
(1996) 12 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 263 of 1994

Jagat Ram

APPELLANT

Vs

Himachal Khadi Mandal

RESPONDENT

Date of Decision : 02-12-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2A

Citation : (1997) 3 LLJ 866 : (1997) 2 ShimLC 138

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Anand Sharma, for the Appellant; B.K. Sood, for K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—This Regular Second Appeal has been preferred by the plaintiff against the judgment and decree dated March 3, 1994 of the District Judge, Una, reversing the judgment and decree dated December 30, 1988 of the Senior Sub-Judge, Una.

2. The respondent, Himachal Khadi Mandal, hereinafter referred to as defendant, is a co-operative society formed in the year 1970 and registered under the Societies Registration Act, 1860. The plaintiff was an employee of the defendant and has been in its continuous service since the time of its constitution. During the course of such employment, the plaintiff remained posted as Manager, Production Centre, Dulehar. Audit of the accounts of the said centre was carried out and as per audit report certain deficiencies were found in the stock of the centre. The plaintiff was accordingly served with a notice dated June 13, 1983 calling upon him to show cause to and explain the allegations made therein. No reply was submitted by the plaintiff to such show cause notice. Consequently, the services of the plaintiff were terminated vide order dated July 19, 1983.

3. The plaintiff assailed the said order of termination of services by way of a suit,

out of which the present appeal has arisen. It was averred that the said order was null and void, inoperative and unauthorised in as much as the same was passed without following the procedure laid down under the law and the relevant rules and without affording a reasonable opportunity of being heard to the plaintiff.

4. The defendant while resisting the suit inter alia raised preliminary objections as to the maintainability of the suit and jurisdiction of the Court. The passing of termination order was admitted. It was pleaded that the termination order was legal and valid. The same was passed in accordance with law and after affording opportunity to the plaintiff to explain his position.

5. The controversy between the parties as per their pleadings led to the framing of the following issues by the trial Court :--

1. Whether the plaintiff is entitled to the reliefs of declaration, permanent and mandatory injunction as prayed for ? OPP

2. Whether the order of dismissal passed by the defendant is perfectly valid and justified ? OPD

3. Whether the suit is not maintainable as alleged ? OPD

4. Whether the present suit does not lie as plaintiff did not avail his remedy ? OPD

5. Whether this Court has jurisdiction to try the suit ? OPD

6. Relief.

6. The learned trial Court answered issues No. 1 and 5 in the affirmative and issues No. 2 to 4 in the negative. Consequent upon such findings the suit of the Plaintiff was decreed vide judgment and decree dated December 30, 1988.

7. On the appeal having been carried before the learned District Judge by the defendant, the judgment and decree dated December 30, 1988 of the learned trial Court was set aside vide the impugned judgment and decree dated March 3, 1994. The learned District Judge came to the conclusion that civil Court had no jurisdiction to grant a declaration against the order of termination of the services of the plaintiff since the matter was within the ambit of an "industrial dispute".

8. Feeling aggrieved by and being dissatisfied with the impugned judgment and decree of the learned District Judge, the plaintiff has come up before this Court by virtue of the present Second Appeal. It is contended that in arriving at the conclusion that civil Court had no jurisdiction, the learned District Judge has misconstrued the law. The questions whether the plaintiff was a workman and whether the defendant is an Industry - were questions of fact which required determination before the jurisdiction of the civil Court could be ousted. It was further contended that the question of jurisdiction could not have been gone into in view of the order dated May 27, 1988 passed by the High Court in C. M. P. (M) No. 99/88 on a reference made by the trial Court vide order dated January 12,

1988.

9. A perusal of the record shows that vide order dated January 12, 1988, the suit was referred to the High Court by the learned Senior Sub-Judge for its being transferred to the H.P. Administrative Tribunal. This order reads : --

"Heard.

Order. The plaintiff had instituted suit No. 597/83 before the Court on August 20, 1983 and had claimed that he was a permanent employee of the Himachal Khadi Mandal (Kullu) defendant in the case and his removal from service vide order dated July 19, 1983 was wrong illegal and not binding on the plaintiff. The defendant Himachal Khadi Mandal, with its Head Office at Akhara Bazaar, Kullu was a society registered under the Societies Act and was controlled by the State Government in accordance with Administrative Tribunals Act, the present dispute was to be adjudicated by the State Administrative Tribunal. The suit filed is therefore, submitted to the Hon"ble High Court of Himachal Pradesh, Shimla for transfer to the Hon"ble Tribunal."

10. On the Case having been received in the High Court in terms of the above referred to order of the Senior Sub-Judge, notices were issued to the parties and on May 27, 1988 order in the following terms came to be passed by Hon"ble V. K. Mehrotra, J., the then Acting Chief Justice:--

"Notice was directed by this Court to issue to the parties on April 29, 1988. It is reported to be served upon Jagat Singh, the plaintiff. Neither he nor anyone else is present on his behalf today. Shri A.K. Goel appears on behalf of Himachal Khadi Mandal, Kullu. An affidavit sworn by the Secretary of the Khadi Mandal has also been filed. From the averments made in paragraphs 2 to 4 of this affidavit it is obvious that the Khadi Mandal is not a local or other authority and Corporation or society which is controlled or owned by the Government, In this view of the matter the suit is triable by civil Court and is not liable to be transferred to the Himachal Pradesh Administrative Tribunal. The reference made by the learned Senior Sub-Judge, Una, H.P. by his order of January 12, 1988, is rejected. The learned Judge will proceed with the trial of the suit in the normal course. Let this order be communicated to him forthwith."

11. A bare perusal of the two orders, quoted above, shows that the question referred and answered was only with regard to the transfer of the case to the H.P. Administrative Tribunal. The question whether the matter involved falls within the purview of Industrial Disputes Act, 1947, or not, was never in issue. Therefore, the order passed by this Court on May 27, 1988 in C.M. P.(M) of 99/88 will not operate as res judicata insofar as the question-whether the dispute involved in the present case falls within the ambit of "industrial dispute" or not is concerned.

12. The Industrial Disputes Act, 1947, hereinafter referred to as the Act is a complete Code and has been enacted for investigation and settlement of

industrial disputes and for certain other purposes detailed therein.

13. Section 2 of the Act deals with "definitions". It defines various expressions occurring in the Act. Clause (k) of this Section defines "industrial dispute" in the following terms :--

" "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

14. The expression "employer", "industry", "industrial establishment or undertaking" and "workman" have been defined in Clauses (g), (j), (ka) and (s) respectively of Section 2 of the Act.

15. Sections 4 to 7 of the Act provide for appointment and/or constitution of Conciliation Officer, Board of Conciliation, Courts of Enquiry and Labour Courts. Sections 7-A and 7-B provide for the constitution of Industrial Tribunals and National Tribunals. Section 10 provides for reference of disputes to Boards, Courts or Tribunals by the "appropriate Government" for adjudication where it is of the opinion that an industrial dispute exists or is apprehended. Section 10-A deals with voluntary reference of an industrial dispute to arbitration. Section 11 lays down the procedure and powers of the Court and Tribunals. Section 11 confers upon the Labour Court and Tribunals an express power to substitute the punishment awarded in a domestic enquiry on being satisfied that such a course is called for on the fact and in the circumstances of a given case. Section 12 prescribes the duties of a Conciliation Officer and procedure for holding the conciliation proceedings. It is provided that in case the Conciliation Officer fails to bring about a conciliation between the parties, he shall make a report to the Government within fourteen days of the commencement of the conciliation proceedings unless such time is extended by agreement between the parties to the dispute. On the basis of such report of the Conciliation Officer, the Government is empowered to refer the dispute to the Court or Tribunal, as the case may be, for adjudication. Section 13 deals with the duties of Board. Section 14 provides that a Court shall ordinarily decide the matter referred to it within six months of the commencement of the inquiry. Section 15 directs that the Labour Court, Tribunal or National Tribunal shall decide the industrial dispute referred to it expeditiously and within the period specified in the order of reference. Section 16 provides for submission of the award by the Court and/or the Tribunal. Section 17 requires that the award of the Court/Tribunal shall be published by the Government in the manner prescribed and that on such publication the award shall become final and shall not be called in question by any Court in any manner whatsoever. Section 17-A deals with the commencement and enforcement of the award on the same having been published. Section 18 provides for settlement between the parties to the industrial dispute while Section 19 deals with certain matters incidental there to.

16. The other provisions of the Act, which are not material for the purpose of the present case, are not being referred to.

17. As per the definition in Clause (k) of Section 2, quoted above, "industrial dispute" means any dispute or difference between-

(a) Employers and employers ; or

(b) Employers and workmen ; or (9) Workmen and workmen :

Provided such dispute is connected with the employment, non-employment, terms of employment or conditions of labour of any person.

18. Since the definition of "Industrial dispute" did not embrace within its ambit a dispute between the employer and an individual workman, Section 2-A came to be inserted in the Act by virtue of the Industrial Disputes (Amendment) Act 35 of 1965. It reads:--

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.--Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute".

19. Dealing with the effect of insertion of Section 2-A in the Act by Amendment Act 35 of 1965 on the definition of expression "industrial dispute" as appearing in Clause (k) of Section 2, it has been held by the Apex Court in *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*,

" ...By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2 (k) but also Section 2-A. Section 2-A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which means that to give an example-- if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2-A. (However, if the union or body of workmen espouses his cause, it does become an industrial dispute). We have given only one instance ; there may be many disputes which would not fall within Section 2(k) or Section 2-A, It is obvious that in all such cases, the remedy is only in a civil Court or by way of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes (in short Sections 10 or 12) does not apply to such a dispute."

20. The Apex Court summarised the following principles for determining the question whether the dispute between the parties is to be determined and adjudicated upon by the civil Court or the machinery provided under the Act at

PP.741-742:

"(1) Whether the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called sister enactments to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/ Industrial Tribunal directly--i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil Court where recourse to civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

21. In *Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another*, while considering the scope of jurisdiction of the civil Court vis-a-vis the provisions of the Act, it has been held that the Act not only confers the right on a worker for reinstatement and backwages, if the order of termination or dismissal is not in accordance with law, but also provides for a detailed procedure and machinery for getting this relief. It has further been held that the scheme of the Act clearly excludes the jurisdiction of the civil Court by implication in respect of the remedies which are available under the Act and for which a complete procedure and machinery has been provided therein.

22. In the present case, the plaintiff is challenging the termination of his services by the defendant. Therefore, it falls within the ambit of Section 2-A of the Act and as such the dispute involved is an "industrial dispute" within the meaning of Section 2 (k) of the Act. The machinery provided by the Act for resolution of such dispute would, therefore, apply and civil Court would have no jurisdiction.

23. A similar question also came up for consideration before a learned Single Judge of this Court in *Himachal Khadi Mandal and Anr. v. Om Prakash*, C. R. No. 189 of 1991, and *Himachal Khadi Mandal and Anr. v. Subash Chand*, C. R. No. 191 of 1991, decided by a common judgment on December 11, 1991. In the said two cases also the order of termination of services of Sarvshri Om Prakash and Subash Chand passed by the present defendant came to be challenged by way of civil suits and it was held that since the dispute raised an "industrial dispute", the jurisdiction of the civil Court was barred and only the forums under the Act would be competent to go into and adjudicate upon the same.

24. The facts of the present case are similar to the facts of the cases referred to above on all fours. Relying upon the ratio laid down by the Apex Court as well as by this Court in the above referred to cases, the present suit is not within the jurisdiction of the civil Court. The findings recorded by the learned first appellate Court are correct and do not call for any interference.

25. Consequently the present appeal fails and the same is accordingly dismissed, leaving the parties to bear their own costs.