

(1986) 02 AHC CK 0060
In the Allahabad High Court
Case No : C.R. No. 6 of 1986

L.I.C. of India Central Office at Bombay

APPELLANT

Vs

S.P. Arya

RESPONDENT

Date of Decision : 10-02-1986

Acts Referred:

Citation : (1986) 52 FLR 515 : (1995) 3 LLJ 467

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : R.P. Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—The opposite party was an employee of the applicants. He was removed from service and a writ petition challenging the order of removal from service and the orders dismissing the appeal and review filed by the opposite party against the order of removal or service has been filed in this Court and is pending. The opposite party filed a suit for arrears of salary, dearness allowance and house rent allowance etc. for the period from 1st December, 1978 to 11th August, 1980 viz. the date on which he was removed from service on the allegation that the amount claimed in the suit even though was payable to him by the applicants had not been paid. A preliminary objection was raised before the Civil Court that the Civil Court has no jurisdiction to entertain the suit. This objection has been repelled by the court below by its order dated 19th October, 1985. The present Revision has been filed against that order.

2. It has been urged by the counsel for the applicants that since the opposite party could raise an industrial dispute in regard to the relief claimed in the suit the only remedy available to him was to raise an industrial dispute and not to institute a suit in the Civil Court. The opposite party has put in appearance and Caveat on his behalf has been filed by Sri A.K. Sharma, Advocate.

3. I have heard learned counsel for the parties and am of the opinion that no

exception can be taken to the order passed by the court below on the facts of the instant case. In *The Premier Automobiles Limited Vs. Kamlakar Shantaram Wadke*, the Question about the respective jurisdiction of the Civil Court on the one hand and the tribunals constituted for deciding industrial disputes on the other was considered at some length and the following principles have been laid down:

"To sum up the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:

- (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 suiter 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 suiter 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 the enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of Industrial disputes by ana large almost invariably are bound to be covered by principle 3 stated above."

4. In my opinion the instant case is covered by principle No. 2 enunciated by the Supreme Court. The suit is essentially for recovery of arrears of salary and such other allowances as are admissible to an employee during the course of his employment. The right of the employee to get salary from his employer for the period of the subsistence of the contract of service is a right under general or common law and is not enunciated as such by the Industrial Disputes Act. In this view of the matter even though an industrial dispute also could have been raised for the enforcement of this right in view of Principle No. 2 enunciated by the Supreme Court the opposite party could as welt have instituted a suit in the Civil Court for the enforcement of that right. The choice was to be left to the election of the Suiter.

5. Learned counsel for the applicant urged that even after taking into consideration the case of Premier Automobiles (Supra) a learned Single Judge of this Court in Sheo Kumar v. Hindustan Academy 1978 (37) FLR 163 has held that a suit in the civil court was not maintainable in matters relating to industrial disputes. Having gone through this decision I am of the opinion that this case is clearly distinguishable. That was a case where the relief claimed in the Civil Court was for a declaration that an order issued by the Secretary and Treasurer of the defendants terminating the services of the plaintiff was illegal and ultra vires. It was pointed out that the right claimed by the plaintiff u/s 6(n) of the Act was undoubtedly a right created by the Act. As seen above in the instant case no such declaration has been claimed by the opposite party. He is not seeking to enforce any right created by the Industrial Disputes Act but is seeking to enforce a right under general or common law.

6. In the result I find no merit in this Revision. It is accordingly dismissed.