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**(1989) 03 MAD CK 0077**

**In the Madras High Court**

**Case No :** Civil Revision Petition No's. 2053, 3934 and 3235 of 1988

Inspecting Assistant Commissioner

APPELLANT

Vs

R. Vasu

RESPONDENT

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**Date of Decision :** 17-03-1989

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 8B, 14, 28  
Constitution of India, 1950 — Article 14, 16(1)

**Citation :** (1990) 49 TAXMAN 307

**Hon'ble Judges :** Sathiadev, J

**Bench :** Single Bench

**Advocate :** N. Veluswamy, for the Appellant; K. Ramamurthi, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sathiadev, J.—Second defendant in O.S. No. 197 of 1987, Sub-Court, Pudukkottai is the petitioner in C.R.P. No. 2053 of 1988 and respondent in C.R.P. No. 3234 of 1988, whereas the plaintiff is the respondent in C.R.P. No. 2053 of 1988 and petitioner in C.R.P. No. 3234 of 1988. The suit was filed by the plaintiff, an U.D.C. working in the Office of the income tax Department, City Circle-I(4), Madurai Range for a declaration that he belongs to the Schedule Tribe community as Kattunaicken and consequentially for grant of an injunction to restrain the defendants from enforcing or initiating any further action pursuant to the proceedings of the second defendant dated 7-9-1987, which came to be issued on charges framed against him that he had produced a bogus caste certificate. The annexures to the charge name deal with materials like statement of imputation and misconduct and documents relied on, etc. Pending disposal of the suit, he filed I.A. No. 561 of 1987 and sought for an interim injunction to restrain the second defendant from proceeding further with the disciplinary proceedings against him. The second defendant filed I.A. No. 572 of 1987 and prayed for dismissal of the suit and the injunction application, viz., I.A. No. 561 of 1987 on the ground that the civil court has no jurisdiction to deal with a service matter.

Both these applications were heard together, and a common order was passed by the trial court, granting injunction in favour of the plaintiff, and dismissing I.A. No. 672 of 1987. Aggrieved against the order of injunction granted by the trial court, second defendant preferred C.M.A. No. 8 of 1988 before the District Judge, Pudukkottai. The Appellate Court allowed the C.M.A. and vacated the order of injunction granted by the trial court. Aggrieved against the order of dismissal of the injunction application, the plaintiff preferred C.R.P. No. 3234 of 1988 in this Court, whereas the second defendant filed C.R.P. No. 2053 of 1988 against the order of the trial court passed in T.A. No. 672 of 1987.

2. In these revision petitions, it is contended that the civil court has no jurisdiction to deal with the reliefs claimed in para 14(b) and (c) of the plaint, in that, after the constitution of the Administrative Tribunal by virtue of the Central Act 13 of 1985, service matter as defined in section 3(c) are excluded from the jurisdiction of civil court u/s 28 read with section 14 of the Code of Civil Procedure, 1908 with effect from 1-11-1985, and, hence, the suit ought to have been dismissed.

3. Service matters as defined in section 3(c) mean all matters relating to the service conditions in respect of a person employed by the Union of India which includes disciplinary matters and, therefore, in view of section 28, which excludes the jurisdiction of any Court other than the Supreme Court, in dealing with "service matters" of the concerned members of the service covered by the Act, it has to be seen whether in a suit of this nature, by seeking any consequential relief, a civil court can interfere with the disciplinary action taken in "service matters" covered by the Act.

4. Mr. K. Ramamurthi, the learned counsel for the plaintiff, relies upon the decision in Venkataramanaswamy Deity of Kothur v. Vadugammal 87 Law Weekly 481 (DB) wherein it was held that the scheme regarding the jurisdiction of the civil court in the T.N. Act 19 of 1951 is different from what is provided in T.N. Act 25 of 1948, because the aim of the Act is not to exclude the jurisdiction of the civil court, but to facilitate proper administration of religious institutions by following certain procedures prescribed for getting remedies either from the Deputy Commissioner or the Commissioner. The learned counsel submits, that, when an incidental relief arises out of the main relief which is outside the scope of Act 13 of 1985, in view of section 9, a civil suit would still lie for granting incidental relief, which may come within the folds of the Act, if it is claimed as a substantive relief. He also relies upon the decision in Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Others, which dealt with the scope of section 70(b) of Bombay Tenancy and Agricultural Lands Act, in which section 85 states that no civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by certain authorities. In dealing with this aspect, it was held that the plea relating to tenancy being a subsidiary plea, and the main plea being whether the defendants had become the statutory owners of the disputed lands, the

jurisdiction of the civil court was not barred by virtue of the said section, in dealing with subsidiary relief. He also referred to a passage on page 254 of the Wade's Administrative Law (5th Edition) which reads as follows:-

"The Home Secretary's statutory power to deport aliens is similarly limited by the word "alien". Whether a person is, in fact or in law, an alien or a British subject is a question which the Court must determine in case of dispute. Alien nationality is the preliminary or collateral condition on which the Home Secretary's power depends. If he could determine this himself conclusively, a British subject mistakenly taken for an alien would have no legal protection, and plainly this would be intolerable."

5. He would then refer to section 22 of the Central Act, 1985, which deals with the procedures and powers of the Tribunal. He submits that, when the main relief that plaintiff belongs to a particular Scheduled Tribe community could be secured only by filing a suit in civil court, and when civil courts are not barred from granting an incidental or consequential or supplemental relief, and when the determination of the Supplemental relief is dependent upon what the civil courts could decide on the main relief; neither section 28 nor section 14 of the Act could ever prevent the civil courts from considering the lis relating to reliefs claimed in para 14(b) and (c) of the plaint. He further submits that, on succeeding on the main relief, plaintiff would be able to avoid the disciplinary proceedings, which were based on a total misconception that he is not a Scheduled Tribe. Even assuming that the Tribunal alone could deal with this matter, prudence is required on the part of the defendant-authorities to await the decision of the civil court before ever drastic consequences are visited upon the plaintiff, and more particularly, when they have not sought for proper verification from the Collector, as decided by the Division Bench of this Court regarding the correctness of the Community Certificate relied upon by him.

6. These contentions proceed on the basis that the Tribunal supplements the jurisdiction of civil courts. In dealing with the scope of section 28 read with section 14, in *S.P. Sampath Kumar v. Union of India* AIR [1987] SC 386 it was held:

"...The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice...." (p. 395)

In *J.B. Chopra and Others Vs. Union of India (UOI) and Others*, , it was again reiterated that the exclusion of civil courts under the Act is totally except for the Supreme Court, and that it being a substitute of the High Court, it has the necessary jurisdiction, power and authority to deal with all questions pertaining to constitution and validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution. In *D. Sambamurthy v. Collector, Kakinada* [1980] LIC 348, a Division Bench of the Andhra Pradesh High Court, in dealing with more or less a similar situation, held that, even though the main relief may come within the fold of a civil court, yet it is the supplemental and consequential relief

relating to a "service matter" arising out of the said main relief, which cannot be decided by the civil court. It was a case wherein the plaintiff sought for a declaration regarding his date of birth, and it was held that such a relief is within the jurisdiction of the civil court, but when he had prayed for the relief of injunction preventing the Government from superannuating him as per the records, it was held that he was not entitled to the grant of injunction pertaining to a "service matter".

7. Section 9 states that Courts shall have jurisdiction to try all suits of civil nature except suits in which their cognisance is either expressly or impliedly barred. u/s 28, there is an express bar of jurisdiction of civil courts pertaining to "service matters" as defined in section 3(c). The charge memo, dated 7-9-1987 pertains to disciplinary proceedings initiated against the plaintiff, and it being a "service matter" relating to which the Administrative Tribunal alone having been invested with the authority to decide the said dispute, in the light of the decisions of the Supreme Court above referred to, under the guise that the relief of injunction prayed for is a supplemental or consequential or incidental relief to the main relief in the suit, it cannot be claimed that such a relief could be tried by a civil court. Without any incidental or consequential or supplemental relief, the main relief prayed for in the suit could be obtained by the plaintiff. It was not his claim that unless he seeks for any of the incidental reliefs, he cannot secure the main relief. On securing the declaration, it is always open to him to seek for appropriate relief pertaining to the incidental reliefs which he had sought for. Pending suit, whatever relief is available before the Tribunal, he can avail of. Therefore, any and every dispute which would come within the definition of service matters in section 3(a), could never be dealt with by civil courts and the High Court, whether they form the main relief or incidental, consequential or supplemental relief and the like because of section 28 read with section 14.

8. Hence, there is no bar on the trial court to proceed with the trial of the suit so far as it relates to the prayer in para 14(a) of the plaint, but it had no jurisdiction to grant the reliefs sought for in para 14(b) and (c) of the plaint. Therefore, C.R.P. No. 3234 of 1988 is dismissed. C.R.P. No. 2053 of 1988 is allowed, resulting in the suit being dismissed only in respect of the reliefs covered by paragraph 14(b) and (c) of the plaint. No costs.

C.R.P. No. 3235 of 1988:

9. The petitioner in C.R.P. No. 3234 of 1988 is the petitioner herein. Against the order passed by the trial court in I.A. No. 561 of 1987, second defendant preferred C.M.A. No. 8 of 1988 to the District Court, Pudukkottai. Pending its disposal, I.A. No. 33 of 1988 was filed by the petitioner herein to dismiss the C.M.A. in limine on the ground that a private counsel had preferred the appeal for the department only with his signature, and, therefore, it is not maintainable. This was opposed by second defendant by claiming that the deponent of the counter-affidavit is the appointing and disciplinary authority for the petitioner, and, therefore, he had chosen to appoint Mr. K. Lakshminarasimhan, Advocate,

who is the departmental special counsel for prosecutions. There is no bar under Order 27, rule 8B preventing the Government, to appoint any private counsel for any case on its behalf, apart from a Law Officer to defend matters in which it is a party. Once a counsel is authorised by the State to appear on its behalf, he has the necessary authority to file the appeal on behalf of the State. As pointed out by the Appellate Court, Order 27, rule 8B is not restrictive or exclusive, but only inclusive, and as such, there is no bar to engage the present counsel on record to file and argue the appeal. Hence, there is no substance in this revision petition and, therefore, it is dismissed with costs.