1958

September 3.

Dr. S. B. DUTT

v.

UNIVERSITY OF DELHI

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Arbitration — Award — Direction for enforcement of contract of personal service—Validity—Such direction, if an error on the face of the award—Delhi University Act, 1922 (No. VIII of 1922), s. 45.

The appellant, a professor in the respondent University, was dismissed from service by the respondent. He thereupon referred the dispute as to his dismissal and certain other disputes to arbitration under the provisions of s. 45 of the Delhi University Act. An award was made on the reference which among other things decided that the appellant's "dismissal was *ultra vires*, *mala fide*, and has no effect on his status. He still continues to be a professor of the University". On proceedings to obtain a judgment on the award:

Held, that the award which purported to enforce a contract of personal service disclosed an error on the face of it and must be set aside.

High Commissioner for India v. *I. M. Lall*, (1948) L. R. 75 I. A. 225 and *Ram Kissendas Dhanuka* v. *Satya Charan Law*, (1949) L. R. 77 I. A. 128, distinguished.

An award may disclose an error on its face though the reason for the erroneous decision was not set out in it.

Champsey Bhara & Co. v. *Jivraj Balloo Spinning and Weaving Co. Ltd.*, (1923) L.R. 50 I.A. 324, explained.

Held, further, that an award made under s. 45 of the Delhi University Act to which the section itself makes the provisions of the Arbitration Act, 1940, applicable, is not the same thing as an award under the Industrial Disputes Act, 1947, and there can be no analogy between the two and the words 'any dispute' occurring in that section cannot include a dispute relating to reinstatement or authorise the passing of any such direction by the arbitrator.

Western India Automobile Association v. *Industrial Tribunal, Bombay*, [1949] F. C. R. 321, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 229 of 1956.

Appeal from the judgment and order dated January 15, 1955, of the Punjab High Court in F. A. O. No. 119-D of 1954, arising out of the judgment and decree

dated May 27, 1954, of the Court of Sub-Judge Class III, Delhi, in Suit No. 206 of 1953.

N. C. Chatterjee, A. N. Sinha and *P. K. Mukherjee*, for the appellant.

M. C. Setalvad, Attorney-General for India, A. B. Rohatgi and *B. P. Maheshwari*, for the respondent.

1958. September 3. The Judgment of the Court was delivered by

Sarkar J.

SARKAR J.—This appeal arises out of a proceeding for filing an award in Court and obtaining a judgment thereon.

The award was made in respect of disputes between the appellant, a professor of the respondent, the University of Delhi, and the respondent. The dispute originally started many years ago and with the passage of time, increased in volume. A narrative of the disputes is necessary for the proper appreciation of the questions arising in this appeal and this we now proceed to give.

On May 10, 1944, the appellant was appointed Professor of Chemistry by the respondent. In August 1948 the Government of India appears to have sanctioned a scheme called the Selection Grade for a higher grade of pay for certain professors. The appellant claimed to be entitled to the benefit of this scheme but it was not given to him by the respondent. This was the first dispute between the parties. In March, 1949, another professor, Dr. Seshadri, was appointed by the respondent the Head of its Department of Chemistry. The appellant contended that he was the Head of the Department and had been wrongfully superseded by the appointment of Dr. Seshadri as the Head. This gave rise to another dispute. The appellant's case is that he tried to get this dispute solved by arbitration under the provisions of the Delhi University Act, 1922, but was unable to do so owing to the obstructive attitude of the University authorities, and was, therefore, on October 18, 1949, forced to file a suit for a declaration that his removal from his position of the Head of the Department of Chemistry was illegal. The respondent in its turn also had certain

1958

Dr. S. B. Dutt
v.
University of Delhi

Sarkar J.

complaints against the appellant for misconduct of more or less serious character into the details of which it is not necessary to enter. It appears to have been agreed between the parties in October 1950 that the mutual grievances would be investigated by Sir S. Vardachariar and Bakshi Sir Tek Chand and their decision was to be accepted as final and binding. In view of this agreement the appellant withdrew his aforesaid suit on November 3, 1950. The investigation was thereafter held and a report submitted on March 1, 1951, which appears to have gone substantially against the appellant. The appellant contended that the investigation had not been fairly held and that the report was for this and other reasons defective and not binding on him. He actually made an application on March 26, 1951, to the Sub-Judge, Delhi, under s. 33 of the Arbitration Act, 1940, for a declaration that there was no arbitration agreement and hence the two referees had no jurisdiction to act or to make an award and, in the alternative, if there was an award, for an order setting it aside. While this application was pending, the Executive Council of the respondent passed a resolution on April 26, 1951, terminating the appellant's service as a professor of the University in view of the findings against him in the report of the investigators. On February 11, 1952, the Sub-Judge, Delhi, dismissed the application under s. 33 on the ground that the agreement as to the investigation by Sir S. Vardachariar and Bakshi Sir Tek Chand of the mutual grievances was not a submission to arbitration and, therefore, no application under s. 33 of the Arbitration Act lay. An appeal to the High Court was dismissed on April 22, 1953, for the same reason.

What we have stated so far gives the history of the disputes between the parties. We now proceed to the events with which we are immediately concerned in this appeal.

On April 28, 1953, the appellant wrote a letter to the respondent claiming, under the provisions of s. 45 of the Delhi University Act, an arbitration with regard to various disputes mentioned in it. That section is in these terms:

1958

Dr. S. B. Dutt
v.
University of Delhi

Sarkar J.

"*Section 45.*

Any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned, and an umpire appointed by the Chancellor. The decision of the Tribunal shall be final and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of this section, within the meaning of the Arbitration Act, 1940, and all the provisions of that Act, with the exception of section 2 thereof, shall apply accordingly."

By that letter the appellant appointed Professor M. N. Saha, the celebrated scientist, now deceased, an arbitrator and called upon the respondent to nominate another arbitrator. The disputes raised in this letter were, (a) that the appellant had been wrongfully deprived of the selection grade; (b) that by the appointment of Dr. Seshadri, as the Head of the Department of Chemistry, the appellant had been wrongfully superseded; (c) that his dismissal was wrongful. A copy of this letter was sent to Professor Saha. On May 2, 1953, the appellant again wrote to the respondent calling attention to the fact that he had already appointed Professor Saha an arbitrator and requiring it to appoint an arbitrator within fourteen days as provided under the law. On May 7, 1953, the respondent wrote to the appellant that his letter of April 28, 1953, had been considered by its Executive Council on April 30, 1953, and that the Council, for the reasons mentioned, to which it is not necessary to refer, did not propose to take any action in the matter. Thereafter, on May 18, 1953, the appellant addressed a further letter to the respondent in which he stated, "as the said University had failed for 15 clear days to appoint after the service of my said notice", meaning his notice of May 2, 1953, "on the University, please take notice that I hereby

1958

Dr. S. B. Dutt v. University of Delhi

Sarkar J.

appoint Professor M. N. Saha arbitrator appointed by me to act as the sole arbitrator and give his award." The appellant also wrote in similar terms to Professor Saha asking him to proceed with the reference as he had become the sole arbitrator. On May 24, 1953, Professor Saha wrote to the respondent stating that as he had been appointed the sole arbitrator by the appellant, he fixed June 15, 1953, for the hearing of the case. On June 12, 1953, the respondent wrote to Professor Saha intimating that it had been advised that the appellant had no right to call for an arbitration and that the respondent did not recognise him (Professor Saha) as an arbitrator and also that he had no jurisdiction to act as one. Notwithstanding this Professor Saha started the arbitration proceedings on June 16, 1953. The respondent appeared by a lawyer before Professor Saha and repeated its objection to his jurisdiction to act as an arbitrator. Professor Saha overruled the respondent's objection and held that he had jurisdiction to act as the sole arbitrator whereupon the representatives of the respondent retired from the proceedings which were then continued in their absence.

Professor Saha made an award which is dated June 17, 1953. The material portion of the award is in these terms:

"The points requiring determination by me are as follows:—

1. Whether the Selection Grade of Professors was rightly withheld in the case of Dr. S. B. Dutt when it was given to all other professors of his standing and seniority.

2. Whether Dr. S. B. Dutt was appointed Professor and Head of the Chemistry Department of the University and was rightly removed from the Headship.

3. Whether the dismissal of Dr. Dutt by a resolution passed by the Executive Council on the 26th April, 1951, was *mala fide* and illegal and therefore wrongful and ineffectual.

4. Whether Dr. Dutt was harassed by the officials of the University and its effect.

After giving the case my careful and earnest attention I find :

(a) The steps for giving the Selection Grade of Professors of the University to Dr. S. B. Dutt were wrongfully and without just cause not taken by the University and he has therefore been wrongfully deprived of the Selection Grade.

(b) The terms of appointment of Dr. Dutt were that he would be also the Head of the Chemistry Department. His removal from Headship was wrongful.

(c) Dr. Dutt was wrongfully dismissed. His dismissal was *ultra vires, mala fide* and has no effect on his status. He still continues to be a professor of the University.

(d) He has been subjected to harassment."

At the request of the appellant, Professor Saha filed the award in the Court of the Sub-Judge, Delhi, on June 24, 1953. The respondent took various objections to it. The Sub-Judge overruled these objections and passed a decree on May 27, 1954, making the award, excepting a small portion thereof with which this appeal is not concerned, a rule of Court. The respondent filed two appeals from this decree, one in the Court of the senior Sub-Judge, Delhi, and the other in the Court of the District Judge, Delhi, as it was in doubt as to which was the proper Court to which the appeal lay. By an order made on November 26, 1954, the High Court withdrew both these appeals to itself for trial, and by its judgment dated January 15, 1955, allowed the appeals and set aside the award on the ground that it disclosed an error on the face of it. The present appeal is against this judgment.

Two points have been raised in this appeal, one by the appellant and the other by the respondent on a matter decided against it which will be referred to later.

The appellant contends that the High Court was wrong in its view that the award disclosed an error on the face of it. The High Court had held that it was not open to the arbitrator "to grant Dr. Dutt a declaration that he was still a professor in the Univer-

1958

Dr. S. B. Dutt v. University of Delhi

Sarkar J.

sity which no Court could or would give him." The High Court felt that this declaration amounted to specific enforcement of a contract of personal service which was forbidden by s. 21 of the Specific Relief Act and therefore disclosed an error on the face of the award.

We are in entire agreement with the view expressed by the High Court. There is no doubt that a contract of personal service cannot be specifically enforced. Section 21, Cl. (b) of the Specific Relief Act, 1877, and the second illustration under this clause given in the section make it so clear that further elaboration of the point is not required. It seems to us that the present award does purport to enforce a contract of personal service when it states that the dismissal of the appellant "has no effect on his status", and "He still continues to be a Professor of the University". When a decree is passed according to the award, which if the award is unexceptionable, has to be done under s. 17 of the Arbitration Act after it has been filed in Court, that decree will direct that the award be carried out and hence direct that the appellant be treated as still in the service of the respondent. It would then enforce a contract of personal service, for the appellant claimed to be a professor under a contract of personal service, and so offend s. 21 (b).

It was said that this might make the award erroneous but that was not enough; before it could be set aside, it had further to be shown that the error appeared on the face of the award. The learned counsel contended that no error appeared on the face of the award as the reasoning for the decision was not stated in it. It was said that this was laid down in the well-known case of *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning and Weaving Co. Ltd.* (1). We were referred to the observations occurring in the judgment at p. 331 to the following effect:

"An error in law on the face of the award means, in their Lordship's view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating

(1) (1923) L.R. 50 I.A. 324.

the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous."

We are unable to agree that the Judicial Committee laid down the proposition that the learned counsel for the appellant ascribes to them. When they referred to the reasons for the judgment, they were contemplating a case where the judgment, that is, the award itself, did not disclose an error but the reasons given for it in an appended paper, did. They did not intend to say that no error can appear on the face of an award unless the reasons for the decision contained in the award were given in it. In our view, all that is necessary for an award to disclose an error on the face of it is that it must contain, either in itself or in some paper intended to be incorporated in it, some legal proposition which on the face of it and without more, can be said to be erroneous. This was the decision of the Judicial Committee in the *Champsey Bhara & Co. case* (1). As the award in this case directs specific enforcement of a contract of personal service, it involves a legal proposition which is clearly erroneous.

Another point raised on behalf of the appellant was that the portion of the award which held that his dismissal had no effect on his status and that he continued to be a professor was merely consequential and hence a surplusage and therefore an error disclosed in it would not vitiate the award. This contention seems to us to be unfounded. The award held that the appellant had been dismissed wrongfully and *mala fide*. Now, it is not consequential to such a finding that the dismissal was of no effect, for a wrongful and *mala fide* dismissal is none the less an effective dismissal though it may give rise to a claim in damages. The award, no doubt, also said that the dismissal of the appellant was *ultra vires* but as will be seen later, it did not thereby hold the act of dismissal to be a nullity and, therefore, of no effect. We are also clear in our mind that the contention about the offending portion of the award being a mere surplusage affords

(1) (1923) L.R. 50 I.A. 324.

1958

Dr. S. B. Dutt v. University of Delhi

Sarkar J.

no assistance to the appellant for it was not said on his behalf that the offending portion was severable from the rest of the award and should be struck out as a mere surplusage. It, therefore, has to remain as a part of the award and so long as it does so, it would disclose an error on the face of the award and make it liable to be set aside as a whole.

It was then contended that a declaration that the appellant continued in his service under the respondent in spite of his dismissal by the latter was a declaration which the law permitted to be made and was not therefore erroneous. It was said that such a declaration had in fact been made by the Judicial Committee in *The High Commissioner for India* v. *I. M. Lall* (1). This contention, in our view, also lacks substance. That was not a case based on a contract of personal service. Indeed the contract of the respondent in that case provided that the service was "to continue during the pleasure of His Majesty, His Heirs and Successors, to be signified under the hand of the Secretary of State for India". The respondent had been dismissed by an order made under the hand of the Secretary of State for India, and as he was liable to be dismissed at the pleasure of the Crown, he could base no complaint against his dismissal on the contract of service and did not, in fact, do so. He founded his suit on the claim that his dismissal by the Crown from the Indian Civil Service of which he was a member, was void and of no effect as certain mandatory provisions of the Government of India Act, 1935, had not been complied with. The Judicial Committee accepted this claim and thereupon made the declaration that the purported dismissal of the respondent was void and inoperative and he remained a member of the Service at the date of the institution of his suit. The declaration did not enforce a contract of personal service but proceeded on the basis that the dismissal could only be effected in terms of the statute and as that had not been done, it was a nullity, from which the result followed that the respondent had continued in service. All that the Judicial Committee did in

(1) (1948) L. R. 75 I. A. 225.

this case was to make a declaration of a statutory invalidity of an act, which is a thing entirely different from enforcing a contract of personal service.

The learned counsel for the appellant also referred us to *Ram Kissendas Dhanuka* v. *Satya Charan Law* (1), in support of his contention that the declaration in the form made in the award was legal. That was a case of a suit by the minority shareholders in a company against its directors for a declaration that an ordinary resolution of the company terminating the appointment of its Managing Agent was void and inoperative inasmuch as under art. 132 of the Articles of Association of the Company the Managing Agents could be removed by an extraordinary resolution only. The High Court had declared the resolution to be void and inoperative. The Judicial Committee maintained that declaration and rejected the argument that "to affirm the continuance in force of the Managing Agent's appointment amounted to specific enforcement of the contract of personal service and was a violation of s. 21(b) of the Specific Relief Act, 1877." It is quite clear to us that this decision has no application to the case in hand. That was not a case in which specific performance of a contract of service was sought. In fact the servant, that is to say, the Managing Agent, was not a party to the action at all. As the Judicial Committee observed: "It (the decree) merely prevents dismissal of the managing agents or termination of their appointment at the instance of a majority in violation of the articles of association of the company which the minority are entitled to have observed. As between the company and the managing agents it certainly has not the effect of enforcing a contract of personal service." It was a case, as the Chief Justice of the Calcutta High Court said in his judgment, in *Ram Kissendas* v. *Satya Charan* (2) at p. 331 "not to enforce a claim to employment with an employer, but a suit to prevent third persons interfering with the Company's employees who are carrying out their contract of service with the company. In other words, it is not a suit to enforce a contract, but a suit to prevent the procurement of a breach of contract." To

(1) (1949) L. R. 77 I. A. 128. (2) (1945) 50 C.W.N. 331.

1958

Dr. S. B. Dutt
v.
University of Delhi

Sarkar J.

such a suit, of course, s. 21 of the Specific Relief Act has no application.

The learned counsel for the appellant also contended that the present case was a case of an *ultra vires* act as *I. M. Lall's* case (1) was and therefore governed by the same considerations. He relied for this purpose on that portion of the award which held that the "appellant's dismissal was *ultra vires*". We find no basis for this contention. No point as to the dismissal of the appellant being *ultra vires* had been referred to the arbitrator. The points for decision set out by the arbitrator do not refer to any question of the dismissal being *ultra vires*. Again the letter of the appellant, dated April 28, 1953, setting out the disputes of which he required decision by arbitration does not make out any case that the dismissal of the appellant by the respondent was *ultra vires* the latter's incorporating statute. His point about the dismissal was that it had been malicious and therefore wrongful; that it had been brought about by a resolution of the Executive Council of the respondent on the basis of the report (also called award) of the investigators, Sir S. Vardachariar and Bakshi Sir Tek Chand, procured by the Vice-Chancellor, Dr. Sen, by denying to the members of the Council any opportunity to discuss the merits of that report. His case on this point in his own words was this:

"When the award was put before the Executive Council Dr. Sen definitely prohibited all discussions of it on the ground that it was an award and suppressed those who desired to comment on it, feeling as they did that the decision, specially in the matter of the supposedly altered telegram was open to grave doubts. In regard to this, questions were asked but not answered.

If Dr. Sen had not wrongly disallowed discussion, I venture to say that the Council would not have agreed to a dismissal, or at any event any allegation of moral turpitude."

It is clear therefore that the appellant was challenging his dismissal on the ground that the Vice-Chancellor, Dr. Sen, who, he said, was inimically disposed towards

(1) (1948) L.R. 75 I.A. 225.

him, had shut out all discussion on the question and procured a resolution for the dismissal of the appellant, and that because of such malicious and wrongful barring of discussion, the resolution was wrongful. It was not the appellant's case before the arbitrator that the dismissal was *ultra vires* the statute or otherwise a nullity. We also find that this point was not advanced in the courts below.

The last point raised on behalf of the appellant was based on s. 45 of the University Act. The terms of that section have been earlier set out. The contention of the learned counsel is that since the section says that any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration, a dispute as to dismissal and a claim to reinstatement might be referred to arbitration under it, and if that could be done, then, the award might properly direct the dismissed professor to be reinstated. For this part of his argument the learned counsel referred us to *Western India Automobile Association* v. *Industrial Tribunal, Bombay* (1). It had been held there that an Industrial Tribunal had power in an award made on a reference under the Industrial Disputes Act, 1947, to direct reinstatement of discharged employees. The learned counsel referred us to the following observation occurring in the judgment of the Federal Court at p. 332:

"Any dispute connected with the employment or non-employment would ordinarily cover all matters that require settlement between workmen and employers, and whether those matters concern the causes of their being out of service or any other question and it would also include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workers."

It was contended that, as in the *Western India Automobile Association* case (1), the words "any dispute" in s. 45 of the University Act would include a dispute as to a claim for reinstatement and would therefore give the arbitrator power to order reinstatement. We do not think that any analogy can be drawn from the

(1) [1949] F.C.R. 321.

1958

Dr. S. B. Dutt v. University of Delhi

Sarkar J.

wording of the Industrial Disputes Act. That Act is concerned with considerations which are peculiar to it. The proceedings before a Tribunal constituted under that Act cannot be said to be arbitration proceedings nor its decision an award, though called an award in the Act, in the sense in which the words "arbitration proceedings" and "award" are used in the Arbitration Act. An award under the Industrial Disputes Act cannot be filed in Court nor is there any provision for applying to Court to set it aside. All considerations that apply to an award under the Industrial Disputes Act, cannot be said to apply to an award made under the Arbitration Act. Furthermore, under s. 45 of the University Act, the arbitration held under it is to be governed by the provisions of the Arbitration Act, 1940, and the validity of an award made under such an arbitration has, therefore, to be decided by reference to the rules applying to that Act, one of such rules being that the award should not disclose an error on its face. For these reasons, in our view, this argument is unfounded.

This disposes of all the points raised on behalf of the appellant and brings us to the contention raised on behalf of the respondent. That contention was that the appointment of Professor Saha as the sole Arbitrator was illegal. It was said that the respondent claimed to appoint Professor Saha the sole arbitrator under s. 9 of the Arbitration Act but that section could only apply where the reference was to two arbitrators, one to be appointed by each party, while the proper interpretation of s. 45 of the University Act was that the arbitration was to three Arbitrators, one nominated by each of the parties and the third by the Chancellor of the University. This point was decided against the respondent by the High Court. As, however, the appeal must be dismissed for the reason that the award contains an error on the face of it, as we have earlier found, it becomes unnecessary to decide the point raised by the respondent. We, therefore, do not express any opinion on this question.

In the result this appeal is dismissed with costs throughout.

Appeal dismissed.