

Before Jitendra Chauhan, J.

THE ADMINISTRATOR, LUDHIANA, IMPROVEMENT TRUST, LUDHIANA,—Appellant

versus

DEV RAJ SHARMA AND OTHERS,—Respondents

R.S.A. No. 3258 of 1985

7th April, 2011

Code of Civil Procedure, 1908—Reinstatement—vide resolution respondent engaged as legal adviser—Respondent removed from services—Resolution not approved—Respondent again engaged continuing to work—Advertisement published for appointment of two part time Legal advisers—Respondent filed suit for injunction restraining Chairman of Trust from appointing any other legal adviser—Suit decreed against the Trust—Appeal filed—Appellate court dismissed the appeal holding the respondent to continue to work until his contract revoked or cancelled by the Trust—Appeal partly allowed.

Held, that no relief of perpetual injunction could be granted beyond the period of three years from the date of his appointment and the period already elapsed. So, the relief of perpetual injunction restraining the Improvement Trust from appointing anybody else as legal adviser by the Improvement Trust except before legal revocation and cancellation of the contract becomes redundant after the expiry of three years from the date of appointment.

(Para 14)

Further held, that the relief i.e. the payment of salary granted is restricted upto three years in view of his appointment letter Ex. P4 from the date of his joining as legal adviser, minus the amount already paid. The arrears of salary will be paid to the respondent within two months from the date of receipt of the certified copy of this judgment failing which the appellant shall have to pay interest @ 6% p.a.

(Para 17)

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Sukhbir Singh Mattewal, Advocate *for the appellant.*

Jasbir Singh Dhaliwal, Advocate *for the respondent No. 1.*

None for other respondents

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(1) This regular second appeal has been filed against the judgment and decree dated 6th April, 1985 passed by learned first Appellate Court, whereby the judgment and decree dated 27th December, 1981 passed by the learned trial Court decreeing the suit for perpetual injunction were affirmed.

(2) The facts in brief are that Dev Raj Sharma, the respondent was engaged as legal adviser by the Ludhiana Improvement Trust, Ludhiana (for short "Trust") on a fixed remuneration of Rs. 522.50 from April, 1978 by passing a resolution. On 19th October, 1978 he was removed from the services but the resolution was not approved by the competent authority. The resolution was cancelled by the competent authority. He was again engaged to work as legal adviser and he continued working till 19th October, 1978. The Deputy Commissioner, Ludhiana sent a letter to the Chairman, Improvement Trust, Ludhiana cancelling the resolution. On 7th October, 1979, resolution No. 28 was passed by the Board of Trustees to the effect that Dev Raj Sharma and M.S. Johar, both the part time legal advisers should continue. The decision of the Trust was not conveyed to the plaintiff-respondent. An advertisement was published by the Chairman in the newspaper for the appointment of two part time legal advisers but as the plaintiff-respondent was continuing, nobody could be appointment. It was in this back drop of facts the suit was filed for perpetual injunction by Dev Raj Sharma against the Chairman of the Trust restraining him from appointing any other legal adviser. The trial court decided the issues in favour of the plaintiff-respondent and decreed the suit as prayed for.

(3) Aggrieved against which, the Trust filed an appeal before the Ld. 1st Appellate Court, which was dismissed. It was held by the Ld. 1st Appellate Court that Dev Raj Sharma continued to work as legal adviser with the Trust and even at the time, when the suit was filed, the period of three years as provided by Ex. P-4 had not expired and he was entitled to continue as legal adviser until his contract was revoked or cancelled by

the Trust. The suit was decided on 23rd December, 1981 and till then, the Trust has not taken any step to terminate his appointment. It was further held that the appointment of plaintiff-respondent would be governed by the terms of resolution Ex. P21 by which the emoluments of the plaintiff-respondent were increased.

(4) The Improvement Trust preferred this appeal which was admitted on 29th January, 1986.

(5) Learned counsel for the appellant submits that the suit for injunction in respect of personal services is not maintainable: mere appointment as legal advisor does not give any right to the plaintiffs to hold that position and that no injunction in the nature of mandatory or prohibitory in respect of the personal services could be granted. Learned counsel further argued that at best the plaintiff is entitled for damages in case of breach of agreement.

(6) Learned counsel for the respondent argued that it is concurrent finding of facts arrived at by both the courts below.

(7) I have heard the learned counsel for the parties and perused the record with their able assistance.

(8) In **Executive Committee of U.P. State Warehousing Corpn. Lucknow versus Chandra Kiran Tyagi**, (1) their Lordships of the Apex Court have held as under :--

“Normally a contract of personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employees is a claim for damages for wrongful dismissal or for breach of contract. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant. The exceptions

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to the normal rule that not declaration to enforce a contract of personal service will be granted as are (1) a public servant who has been dismissed from service in contravention of Article 311: (2) reinstatement of a dismissed worker under Industrial Law or by Labour or Industrial Tribunal: (3) a statutory body when it has acted in breach of a mandatory obligation imposed by statute.”

(9) I have heard the learned counsel for the parties and perused the record.

(10) The only point for determination in this case is “whether the relief can not be granted beyond the maximum period of contract ?”

(11) The admitted facts are that on 20th April, 1978, the plaintiff-respondent was appointed as legal adviser,—*vide* Ex. P4 for one year which period was renewable for a maximum period of three years after completion of the first year. On 19th October, 1978, resolution Ex. P1 was passed terminating the services, which was later on suspended on 23rd January, 1979,—*vide* Ex. P2. On 7th October, 1979,—*vide* resolution No. 18 Ex. P21, respondent was entrusted on job and to continue as legal adviser. The relevant extract from Resolution No. 18 Ex.21 is reproduced as under :—

“Resolution No. 18

xx	xx	xx	xx	xx
xx	xx	xx	xx	xx

Sh. Dev Raj Sharma who is expected to be reinstated be entrusted to do the job in cooperation with Mr. Johar. The fee to both the lawyers be paid as Rs. 550 per month. Arrears of salary be not with held.”

(12) The services of the respondent were never terminated thereafter. On the suspension of resolution dated 19th October, 1978, the plaintiff-respondent is deemed to be continued as legal adviser, which fact wa confirmed,—*vide* resolution dated 7th October, 1979 Ex. P21.

(13) The terms and conditions of Ex. P4 shows that initially the appointment was for a period of one year in the first instance and was to be renewed for a maximum period of three years at a time after the completion of the first year, if the work and conduct was found to be satisfactory. As per Ex. P4, the salary was fixed as Rs. 550 per month. Admittedly there is no evidence on record to show that the plaintiff was ever served with any show cause notice to the effect that his work and conduct was not satisfactory. Neither there is any pleading in the written statement to this effect. Once the plaintiff has completed one year with satisfactory work and conduct, then he had a right to continue up to three years.

(14) The learned counsel for the plaintiff-respondent has fairly conceded that the plaintiff could only claim, at best, the salary of the contractual period at the agreed rate; as provided in Ex. P4 and Ex. P21. Though, specifically no relief for recovery of salary for the contractual period has been prayed, yet this court is competent to grant the relief in the facts and circumstances of the case. No relief of perpetual injunction could be granted beyond the period of three years from the date of his appointment and the period already elapsed. So, the relief of perpetual injunction restraining the Improvement Trust-defendant from appointing anybody else as legal adviser by the Improvement Trust except before legal revocation and cancellation of the contract becomes redundant after the expiry of three years from the date of appointment.

(15) Thus there is no scope to interfere in the findings of fact recorded by both the courts below and the same are accordingly affirmed.

(16) No question of law arises for determination of this Court.

(17) However, it is clarified/ordered that the relief i.e. the payment of salary granted is restricted upto three years in view of his appointment letter Ex. P4 from the date of his joining as legal adviser, minus the amount already paid. The arrears of salary will be paid to the respondent within two months from the date of receipt of the certified copy of this judgment failing which the appellant shall have to pay interest @ 6% p.a.

(18) The judgment and decree passed by the 1d. Court below is modified to the extent indicated above. The appeal is partly allowed.