper book). Challenging such order of termination the respondent No. 1 moved this Court inter alia asking for his reinstatement. In the Affidavit-in-Opposition the respondent authority took a plea that the post in which the respondent No. 1 was acting stood abolished and as such there was no question of reinstatement. The learned single Judge giving credence to the sequence of events resulting in the order of termination came to a finding that

the abolition of post was an act of mala fide and as such directed reinstatement of the respondent No. 1. Being aggrieved by the said order the respondent authority preferred the instant appeal. During the pendency of the appeal the respondent No. 1 floated a company of his own and is at present engaged in such business.

2. Mr. Anindya Kumar Mitra, learned counsel appearing for the appellants, contended that the respondent No. 1's appointment, as Chief Executive was a contractual employment. The said contract provided for termination of employment at any point of time in lieu of three months' salary. In the instant case the respondent No. 1 was offered three months' salary in lieu of notice. Hence, such contract could not be enforced in view of Section 14 of the Specific Relief Act, 1963. It was further contended that there was no public law element involved in the instant case and as such the writ petition was not maintainable. Reliance was placed on the Apex Court decision in this regard ([G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others](#)). It was further contended that the abolition of post subsequent to the termination of the respondent No. 1 had no relevance and irrespective of such abolition the respondent No. 1 was not entitled to claim for his reinstatement. Detailed submissions were made on the issue of subsequent engagement of the said respondent in a rival business.

3. Mr. Kalyan Bandopadhyay, learned counsel for the respondent No. 1, contended that the sequence of events that had resulted in the termination as recorded by the learned single Judge in his judgment would ex facie show that the respondent authority acted mala fide to get rid of the respondent No. 1. It was further contended on behalf of the respondent No. 1 that his subsequent engagement in business should not in any way come in the way of his reinstatement if he was otherwise entitled to. It was further contended that since the respondent authority acted mala fide being a public body they were amenable to writ jurisdiction and the writ Court rightly intervened and directed reinstatement.

4. We have carefully examined the detailed judgment of learned single Judge. It appears that the learned single Judge took immense pain to consider each and every event that had ultimately resulted in termination of service of the respondent No. 1. It appears that the learned Judge considering those facts became sympathetic to the respondent No. 1 and directed his reinstatement. The learned Judge, however, inadvertently overlooked the provisions of Section 14 of the Specific Relief Act, 1963 that clearly debarred specific performance of such contractual service. The respondent No. 1 got employment through a contract. Hence, his service was guided by the terms and conditions of the said contract. Since the terms of the contract stipulated termination of service at any point of time by the employer in lieu of three months' salary the respondent No. 1 was not entitled to enforce such contract for reinstatement in service. If his service was terminated wrongfully he should have taken recourse to other remedy available to him. Writ proceedings could not help him in this regard. Under Article 226 of the Constitution we (sic) are

to see whether there is any violation of constitutional right. Neither the writ petitioner was a government servant within the meaning of Article 311 nor any of the constitutional provisions had been violated in this case. The contract of service permitted the employer to have his service terminated in lieu of three months' salary. Whether such termination was rightful or not was not within the domain of writ jurisdiction. Hence, on the said ground alone the writ petition was not maintainable.

5. In the result, the impugned judgment and order dated January 31, 1996 is quashed. The writ petition is dismissed.

6. We, however, observe that we have not gone into the question as to whether the writ petitioner's termination was otherwise wrongful or not. We have not examined that question as we find that the writ petition was not maintainable in view of the provisions of Section 14 of the Specific Relief Act, 1963.

7. There would be no order as to costs.

8. Urgent Xerox certified copy would be given to the parties, if applied for.

ASHOK KUMAR MATHUR, C.J.

9. I agree.

10. Later. Prayer for stay of operation of the Judgment made by the learned counsel for the appellant is refused.