
(2005) 03 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : F.A.O. (Ord) No's. 222 and 279 of 1993

Jalam Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 106 FLR 984 : (2006) 1 LLJ 755 : (2005) 2 ShimLC 86

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Kuldip Singh and Bimal Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This judgment shall dispose of two appeals being FAO No. 222 of 1993 and FAO No. 279 of 1993. The only question to be decided in these cases is with regard to the jurisdiction of the Civil Court.

2. Facts giving rise to the present appeals are that in both the suits, the plaintiff filed suit for declaration that the verbal orders of termination of service of the plaintiff are illegal and nullity and not binding on the plaintiff with the effect that the plaintiff continues in service with all antecedents service benefits till the date of superannuation or till he is lawfully removed from service. There was also a prayer for mandatory injunction.

3, Both the suits were decreed by the trial Court by holding that the termination of the service of the defendant is wrong and illegal and the plaintiff continues to be in service as before, entitling the plaintiff to all service benefits including the wages of the period he was not allowed to work.

4. The present respondents filed appeals in the Court of learned District Judge, Sirmour at Nahan. The learned District Judge has held that the Civil Court had no jurisdiction in the matter since the matter was squarely covered under the provisions of the Administrative Tribunals Act and the remedy of the plaintiffs, if

any, lay with the State Administrative Tribunal.

5. Mr. Kuldeep Singh, learned senior counsel appearing on behalf of the appellant, has urged that the judgment of the learned lower appellate Court is totally illegal. According to him the order of termination had been passed without giving any opportunity to the appellants and therefore, the said order being violative of the principles of natural justice was null and void and according to him in case of such an order, Civil Court has jurisdiction to entertain the dispute.

6. Mr. Ashok Chaudhary, learned Additional Advocate General, has contended that no verbal orders were passed and in fact the case set up in defence was that the present appellant had left the job of his own violation and his services had never been terminated. The plaintiff did not come for work for more than one year and as such there is no order of termination. ;

7. In support of his contention Mr. Kuldeep Singh has relied upon *Shri Bhagwan and Another Vs. Ram Chand and Another*, ; *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , *A.R. Antulay Vs. R.S. Nayak and Another*, , *R.B. Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission (It and Wt) and Another*, and *Krishan Lal Vs. State of Jammu & Kashmir*, He contends that all these judgments lay down that rules of natural justice are sacrosanct and any order passed in violation of the rules of natural justice is void ab initio. He placed reliance on *Dhruv Green Field Ltd. Vs. Hukam Singh and Others*, to contend, that if an order is void ab initio then the jurisdiction of the Civil Court cannot be deemed to be barred. There can be no quarrel with the proposition that every order whether judicial, quasi-judicial or administrative which effects the rights of any party should be a speaking order and should be passed in accordance with the rules of natural justice.

8. The point raised by Mr. Kuldeep Singh is that when an order is passed in violation of the rules of natural justice such an order is void and then the Civil Court has jurisdiction to entertain the civil suit challenging such an order. I have great doubt with regard to the second part of the proposition propounded by the learned counsel for the appellant. However. I need not go into such question in the present case since in my view this question does not arise for decision.

9. The suits in the present case(s) were filed not only for setting aside the verbal order of termination, but also with the prayer that the plaintiff shall continue in service with all antecedent benefits. It is not only the prayer " clause, but the entire frame of the suit which has to be seen. Secondly the main basis of the suit is the so called verbal order which is stated to have been passed in violation of the rules of natural justice. The respondent has stated that no such order has been passed and according to them the plaintiff had himself ceased to come for work. This is a question which is to be decided by the appropriate forum. Firstly this question has to be decided whether a verbal order was passed or not. It is only thereafter that the question will arise whether such verbal order was passed

in violation of the rules of natural justice. Who will have jurisdiction to decide the first question? In my considered view, there can be no difference of opinion with regard to this, it will only be the appropriate forum either under the Administrative Tribunals Act or under the Industrial Disputes Act. In case of a person who is daily wager under the State Government and is working in a department which falls within the definition of industry, he will have two options before him. In case he claims violation of the provisions of the Industrial Disputes Act, he shall have go to the Industrial Tribunal in view of the law laid down by this Court in Himachal Pradesh Agro Industries Corporation Vs. Raj Kumar and Others, This judgment has been upheld by the Supreme Court. In this judgment, it has been held as under at p. 878:

75. For the foregoing reasons, in our opinion, the Administrative Tribunal constituted and established under the Administrative Tribunals Act, 1985 has no jurisdiction to entertain, deal with and decide an application for the protection or enforcement of rights created or liabilities imposed under the Industrial Disputes Act, 1947 or any other law for the time being in force and the only remedy available to the aggrieved party is to approach Industrial Tribunal/Labour Court or an Authority constituted, and/or established under the relevant statute. The orders passed by the Administrative Tribunal either under the provisions of the ID Act or any other law for the time being in force must necessarily be held to be null and void and without jurisdiction.

10. However, in case a daily wager employee does not complain of any violation of the Industrial Disputes Act of the matter raised by him does not fall within the meaning of the Industrial Dispute, it would only be the State Administrative Tribunal which will have jurisdiction to decide the matter. In this behalf reference may be made to the judgment of the Apex Court in Union of India and others Vs. Deep Chand Pandey and another, wherein in a case relating to a casual typist who claimed the right to continue in employment, the Apex Court held that the High Court has no jurisdiction to entertain the writ petition since the matter was squarely covered by the Administrative Tribunals Act. In this case, it has been held as under:

The present respondents are claiming the right to continue in the employment of the Union of India as before, with additional claim of temporary status and it is, therefore, idle to suggest that such a claim is not covered by the Act. The necessary conclusion, therefore, is, that the remedy of the respondents was before the Tribunal and not the High Court. We accordingly, hold that the High Court did not have the jurisdiction to entertain the claim of the respondents.

11. This Court in Sangeeta Devi v. Union of India 1997 (1) Shim LC 157 in similar circumstances held that the remedy of the petitioner would be either under the Administrative Tribunals Act or the Industrial Disputes Act and did not exercise jurisdiction under Article 226 of the Constitution.

12. In view of the above judgment, the plaintiffs' remedy was either to approach

the authorities under the Industrial Disputes Act or to approach the State Administrative Tribunal. The Civil Court had no jurisdiction to entertain the suit. The learned lower appellate Court rightly ordered that the plaint be returned to the plaintiff for presentation to the proper forum.

13. The appeals are, therefore, without any merit and are dismissed with no order as to costs.