

Before S. S. Sandhawalia C.J. and G. C. Mital, J.

STATE BANK OF INDIA,—Defendant-Appellant.

versus

DARSHAN KUMAR JINDAL,—Plaintiff-Respondent.

Regular Second Appeal No. 964 of 1972

February 27, 1979.

Code of Civil Procedure (V of 1908)—Sections 9 and 100—Industrial Disputes Act (XIV of 1947)—Sections 2(k) and 10—Jurisdiction of a Civil Court in relation to an industrial dispute—Dispute relating to termination of service of an employee—Such dispute espoused by a labour union and conciliation proceedings held—Government refusing to make reference of the dispute for adjudication—Jurisdiction of Civil Court to decide the dispute thereafter—Whether barred—Plea of want of jurisdiction of a Civil Court—Whether could be raised for the first time in second appeal.

Held, that where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Industrial Disputes Act 1947, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he cannot have both. He has to choose the one or the other. The plaintiff has to elect his remedy either under the Act or by a separate suit and where he chooses the remedy under the Act and avails that but fails, in that event the Civil Court will have no jurisdiction to entertain his suit thereafter.

(Paras 9 and 11)

Held, that the plea of want of jurisdiction of a Civil Court can be raised for the first time in second appeal.

(Paras 7 and 11)

Case referred by Hon'ble Mr. Justice Rajendra Nath Mittal on September 18, 1974 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr Justice S. S. Sandhawalia and Hon'ble Mr Justice G. C. Mittal finally decided the case on 27th February, 1979.

Regular second Appeal from the decree of the Court of Shri P. R. Aggarwal, Addl. District Judge, Ambala, dated the 15th day of March, 1972, affirming that of Shri K. C. Gupta, Sub-Judge III Class, Ambala, dated the 29th March, 1971, decreeing the suit of the plaintiff with costs for declaration that the order dated 28th December,

1962, and 28th June, 1963, passed by the Superintendent Staff Section State Bank of India, New Delhi, Local Head office, dismissing the plaintiff from the service as a Clerk under the deft and orders, dated 25th November, 1963, passed by the Deputy Secretary and Treasurer State Bank of India, New Delhi Local Head Office dismissing the plaintiff's appeal from the orders passed by the Superintendent Staff Section are illegal, ultra vires, void and wrongful and inoperative and the plaintiff remains and continues to be in the service of the defendant to the post he held at the time of the impugned order.

The Lower Appellate Court ordered that the defendant-appellant shall be at liberty to proceed afresh against the plaintiff-respondent in accordance with law, if it so chooses and leaving the parties to bear their own costs.

The Lower Appellate Court also dismissed the cross-objections filed by the plaintiff-respondent.

Claim :—For Declaration to the effect that the orders dated 28th December, 1962 and 28th June, 1963 passed by the Superintendent, Staff Section, State Bank of India, New Delhi Local Head Office dismissing the plaintiff from the service as a Clerk under the defendant, and the order dated 25th November, 1963 passed by the Deputy Secretary and Treasurer State Bank of India, New Delhi dismissing the plaintiff's appeal from the order dated 28th June, 1963, passed by the Superintendent Staff Section State Bank of India, New Delhi are wrongful illegal, ultra vires void, and inoperative and the plaintiff is still in the service of the defendant as a Clerk at the time of the impugned orders and also on the date of the institution of the suit and is entitled to remain as such, till the date of retirement or till his services are lawfully terminated and a decree for cost/costs, or any other relief to which the plaintiff is entitled in law and equity.

R. K. Chhibbar, Advocate, with Mr. Bipen Kanchal, Advocate, for the Appellant.

G. S. Grewal, Advocate, with Mr H. S. Nagra, Advocate, for the Respondent.

JUDGMENT

G. C. Mital, J.

(1) Darshan Kumar Jindal, plaintiff-respondent, was appointed as a Clerk in the Imperial Bank of India on July 2, 1945. He was confirmed on January 2, 1946. By virtue of State Bank of India

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Act 1955, he became an employee of State Bank of India. He was dismissed by the State Bank of India after enquiry on June 28, 1963. The departmental appeal filed by him also failed on November 25, 1963.

(2) The matter was taken up for reconciliation and when reconciliation failed, the Reconciliation Officer moved the Government of India for reference of the dispute to the Labour Tribunal under section 10 of the Industrial Disputes Act, 1947. The Government of India refused to refer the industrial dispute with regard to the dismissal of the plaintiff,—*vide* order, dated April 17, 1965. It may be stated that the reconciliation proceedings were started on the authorisation of the plaintiff which was espoused by the workmen of the State Bank of India as represented by the Staff Association. When the Government of India refused to refer the dispute to the Industrial Tribunal, the Staff Association of workmen of the State Bank of India filed Civil Writ Petition No. 1322 of 1965 in this Court for a writ of mandamus directing the Government of India to refer the dispute, regarding the dismissal of the plaintiff, for decision of the Industrial Tribunal. The writ petition ultimately came up before a Division Bench on October 18, 1966 and the writ petition was dismissed, holding that it was not necessary to go into the merits of the findings arrived at as the report was such on which the Government could have come to the conclusion that the enquiry was fair and proper one and that it was not expedient to refer the matter for adjudication.

(3) After the plaintiff failed in the conciliation proceedings under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), as stated above, he filed the present civil suit, out of which this appeal arises, on April 22, 1968 before the Subordinate Judge 1st Class, Ambala Cantt. against the State Bank of India for declaration to the effect that the orders of dismissal passed against him are wrongful, illegal, *ultra vires*, void and inoperative, and that the plaintiff is still in the service of the defendant as a Clerk and is entitled to remain as such till the date of retirement or till his services are lawfully terminated. The suit was opposed by the State Bank of India on various grounds.

(4) On the pleading of the parties, the following issues were framed:—

(1) Whether the suit is not maintainable in the present form ?

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- (2) Whether the suit is barred by limitation ?
 - (3) Whether the present case has become *res judicata* in view of the decision of their Lordships in writ case No. 1322 of 1963 namely the workmen of the State Bank of India versus the Government of India ?
 - (4) Whether the written statement is duly signed by an authorised Agent? If not, to what effect?
 - (5) Whether the enquiry against the plaintiff has not been conducted according to natural principles of justice and thus the plaintiff has been prejudiced, and, if so, to what effect?
 - (6) Whether ample opportunity, according to Article 311 of the Constitution of India, was given to the plaintiff? If not, to what effect ?
 - (7) Whether the plaintiff is entitled to the relief claimed ?
 - (8) Whether the plaintiff has not been dismissed by the competent authority ?
 - (9) Relief.

The trial Court decreed the suit by judgment and decree, dated March 29, 1971 and granted a decree for declaration that the orders of dismissal are illegal, *ultra vires*, void, inoperative and wrongful, and that the plaintiff remains in the service of the defendant on the post he held at the time of the impugned order. The judgment and decree of the trial Court were upheld by the Additional District Judge by judgment and decree, dated March 15, 1972. The State Bank of India has come to this Court in Second Appeal against the Judgments and decrees of the Courts below.

(5) Initially the case came up before Rajendra Nath Mittal, J., but after hearing the arguments he was of the opinion that the questions involved in the case are of great importance and are likely to arise in many cases. Therefore, he thought it fit that it may be decided by a Division Bench. That is how this case is before us.

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(6) At the time of arguments before us Mr. Rajinder Kumar Chhiber, counsel for the State Bank of India, has raised a new point of jurisdiction of the Civil Court to entertain the present suit on the facts and circumstances of this case. This point was not raised on behalf of the Bank before this date and the question arose for consideration whether it should be allowed to be raised or not. The counsel for the appellant, relying on *The Premier Automobiles Ltd. v. Engineering Mazdoor Sabha and others*, (1), submitted that there was total absence of jurisdiction for the Civil Court to entertain the present suit and since he was raising a point of jurisdiction which went to the root of the matter for which there was enough material on record, so he should be permitted to raise this point. Not only this, he argued that this Court should or is bound to allow him to raise this question of jurisdiction and for this matter he relied on various judgments of the Supreme Court, one of the Privy Council and a Full Bench Judgment of this Court, which are referred to as *Badri Prasad and others v. Nagarmal and others*, (2), *A. St. Arunachalam Pillai v. M/s. Southern Roadways Ltd. and another*, (3), *Ram Kristo Mandal and another v. Dhankisto Mandal*, (4), *Ramlal Hargopal v. Kisanchandra and others*, (5), and *Davinder Singh and another v. Deputy Secretary-cum-Settlement Commissioner, Rural, Rehabilitation Department, Punjab and others*, (6).

(7) After perusing these judgments we are inclined to permit the counsel for the appellant to raise the point of jurisdiction subject to the condition that even if he succeeds on this point, he will pay the costs of the respondent in all the three Courts as the respondent has already been out of service since 1963.

(8) The counsel for the appellant on the point of jurisdiction has argued that admittedly there were reconciliation proceedings under the Act between the plaintiff and the Bank with regard to his dismissal which were espoused by the Staff Association of the workmen of the State Bank of India of which the plaintiff was a member and when the reconciliation proceedings failed, reference was sought

(1) A.I.R. 1975 S.C. 2238.

(2) A.I.R. 1959 S.C. 559.

(3) 1960 S.C. 1191.

(4) 1969 S.C. 204.

(5) 1924 Privy Council 95.

(6) 1964 (Part I) I.L.R. Pb. 905.

under Section 10 of the Industrial Disputes Act through the Government of India and when the Government of India declined to refer the dispute of dismissal of the plaintiff to the Industrial Tribunal on finding that his dismissal was justified, writ petition No. 1322 of 1965 was filed in this Court under Article 226 of the Constitution of India for a Writ of Mandamus directing the Government of India to refer the dispute relating to the plaintiff's dismissal to the Industrial Tribunal and the same had been dismissed on October 18, 1966 (Copy at Exhibit DX on record). The plaintiff sought his remedy under the Act and once he chose the remedy under the Act and failed therein then the remedy of Civil Suit was not available to him and for this matter he relies on the decision of the Supreme Court reported in *The Premier Automobiles' case* (supra).

(9) We have gone through the aforesaid judgment carefully and we find that the submission of the counsel for the appellant has substance and deserves to be upheld. Reference may be made to paras 9, 13, 14, 15, 23, 24 and 25 of the judgment. For facility of reference some of the portions of the judgment are reproduced below :—

“But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event Civil Court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone.”

“Mr. Sorabjee endeavoured to take his case out of the well established and succinctly enunciated principles of law by the English courts on two grounds:—

“(1) That the remedy provided under the Act is no remedy in the eye of law. It is a misnomer. Reference to

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the Labour Court or an Industrial Tribunal for adjudication of the Industrial dispute was dependent upon the exercise of the power of the Government under section 10(1). It did not confer any right on the suitor."

"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 33C, 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*, (1961)1 SCR 227= (AIR 1960 SC 1223) and *Bombay Union of Journalists v. The State of Bombay*, (1964)6 SCR 22=(AIR 1963 SC 1617) 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 to call the remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. * * *

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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."

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In India under Section 9 of the Code, the Courts have subject to certain restrictions, jurisdiction to try suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There are no different systems of civil courts for enforcement of different kinds of rights. In the instant case taking cognizance of a suit in relation to an industrial dispute for the enforcement of any kind of right is not expressly barred. But if it relates to the enforcement of a right created under the Act, as stated above, by necessary intendment, the jurisdiction of the Civil Courts is barred. That being so, in India, it is barred for all purposes, except in regard to matters which will be alluded to hereinafter."

"To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus :

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

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

"We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large almost invariably are bound to be covered by principle 3 stated above."

(10) The counsel for the respondent, besides stating that the aforesaid point be not allowed to be raised for the first time in the High Court, stated that even if it was allowed to be raised, the jurisdiction of the Civil Court was not barred, as in fact there was no reference of dispute regarding the dismissal of his client before the learned Labour Tribunal or Industrial Tribunal and he further argued that in any case he was not a party to the conciliation proceedings or the writ petition and therefore it cannot be said in law that he availed of the remedy of the Act and therefore his suit was barred.

(11) As already stated above, we feel that it is a fit case to allow the appellant to raise the point of jurisdiction and since we permitted this point to be raised and the counsel for the respondent was also afforded full opportunity to meet the point, we are not satisfied with the argument of the counsel for the respondent that since there was no reference of dispute regarding the dismissal of his client to the Industrial Tribunal, therefore the suit is competent. Answer to

this argument is found in the judgment of the Supreme Court in *The Premier Automobiles'* case (supra) from the relevant extracts which have already been reproduced above. The plaintiff has to elect his remedy either under the Act or by a separate suit if it was a case where both these remedies were open. Without going to the matter whether the suit for reinstatement is competent or not and assuming that both the remedies were available to the plaintiff, he chose the remedy as provided by the Act and once he availed of that remedy, in that event the Civil Court will have no jurisdiction to entertain the suit. As such we repel this contention of the counsel for the respondent.

(12) The last contention of the counsel for the respondent was that the plaintiff was not a party to the reconciliation proceedings or the writ petition and therefore it cannot be said that he availed of the remedy under the Act. Under the Industrial Law, prior to the amendment of Section 2(k), a dispute relating to an individual workman could be espoused on the authorisation of the workman concerned, by the union of which he was a member. That is how, the reconciliation proceedings were taken up by the Workmen's Association on behalf of the plaintiff and after the reconciliation proceedings failed and the Government of India refused to refer the dispute under Section 10 of the Act, after finding the dismissal of the plaintiff as justified, a writ petition was filed in this Court by the Association of workmen for the benefit of the plaintiff. Neither in replication in reply to para 8 of the written statement nor in his own statement the plaintiff made out a case that the reconciliation proceedings and the writ petition were not authorised by him or were not initiated for his benefit at his instance. If such a plea had been raised then this matter could have gone into. Therefore, we have no option but to hold that reconciliation proceedings and writ-petition were filed by the Association of the workmen concerned on behalf of and for the benefit of the plaintiff and he is bound by the same and he cannot now be heard to say that they are not binding on him. It is further important to mention that only after the dismissal of the writ petition that the present suit was filed. It clearly goes to show that he was throughout availing of the remedy under the Act and the writ petition and when those failed then he chose to approach the Civil Court for redress twice over. According to the judgment of the Supreme Court in the *Premier Automobiles'* case (supra) this cannot be permitted.

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(13) For the reasons recorded above, we hold that the Civil Court has no jurisdiction to entertain the suit on the facts and circumstances of this case which have been detailed above. Consequently the appeal is allowed, the judgments and decrees of the Courts below are set aside and the suit is dismissed. As already observed above, the appellant, State Bank of India, shall however, bear the costs of the respondent in all the three Courts.

S. S. Sandhawalia, C.J.—I agree.

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