

REVISIONAL CIVIL

Before A. D. Koshal, J.

UNION OF INDIA,—Petitioner.

versus

BURMA NAND,—Respondent.

Civil Revision No. 264 of 1973.

March 28, 1974.

Specific Relief Act (XLVII of 1963)—Section 34, Proviso—Constitution of India—Article 311—Order of removal from service in contravention of Article 311—Suit to have the order declared void—Arrears of pay not claimed—Such declaratory suit simpliciter—Whether barred by the proviso to Section 34—Relief for recovery of arrears of salary—Whether “Further Relief” in terms of the proviso.

Held, that Section 34 of Specific Relief Act, 1963 is not exhaustive of the cases in which a declaration simpliciter can be granted by the Court. Where a suit for declaration is filed to have the order of removal from service declared void being in contravention of Article 311 of Constitution of India, such a suit is in substance to have the true construction of a statute declared and to have an act done in contravention of the Constitution pronounced void. Although the suit even is for a declaration simpliciter without claim to arrears of pay, it falls outside the limits of Section 34 of the Act, the proviso to which will not stand in the way of the relief sought.

Held, that even when a person seeks a declaration simpliciter that he is entitled to any character or to any right as to any property within the meaning of Section 34 of the Act and a relief flowing from the declaration is open to him but has not been prayed for, the proviso would not be attracted to the case if the relief of declaration is itself a real and effective relief. The recovery of arrears of salary is not a “further relief” in terms of proviso to Section 34 of the Act inasmuch as the declaration to the order of removal from service being void, is all by itself a fully effective relief which is not rendered meaningless by the absence of a prayer for recovery of arrears of salary.

Petition under Section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India for revision of the order of Shri I. P. Anand, Sub-Judge, 1st Class, Ambala City, dated the 2nd November, 1972, deciding the issue against the defendant and in favour of the plaintiff.

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Rattan Lal Garg, Advocate, for the petitioner.

B. S. Khoji, Advocate, for the respondent.

JUDGMENT

KOSHAL, J.—This petition under section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India seeks the revision of an order dated 2nd of November, 1972, passed by Shri I. P. Anand, Subordinate Judge 1st Class, Ambala City, deciding a preliminary issue arising in a suit for declaration.

(2) Certain facts are not disputed and may be stated here. Plaintiff Burma Nand, who is the respondent before me, joined the Jagadhri Railway Workshop as a Skilled Fitter on the 2nd of January, 1953. He continued to work in that capacity till 19th of August, 1968, when he was charged with serious misconduct. Ultimately, the Works Manager, Jagadhri Railway Workshop, removed him from service through an office memorandum, dated the 24th of February, 1969. He filed an appeal, but the same was rejected by the Appellate Authority on the 31st of July, 1969.

(3) In his suit the plaintiff has challenged the order of his removal from service as being violative of the provisions of Article 311 of the Constitution of India and of the statutory rules regulating the conditions of his service. The prayer made in the suit, which was instituted on 10th of March, 1972, is that "a declaration to the effect that the plaintiff shall be deemed to be still in service as Skilled Fitter in Railway Workshop, Jagadhri, as order of his removal, dated 24th February, 1969 passed by the Works Manager, Jagadhri Workshop, and his rejection of appeal by the Appellate Authority, dated 31st July, 1969 are illegal, void, inoperative and are not binding on plaintiff or any other relief this learned court deems fit be accorded."

The sole defendant in the suit is the Union of India on whose behalf the removal of the plaintiff is sought to be justified. One of the preliminary objections taken in the written statement reads :

"That the suit is barred by Order 2 C.P.C. and Specific Relief Act inasmuch as the plaintiff would have become entitled to arrears of pay also simultaneous with the grant of relief of declaration and injunction and suit for mere

declaration without consequential relief is not maintainable.”

The objection is not happily worded but it is common ground between the parties that it pleads rule 2 of Order II of the Code of Civil Procedure and section 34 of the Specific Relief Act, 1963 (hereinafter referred to as the 1963 Act) as a bar to the suit by reason of the failure of the plaintiff to claim arrears of pay from the date of his removal from service up to the date of the institution of the suit. On the basis of this objection the learned Subordinate Judge framed the following preliminary issue :

“Whether the suit is barred by section 34 of the Specific Relief Act and Order 2, rule 2, C.P.C. ?”

Holding that the suit was maintainable in its present form, the learned Subordinate Judge decided the issue in favour of the plaintiff through the impugned order.

(4) Mr. R. L. Garg, learned counsel for the petitioner, has frankly and very rightly conceded before me that no question of the application of rule 2 of Order II of the Code of Civil Procedure arises in the present case because that rule merely lays down that if a plaintiff does not seek the entire relief to which he is entitled in respect of a cause of action on which he sues, he shall not later on sue for the relinquished relief without the leave of the Court. Now, if the relief for arrears of pay flows from the same cause of action which is the basis of the claim for the declaratory relief, the provisions of rule 2 shall come into operation *if and when the plaintiff subsequently brings a suit for recovery of the said arrears*, a relief which he has not now claimed. So long as the plaintiff does not bring such a second suit the applicability of rule 2 is not attracted and it cannot, therefore, be said to bar the present suit in any manner.

(5) The relevant part of section 34 of the 1963 Act on which the solitary contention raised on behalf of the petitioner is based, is reproduced below for facility of reference :—

“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

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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.

* * * * *

Mr. Garg has vehemently contended before me that if and as soon as the declaration prayed for is granted to the plaintiff, he becomes entitled to salary which is, therefore, a 'further relief' within the meaning of the proviso to section 34 and that the result is that the suit for declaration is not maintainable by reason of what the proviso states.

In reply, learned counsel for the plaintiff-respondent has put forward two points :

- (1) Section 34 is not exhaustive of the cases in which a declaration simpliciter can be granted by the Court; so that if a suit is not of the type contemplated by section 34, a mere declaration may be granted therein by the Court even though a 'further relief' can be claimed by the plaintiff. The suit in the present case does not fall within the ambit of section 34.
- (2) Even if the present suit is one falling within the ambit of section 34, it is not barred by the proviso to the section inasmuch as 'further relief' means a relief which is inherent in the declaration claimed, being a relief without which the declaratory relief would be ineffective, infructuous and unworkable. The declaration sought by the plaintiff is a self-sufficient relief which would entitle him to remain in service and would be fully effective even in the absence of a prayer for recovery of arrears of salary, which, therefore, cannot be considered a 'further relief' within the meaning of the proviso.

After hearing learned counsel for the parties at length, I am of the opinion that both the points put forward by the learned counsel for the respondent are well-founded and that the contention raised on behalf of the petitioner must be turned down.

(6) The leading case on the first point put forward by Mr. Khoji is *Fischer v. Secretary of State for India in Council* (1), in which Lord Macnaghten said of section 42 of the Specific Relief Act (Act I of 1877, and hereinafter called the 1877 Act), the provisions of which are identical with those of section 34 of the 1963 Act :

“Now, in the first place it is at least open to doubt whether the present suit is within the purview of section 42 of the Specific Relief Act. There can be no doubt as to the origin and purpose of that section. It was intended to introduce the provisions of section 50 of the chancery Procedure Act of 1852 (15 and 16 Vict. c. 86) as interpreted by judicial decision. Before the Act of 1852 it was not the practice of the Court in ordinary suits to make a declaration of right except as introductory to relief which it proceeded to administer. But the present suit is one to which no objection could have been taken before the Act of 1852. It is in substance a suit to have the true construction of a statute declared, and to have an act done in contravention of the statute rightly understood pronounced void and of no effect. That is not the sort of declaratory decree which the framers of the Act had in their mind.”

The next case in point is *Partap Singh v. Bhabute Singh* (2). In that case the suit of the plaintiff was for a declaration that a compromise of certain pre-emption suits made on their behalf when they were minors and decrees passed thereunder were not binding on them, having been obtained by fraud and in proceedings in which they were practically unrepresented. Before the Judicial Committee it was contended by the contesting defendant that the suit having been filed for the purpose of obtaining a declaratory decree only was bad in form inasmuch as it did not pray that the decree should be set aside; but that, assuming that it was rightly framed in asking only for a declaratory decree, the Court had a discretion as to the granting or refusing such a declaration. The Judicial Committee observed that section 42 of the 1877 Act did not apply to the case and that it was not a question of exercising a discretion under that section. They gave to the plaintiffs a decree setting aside the decrees complained of and declaring that the

(1) (1899) 26 I.A. 16 (P.C.)

(2) (1913) 40 I.A. 182 (P.C.).

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compromise and the decrees complained of were not binding upon the appellants. That case also, therefore, is an authority for the proposition that section 34 of the 1963 Act (which as already pointed out, corresponds to section 42 of the 1877 Act) is not exhaustive of the cases in which a declaration may be granted to a plaintiff. This proposition was accepted as correct in *The Andhra University v. Korada Durga Lakshmi Manoharam*, (3), by Raghava Rao, J., who was dealing with a suit for declaration of breach of contract lying in the wrongful dismissal of the plaintiff from service under the Andhra University, a corporate body. One of the contentions raised on behalf of the defendant University was that the case attracted the provisions of section 42 of the 1877 Act and was hit by its proviso so that it was incumbent on the plaintiff to sue for damages, however, nominal, and that even apart from that section and the proviso to it, a suit for bare declaration of the type in question was unknown to law. In holding that the suit fell outside the ambit of the 1877 Act, the learned Judge observed :

“The section contemplates only a suit for judicial declaration of the legal character or status of a party or of his right as to any property, and this suit is not of that kind. As Mr. Narasaraju rightly argues, the section is not, according to well-settled authority of this Court, exhaustive of all possible declaratory suits ; but the question still remains whether the present one is maintainable otherwise than with reference to the section. This leads me to a consideration of the second branch of the contention.”

After reviewing numerous decided cases the learned Judge added :—

“The position, therefore, is that there has been no case cited to me which holds that a suit for a declaration of breach of contract lying in the wrongful dismissal of the plaintiff from the defendant’s service uncoupled with a claim of damages for such breach but conceived solely with a view to the vindication of the plaintiff’s character which stands tarnished by such wrongful dismissal is unmaintainable.”

Partap Singh v. Bhabute Singh (2) and the above extracted observations by Lord Macnaghten in *Fischer v. Secretary of State*

(3) A.I.R. 1951 Mad. 870.

for India (1) were cited with approval in *Vemareaddi Ramaraghava Reddy and others v. Konduru Seshu Reddy and others* (4) in which the proposition referred to above was reiterated in categorical terms. In the case before their Lordships the declaration sought was that part of a decree passed on a compromise under which certain temple properties were declared to be the private properties of the defendants who were managing the temple as its trustees was not binding on the deity. The suit had been brought by a worshipper. It was argued on behalf of the defendants that the plaintiff was not suing as a person entitled to any legal character or to a right as to any property but was suing for the benefit of the deity so that the suit was barred by the provisions of section 42 of the 1877 Act. After citing the said observations of Lord Macnaghten and referring to *Partab Singh v. Bhabute Singh*, (2) their Lordships held :

“It appears to us that a decree of the character which has been sought by the plaintiff in this case is not one as to which the additional powers conferred by the Act of 1852 were required by the Court of Chancery. The injury complained of was that the Court has, by recording the compromise in O. P. No. 3 of 1950, deprived the deity of its present title to certain trust properties. The relief which the plaintiff seeks is for a declaration that the compromise decree was null and void and if such a declaration is granted the deity will be restored to its present rights in the trust properties. A declaration of this character, namely, that the compromise decree is not binding upon the deity is in itself a substantial relief and has immediate coercive effect. A declaration of this kind was the subject-matter of appeal in *Fischer v. Secretary of State for India in Council* (1) and falls outside the purview of section 42 of the Specific Relief Act and will be governed by the general provisions of the Civil Procedure Code like section 9 or 0.7, R. 7.”

The ratio of *Vemareddi's case* (4) was followed in a Bench decision of the Allahabad High Court reported as *The Western India Match Co. Ltd. v. Rameshwar Prasad* (5) in which the question

(4) A.I.R. 1967 S.C. 436.

(5) 1971 Labour and Industrial Cases 1447.

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involved was the same as has arisen before me inasmuch as the plaintiff therein had sought a declaration that the order passed by the defendant Limited Company dismissing him from service was void, illegal and inoperative inasmuch as it was in breach of the relevant Standing Order. On behalf of the defendant it was contended that the relief claimed in the suit could not be granted *inter alia* in view of the provisions of section 42 of the 1877 Act. In repelling the contention B. D. Gupta and Hari Swarup, JJ., took note of the above extracted observations of Lord Macnaghten and of the approval thereof by their Lordships of the Supreme Court in *Vemareddi's case* (4) and then observed :

“The present case is also one in which the plaintiff is seeking that the order passed by the defendant in breach of the Standing Order be pronounced void and of no effect. Hence the provisions of section 42 will not be attracted to this case and the relief claimed cannot be denied to the plaintiff on the basis of section 42 of the Specific Relief Act.”

7. The suit with which I am concerned is in substance a suit to have an act done in contravention of Article 311 of the Constitution pronounced void and of no effect. The observations of Lord Macnaghten in *Fischer v. Secretary of State for India*, (1) therefore fully apply to it. It is also a suit in which the relief of declaration sought by the plaintiff is in itself a substantial relief having immediate operation. The ratio of the decision of their Lordships of the Supreme Court in *Vemareddi's case*, (4) is, therefore, clearly attracted to it. The same is true of what has been laid down in *The Andhra University v. Korade Durga Lakshmi Manoharam* (3) and *The Western India Match Co. Ltd. v. Rameshwar Prasad* (5). I am thus of the opinion that the instant case falls outside the limits of section 34 of the 1963 Act, the proviso to which would not stand in the way of the relief sought being granted by the Court.

8. I shall now examine the decisions which have been cited by Mr. Khoji, learned counsel for the respondent, in support of the second point put forward by him. In *The State of Delhi v. The Union of India* (6), decided by Falshaw C.J., and Tek Chand, J., the plaintiff was employed as an Inspector in the Delhi Armed

(6) L.P.A. No. 90-D of 1961 decided on 8th March, 1963.

Police. His appointment was temporary and on the 15th of October, 1952, he was discharged by the Inspector-General of Police as his services were no longer required. In May, 1956, he instituted a suit for a declaration that his dismissal was void as being violative of the provisions of Article 311 of the Constitution of India and that he was still in service as an Inspector of Police. In holding that the suit was not hit by the proviso to section 42 of the 1877 Act, Falshaw, C.J., who spoke for the Court, observed :

“In my opinion if a Government servant sues for a declaration that the termination of his services suffers from such grave defects as to be of no effect, and consequently that he is to be treated as having been in service throughout, it is not necessary for him to sue for pay since if he succeeds with his declaration the other consequences automatically follow,”

Although Falshaw, C.J., did in terms say so, what he appears to have meant is that even when a person seeks a declaration simpliciter that he is entitled to any character or to any right as to any property within the meaning of section 42 of the 1877 Act and a relief flowing from the declaration is open to him but has not been prayed for, the proviso would not be attracted to the case if the relief of declaration is itself a real and effective relief.

Another case which is directly in point is *Lt. Col. G. S. Dutta v. Union of India* (7). In that case the plaintiff who had been retired from service sought a declaration that the date of his retirement was the 16th of July, 1954, instead of the 7th of June, 1953, and that he was entitled to increase in his pension accordingly. He prayed for an injunction against the Union of India. A contention was raised that the proviso to section 42 of the 1877 Act was a bar to the suit because the plaintiff had not asked for the arrears of his pension due up to the date of the suit. Considering the proviso, Jankinath Bhat, J., observed :

“The emphasis is on the words ‘further relief’. In my opinion further relief would mean a relief which is inherent in the original declaration claimed, a relief without which

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the declaratory relief claimed would be ineffective, infructuous and unworkable. A typical case of the application of this proviso is where a person claims a title to some property but is out of its possession, a mere declaration of title would make the decree meaningless, infructuous and incapable of yielding any fruitful results, because the effective decree that can be passed is with respect to possession of the property. If the possession is allowed to remain with the adverse party, and a mere declaration is issued in favour of the plaintiff the decree would be meaningless. That is the purport of this proviso and the principle underlying it."

Applying this interpretation of the proviso to the case before him, the learned Judge held :

"The present case can very well be understood and interpreted in the following manner. If the plaintiff gets a declaration that he is entitled to an enhanced rate of pension this decree will enure for the life time of the plaintiff, because he will be entitled to the enhanced pension not only upto the date of the institution of the suit, but right upto the end of his life. If he omits to claim a certain sum which he could have claimed upto the institution of the suit, that would not make the declaratory decree meaningless and infructuous, because the decree will envisage a recurring cause of action to him for an enhanced rate of pension for future also after the date of the decree. I think the plaintiff's case is not hit by the proviso to section 42 of the Specific Relief Act, but a subsequent suit by him after retirement for arrears of the enhanced rate for the period upto the institution of the suit would be barred under Order 2, rule 2 of the Code of Civil Procedure."

With the utmost respect I am in Full agreement with the interpretation placed on section 42 of 1877 Act (corresponding to section 34 of the 1963 Act) by Janakinath Bhat, J., in *Lt. Col. Dutta's case* (7) and would say on the basis thereof that the relief for recovery of arrears of salary is not a 'further relief' within the terms of the proviso to section 34 of the 1963 Act inasmuch as the declaration

sought by the plaintiff is, all by itself, a fully effective relief which is not rendered meaningless by the absence of a prayer for recovery of arrears of salary.

9. According to *Mr. Garg Lt. Col. Dutta's case* (7) as also *The State of Delhi v. The Union of India* (6) do not lay down correct law. In this connection he relies on *Jugraj Singh and another v. Jaswant Singh and others* (8) in which the facts were these. One Bhag Singh mortgaged certain lands to Ran Jang Singh in the year 1923. On the strength of a power of attorney executed by a son of Bhag Singh, S. Kartar Singh Chawla, an Advocate, executed a sale deed in respect of the lands on the 30th of May, 1963, in favour of Jaswant Singh and others. The sale deed was later on registered whereafter the vendees applied under section 9 of the Punjab Redemption of Mortgages Act, 1913 (hereinafter referred to as the Punjab Act) for redemption of the mortgage. They deposited the entire amount due under the mortgage in the Court of the Collector who on the 6th of August, 1963, ordered the redemption of the mortgage. The sons of the original mortgagees thereupon filed a suit under section 12 of the Punjab Act on the 7th of August, 1963, and the relief claimed by them in the plaint was stated thus in paragraph 10 thereof :

"The plaintiffs pray that a decree for declaration to the effect that the defendants are neither the owners of the above mentioned land nor they have any right to get the aforesaid land redeemed as per the orders of the S.D.O. Muktsar exercising the powers of Collector, dated the 6th August, 1963, which is illegal and against law and the plaintiffs are not bound by it and neither the defendants are entitled to take possession of the aforesaid land in accordance with that order, be passed in favour of the plaintiffs against the defendants with costs.

Holding that the suit was hit by section 42 of the 1877 Act, Hidayatullah, C.J., who delivered the judgment of the Court observed :—

"We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither

(8) A.I.R. 1971 S.C. 761.

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asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order."

This case is clearly distinguishable from the present one. Therein a valid order by which the plaintiffs were bound had come into existence before they brought their suit. As remarked by Hidayatullah, C.J., a prayer for the setting aside of the order was a must for them. If the order was allowed to stand, the grant of the declaration prayed for would be an illusory and, in fact, a meaningless relief which would be ineffective unless the order was set aside. The relief of cancellation of the order was, therefore, a 'further relief' within the meaning of the proviso to section 42 of the 1877 Act. In this view of the matter it would appear that *Jugraj Singh's case* (8) lays down nothing contrary to the dicta in *Lt. Col. G. S. Dutta's case* (7) and *The State of Delhi v. The Union of India* (6) and is, therefore, no assistance to the case of the petitioner.

10. For the reasons stated, the petition fails and is dismissed but with no order as to costs.

K. S. K.

APPELLATE CIVIL

Before D. K. Mahajan and P. S. Pattar, JJ.

PATIALA AVIATION CLUB,—Appellant.

versus

THE PRESIDING OFFICER, LABOUR COURT AND OTHERS,—

Respondents.

L.P.A. 612 of 1973.

March 28, 1974.

*Societies Registration Act (XXI of 1860)—Section 6—Appeal
filed by the Manager of a registered society challenging a judgment*