
(2002) 04 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1748 of 1989

Amarjit Singh, Conductor No. 53, Punjab Roadways

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2002) 95 FLR 993 : (2002) 3 LLJ 1078

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Arun Palli, for the Appellant; J.S. Bedi, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—Plaintiff Amarjit Singh, who was employed as Conductor in the Punjab Roadways, was charge-sheeted for misconduct and vide order dated August 6, 1976 his services were terminated. Against the termination of his services, he filed an appeal before the department-Appellate Authority and his appeal was dismissed. After dismissal of the appeal, the appellant issued a demand notice dated February 10, 1978, pursuant to which conciliation proceedings were held. However, ultimately on September 21, 1978 the Government declined to make the reference. The appellant filed the present suit on August 21, 1978 praying therein that his termination orders be set aside. Both the trial court as well as the lower appellate court have dismissed the suit and the subsequent appeal of the appellant on the ground that since the appellant had already chosen a particular forum, i.e., the Labour Court, therefore, now he is estopped from agitating the same matter before the civil court, thus, both the courts below have non-suited the appellant on the ground that jurisdiction of the civil court is barred under such circumstances.

2. The sole question that arises in the present case is:-

When a person seeks remedy under a particular Act and on the declining of the relief under the said Act, can he prefer the same relief before the Civil Court?

3. Mr. Arun Palli, learned counsel for the appellant, contended that merely electing a remedy would not tantamount to availing or exhausting it under the Act and, therefore, the declining of the reference to the Labour Court would stop the appellant from moving the Civil Court.

On the other hand, the stand taken on behalf of the appellant had been controverted by Mr. J.S. Bedi, Assistant Advocate General, appearing on behalf of the State. Mr. Bedi has relied upon the observations of the lower appellate Court made in para No. 14 of the judgment in order to contend that once the appellant had chosen a particular forum, then he could not seek the remedy under the civil Court.

I have given thoroughful consideration to the rival contention advanced by the learned counsel for the parties. There is no dispute that the plaintiff-appellant had issued a demand notice dated February 10, 1978, pursuant to which conciliation proceedings were held. There is also no dispute that the Government had declined to make the reference to the labour Court vide order dated August 21, 1978. Now the question arises whether by issuing a demand notice to the Government, the appellant had availed of the remedy provided under the Industrial Disputes Act, 1947? The Government has not referred the dispute to the Labour Court for adjudication. Thus, it stands amply proved that a judicial remedy has been made available to the appellant with the refusal of the Government to make a reference to the Labour Court. In this way, through the appellant had elected to avail the remedy provided under the Industrial Disputes Act, 1947, but it cannot be said that he had availed of the remedy under the said Act when he had moved the Civil Court for the redressal of his grievance. For this view, I'm fortified by the decision of the Division Bench of this Court in Workmen of New Snow View Transport Pvt. Ltd. Vs. State of Punjab and Others, wherein it has been held by their Lordships that an "order of reference u/s 10(1) of the Industrial Disputes Act is an administrative act of the Government..." Similarly, in the case Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, , it has been held by their Lordships of the Supreme Court as un-der:-

"While exercising power u/s 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10. It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits..."

From the authorities referred to above, it stands amply proved that though the appellant had issued a demand notice u/s 10(1) of the Industrial Disputes Act, 1947, but he has not availed of the remedy available to him under the said Act as the Government had declined to refer the dispute to a judicial or quasi-judicial body, suchlike Labour Court, by passing an administrative order.

Now the question arises whether on refusal by the Government to refer the dispute to the Labour Court, the principles of resjudicata are applicable against the appellant to approach the Civil Court? To answer this question, I am of the view that when the appellant had not been permitted to avail of the remedy under the Industrial Disputes Act, 1947, with the refusal by the Government to make a reference to the Labour Court, the principles of resjudicata cannot be made applicable against the appellant when he moved the civil court for the redressal of his grievance. For this view of mine, I am further fortified by the decision of the Division Bench of this Court in the case Workmen of New Snow View Transport Pvt. Ltd. v. State of Punjab (supra), wherein their Lordships were pleased to hold that the "function of the Government either u/s 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as res judicata applicable to judicial acts, do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact when the Government refuses to make a reference it does not exercise its power and it is only when it decides to refer that it exercises its power....." Thus, it is held that the principles of res judicata is not applicable to the facts of the present case.

For the sake of clarity, it may be mentioned that the learned trial court had framed the following issues:-

1. Whether this Court has got no jurisdiction to entertain and try the suit?
2. Whether the order dated 6.8.1976 passed by the General Manager, Punjab Roadways, Jalandhar, is illegal, ultra vires, null and void etc., as alleged in the plaint?
- 2A. Whether the plaintiff sought relief from a forum under the Industrial Disputes Act? If so, to what effect?
3. Relief.

Issues No. 1 and 2 have already been decided in favour of the appellant. The suit of the appellant was dismissed by the learned Additional District Judge, vide judgment dated July 25, 1988 on the basis of the findings on issue No. 2A. as the said issue was decided against the appellant. Now in view of my findings, issue No. 2A is also decided in favour of the plaintiff-appellant and against the defendant-respondent.

In the light of the above discussion, the appeal is allowed and the suit of the appellant is decreed with consequential reliefs. The Parties are left to bear their own costs.