

Before D. S. Tewatia, and S. S. Kang, JJ.

MALKIAT SINGH,—Appellant.

versus

EXECUTIVE ENGINEER,—Respondent.

Second Appeal From Order No. 41 of 1979.

July 16, 1980..

*Industrial Disputes Act (XIV of 1947)—Sections 10 and 17(2)—Code of Civil Procedure (V of 1908)—Section 9—Industrial dispute regarding termination of an employee referred for adjudication to a Labour Court—Employer pleading that the employee was not a 'workman' nor his activity an 'industry'—Labour Court rejecting such pleas and giving its award on merits directing reinstatement of the workman—Such award challenged in Civil Court—Jurisdiction of the Civil Court—Whether barred.*

*Held*, that the jurisdictional competency of the Civil Court to entertain suits in regard to matters which are subject matters of special statutes and tribunals of limited jurisdiction which are envisaged therein to deal with the rights and liability arising under such a statute comes to be considered in two situations : (1) when an affected party in the first instance takes recourse to the civil court for enforcement of ones right and (2) where a party aggrieved of the decision of the Tribunal of a limited jurisdiction challenges its order or award in the Civil Court. In the first situation it would have to be seen as to whether the right is such which is the creation of the special statute and a provision is made for its enforcement through a forum created by the statute in accordance with the procedure prescribed therein. In such a case a party is precluded to take recourse to civil Court. In other words, the jurisdiction of the Civil Court stands excluded altogether in regard to the enforcement of rights or liability created by such a special statute. In regard to second situation where an award of a Tribunal of a limited jurisdiction is intended to be challenged in the Civil Court, the governing consideration where the statute makes the award final and unchallengeable in any Court, is : whether the award in question is null and void. Once a Labour Court comes to the conclusion that the person who had raised the industrial dispute was a 'workman' and its employer was as 'industry' as defined under the Act and then an award was rendered then such an award would be unchallengeable in any other court by virtue of the provisions of section 17(2) of the Industrial Disputes Act, 1947 except on the ground that the award was rendered by the special Tribunal by abusing its authority or in violation of the provisions of the Act. An award cannot be challenged in a Civil Court on the ground that the finding of the Labour Court

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on the material facts in question was wrong because a Tribunal or a Court which has jurisdiction over the parties and the subject matter of dispute is entitled to give its finding even on important issues touching its jurisdiction. On such a given issue its finding may be correct or may not be correct. If the findings are not correct, then the order would not suffer from want of jurisdiction and would not have the character of being 'null' and 'void'. It would at best be a wrong order, if there is a higher authority to call it a wrong order, otherwise if no superior authority is provided by the statute and the award of the Industrial Tribunal or the Labour Court is made final then in fact it would be misnomer to call its finding on any issue as being wrong as there is no superior authority to find fault with its findings. The Civil Court cannot sit in judgment upon the finding of a Labour Court. It can take cognizance of challenge to the order or award of a special Tribunal whose order is made unchallengeable in any civil Court only if it suffers from the two infirmities, that is, where either the special Tribunal in giving the award has abused its authority or has acted 'outside the provisions of the Act or in violation thereof. Thus, where the Labour Court gives an award on merits rejecting the pleas raised by the employer, the Civil Court has no jurisdiction to entertain the suit challenging the legality and the validity of that award. (Paras 5, 6, 12, 13 and 15).

*(Case referred by Hon'ble Mr. Justice J. V. Gupta, on 13th November, 1979 to a larger Bench for the decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. S. Kang has finally decided the case on 16th July, 1980).*

*Second Appeal from the order of the Court of Shri K. C. Dewan, Additional District Judge, Jullundur, dated the 24th March, 1979 reversing that of Shri Baldev Singh, Sub-Judge, 1st Class, Jullundur, dated the 15th November, 1976 remanding the case back to the trial court with the direction to take the parties to trial on the issues arising out of the pleadings and decide the matters in accordance with law and directing the parties to appear through their counsel before the learned trial court on 7th April, 1979.*

V. K. Bali, Advocate with Jang Bahadur Singh, Advocate, for the Petitioner.

S. L. Ahluwalia, Advocate, for the Respondent.

#### JUDGMENT

D. S. Tewatia (Oral).

(1) The referring order of the learned Single Judge raises the significant question of law whether an award rendered by a Labour

Court on a reference under section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act) made final and unchallengeable, in any Court by section 17(2) of the Act can be challenged in a civil Court on the ground that one of the party before the Labour Court disputed the fact that the person raising the industrial dispute was a 'workman' and the disputing concern an 'industry' as envisaged in the Act and the finding of the Labour Court disagreeing with the said assertion was not correct.

2. Before attempting an answer to the question posed, brief reference to the relevant facts, is necessary. Malkiat Singh appellant, whose services were dispensed with by the respondent, raised an industrial dispute and sought reference thereof to the Labour Court. The Government made a reference under section 10 of the Act to the Labour Court, which gave its award on 11th May, 1976 in favour of Malkiat Singh and against the respondent.

3. One of the issues raised before the Labour Court was that Jullundur Drainage Division of Punjab P.W.D. (Health) being a Government Department, was not an 'industry' and Malkiat Singh appellant employed by it was a Government servant and not a workman as defined in the Industrial Disputes Act and thus the dispute raised by him was not an industrial dispute. The Labour Court found the issue in favour of Malkiat Singh, holding him to be a 'workman' and the respondent Jullundur Drainage Division as an 'industry'. The Executive Engineer, Jullundur Drainage Division, challenged the said award in the Civil Court as being null and void and thus not binding on him. The pleas raised by the parties led to the framing of the following two issues :—

- (1) Whether the suit is barred by the principles of *res judicata* ?
- (2) Whether the jurisdiction of this Court is barred in view of Section 9 C.P.C. read with Section 17(2) of the Industrial Disputes Act, 1947 ?

4. The trial Court found both the issues against the plaintiff and dismissed the suit. However, the appellate Court remanded the case for decision in accordance with law, it being of the view that since jurisdiction of the Labour Court was challenged, the

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decision of the Labour Court would not operate as *res judicata* and further the plaintiff had to be given an opportunity to establish that the award of the Labour Court was null and void. Malkiat Singh impugned the judgment of the appellate Court in this Court. The learned Single Judge who was seized of the matter in the first instance referred it to a larger Bench, that is how the matter is before us.

5. Jurisdictional competency of the Civil Court to entertain suits in regard to matters which are subject matters of special statutes and Tribunals of limited jurisdiction which are envisaged therein to deal with the rights and liability arising under such a statute comes to be considered in two situations; (1) when an affected party in the first instance takes recourse to the Civil Court for enforcement of one's right; (2) where a party aggrieved of the decision of the Tribunal of a limited jurisdiction challenges its order or award in the Civil Court.

It is by now authoritatively settled that differing criteria would govern the two situations. In the first situation it would have to be seen as to whether the right is such which is the creation of the special statute and a provision is made for its enforcement through a forum created by the statute in accordance with a procedure prescribed therein. In such a case it has been held that a party is precluded to take recourse to Civil Court. In other words the jurisdiction of the Civil Court stands excluded altogether in regard to the enforcement of rights or liability created by such a special statute. *Premier Automobiles v. K. S. Wadke* (1), is a decision in point wherein, after an exhaustive survey of the decided cases on the point, four criteria were culled out, No. 3 being relevant for our purpose is in the following terms :—

“(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.”

6. In regard to second situation where an award of a Tribunal of a limited jurisdiction is intended to be challenged in the Civil Court, the governing consideration, where the statute makes the

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(1) AIR 1975 S.C. 2238.

award final and unchallengeable in any Court, is: whether the award in question is null and void. In this regard Their Lordships in *Firm Seth Radha Kishan versus Administrator, Municipal Committee, Ludhiana*, (2), expressed themselves in the following words:—

“A suit in a Civil Court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provision.”

That was a case in which Ludhiana Municipal Committee sought to recover terminal tax in respect of ‘Sambhar salt’ at the rate of As 10 per maund. The stand taken by Radha Kishan in the civil suit that he filed against the recovery of tax at that rate, was that ‘Shambhar salt’ was a ‘common salt’ and the tax payable thereon was at the rate of 3 pies per maund. In other words ‘Shambhar salt’ according to him fell under item 68 of the Schedule attached to the notification where the rate fixed was 3 pies per maund and not under item 69 where the rate was As. 10 per maund in respect of ‘salt’ other than ‘common salt’. Their Lordships held that the Municipal Committee under the given notification read with section 61 of the Municipal Act was duly empowered to levy terminal tax on salt whether it was ‘common salt’ or not. The dispute was only regarding rate of tax which depended upon the character of salt. The ascertainment of the said fact was necessary for fixing the rate and it was not necessary to say that in ascertaining the said fact the Municipal authorities concerned travelled outside the provisions of the Act.

7. Their Lordships in *Dhulabhai, etc. v. State of Madhya Pradesh and another* (3), appear to be adding one more criterion for judging the challengeability in the Civil Court of an award of a Tribunal of a limited jurisdiction, when they observed that before bowing to the finality of the award of the Tribunal of limited jurisdiction it would be apt to ensure whether the statute which makes the order of special Tribunal final and puts it beyond the reach of all Courts, including Civil Court, provides against the said order the same

(2) A.I.R. 1963 S.C. 1547.

(3) A.I.R. 1969 S.C. 78.

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remedy as are normally associated with actions in civil Court meaning thereby that even where the award of the Tribunal does not smack of abuse of power nor is passed in violation of the provisions of the statute, then too such an order would be challengeable if the statute does not provide any remedy of a kind against such an order as is the case with regard to the orders of the trial Court under the Code of Civil Procedure.

8. For answering the question posed it is the criterion indicated by their Lordships for determining the competency of the civil Court in the second situation abovementioned that would have to be taken into consideration in judging whether an award of a Labour Court in general and particularly the award which is under challenge in this case would be challengeable in civil Court.

9. As has been already observed, that criterion finds echo in Firm Radha Kishan's case (supra) wherein it has been an award, which is enunciated that the result of an abuse of power by the Labour Court or an Industrial Tribunal or is an award which is rendered in violation of the provisions of the statute would be challengeable in civil Court. But the question arises: would an award which does not suffer from any of the infirmities aforementioned be challengeable in the civil Court on the additional ground mentioned by their Lordships in *Dhulabhai's case* (supra)? We do not think the additional criterion was intended by their Lordships to govern the challenge to an industrial award in the civil Court. The object underlying the enactment of Industrial Disputes Act was to achieve industrial peace and harmony. That was possible when the workmen, who in the nature of things, were no match to their employer, if it came to a fight of prologed civil litigation were, to some extent; put on an equal footing with their employers for being able to fight for their rights and, therefore, special forum like the Representative Committee of Workmen and Employer was created to identify the disputes which were likely to snow ball into industrial disputes. Forum for reconciliation were created for settlement by reconciliation between the workmen and the employer and if that fails then finally the adjudication of the disputes by Labour Court or Industrial Tribunal etc., as the case may be, is provided for. But by the time the matter reaches the adjudication by the Special Tribunal under the Act sufficient time is consumed.

The award of these special Tribunals is, therefore, made final and unchallengeable in any other Court primarily to put a full stop to an industrial dispute and particularly to the agony of the unequal of the two contestants, that is, the 'workmen' who if later on are to be dragged into civil Court would lose their 'right' by result of sheer inability to finance the litigation in civil Court and also to sustain themselves if out of job till the conclusion of the proverbially prolonged litigation in the civil Courts. In view of the above, it is indeed unthinkable that the additional criterion indicated by their Lordships in the context of the taxation statute was intended to be applied to an award passed under the Industrial Disputes Act.

10. Mr. S. L. Ahluwalia, learned counsel for the respondent-department, primarily placed reliance on a Single Bench decision of Allahabad High Court in *Alam Singh vs. Modi Sugar Mills Ltd., Modinagar* (4). This was case in which there was no dispute on facts. It was the admitted case of both sides that it was a single workman who had sought to raise an industrial dispute. The definition of industrial dispute, as it then stood and authoritatively interpreted by their Lordships of the Supreme Court in *Newspapers, Ltd. vs. State Industrial Tribunal* (5), did not recognise a dispute raised by a single workman to be an industrial dispute referable under section 10 of the Act for adjudication. It was in view of this that the reference as also the award that was given in pursuance of the reference was held to be outside the provisions of the Act and thus null and void *ab initio*. Such is not the case here.

(10-A) Mr. Ahluwalia placing reliance on the following observation in *Premier Automobiles' case* (supra):

"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."

urged that remedy of Malkiat Singh appellant lay in the Civil Court and not with the authorities under the Industrial Disputes Act. It is this contention which had prevailed with the lower appellate Court whose judgment is under challenge. The observation extracted above from *Premier Automobiles' case* represents one of the four

(4) 1965 II, 2 L.L.J. 593.

(5) 1957 L.L.J. 1.

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criteria which their Lordships had enunciated in their decision. One of the criteria I have already extracted in the earlier part of the judgment. These criteria have been indicated as already observed by their Lordships for determining as to whether at the initial stage the affected party can or cannot approach the civil Court. These criteria can be of help where there is no dispute on facts. In a given case where one party approaches the civil Court and the other party raises a dispute that the dispute does not fall under the given criterion the civil Court is not to fold its hands. It is duty bound to give a decision. If it does not it would be guilty of non-exercising of jurisdiction vesting in it. Similarly, if the dispute had been taken to the Labour Court by way of reference under section 10 of the Act and one of the parties was to take up a stand that the 'workman' was not a 'workman' and the respondent was not an 'industry' as defined under the Industrial Disputes Act, the Tribunal was not to stop adjudicating the matter. It had to give its finding on disputed facts. No scope for any doubt is left in this regard by a constitution Bench decision of five judges in *Om Parkash Gupta versus Dr. Rattan Singh and another* (6). That was a case under Delhi Rent Control Act. Landlord in that case sought ejection of the tenant. The tenant denied the relationship of landlord and tenant. The Rent Controller went into the question of relationship of landlord and tenant and held that the relationship of landlord and tenant existed. The tenant was directed to deposit the arrears of rent by a given date. His failure to do so led to the striking off his defence and finally order of ejection against him. The matter finally reached the Supreme Court at the instance of his tenant. It was contended on his behalf that the moment he disputed the relationship of tenant and landlord the jurisdiction of the Rent Controller stood ousted and he was not competent to give a finding that in fact relationship of tenant and landlord existed. Hence, the order of ejection that he passed was null and void and without jurisdiction. Their Lordships repelled the contention with the following observation:—

“The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also because a simple denial of the relationship cannot oust the jurisdiction of the Tribunals under the Act. True, they

(6) 1963 P.L.R. 543.

are tribunals of limited jurisdiction the scope of their power and authority being limited by the provisions of the Statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four-corners of the Statute creating them. But within the provisions of the Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in execution proceeding. In our opinion, therefore, there is no substance in the contention that as soon as the appellant denied the relationship of landlord and tenant, the jurisdiction of the authorities under the Act was completely ousted."

11. In view of the aforesaid authoritative observation of their Lordships in *Om Parkash's case* (supra) the special Tribunal under the Industrial Disputes Act was competent to examine the plea as to whether the petitioner, before it, was the 'workman' and the respondent an 'industry' as envisaged in the Act.

12. Once it came to the conclusion that the person who had raised the industrial dispute was a 'workman' and the respondent was an 'industry' as defined under the Act and then an award was rendered then such an award would be unchallengeable in any other Court by virtue of the following provision of section 17(2) of the Act, except on the ground that the award was rendered by the special Tribunal by abusing its authority or in violation of the provisions of the Act:—

"17(2) Subject to the provisions of section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever."

13. Its award cannot be challenged in civil Court on the ground that finding of the Labour Court on the two material facts in question was wrong. Because a Tribunal or a Court which has jurisdiction

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over the parties and the subject-matter of dispute is entitled to give its finding even on important issues touching its jurisdiction. On such a given issue its finding may be correct or may not be correct. If the findings are not correct, then the order would not suffer from want of jurisdiction and would not have the character of being 'null' and 'void' (*Ittyavira Mathai v. Varkey Varkey and another* (7)). It would at best be a wrong order, if there is a higher authority to call it a wrong order, otherwise if no superior authority is provided by the statute and the award of the Industrial Tribunal or the Labour Court is made final then in fact it would be misnomer to call its finding on any issue as being wrong as there is no superior authority to find fault with its findings. The Civil Court cannot sit in judgment upon the finding of a Labour Court. It can take cognizance of challenge to the order or award of a special Tribunal whose order is made unchallengeable in any civil Court only if it suffers from the two infirmities as already observed, i.e., where either the special Tribunal in giving the award has abused its authority or has acted outside the provisions of the Act or in violation thereof.

14. Mr. Ahluwalia drew our attention to two decisions of Lahore High Court, 1: *Municipal Committee, Montgomery v. Master Sant Singh* (8), 2: *Baru and others v. Niader and others* (9), in support of the proposition that it is the averments in the plaint that have to be looked into to judge as to whether civil Court had or had not the jurisdiction in the matter, Mr. Ahluwalia has canvassed that since in the plaint the respondent had averred that the reference under section 10 of the Act and the award rendered by the Labour Court in pursuance thereof is 'null' and 'void' and without jurisdiction and the averments, as already observed, in the plaint being the governing factor in determining the jurisdiction of the Civil Court so in the present case the civil Court had rightly taken cognizance of the suit. There is no dispute with the aforesaid proposition of law but the plaintiff cannot merely aver in the plaint that the impugned order is 'null and void' and without jurisdiction. He has to further say as to why it was considered null and void and without jurisdiction. Once the ground on which the averment to the effect that the order was null and void is based is indicated then it is the ground

(7) A.I.R. 1964 S.C. 907.

(8) A.I.R. 1940 Lahore 377.

(9) A.I.R. 1942 Lahore 217.

or the reasons that will have to be looked into for determining the competency of the civil Court to entertain the suit. In the present case the reason given is that the Labour Court was wrong in holding that Malkiat Singh appellant herein was a 'workman', and the respondent herein was an 'industry.' The civil Courts have to take into consideration for judging its competency this reason, and not the conclusion which the plaintiff had drawn from the said reasons. The reason being merely that the finding of the Tribunal on the given material issue was wrong, this would not entitle the civil Court to entertain the challenge to the award in question.

15. For the reasons aforementioned, we hold that the civil Court had no jurisdiction to entertain the suit of the respondent-department challenging the legality and the validity of the award of the Labour Court in question. The appeal is allowed with costs.

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N. K. S.