CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and Shamsher Bahadur, J.

THE HARYANA CO-OPERATIVE TRANSPORT LIMITED, KAITHAL,—
Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1575 of 1966.

March 26, 1968

Industrial Disputes Act (XIV of 1947)—S. 7 and 9—Constitution of India (1950)—Article 226—Person lacking qualifications under section 7 appointed as Presiding Officer of a Labour Court—Validity of such appointment—Whether can be challenged in the High Court in writ proceeding—S. 9(1)—Whether a bar to such proceedings.

Held, that if a person lacking essential qualifications as laid down in section 7 of Industrial Disputes Act is appointed a Presiding Officer of a Labour Court, the infirmity of the appointment, being in contravention of the statutory provisions cannot be over-looked on the plea that such matter cannot be called in question in any manner under sub-section (1) of section 9 of the Act. The powers of *certiorari* and *quo warranto* under the plenary powers of Article 226 of the Constitution give ample authority to the High Court to grant relief by quashing the award given by such Presiding Officer of the Labour Court.

[Para 13]

Case referred by Hon'ble the Chief Justice Mr. Mehar Singh, on 17th *October*, 1967 *to a larger bench for decision of an important question of law involved in the case and it was finally decided by a Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Shamsher Bahadur on 26th of March*, 1968.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ in the nature of* certiorari *or any other appropriate writ, order or direction be issued quashing the Award, dated* 16*th April*, 1966, *given by the Labour Court, Rohtak, respondent.*

N. K. SODHI, ADVOCATE, for the Petitioner.

G. C. MITTAL, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA) AND L. K. SOOD, ADVOCATE, for the Respondents.

ORDER OF THE DIVISION BENCH.

Shamsher Bahadur, J.—The award (Annexure 'E') delivered in an industrial dispute by Shri Hans Raj Gupta, the second respondent, on April 16, 1966, has been challenged in *certiorari* proceedings under Articles 226 and 227 of the Constitution at the instance of the Haryana Co-operative Transport Limited, Kaithal on a number of grounds, but the only serious challenge relates to the validity of his appointment as Presiding Officer of the Labour Court, Rohtak.

(2) At first the industrial dispute between the petitioner and respondents 3 and 4, who are conductor and driver, respectively, of the petitioner, was referred under section 10 of the Industrial Disputes Act (hereinafter called the Act) by notification of the State of Punjab of 22nd of June, 1964, for the adjudication of Shri Jawala Dass on whose retirement Shri Hans Raj Gupta was appointed on 4th of June, 1965, during the pendency of the reference. The second respondent was Registrar to the Pensions Appeals Tribunal, Jullundur Cantonment, for more than seven years from January 14, 1947, to October 19, 1954. After relinquishing the post of Registrar, he was reverted as Upper Division Clerk-cum-Head Clerk which office he held till February 17, 1957, and was appointed subsequently as Assistant Settlement Officer where he remained till September, 1962.

(3) Under sub-section (1) of section 7 of the Act, the appropriate Government may by notification constitute one or more Labour Courts for the adjudication of industrial disputes and sub-section (3) says that:—

> "A person shall not be qualified for appointment as the presiding officer of a labour Court, unless
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> (a) he is, or has been, a Judge of a High Court; or
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> (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
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> (c) he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Dispute (Appellant Tribunal) Act, 1950, or of any Tribunal for a period of not less than two years; or
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> (d) he has held any judicial office in India for not less than seven years; or

(e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years."

(4) Concededly, the second respondent does not fulfill the qualifications under clauses (a), (b), (c) and (e) of sub-section (3) of section 7. It is claimed on his behalf that he fulfills the qualification of having held judicial office under clause (d) for more than seven years.

(5) The petition in the first instance came for hearing before the learned Chief Justice who, by his order of 17th of October, 1967, directed it to be heard before a Division Bench.

(6) It is now conceded by Mr. Mittal, appearing for the State of Haryana, that the second respondent did not hold a judicial office for a period of seven years. This is a position which had not been adopted before the learned Chief Justice when the petition was heard for the first time. Manifestly, the office of Registrar to the Pensions Appeals Tribunal is administrative in nature even if it may be assumed that the Pensions Appeals Tribunal is a judicial or quasi-judicial authority. The second respondent, therefore, lacked the fundamental and essential qualification of being appointed a Presiding Officer of the Labour Court and his appointment, therefore, was void *ab initio*.

(7) Only two points have now been raised before us in support of the appointment and consequently the award made by him in the industrial dispute between the petitioner and respondents 3 and 4. It is submitted, in the first instance, that the objection with regard to the validity of the appointment of the second respondent was not raised before the Labour Court itself. So far as this matter is concerned, it is now well-settled that where an authority, whether judicial or quasi-judicial, has in law no jurisdiction to make an order the omission by a party to raise before the authority the relevant facts for deciding that question cannot clothe it with jurisdiction. Reference may be made to the Supreme Court decision in *Arunachalam Pillai* v. *M/s Southern Roadways, Ltd.* (1), where Mr. Justice Imam, speaking for the Court, observed that though the respondent in that case had submitted to the jurisdiction of the Regional

(1) A.I.R. 1960 S.C. 1191.

Transport Officer and had in his petition under Article 226 in the High Court taken the objection that that officer had no jurisdiction to vary the conditions of a permit, the High Court acted rightly in allowing the respondent to urge that the Regional Transport Officer had no jurisdiction to vary the conditions of a permit as it was by a decision of the High Court itself after the writ had been filed that this came to be the accepted view. The instant case is on a much surer footing as the appointment was in contravention of the statutory provision and has been questioned in the writ petition itself.

(8) The second ground on which the appointment and the award are defended by Mr. Mittal is based on sub-section (1) of section 9 of the Act which says:—

> "No order of the appropriate Government or of the Central Government appointing any person as the Chairman or any other member of a Board or Court or as the Presiding officer of a Labour Court shall be called in question in any manner; and no act or proceeding before any Board or Court shall be called in question in any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court."

(9) The bar of sub-section (1) of section 9, however, can relate only to the jurisdiction of the Civil Courts. It is only the Civil Courts which would be precluded from entertaining the disputes regarding the validity of the appointment and the proceedings of the presiding officer of the Labour Court. There are two Bench authorities which deal directly with the point in issue. *Khushi Ram Dwarka Nath Weaving Mills, Amritsar* v. *The State of Punjab* (2), decided by Chief Justice Bhandari, and Dulat, J., dealt with the appointment of Shri Avtar Narain Gujral as the Industrial Tribunal under section 7 of the Act. The objection regarding his appointment taken in a writ petition under Article 226 was based on the absence of consultation of the appropriate Government with the High Court. As sub-section (3) of section 7 of the Act then stood, a member of the Tribunal had to be an independent person (a) who is or has been a Judge of the High Court or a District Judge or (b) otherwise qualified for appointment as a Judge of a High Court, and provided that "the appointment to a Tribunal of any person not qualified under

(2) (1953-54) 5 F. J.R. 402.

part (a) shall be made in consultation with the High Court of the Province in which the Tribunal has or is intended to have, its usual place of sitting". It transpired that the appointment of Shri Gujral under clause (b) had not been made in consultation with the High Court. Before the Bench it was conceded by the Advocate-General Mr. Sikri (as Mr. Justice Sikri then was) that the provision in section 9 of the Act "which prohibits the order of the appropriate Government appointing any person as a member of a Tribunal, being called in question in any manner" meant that "the validity of an order of appointment cannot be questioned in a civil suit but that it does not debar this Court from considering its validity in proceedings like the present." It would be observed that the relevant provision of section 9 was the same as it is today, and the decision of the Bench reached on the concession of the Advocate-General would apply equally to the facts of the present case. The other Bench decision to the same effect is of the Rajasthan High Court of Chief Justice Wanchoo (later Chief Justice of India) and Bapna, J., in *the Mewar Textile Mills, Ltd.* v. *Industrial Tribunal* (3). In that case also the appointment of a person under section 7 of the Act was challenged on the ground that it was made without the consultation of the High Court. The appointment was found to be invalid and in discussing the effect of section 9 of the Act it was held by Chief Jstiuce Wanchoo (Bapna, J.. concurring) that:—

> "Section 9 of the Industrial Disputes Act even though it may be very widely worded, cannot take away the jurisdiction of the High Court under Article 226 of the Constitution."

(10) Reliance was placed on a decision of the Privy Council in *Rex* v. *Nat Bell Liquors Ltd* (4), where it is stated that:—

> ". . . again and again the Court of King's Bench had held that language of this kind did not restrict or take away the right of the Court to bring the proceedings before itself by certiorari".

(11) Reference may also be made to Halsbury's Laws of England, Simonds Edition, Volume II, at page 137, para 257, the corresponding

(3) A.I.R. 1951 Raj. 161.
(4) (1922) 2 A.C. 128.

passage in Hailsham edition being in para 1445 of Volume 9 cited in the *Mewar Textile Mills'* case:—

> "Certiorari can be taken away only express negative words. It is not taken away by words which direct that certain matters shall be 'finally determined' in the inferior court, nor by a proviso that 'no other Court shall intermeddle' with regard to certain matters as to which jurisdiction is conferred on the inferior court."

(12) As observed by Chief Justice Wanchoo:—

> "What applies to *certiorari* applies, in our opinion, to all the writs, orders or directions which can be issued under Article 226 of the Constitution of India with this vital difference. In England the Parliament is supreme and it can take away the right of the superior Court to issue writs of *certiorari* and so on by express words. In India, however, the Constitution is supreme, and neither the Parliament nor the State Legislature can take away the right conferred on the High Courts under Article 226 of the Constitution. Such rights can only be abridged by an amendment of the Constitution, as provided in Article 368. Section 9, therefore, of the Industrial Disputes Act, even though it may be very widely worded, cannot take away the jurisdiction of this Court under Article 226 of the Constitution, and it is open to this Court, therefore, to consider the validity of the appointment of . . . as the Industrial Tribunal."

(13) Being in respectful agreement with the views expressed by the Benches of the Punjab and Rajasthan High Courts we are of the opinion that the infirmity in the appointment of the second respondent which has been conceded to be in contraction of the statutory provisions, cannot be overlooked on the plea that such a matter cannot be called in question in any manner under sub-section (1) of section 9 of the Act. The powers of *certiorari* and *quo warranto* under the pleanary powers of Article 226 of the Constitution give ample authority to this Court to grant the relief which has been sought in this Court.

(14) We would, accordingly, allow this petition and quash the award of the second respondent whose appointment was not validly made. It would be for the State Government to consider

whether the reference in question should be sent to the Labour Court which has now been constituted as we understand Shri Hans Raj Gupta is no longer the Presiding Officer of the Labour Court at Rohtak. In the circumstances of this case, we make no order as to costs.

MEHAR SINGH, C.J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

MOHINDER SINGH AND OTHERS,—*Petitioners.*

versus

SAMIR SINGH,—*Respondent.*

Civil Revision No. 908 of 1967

April 5, 1968

Stamp Act (II of 1899)—S. 2(5)—'Bond'—Meaning of—Document providing refund of purchase price paid and payment of a stipulated sum as damages—Whether a 'bond' or an 'agreement'.

Held, that an instrument to be a 'Bond', a person must oblige himself to pay money or to deliver certain goods to another. Where the primary object of such an instrument is to incur an obligation to pay, it comes within the definition of a bond. An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond.

[Para 3].

Held, that a document providing for (a) refund of part of the purchase price paid; and (b) payment of a stipulated sum as damages in case of breach of contract, is an agreement and not a bond because there is no obligation to pay a stipulated sum and if the intending seller fails to perform the contract, he is under a duty to refund the amount he has received as a part of the price for the sale. [Para 4].

Revision petition under section 115, Civil Procedure Code for revision of the order of Shri Pawan Kumar Garg, Sub-Judge, 1st Class, Mansa, dated the 26th October, 1967 holding that document D.A. is a bond and not an agreement and it was liable to payment of stamp duty and penalty as a bond.

HARBANS LAL, ADVOCATE, for the Petitioners.

NEMO for the Respondent.