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M/S. PEARLITE LINERS PVT. LTD.

v.

MANORAMA SIRSI

JANUARY 6, 2004

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[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

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Specific Relief Act, 1963—Section 14—Contract for personal service—No written contract—Employee challenging transfer order, seeking declaration that she continued to be in service of employer and injunction restraining company from holding enquiry—Trial Court and also lower appellate court holding suit not maintainable—However, High Court directing suit to be decided on merits—Enforcement of contract—Permissibility of—Held: Enforcement of such contract not permissible under law—Employer cannot be forced to take such employee with whom relation having reached a point of complete loss of faith—Also it is not a case of public employment to attract Article 311 of Constitution or case under Industrial Disputes Act nor the employer is a statutory body for attracting enforcement of contract—Further, none of the relief sought in the plaint can be granted under law—Thus, High Court erred in directing suit to be decided on merits—Suit which is bound to be dismissed for want of jurisdiction of court, should not be allowed to continue and go for trial—It should be thrown at the threshold—Code of Civil Procedure, 1908—Order 7, Rule 11(d)—Constitution of India, 1950 Article 311—Industrial Disputes Act, 1947.

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Appellant company appointed respondent as a trainee accountant. She was transferred from head office to sales office. She did not comply with the transfer order and remained unauthorisedly absent from work. Company issued chargesheet. Respondent filed suit challenging the transfer order and also seeking declaration that she continued to be in service of the company and injunction restraining the company from holding enquiry against her. Trial Court held that court had no jurisdiction to entertain the suit as it was not maintainable and rejected the plaint. Lower appellate court dismissed the appeal. However, High Court holding that the company failed to prove that the suit was not maintainable, remanded it to trial court for being decided on merits. Hence the present appeal.

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Appellant-company contended that the prayers in the suit seeking reinstatement of the respondent as an employee of the appellant company amounts to specific performance of a contract of personal service which is specifically barred under the provisions of the Specific Relief Act. A

Allowing the appeal, the Court

HELD: 1.1. It is well settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. This general rule of law is subject to three well recognized exceptions—(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution; (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 of violation of the mandatory provisions of the statute. [270-E-G] B C

Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors., [1976] 2 SCC 58, referred to. D

1.2. The instant case is not a case of public employment so as to attract Article 311 of the Constitution of India; neither the case is under the Industrial Disputes Act nor the appellant-company is a statutory body, there is no statute governing service conditions, thus does not fall in any of the three exceptions. It is a case of private employment which normally would be governed by the terms of the contract between the parties. Since there is no written contract between the parties, the dispute cannot be resolved with reference to any terms and conditions governing the relationship between the parties. Declaration that she continued to be in service and an injunction against a transfer order and against holding a departmental enquiry in a suit would amount to imposing an employee on an employer or to enforcement of a contract of personal service, which is not permissible under the law. An employer cannot be enforced to take an employee with whom relations have reached a point of complete loss of faith between the two. [270-H; 271-A-E] E F G

1.3. Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. Non-compliance of transfer order by the respondent amounts to refusal to obey the orders passed by superiors for which employer can reasonably be expected to take H

- A** appropriate action against the concerned employee. Therefore, a declaration that the transfer order is illegal and void cannot be granted. Further, the declaration that she continues to be in service of the appelland company amounts to enforcing a contract of personal service which is barred under the law. Regarding the permanent injunction sought to restrain the respondent from holding an enquiry against her, if the management feels that the respondent is not complying with its directions it has a right to decide to hold an enquiry against her, the management cannot be restrained from exercising its discretion in this behalf. Grant of these would indirectly mean that the Court is assisting the respondent in continuing with her employment with the appelland company, which is enforcing a contract of personal service. Thus, none of the reliefs sought in the plaint can be granted to the respondent under the law. Further, regarding the question as to whether such suit which is bound to be dismissed for want of jurisdiction of a Court, such suit should be thrown at the threshold, reliefs prayed for should not be granted and such a suit should not be tried at all. Thus, High Court erred in directing the suit to be tried on merits. [272-C-H]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5348 of 2002.

From the Judgment and Order dated 28.8.2001 of the Karnataka High Court in R.S.A. No. 687 of 2000.

Rajeev Dhavan, S.N. Bhat, D.P. Chaturvedi and Rishi Raj Baruah for the Appellant.

Ms. Kiran Suri for the Respondent.

- F** The Judgment of the Court was delivered by

ARUN KUMAR, J. The respondent filed a suit for declaration and permanent injunction against the appelland with the following prayers :

- G** “(a) declaring that the transfer order of the plaintiff dated 11.1.86 issued by the secretary of the first defendant company from its Head Office to the Shankar Rice Mill Godown, Shimoga belonging to M/s. Bharath Founders is illegal void and inoperative and further declare that the plaintiff is to be in the service of the first defendant company and she is entitled to all the emoluments including her salary.

- H** (b) for permanent injunction restraining the defendants from

holding any enquiry against the plaintiff on the ground that she has not complied with the order of transfer dated 11.1.86 and she is guilty of insubordination etc. as stated in the articles of charges dated 17-1-87 and enquiry indicated in the notice dated 2-2-87.”

The appellant while denying the averments contained in the plaint took an objection that the Civil Court had no jurisdiction to try the suit. The trial court framed various issues in the suit. The relevant issue for the present purpose is :

“*Issue No 5* : whether defendant No.1 proves that this Court has no jurisdiction to try the suit.”

The trial court decided the said issue in favour of the defendant and held that the court had no jurisdiction to entertain the suit as it was not maintainable and the plaint was liable to be rejected. The appeal filed by the respondent-plaintiff against the said judgment of the trial court remained unsuccessful. The judgment of the trial court on Issue No.5 was affirmed by the appellate court while dismissing the appeal. The respondent plaintiff filed a regular second appeal against these judgments. The appeal succeeded. The High Court held that the defendant had failed to prove that the suit was not maintainable before the Civil Court. The trial court was directed to dispose of the suit on merits in accordance with law. The defendant has filed the present appeal against the judgment of the High Court.

Briefly the facts are :

That the plaintiff was appointed by the defendant Company in the year 1976 on a monthly salary of Rs. 535 as a trainee accountant. She was promoted as an Officer with a monthly salary of Rs. 1605. On 11th January, 1986, the plaintiff was transferred from the head office of the defendant Company to its sales-office-cum-godown located at Shanker Rice Mill Compound, Shimoga. The said office is within the same city. However, according to the plaintiff the location of the office was not good and no amenities for the staff were available at the said office. The plaintiff did not comply with the said transfer order and continued to be unauthorisedly absent from work. On 17th January, 1987, a charge sheet was issued to the plaintiff to which she did not give any reply. The present suit was filed on 12th February, 1987. According to the defendant the prayers in the suit really amount to enforcement of a contract for personal service, a relief which a civil court cannot grant.

A Therefore the legal question for consideration which arises is :

“Can a contract of service be specifically enforced?”

B The relationship between the parties is based on a contract between two private parties. Admittedly, there is no written contract. If there had been a written contract, it would have contained terms and conditions governing the relationship between the parties. In spite of absence of a written contract governing the relationship between the parties, respondent-plaintiff challenged the transfer order by filing the present suit. She raised several grounds in this behalf including that the transfer was illegal as it was to a different Company. C The transfer was to a lower post which means it is by way of punishment. Further according to the plaintiff the place to which she had been transferred was not suitable to work at. The defendant denied all these allegations in the written statement. Apart from challenge to the transfer order, the plaintiff sought a declaration that she continued to be in service of the defendant and was entitled to all emoluments including salary. Further an injunction was D prayed to restrain the defendant from holding inquiry against the plaintiff. Significantly, no prayer for damages for breach of contract was made in the suit.

E Learned counsel for the appellant argued that the prayers in the suit seek reinstatement of the plaintiff as an employee of the defendant Company which really amounts to specific performance of a contract of personal service which is specifically barred under the provisions of the Specific Relief Act. It is a well settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. This general rule of law is subject to three well F recognised exceptions—(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 of violation of the mandatory provisions of the statute. [Per *Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.*, [1976] 2 SCC 58. G

The present case does not fall in any of the three exceptions. It is neither a case of public employment so as to attract Article 311 of the Constitution of India nor the case is under the Industrial Disputes Act. The

defendant is not a statutory body. There is no statute governing her service conditions. The present is a case of private employment which normally would be governed by the terms of the contract between the parties. Since there is no written contract between the parties, the dispute cannot be resolved with reference to any terms and conditions governing the relationship between the parties. The plaintiff has neither pleaded nor there has been any effort on her part to show that the impugned transfer order was in violation of any term of her employment. In the absence of a term prohibiting transfer of the employee, *prima facie* the transfer order cannot be called in question. The plaintiff has not complied with the transfer order as she never reported for work at the place where she was transferred. As a matter of fact, she also stopped attending the office from where she was transferred. Non-compliance of the transfer order by the plaintiff amounts to refusal to obey the orders passed by superiors for which the employer can reasonably be expected to take appropriate action against the concerned employee. Even though it is a case of private employment, the management proposed to hold an enquiry against the delinquent officer, that is, the plaintiff. In case of such insubordination, termination of service would be a possibility. Such a decision purely rests within the discretion of the management. An injunction against a transfer order or against holding a departmental enquiry in the facts of the present case would clearly amount to imposing an employee on an employer, or to enforcement of a contract of personal service, which is not permissible under the law. An employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two.

Let us now examine the prayers in the suit in the light of averments contained in the plaint. It is stated in Para 6 of the plaint that the Secretary of the Company warned her about her timings and issued a memo about her attendance. He demanded her resignation on 15th December, 1983. She did not resign as per the request. It is further stated in Para 7 that "she was discriminated against in the matter of providing incentives in May, 1985.....She gave a representation to the Directors establishment to consider this aspect of the matter. Secretary in his reply dated 23rd May, 1985 abused her that she was not working properly....." In Para 8, it is stated that the Secretary further issued her a notice stating that she had not worked for two years. Then follows the impugned transfer order dated 11th January, 1986. The plaintiff has further alleged that her representation against the said transfer order was not considered. This was followed by a notice to

A conduct an enquiry against the plaintiff. In the background of such facts, the plaintiff has in the suit made the following prayers :

“(a) Declaring that the impugned transfer order is illegal, void and inoperative.

B (b) The plaintiff continues to be in service of the defendant Company and is entitled all emoluments including salary; and

(c) Permanent injunction restraining the defendant from holding an enquiry against the plaintiff.

C The question arises as to whether in the background of facts already stated can such reliefs be granted to the plaintiff. Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. Further it is to be considered that if the plaintiff does not comply with the transfer order it may ultimately lead to termination of service.

D Therefore, a declaration that the transfer order is illegal and void in fact amounts to imposing the plaintiff on the defendant inspite of the fact that the plaintiff allegedly does not obey order of her superiors in the Management of the defendant Company. Such a relief cannot be granted. Next relief sought in the plaint is for a declaration that she continues to be in service of the defendant Company. Such a declaration again amounts to enforcing a contract

E of personal service which is barred under the law. The third relief sought by the plaintiff is a permanent injunction to restrain the defendant from holding an enquiry against her. If the management feels that the plaintiff is not complying with its directions it has a right to decide to hold an enquiry against her. The management cannot be restrained from exercising its discretion

F in this behalf. Ultimately, this relief if granted would indirectly mean that the court is assisting the plaintiff in continuing with her employment with the defendant Company, which is nothing but enforcing a contract of personal service. Thus, none of the reliefs sought in the plaint can be granted to the plaintiff under the law. The question then arises as to whether such a suit

G should be allowed to continue and go for trial. The answer in our view is clear, that is, such a suit should be thrown at the threshold. Why should a suit which is bound to be dismissed for want of jurisdiction of a court to grant the reliefs prayed for, to be tried at all? Accordingly, we hold that the trial court was absolutely right in rejecting the plaint and the lower appellate court rightly affirmed the decision of the trial court in this behalf. The High Court

H was clearly in error in passing the impugned judgment whereby the suit was

restored and remanded to the trial court for being decided on merits. The judgment of the High Court is hereby set aside and the judgments of the courts below, that is, the trial court and the lower appellate court are restored. The plaint in the suit stands rejected. A

The appeal is allowed. The parties are, however, left to bear their respective costs. B

N.J.

Appeal allowed.