FULL BENCH.

Before; S. S. Sandhawalia, C.J., P. C. Jain and M. R. Sharma, JJ.

SUKHI RAM,—*Appellant.*

versus

STATE OF HARYANA,—*Respondent.*

Regular Second Appeal No. 1535 of 1974.

March 19, 1982.

Industrial Disputes Act (XIV of 1947)—*Sections* 2(k), 2-*A and* 10—*Code of Civil Procedure* (V of 1908)—*Section* 9—*Industrial worker dismissed from service—Dismissed employee taking no steps under the Act to challenge his dismissal by raising an industrial dispute—Dismissal however challenged by a suit in a civil Court—Such Court—Whether has jurisdiction to entertain the suit.*

Held, that where the right or liability claimed has its fountain head within the Industrial Disputes Act, 1947 itself and from no other source then the remedy therefor would also lie within the procedural provisions of the same statute alone. For example, if a claim is rested on Sections 25-B, 25-C, 25-F and 25-FF or 25-G (without being exhaustive) it would be an industrial dispute relating to the enforcement of a right or obligation created under the Act.

The aforesaid rights and obligations are specifically creatures of the statute alone. For instance, if the Act was not on the statute book no such 'industrial dispute' in their context could possibly arise. Therefore, the first test, in evaluating the issue is whether the right or obligation giving rise to the *lis* arises from the Act and Act alone. If this is so, then the only remedy available is to make resort to the Act and the forums and procedure prescribed by it and the jurisdiction of the Civil Court would be impliedly barred. But where the right or obligation giving rise to the industrial dispute springs from a source other then the Act—that is, under general law (including therein any other statutes) then the workman is given two alternative remedies. In such a case, it is in his discretion to either make resort to the ordinary jurisdiction of the Civil Court or to seek the remedy under the Act. However, he must distinctly effect his remedy and he cannot have both. He is to choose one or the other. Thus, where the dismissal or removal of a workman gives rise to a dispute arising out of the rights or liabilities under the general or the common law and workman has not even remotely resorted to any of the remedies under the Act, that is, no industrial dispute was sought to be raised nor any reference claimed under section 10 of the Act, the workman would be entitled to elect either of the two alternative remedies available to him. It must, therefore, be held that the civil court has jurisdiction to entertain a suit by the workman in connection with an industrial dispute arising out of a right or liability under the general or the common law if no steps had been earlier taken by him to resort to remedy under the Industrial Disputes Act. (Paras 8, 10, 11 and 14).

Banarsi Dass *vs.* State of Haryana and others.
1980 (1) S.L.R. 355.

OVERRULED.

Case referred by Hon'ble Mr. Justice M. R. Sharma to a Full Bench on 27th January, 1981 for deciding the important questions of law involved in this case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice P. C. Jain and Hon'ble Mr. Justice M. R. Sharma again referred the case to a Single Judge on 19th March, 1982 after answering the relevant question, for disposal of the case on merits...

Regular Second Appeal from the decree of the court of Shri R. S. Gupta Additional District Judge Rohtak dated 22nd February 1974 affirming that of Shri S. N. Chadha Sub Judge 2nd Class Rohtak dated 8th June, 1973 dismissing the suit of the plaintiff.

Application under Section 5 of the Limitation Act praying that the delay be condoned, so that the plaintiff—appellant does not suffer irreparable loss.

Ravi Nanda. Advocate with J. M. Sethi, Advocate and S. S. Mahajan, Advocate, *for the petitioner.*

K. P. Bhandari. Advocate with Ravi Kapur, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) The meaningful question for the consideration of the Full Bench in this set of twelve regular second appeals has been formulated in the following terms in the order of reference:—

> "Whether a Civil Court has no jurisdiction to entertain a suit filed by a worker employed in a State Department Undertaking whose service is protected by Article 311 of the Constitution of India, and who did not take any steps to have the dispute referred to a Labour Court or a Tribunal under section 10 of the Industrial Disputes Act."

2. At the very outset it calls for pointed notice that the learned counsel for the parties were agreed that for the limited purpose of the precise issue before us the distinction between a workman having the protection of Article 311 and another not so protected is one without a difference. It is the common case that the question admits of an answer which would have applicability to workmen irrespective of the aforesaid categorisation. Therefore, enlarging the scope of the question accordingly, we would reframe the question as under:—

> "Whether the Civil Court has jurisdiction to entertain a suit filed by a workman in connection with an industrial dispute, if no steps had been earlier taken by him to have the same referred under section 10 of the Industrial Disputes Act to a Labour Court or the Tribunal."

The issue being primarily legal, the facts pale into relative insignificance. Nevertheless the matrix thereof giving rise to the question have to be adverted to albeit briefly and it suffices to notice those in R.S.A. No. 1535 of 1974.

3. Sukhi Ram appellant was employed on a temporary basis as a Bus Conductor with the Haryana Roadways at the material time in June, 1971. Departmental proceedings for having misappropriated the bus fare collected by him were initiated against him culminating in the termination of his services by the order of the General Manager, Haryana Roadways dated the 25th of August, 1971. He then preferred a suit in the Civil Court seeking a declaratory decree to the effect that the aforesaid order was illegal, *ultra vires* of the Constitution and opposed to the principles of natural justice and sought the relief of declaration that he should be deemed to have continued in the service of the Haryana Roadways as a Bus Conductor. The respondent-State contested the suit and the material issue No. 1 was framed in the following terms:—

> "Whether the impugned termination order dated 25th of August, 1971, is void, illegal, *ultra vires* and against the principles of natural justice on the grounds mentioned in sub paragraph 1 to 3 of para 9 and mentioned in the plaint? "

The trial Court found this issue against the appellant and dismissed the suit. On appeal the learned Additional District Judge, Rohtak upheld the findings of the trial Court and dismissed the same on the 22nd of February, 1974.

4. The regular second appeal against the aforesaid judgments along with the other connected appeals, including those preferred by the State, first came up for hearing before my learned brother Sharma J. There it was firmly urged on behalf of the State that since the plaintiff-appellants were employed by the Roadways Department of the appropriate Government, their dismissal or removal from service brought into existence an industrial dispute which was governed exclusively by the Industrial Disputes Act (hereinafter referred to as the Act) and, therefore, was not within the cognizance of the Civil Court. Reliance for this contention was primarily placed on the Division Bench judgment in *Banarsi Dass* v. *State of Haryana and others,* (1) and by way of analogy reference was made to *State of Punjab* v. *Dawarka Dass,* (2). In both the

(1) 1980 (1) S.L.R. 356.

(2) 1976 P.L.R. 92.

aforesaid cases, the workmen had not approached the State Government for making a reference under section 10 of the Act, but nevertheless it was held that the jurisdiction of the Civil Court to take cognisance of the matter was impliedly barred. Noticing some conflict of principle and judicial opinion and in view of the obvious importance of the issue, the same was referred for decision to the Full Bench.

5. Reverting back to the question before us, it first calls for pointed notice that there is no specific section in the Act which expressly bars the jurisdiction of the Civil Court with regard to industrial disputes. The issue has, therefore, to be examined on the anvil of the large principle that if a special jurisdiction or a tribunal is created, in that case the matters, which are within such jurisdiction, are impliedly barred from cognisance of the Civil Court. Though this proposition is well-settled, it nevertheless poses problems in its practical application as evidenced from the earlier conflict of judicial precedent on the point. Fortunately, however, in the specific context of the Act, the matter is reduced to a narrow compass within the canvas of the binding precedent of the final Court. *In The Premier Automobiles Ltd.* v. *Kamlakar Shantaram Kadke and others,* (3), their Lordships examined the issue against a broader canvas of principle and earlier precedents and summed up the law in four succinct principles. Therefore, within this jurisdiction, it is not necessary to travel beyond the principles now authoritatively laid down. The four principles, which now govern have been spelled out in paragraph 23 of the report are:—

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only

(3) AIR 1975 S.C. 2238.

remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

6. The learned counsel for the parties are wholly agreed (and it seems to be otherwise equally plain) that what falls for consideration herein is the true application of principle (2) enunciated above. It is the common case that the dismissal or removal of the workmen employed in the State Roadways Departments, raises a dispute arising out of the rights or liabilities accruing to them under the general or the common law. Even if the Industrial Disputes Act were to be not on the statute book at all, the workmen could resort to their ordinary civil rights in the civil courts for the redressal of any grievance with regard to their dismissal or removal. There is thus no manner of doubt that the rights or liabilities invoked herein are not the mere creatures of the Industrial Disputes Act itself, but indeed exist *de hors* the same.

7. On the aforesaid agreed promise, one can now proceed to consider the true application of principle (2) laid in *The Premier Automobiles Ltd., case* (supra). However, before doing so, it is necessary to have a backdrop of the relevant provisions of the Act. The larger purpose of the Act, as its very preamble indicates, is to make provision for the investigation and settlement of industrial disputes which inevitably include within it their adjudication as well. The Act originally envisaged Collective bargaining contracts between the union representating the workmen and the management — a matter which was otherwise outside the realm of the common law or the Contract Law. The expression "industrial dispute" was wide-rangingly defined as under in section 2(k) of the Act:—

" 'Industrial dispute' means any dispute or difference between employe s and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

On the aforesaid definition and the construction placed thereon, it was axiomatic that individual disputes were not within the ambit of the Act unless these were sponsored or adopted by a Union of workmen. To remedy this situation, by Act No. 35 of 1965, section 2-A which is in the following terms) was inserted in the statute:—

> "4-A. *Dismissal, etc. of an individual workman to be deemed to be industrial dispute*—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute".

What then calls for notice in *extenso* is the relevant part of section 10 pertaining to the reference of industrial disputes to courts or tribunals:—

> "....(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may, at any time, by order in writing—
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> (a) refer the dispute to a Board for promoting a settlement thereof, or
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> (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for enquiry; or
>
> (c) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
>
> (d) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication;
>
> * * * *"
>
> * * * *"

It is now well settled by a string of precedent that the powers of the authorities deciding industrial disputes under the Act are far more

extensive and wider than the powers of civil court whilst adjudicating a dispute, which may also be an industrial dispute. Labour Courts and Tribunals to whom a reference may have been made by the government under section 10 of the Act can lay down industrial policy for industrial peace, can virtually create new contracts, and order reinstatement of dismissed workmen, which ordinarily a civil court could not do. It is thus manifest that the Act confers very valuable rights and remedies on a workman which would otherwise be not available to him under the general or the common law. Nevertheless, the availing of some of these rights and remedies is subject to the provisions of section 10 and the power of the government to refuse a reference in a particular case. Primarily because of this provision, it was strenuously urged before their Lordships in *The Premier Automobiles Ltd. case* (supra), that the remedies provided under the Act were no remedy in the eye of law and were a misnomer. Categorically rejecting this contention, their Lordships observed as follows:—

> "We do not find much force in either of the contentions. It is no doubt true that the remedy provided under the Act under section 33-C, on the facts and in the circumstances of this case involving disputes in relation to the two settlements arrived at between the management and the workmen, was not the appropriate remedy. It is also true that it was not open to the workmen concerned to approach the Labour Court or the Tribunal directly for adjudication of the dispute. It is further well established on the authorities of this Court that the Government under certain circumstances even on the ground of expediency (vide *State of Bombay* v. *K. P. Krishnan*, (4) and *Bombay Union of Journalists* v. *The State of Bombay*, (5) can refuse to make a reference. If the refusal is not sustainable in law, appropriate directions can be issued by the High Court in exercise of its writ jurisdiction. But it does not follow from all this that the remedy provided under the Act is a misnomer. Reference of industrial disputes for adjudication in exercise of the power of the Government under section 10(1) is so common that it is difficult

(4) (1961) 1 SCR 227=(AIR 1960 S.C. 1223).

(5) (1964) 6 SCR 22=AIR 1963 S.C. 1617.

to call the remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. The remedy suffers from some handicap but is well compensated on the making of the reference by the wide powers of the Labour Court or the Tribunal. The handicap leads only to this conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is not exclusive. It is alternative. But surely for the enforcement of a right or an obligation under the Act the remedy provided *uno flatu* in it is the exclusive remedy. The legislature in its wisdom did not think it fit and proper to provide a very easy and smooth remedy for enforcement of the rights and obligations created under the Act. Persons wishing the enjoyment of such rights and wanting its enforcement must rest content to secure the remedy provided by the Act. The possibility that the Government may not ultimately refer an industrial dispute under section 10 on the ground of expediency is not a relevant consideration in this regard."

In consonance with the aforesaid view, it was concluded in *The Premier Automobiles Ltd., case* (supra), that despite the fact that there was no specific section in the Industrial Disputes Act, barring the jurisdiction of the civil courts, yet under principles (3) and (4), resort to the civil courts would be impliedly barred on general principles.

8. Stage is now set for the true application of principle (2) enunciated by their Lordships in *The Premier Automobiles Ltd., case* (supra). A close analysis of principles (2), (3) and (4) collectively would make it plain that what is visualised therein are two distinct and separate fields. Firsly, where the right or liability claimed has its fountain head within the Industrial Disputes Act itself and from no other source. This forms a distinct class by itself. So far as this arena is concerned, it is now authoritatively laid down that if the right or liability flows from the Act itself then the remedy therefor would also lie within the procedural provisions of the same statute alone. Principles (3) and (4) make

this patently manifest. For example, if a claim is rested on sections 25-B, 25-C, 25-F and 25-FF or 25-G (without being exhaustive), it would be on industrial dispute relating to the enforcement of a right or an obligation created under the Act. The aforesaid rights and obligations are specifically creatures of the statute alone. For instance, if the Act was not on the statute took, no such 'industrial dispute' in their context could possibly arise. Therefore, the first test, in evaluating the issue is—whether the right or obligation giving rise to the *lis* arises from the Act and Act alone. If this is so, then the only remedy available is to make resort to the Act and the formus and procedures prescribed by it. The jurisdiction of the civil courts would be impliedly barred totally in view of the principles (3) and (4) supra.

(9) Though the aforesaid issue appears to be plain on principle, precedent within this Court is equally consistent therewith. Reference may first be made to *Dawarka Dass's case* (supra). Therein the right invoked was under section 25-F (2) (a) (ii) of the Act and consequently sprang directly from the Act itself. The learned Single Judge held that in such a case there was an implied bar against the remedy by way of a civil suit even without reference to the ratio in *Premier Automobiles Ltd., case* (supra) which was not brought to the notice of the Bench. On appeal, the Letters Patent Bench in (*Dwarka Dass* v. *The State of Punjab*), (6) affirmed the judgment holding expressly that the case fell within principle (3) of the *Premier Automobiles Ltd.* case (supra). No challenge to the correctness of the view in *Dwarka Dass's case* (supra), was raised on either side and we are otherwise in agreement with the same and would, therefore, unhesitatingly affirm the said view.

10. Coming now to the second distinct category where the right or obligation giving rise to the industrial dispute springs from a source other than the Act — that is, under the general law (including therein any other statutes) then under principle, (2) the workman is expressly given two alternative remedies. In such a case, it is in his discretion to either make resort to the ordinary jurisdiction of the civil courts or to seek the remedies under the Act. However, he must distinctly elect his remedy. It is now authoritatively settled that he cannot have both. He is to choose one or the other.

(6) L.P.A. 1 of 1976 decided on 27th November, 1978.

11. In the present case, as already noticed in paragraph-6, it is the common case that the dismissal or removal of workmen here raises dispute arising out of the rights or liabilities under the general or the common law. Once that is so, principle (2) of the *Premier Automobiles Ltd. case* (supra), would be at once attracted and the workmen would be entitled to elect either of the alternative remedies available to them. There is no dispute here that the workmen have not even remotely resorted to any of the remedies under the Act. No industrial dispute was sought to be raised on their behalf *nor any reference claimed under section* 10 *of the Act.* They had straight-away made their election and chosen to agitate their rights in the civil courts. Both on principle and binding precedent, therefore, they would be clearly entitled to claim relief by way of a civil suit.

12. In fairness to the learned counsel for the parties, I would notice that during the course of arguments reference was made to the Division Bench judgment in *State Bank of India* v. *Darshan Kumar Jindal,* (7). Its correctness had been challenged on the ground that mere asking for a reference would not be treated as electing a remedy under the Industrial Disputes Act and the observations made in para-10 of the aforesaid judgment deserve reconsideration. However, in my view this question does not deserve consideration in the instant case as the same does not at all arise for our decision.

13. Undoubtedly, there is a touch of discordance in view of the observations made in *Banarsi Dass's case* (supra). A reference to the judgment therein would show that counsel were remiss in not highlighting the finer nuances of principle (2) in the *Premier Automobiles Ltd. case* (supra). In fact, the matter does not seem to have been adequately debated at all. The earlier view of the learned Single Judge and its affirmance by the Letters Patent Bench in *Dewarka Dass's case* (supra), was not brought to the notice of the Bench. The issue having been not well presented, the Division Bench in *Banarsi Dass's case* (supra), relied simply on paragraph-24 of the report in the *Premier Automobiles Ltd. case* (supra) to negative the claim of the conductor in Haryana Roadways to prosecute his remedy in the civil court. A close reading of the aforesaid

(7) 1979 P.L.R. 567.

paragraph 24 in *Premier Automobiles Ltd. case* (supra) would show that their Lordships themselves visualised an individual industrial dispute falling under section 2-A of the Act as one in which the contingency of a resort to the civil court would be available. They had only observed that industrial disputes within the meaning of section 2(k) of the Act would by and large be under the Act and thus governed by principle (3). If principle (2) were to be so literally construed, then the alternate remedy visualised thereby would be rendered virtually nugatory. With the greatest respect, it would appear that the view expressed in *Banarsi Dass's case* (supra) is overly constricted and does not lay down the law correctly and has, therefore, to be overruled.

14. In the light of the aforesaid discussion, we would render the answer to the question as reframed (in paragraph 2 above) in the affirmative. It is held that the Civil Court has jurisdiction to entertain a suit by a workman in connection with an industrial dispute arising of the right or liability under the general or the common law (and not under the Act), if no steps had been earlier taken by him to resort to the remedy under the Industrial Disputes Act.

(15) All these appeals would now go back to the learned Single Judge for disposal on merits in the light of the aforesaid answer to the legal question.

Prem Chand Jain, J.—I agree.