
(2000) 10 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13278 of 2000

Iqbal Singh

APPELLANT

Vs

The Presiding Officer, Labour Court, Gurdaspur

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Industrial Disputes Act, 1947 — Section 10(1), 33C

Citation : (2001) 1 ILR (P&H) 368 : (2001) 1 LLJ 1525

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Sumeet Malhotra, for the Appellant;

Judgement

S.S. Sudhalkar, J.—After being unsuccessful in seeking remedy from the Civil Court, petitioner has now taken re-course to the provisions of the Industrial Disputes Act (hereinafter referred to as "the Act"). The petitioner was working as a conductor in the Punjab Roadways. He was charge-sheeted and after the enquiry he was found guilty and was dismissed from service. He was dismissed on 2.1.1984. He filed departmental appeal which was dismissed on 19.7.1985—He filed a Civil suit for declaration challenging order of dismissal. The suit was dismissed on 30.5.1986. He filed an appeal before the District Judge which was dismissed on 1.4.1987. Against that order Regular Second Appeal No. 2304 of ,1987 was filed in this Court. The R.S.A. was also dismissed on 15.9.1987. Thereafter he raised an industrial dispute. The dispute was referred to the Labour Court by notification dated 17.9.1996. The reference was made to the Labour Court who held that the petitioner was debarred from agitating the dispute after he had failed in the Civil Courts.

2. Being aggrieved by the award of the Labour Court, the petitioner has filed this writ petition.

3. Learned counsel for the petitioner argued that the Civil Court had no jurisdiction to grant a relief of reinstatement and therefore, the denial of the

relief by the Civil Court will not come in the way of entertaining the industrial dispute, because the decision of the Civil Court cannot be said to be decision of the competent court.

4. In the case of Sukhi Ram v. State of Haryana 1982(1) SLR 663, it has been held by Full Bench of this Court that in connection with an industrial dispute arising out of the right or liability under the general or the common law, the worker has got two alternative remedies available to him : (i) to go to civil Court, and (ii) under the Industrial Disputes Act. It is further held in that case that worker must distinctly elect one of his remedies and he cannot avail of both of them. It is further held that the civil Court has the jurisdiction to entertain a suit, falling under the second category. The Full Bench has also referred to the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , wherein it has been held as under :-

"(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.

(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."

5. It has also been held in the said case that 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 an alternative remedy, leaving it to the election of (he suitor concerned to choose his remedy for the relief which is competent to be granted in a particular case.

6. Therefore, considering the above principles, if the dispute is such which can give rise to remedies under both the provisions and if the workman elects one remedy and fails in the same, then he will not be entitled to take resort to the other remedy. This position gives rise to the question as to whether Civil Court was having jurisdiction to entertain the suit for the relief which the petitioner had asked for ?

7. Learned counsel for the petitioner has relied on the case of Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, . In that case, the Supreme Court held that the suit was filed by the appellant who was an employee of the company with a prayer for relief of declaration that the dismissal is null and void in view of the provisions of the Standing Orders framed under the

Industrial Employment (Standing Orders) Act, 1946 and that he was not guilty of any mis-conduct as no enquiry was conducted, the dismissal was bad. He also sought the relief of back wages and injunction and not giving effect to (he order of dismissal. The Supreme Court in that case held that so far as that suit filed by the employees was concerned, there appeared to be no doubt that civil Court had no jurisdiction and the "High Court was right in coming to the conclusion. The Supreme Court in that case was dealing with an employee of the company. Present is the case of the employee of the Punjab Roadways. The employees in the Punjab Roadways, as admitted by the counsel for the petitioner, are governed by the provisions of Civil Service Rules of the State and the disciplinary appeal rules of the State. In the case of Sukhi Ram (supra), the appellant was employed in the Roadways department of State of Haryana. So the principle laid-down in the case of Sukhi Ram will be directly applicable to the facts of the present case. It is not shown as to how the Civil Court had no jurisdiction to entertain the suit of the nature as filed by the petitioner. This being the position, it cannot be said that Civil Court had no jurisdiction to entertain the suit. Moreover, it is not shown that Civil Court had dismissed the suit on the ground of jurisdiction.

8. The principle of res-judicata would, therefore, come into play and the petitioner cannot have any right to raise an industrial dispute after getting the decision from the Civil Court on merits.

In view of the above discussion, we do not find any merit in this writ petition and is therefore, dismissed.

9. Petition dismissed.