

(1994) 12 MAD CK 0043
In the Madras High Court

Lilly Bai

APPELLANT

Vs

Chinna Thai and Others

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 311

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 44(1)

Citation : (1996) 1 MLJ 131

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Second defendant in O.S. No. 882 of 1990, on the file of Principal Sub Judge, Madurai, has filed this second appeal.

2. The following substantial questions of law has been raised for consideration in this second appeal:

(1) Whether the judgment of the lower appellate court could be sustained on the facts and circumstances of this case in the light of the principles of law applicable thereto? and

(2) Whether the view of the lower courts that the suit is competent is sustainable in law?

3. Plaintiff is the first respondent, 1st defendant is the second respondent and defendants 3 to 5 in the suit are respondents 3 to 5 in this second appeal. The parties to this second appeal are mentioned hereafter according to their rank in the suit.

4. The plaintiff filed the suit for the following reliefs:

(a) To pass a decree of declaration declaring that the plaintiff is entitled to continue in the post of Tamil Pandit even after 31.10.1990 as such entitled to all the benefits, salary, etc.

(b) in consequence of the grant of declaration to pass an decree for permanent injunction-restraining the defendants from interfering with the plaintiff's continuance as a Tamil Pandit by preventing or otherwise affecting her right to service in the 1st defendant-School.

(c) To pay the cost of this action by the contesting defendants.

5. In the suit, there are five defendants. Defendants 3 to 5 are the authorities under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as "the Act"), and the first defendant is the management.

6. The material facts which gave rise to the filing of the suit and this second appeal can be summarised as follows:

The second defendant was appointed as a Tamil Pandit on 10.7.1967. Since there was some violation by the management regarding directions given by the Government, the recognition was withdrawn and 31 teachers including the appellant herein were removed from service. These teachers filed appeal before the Chief Educational Officer, Madurai, on 5.1.1974, and as per order dated 23.10.1978, the appeal was allowed. The management filed appeal before the Educational Tribunal as C.M.A. No. 376 of 1978, but it was dismissed on 27.6.1981. Against the decision of the Educational Tribunal, the first defendant filed W.P. No. 10334 of 1981 before this Court. This Court remanded the matter back to the Tribunal for fresh consideration. The second defendant filed Writ Appeal No. 357 of 1990 before this Court, and pending appeal, there was a compromise between the second defendant and the first defendant, and an order was passed in terms of the compromise. The salient features of the compromise are:

In view of the agreement between the learned Counsel for the parties, on instructions from their respective clients, it is not necessary for us to refer to the facts of the case or even the order of the Tribunal or the judgment of the learned single Judge, impugned in this appeal and it would suffice to say that during the course of hearing when the Bench expressed the opinion about the violation of Section 44(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the consequences of non-deposit of the amount as envisaged by Section 44(4) of the Act, the learned Counsel for the parties have agreed on instructions from their respective clients, to the following order being made:

1. That the appellant shall be reinstated by the first respondent-School forthwith.
2. That the appellant shall not claim any back wages till the date of her reinstatement.
3. That the appellant shall be granted continuity of service from the date of her termination till the date of her reinstatement for the purpose of fixation of her seniority and further fixation of her salary, etc., but without any back wages.

In view of the abovesaid agreed order, the writ appeal is disposed of. No costs.

After the compromise, the second defendant was reinstated in service on 8.8.1990 and she continued in service till 30.8.1990. In between this period, certain developments happened. The first defendant filed writ petition challenging the withdrawal of the recognition, and the recognition was restored as per memo No. 49588/B1/34-14 dated 21.9.1974. In between this period, i.e., between 1973 and 1974, the Government directed that all the retrenched staff be absorbed in various panchayat schools and schools of local authorities. The second defendant was not appointed in any school, and that necessitated her filing a separate appeal before the Chief Educational Officer, Madurai, as stated above.

7. After the recognition was restored, and, while the second defendant was out of service, the first defendant management appointed one James Irudhayaraj in the place of the second defendant, as Tamil Pandit. He was working in that school from 1973 to 1975, and his post was approved by the Department. He was also given increment as an approved teacher. In 1975, James Irudhayaraj resigned and one T.Chellasamy was appointed in that place, i.e., in the place of the second defendant, from 1975 to 1978. Due to unauthorized absence, he was removed, and the plaintiff was appointed as Tamil Pandit in that place.

8. As stated, on the basis of the order in the writ appeal, the second defendant joined duty on 8.8.1990, and she was allowed to continue till 31.8.1990. On 1.9.1990, the appellant (second defendant) was removed from service on the ground that she was not able to furnish the Government Order to the management. The second defendant filed a contempt application before this Court, and when the contempt application came up for hearing, the first defendant again reinstated the second defendant in service. The first defendant unconditionally apologised before this Court. The first defendant thereafter filed a complaint against the second defendant to the District Educational Officer and the second defendant was placed under suspension. The second defendant filed an appeal against the suspension, and the Authorities under the Act cancelled the suspension. The first defendant did not obey the order. Meanwhile, the plaintiff filed the present suit for the reliefs stated above, the reasons being that there is only one post of Tamil Pandit in the school, and if the second defendant is to be reinstated, she has to be relieved from the post. The first defendant, therefore, issued a memo to the plaintiff informing her that with effect from 31.10.1990, she will be relieved from service so as to provide the second defendant that post. It is the said order of the 1st defendant-management that is challenged in the suit.

9. The main grievance of the plaintiff in the plaint is that at the time of her appointment on 1.2.1979, she was told by the management that her appointment in the school is for a permanent staff. She has further averred that for about three years, she was not given any salary by the first defendant, and, only on her executing a bond, she was given salary without any increment. It is

also averred by her that she was kept in dark about the litigation pending between the second defendant and the first defendant, and only after the entire litigation was over, the first defendant gave records to the plaintiff for instituting the suit. She also averred that she made an attempt to get herself impleaded in Writ Appeal No. 357 of 1990, which was dismissed. It is also her case that the second defendant is not qualified to be posted as a Grade I Tamil Pandit. She says that she has been working in the school from 1979 onwards, for the last 15 years. It is at this juncture, she was relieved from service, and that too, to provide for an unqualified candidate. It is also averred that the orders of the Educational Officer are all without authority, and also in violation of the principles of natural justice. She (plaintiff) further avers that the order of the Educational Tribunal does not direct that the second defendant should be appointed in the place of the plaintiff, and hence the memo issued by the defendant on 1.10.1990 is invalid.

10. The second defendant (appellant herein) filed a detailed written statement. She states that she was appointed in the school long before 1973, when the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 came into force, and she was fully qualified at the time of her appointment. She has also averred that the present suit is filed in collusion with the first defendant, to overcome the consequences of the judgment in Writ Appeal No. 357 of 1990. According to her, the Tribunal allowed her appeal, directing the management to reinstate her in service, with all backwages. She relinquished the backwages on the honest belief that she will be reinstated in service and allowed to continue as Tamil Pandit. She pleads that the management cannot terminate her services on principle of estoppel. She has also contended that the Civil Court has no jurisdiction to grant the relief sought in the plaint, and the plaintiff has filed the suit at the instance of the management, which is lacking in good faith. Ultimately, she prayed that the suit may be dismissed with her costs.

11. During trial, three witnesses were examined on the side of the plaintiff, and the second defendant examined herself as D.W. 1. A departmental witness was examined as D.W. 2. The plaintiff produced Exs. A-1 to A-9, and on the side of the defendants, Exs.B-1 to B-24 were marked.

12. Taking into consideration the entire facts, the trial court held that the Civil Court's jurisdiction is not ousted. According to the trial court, the question whether the termination of the plaintiff and the appointment of the second defendant in the 1st defendant-School is valid, will not come within the ouster jurisdiction of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The trial court also held that the appellant (second defendant) was appointed properly, and she is not disqualified to hold the post. But the trial court directed the Authorities concerned, to create another post so that the plaintiff could be accommodated in the school, and also further directed that the plaintiff will not be relieved from duty till the Authorities create another post. The trial court also directed the first defendant-School to pay the salary from its hands to the

plaintiff. In effect, the second defendant was allowed to continue in service, but a prohibitory direction was given against the 1st defendant-management from relieving the plaintiff.

13. Against the judgment, the plaintiff did not prefer an appeal. But the first defendant preferred an appeal before the lower appellate court. The lower appellate court was of the view that the civil court's jurisdiction is not ousted. It further held, placing reliance on the evidence of D.W. 2, that the second defendant is not qualified to hold the post. The lower appellate court further held that the plaintiff is not liable to be retrenched from service, and consequently granted the relief sought for in the plaint.

14. It is the decisions of the courts below that are now challenged in this second appeal.

15. It is also brought to the notice of this Court that pursuant to the judgment of the lower appellate court, the appellant was given a memo reverting her back to a junior post, taking into consideration the evidence of D.W. 2 that she (second defendant) is not qualified to hold the post.

16. When the appeal was filed, the plaintiff also entered appearance through the caveat, and after hearing the parties, this Court passed an interim order on 1.11.1994, as follows:

Interim stay until further orders. The appellant Mrs. Lilly Bai and the plaintiff Mrs. Chinna Thai shall be in service as on 3.10.1994 until further orders and the management shall pay salary to the plaintiff Chinna Thai as well as the second defendant Lilly Bai until further orders.

2. Mr. E. Padmanabhan, learned Counsel for the 1st respondent, requests time for filing counter. One week time is granted for filing counter. Mr. M. Sekar, learned Counsel for the management 1st defendant is not present.

3. Notice to respondents 2 to 5.

17. Since there was some mistake regarding the date, another C.M.P. was filed by the appellant (2nd defendant) to correct the date. The plaintiff also filed an application to vacate the stay. As per order dated 9.2.1994, I modified the order dated 1.11.1994, and interim stay as prayed for was granted, with a direction that the appeal itself will be heard on 16.12.1994. In fact, at the time when the C.M.Ps. were heard on 9.12.1994, learned Counsel for the parties (except the learned Additional Government Pleader appearing for defendants 3 to 5) virtually argued the appeal itself. Therefore, with the consent of learned Counsel appearing for all the parties, the second appeal was directed to be posted for final hearing on 16.12.1994, along with the connected C.M.Ps. on 16.12.1994, the arguments which were heard in part earlier, were completed.

18. The main argument that was urged by the learned Counsel for the appellant was that the civil court has no jurisdiction to decide the matter in view of the

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. He brought to my notice certain salient features under the Act, especially Sections 53, 53-A and 54 of the Act, and also some of the Rules framed thereunder. He also brought to my notice the constitution of the various tribunals, both original and appellate, to get redress under the Act. According to the learned Counsel for the second defendant (appellant), in view of a statutory provision expressly exonerating the jurisdiction of the civil court, the relief sought for in the plaint should not have been granted, and the suit should not have been entertained by the civil court.

19. It was further contended by the learned Counsel for the appellant that though it was averred in the plaint that the second defendant (appellant) was not qualified, that was not seriously argued before the courts below, and in such circumstances, merely by believing the evidence of D.W. 2, an adverse inference should not have been drawn against the second defendant. It is also the further contention of the learned Counsel for the second defendant (appellant) that as against the appellant, no relief is claimed in the plaint, but, by the judgment of the lower appellate court, an adverse finding has been given, and, therefore, she has now been sought to be relieved from the post of Tamil Pandit Grade I. According to the learned Counsel, the Act and Rules which came into force in 1973 have no application so far as she (2nd defendant) is concerned, since her appointment was long before the Act and Rules came into force. The Authorities under the Government have also recognised her appointment and have approved the same. Aid is also given to the School Administration, approving her appointment as valid. When the Government and the authorities have recognised and approved her appointment, the civil court should not have decided about the validity of her appointment. It is also contended that from a reading of the plaint and the reliefs prayed for therein, it is clear that it is the management which is being the suit, in order to oust the appellant (second defendant) from the school, one way or the other.

20. Respondents 3 to 5, who are defendants 3 to 5 in the suit, were represented by the learned Additional Government Pleader (C.S.). He also put forward the contention that the civil court has no jurisdiction to deal with the matter, and the judgment of the trial courts as well as the lower appellate court was without jurisdiction. The learned Counsel for the 1st defendant-management contended that the management is interested only in the finality of the proceedings one way or the other, whether by the civil court or the tribunal. According to him, the management is aggrieved because it has been directed to pay the salary of the plaintiff from out of its hands. Learned Counsel would further contend that the advice given by the trial court to create a post, is not acceptable.

21. The learned Counsel for the plaintiff, on the other hand, wanted to sustain the judgment of the trial court. He contended that the civil court has jurisdiction, and Sections 53 to 55 of the Act are not applicable so far as the reliefs prayed for by the plaintiff are concerned.

22. When the matter was taken up for hearing, this Court suggested that in case

it is found that civil court has no jurisdiction, it is better to relegate the matter to be agitated before the competent tribunal. This Court also warned that an observation made by this Court regarding the merits of the case will affect the rights of parties even if they go before the tribunal hereafter. Except the learned Counsel for the plaintiff, all others agree for the said suggestion. The learned Counsel for the plaintiff alone insisted that the matter had to be heard on merits also.

23. The first question to be decided is, whether the civil court has jurisdiction to deal with the matters that are provided under the Act.

24. Sections 53, 53-A and 54 of the Act read thus:

53. Civil Court not to decide questions under this Act : No civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act. 53-A. Settlement of dispute as to educational agency, etc.-

(1) Notwithstanding anything contained in Section 53, whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a school committee, or as to the appointment of secretary of the school committee, arises such dispute may be referred by the persons interested or by the competent authority to the civil court having jurisdiction, for its decision.

(2) Pending the decision of the civil Court on a dispute referred to it under Sub-section (1), or the making of an interim arrangement by the civil court for the running of the private school, the Government may nominate an officer to discharge the functions of the educational agency, the school committee or the secretary, as the case may be, in relation to the private school concerned.

54. Finality of orders, etc., passed under this Act. : (1) Any order made, decision taken or direction issued by any authority or officer in respect of matters to be determined for the purpose of this Act, shall, subject only to appeal or revision, if any provided under this Act, be final. (2) No such order, decision or direction shall be liable to be questioned in any court of law.

Sections 19 and 20 of Chapter V of the Act deals with the qualifications, conditions of service, etc., of teachers and other persons employed in private schools, and regarding appointment of teachers and other employees in private schools. Sub-section (2) of Section 20 of the Act says:

Nothing contained in these section or any rule made thereunder shall apply to any person who, on or before the date of the commencement of this Act is employed as teacher or other employee in any private school.

The said clause is also of some importance in this case when we consider the qualifications of the second defendant (appellant) to continue as a Tamil Pandit.

25. The Rules have been framed under the Act. Rule 15 provides that the number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of schools education from time to time, with reference to the academic requirements, teacherpupil ratio and overall financial considerations. It is not disputed that there is only one post that is sanctioned for the school. It is also not disputed that the plaintiff joined the school after the Act came into force, i.e., on 1.2.1979.

26. There is an express prohibition of the civil court deciding or dealing with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act. So, the question that arises for consideration is, what are the matters that can be dealt with under the Act in so far as the services of teachers are concerned.

27. Sections 22, 23, 24, 41, 42 and 45 of the Act deal with matters regarding service conditions of the teachers. Section 22 of the Act says that no teacher or other person employed in any private school shall be dismissed, removed or reduced in rank, nor shall his appointment be otherwise terminated except with the prior approval of the competent authority. It is also provided that against the order of the competent authority, an appeal is provided to such authority or officer as may be prescribed, and as may be appointed by the Government. Section 23(a) and (b) say that (any teacher or other person employed in any private school who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated;) or whose pay or allowance or any of whose conditions of service are altered or interpreted to his disadvantage, by any order, (may prefer an appeal against such order to such authority or officer as may be prescribed) [*Italics supplied*]. Section 24 of the Act deals with the second appeal, to be filed before the tribunal appointed under the Act.

28. The main contention put forward by the learned Counsel for the plaintiff is that the order dated 1.10.1990 is neither dismissal nor removal nor reduction in rank, and hence this matter does not come within the prohibition of Section 53 of the Act. The said contention has no force. The order dated 1.10.1990 reads as follows.

According to the learned Counsel, the said order is neither dismissal, removal, nor reduction in rank. The said contention has no force, for the reason that the Order itself says that she has to be relieved from service so as to provide for the appellant in that place. The order cannot be read as a punishment on the second defendant. But it cannot be said that she is not removed from service by virtue of that order. That apart, Sections 22 and 23 of the Act contemplate appeal against termination for some other reason also. In either way, it cannot be said that the case of the second defendant is not coming either u/s 22 or 23 of the Act read with Section 53 of the Act.

29. In this connection, Section 53(A) of the Act also gains importance. Even though that also is in respect of a private school, if it is an inter se dispute

between an educational agency or regarding the appointment of a Secretary of the school committee, such a dispute, a civil court is given jurisdiction to decide. It is an Exception to Section 53 of the Act. So, except in respect of matters provided u/s 53-A of the Act, in all other matters, the jurisdiction of the civil court is expressly included. Section 54 of the Act gives a finality to the Orders passed by the Authorities under the Act, and it further provides that the order passed by the authorities shall not be questioned in any court of law.

30. In *Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.* (1976) 2 S.C.C. 58, this question came up for consideration. There also, a local degree college registered under the Societies Registration Act was established. It was a recognised institution. It also agreed to be governed by the Statutes and Ordinances of a Public University to which it was affiliated. The question that came up for consideration in that case was, whether the dismissal of a Principal of that College without the prior approval of the Vice-Chancellor as required by the University Act was void, and whether any relief could be granted to the Principal. While deciding that case, their Lordships held as follows:

A contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions, (i) where a Public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

These are only instances where a declaration sought for can be granted. In all other respects, the remedy of the person affected is only to get damages. Their Lordships further held in that case that "Before an institution can be considered a statutory body, it must be established that it was created under the statute and owes its existence to the statute. This is distinct from an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. The adoption of certain statutory provisions by itself is not sufficient to clothe the institution with a statutory character. The Institution concerned must owe its very existence to a statute would be the fountain head of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

31. The above principle was followed again by the Apex Court in the decision reported in *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, , wherein it was held as follows:

Even though the college in question may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the government it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision. Though the action of the college in terminating the services of the appellant on ground of want of the Director's approval had been held to be wrongful but even so it was not in contravention of any statutory provisions or regulations or procedural rules. Therefore, it is not possible to grant a declaration that the appellant continues to be in the service of the college and that he is entitled to all the benefits flowing from the declaration.

32. Regarding the bar of jurisdiction of the Civil Court to decide matters between master and servant, the Apex Court has declared the law in various cases.

33. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , their Lordships held thus:

The following principles regarding exclusion of jurisdiction of civil court may be laid down:

(1) Where the state gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intentment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular act. In either case the scheme of the particular act must be examined because U is a relevant enquiry.

(7) An exclusion of jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply; Case law discussed.

34. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , the question that came up for consideration was, whether in respect of industrial disputes, civil court can exercise jurisdiction. While considering that point, their Lordships held thus:

In *Doe v. Bridges* (1831) 1 B. & A.D. 847 are the famous and oft quoted words of Lord Tenterden, C.J. saying:

Where an act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.

This passage was cited with approval by the Earl of Halsbury, L.C. in *Pasmore v. The Oswaldtwistle Urban District Council* 1898 A.C. 87 and by Lord Simonds at p.407 in the case of *Cutler v. Wandsworth Stadium Limited* 1949 A.C. 398. Classic enunciation of the law and classification of the cases in three classes was done by Willes, J. With the precision which distinguished the utterances of that most accomplished lawyer, in the case of *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C.B. 336 (Vide the speech of Viscount Haldane at page 391 in the case of *Neyille v. London "Express" Newspaper Limited*, 1919 A.C. 368 (HL). The classes are enumerated thus:

There are three classes of cases in which a liability may be established by Statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it.... "With respect to that class it has always been held, that the party must adopt the form of remedy given by the Statute."

35. In *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, , the question that came up for consideration was, whether the Tamil Nadu Estates (Abolition and

Conversion into Ryotwari) Act excludes the jurisdiction of civil court in respect of matters considering the nature of land. While considering the point, their Lordships held, in paragraph 8, as follows:

The principles bearing on the question as to when exclusion of the civil court's jurisdiction can be inferred have been indicated in several judicial pronouncements but we need refer to only two decisions. In AIR 1940 105 (Privy Council) the Privy Council at page 236 of the report has observed thus:

It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , Hidayathullah, C.J., speaking for the court, on an analysis of the various decisions cited before the court expressing diverse views, culled out as many as 7 propositions : out of them the first two which are material for our purposes are these:

(1) Where the statute gives a finality to the orders of the special tribunal the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court's would normally do in a suit. Such provision, however, does not exclude those cases the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is not express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

36. *Anwar Vs. First Additional District Judge, Bulandshahr and Others*, the question that came up for consideration was, whether in a matter arising under the Motor Vehicles Act, a civil court can grant injunction restraining the hearing authority from proceeding with the hearing of the case and exercising its statutory functions under the said Act. The relevant portion in paragraph 6 of the

said judgment (at page 1788) reads thus:

Section 9 of the Code of Civil Procedure, 1908, provides that the courts (subject to the provisions contained therein) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is no doubt true that is no express provision in the Act taking away the jurisdiction of the civil courts to try a suit in which the validity of the proceedings under Chapter IV-A of the Act is called in question. But we are of opinion that the jurisdiction of the civil courts is impliedly barred from entertaining suits of the present nature. The jurisdiction of the State Government (the hearing authority u/s 68-D of the Act) is exclusive in character and it is not open to a civil court to issue an order of injunction restraining the hearing authority from proceeding with the hearing of the case and exercising its statutory functions. Whenever status uses the expression that a decision of an authority shall be final, the jurisdiction of a civil court to go into the correctness or otherwise of the decision is taken away. We have gone through the plaint presented in this case. It is not disputed that the scheme had been duly published u/s 68-C of the Act by an authority which had the power to publish it and that the authority which was hearing the case u/s 68-D of the Act had the power to do so. All the contentions urged in the plaint relate to the merits of the scheme and the desirability of bringing the scheme into force. All such objections relating to the merits of a scheme or the desirability of bringing such scheme can be raised by an aggrieved person before the hearing authority u/s 69-D of the Act and it is for the hearing authority to consider such objections and representations and to pass appropriate orders thereon. Where the statute gives finality to the orders of a special tribunal the civil court's jurisdiction must be held to be excluded insofar as the merits of the case is concerned. If jurisdiction is so excluded, the civil courts have jurisdiction only to examine whether the provisions of the statute have not been complied with or the tribunal had or had not acted in conformity with the fundamental principles of judicial procedure.

....

37. In the same volume, in the decision reported in Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others, , their Lordships held that a clever drafting of the plaint cannot overcome the bar of jurisdiction. In paragraph 5 of the said judgment (at page 2199), their Lordships held thus:

It is no doubt true that the plaintiffs who claimed to be the owners along with some others of the suit land had avoided to seek a declaration that the suit land was not shamlat deh. They had, however, questioned the correctness of the entries in the revenue records which showed that the Panchayat was entitled to the suit land. The plaintiffs cannot by drawing their plaint cleverly by not claiming a declaration that the land in question was not shamlat deh confer jurisdiction on the civil court when by virtue of Section 13 of the Act the jurisdiction of civil courts to try such suits had been taken away.

38. In *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, , their Lordships summarised the law regarding the ouster of jurisdiction as follows:

...Generally speaking, the broad guiding considerations are that wherever a right, not preexisting in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts' jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts' jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the civil courts' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, .

39. A recent decision of the Apex Court reported in *Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others*, , the question that came up for consideration was, whether the orders of the Municipality regarding demolition of building can be questioned in a civil court. While considering that point, their Lordships have exhausted the Law on that point. The relevant paragraphs of the said decision are as follows:

(Paras 10 to 23 and portion of para 24):

Section 9 of the CPC (hereinafter referred to as "the Code") says that courts shall have jurisdiction to try all suits of civil nature "except suits of which their cognizance is either expressly or impliedly barred." According to the Corporation once the jurisdiction of the court to try a suit in which the validity of any order passed under the provisions of the Corporation Act or the notice issued thereunder has been specifically barred and an internal remedy has been provided for redressal of the grievances of the persons concerned, there is no scope for court to entertain a suit.

In the olden days the source of most of the rights and liabilities could be traced to the common law. Then statutory enactments were few. Even such enactments only created rights or liabilities but seldom provided forums for remedies. The result was that any person having a grievance that he had been wronged or his right was being affected, could approach the ordinary civil court on the principle of law that where there is a right there is a remedy *ubi jus ibi remedium*. As no internal remedy had been provided in the different statutes creating rights or liabilities, the ordinary civil courts had to examine the grievances in the light of different statutes. With the concept of the welfare State, it was realised that enactments creating liabilities in respect of payment of taxes, obligations after vesting of estates and conferring rights on a class of citizens, should be complete

codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Provisions were also made for appeals and revision to higher authorities.

Then a question arose as to where a particular Act had created a right or liability and had also provided a forum for enforcement of such right or for protection from enforcement of a liability without any authority in law, whether a citizen could approach a court. It may be pointed out that many statutes have created certain rights or liabilities and have also provided the remedial measures in respect thereof, but such statutes have not touched the common law rights of the citizen. But there are some statutes, which is public interest affect even the common law rights or liabilities of the citizen, which were in the nature of existing rights. The distinction between the two types of rights or liabilities is subtle in nature but at the same time very vital.

In one of the earliest case of *Wolver Hampton New Waterwoks Co. v. Hawkesford* (1859) 6 C.B. 336. Willes, J., said:

There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contain words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particularly remedy for enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

The same view was reiterated by the house of Lords in *Neville v. London "Express" Newspaper Limited*, in *Barraclough v. Brown*, it was said:

I do not think the appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right.

It has further pointed out "the right and the remedy are given unoflatu and the one cannot be dissociated from the other."

In the well-known case of AIR 1940 105 (Privy Council) this question was considered in connection with Sea Customs Act, 1878. It was said:

It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or

clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure.

But having enunciated the general principle in respect of ouster of the jurisdiction of the civil court it was said:

But, in their Lordships' opinion, neither Section 32 nor the principle involved in the decision in the case of *Secretary of State for India in Council v. Moment Affect The* (1912) 40 I.A. 48 : ILR (1913) Cal. 391 validity of an Act of the Indian Legislature which creates an obligation and provides an exclusive Code for its determination; such an obligation is not covered by Sub-section (2) of Section 32.

In connection with the imposition of Terminal Tax on salt under the Punjab Municipal Act, in *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, it was said that where a statute created a liability and provided a remedy, party aggrieved should pursue the remedy provided under the Act. A Constitution Bench of this Court in *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, considered the provisions of Madras General Sales Tax Act and the exclusion of the jurisdiction of the civil court. It was pointed out that there was an express and unambiguous prohibition and no suit could be entertained by a civil court. In connection with the Bombay Sales Tax Act the same view was reiterated by a Constitution Bench of this Court in *Kamala Mills Ltd. Vs. State of Bombay*. In *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, a Constitution Bench examined the bar,

On the jurisdiction of the civil court in connection with the House and Tenants - U.P. (Temporary Control of Rent and Eviction) Act, and came to the conclusion that a special statute had excluded the jurisdiction in clear and unambiguous words and it had provided an adequate and satisfactory alternative remedy to a party, that may be aggrieved by the relevant order and as such the jurisdiction of the civil court had been ousted. This very question was examined in *State of Kerala Vs. Ramaswami Iyer and Sons*, in connection with the jurisdiction of the civil court would be deemed to have been excluded because the legislature had set up a Special Tribunal to determine the question relating to rights or liabilities which had been created by the statute. Again in connection with the provisions of the Evacuee Property Act, in *Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad*, and *Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum*, it was held that complete machinery for adjudication of all claims has been provided under the Act overrides other laws, including Section 9 of the CPC and there was no scope for the civil court to entertain any suit.

The Constitution Bench in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, said:

Where there is an express bar of the jurisdiction of the court, an examination of

the scheme of the particular act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary "to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

In connection with the Industrial Disputes Act, in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , it was pointed out that "the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute, if it concerned enforcement of certain right or liability created only under the Act." The jurisdiction of the civil court in connection with the levy of octroi duty under the C.P. and Berar Municipalities Act, 1922 was examined by the court in *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, , and held it was barred.

Whether the court can hear and determine suits relating to levy of professional tax under the Punjab Municipal Act, 1971 was examined in the case of *Munshi Ram and Others Vs. Municipal Committee, Chheharta*, and it was held:

...(Where a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded.

It was pointed out in *Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others*, , that when by a special statute rights have been created and jurisdiction of the court has been barred then the jurisdiction of the court to try such suits has been barred then the jurisdiction of the court to try such suits has been taken away. In the case of *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, :

Wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created unoflatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provisions the civil court's jurisdiction is impliedly barred.

The jurisdiction of civil court to entertain a suit for ejectment was examined in *Sushil Kumar Mehta v. Gobind Ram Bohra* (1990) 1 S.C.C. 93 and it was held that the Rent Control Act was a complete Code and the jurisdiction to try a case for ejectment was exclusive under that Act.

With the increase in the number of taxing statutes, welfare legislations and enactments to protect a class of citizens, a trend can be noticed that most of such legislations confer decision making powers on various authorities and they seek to limit or exclude court's power to review those decisions. The result is that the power of the court u/s 9 of the Code is being denuded and curtailed by such special enactments, in respect of liabilities created or rights conferred. This Court in the judgments referred to above has upheld the ouster of the jurisdiction of the court on examination of two questions: (1) Whether the right or liability in respect whereof grievance has been made, had been created under an enactment and it did not relate to a pre-existing common law right? (2) Whether the machinery provided for redressal of the grievance in respect of infringement of such right or imposition of a liability under such enactment, was adequate and complete? The ouster of the jurisdiction of the court was upheld on the finding that the rights or liabilities in question had been created by the Act in question and remedy provided therein was adequate.

But the situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the courts so far remedy against the orders passed under such statute are concerned. In such cases, the courts have to be more vigilant, while examining the question as to whether an adequate redressal machinery has been provided, before which the person aggrieved may agitate his grievance. In the case of *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, , this Court after referring to the case of *Addanki Tiruvenkata Thata Desika Charyulu* (Since deceased) and after him his legal representatives *Vs. State of Andhra Pradesh and Another*, observed : (S.C.C. P.579, para 35).

It was pertinently added that this exclusion of the jurisdiction of the "civil court would be subject to two limitations. First, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. The second is as regards the exact extent to which the powers of statutory tribunals are exclusive." The question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors.

In *Srikant Kashinath Jituri v. Belgaum Corporation* AIR 1994 S.C.W. 4453, the question that came up for consideration was, if a writ is maintainable, even though there is finality of the order of the authorities, a suit is also maintainable in spite of Section 9 of the Code of Civil Procedure. Repelling the abovesaid contention and also reiterating the principles enunciated in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, and also *Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others*, , their Lordships held thus:

...Learned Counsel contended that if a writ petition is maintainable without filing

the second appeal provided by Rule 20, a suit is equally maintainable. In our opinion the said contention is based upon a misconception. Such an onerous provision may be a ground for entertaining a writ petition on the ground that the alternative remedy provided by the statute is not an adequate or efficacious remedy see: *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, , but that can never be a ground for maintaining a civil suit. Both the jurisdictions are different and are governed by different principles. Article 226 provides a constitutional remedy It confers the power of judicial review on High Courts. The finality clause in a statute is not a bar to the exercise of this constitutional power whereas the jurisdiction of a civil court arises from another statute, viz., Section 9 of the Code of Civil Procedure. In such a case, the bar arising from an express provision like Rule 25, or arising by necessary intendment can be overridden only in cases and situations pointed out in *Dhulabhai*. The jurisdiction of the civil court in such matters is governed by the principles aforesaid and the ground now urged by Sri Tarkunde is not one of the grounds recognised for invoking the jurisdiction of the civil court. It is not correct to say that whatever is good for Article 226 is good for suit as well.

40. While considering the aspect of ouster of jurisdiction, one important factor to be considered is, whether the provision contained in the Statute conferring jurisdiction, provides for an adequate and effective remedy. It was so held in the decision reported in *Sayed Mohamed Baquir El-edroos (Dead) by Lrss. Vs. State of Gujarat*, .

41. If the Act does not provide an adequate remedy, even if there is an express bar of the jurisdiction of civil court, it cannot be said that the jurisdiction of civil court is completely ousted.

42. The provisions in the impugned Act (which I have extracted above) will make it clear that it has provided an adequate and effective machinery to redress the grievances. It provides for the filing of a representation, hearing of the parties, passing an order, filing an Appeal, or a second appeal, and also in certain cases, revision before Government. In fact, the Tribunal is a Judicial Officer, not below the rank of a Subordinate Judge.

43. Before the Tribunal constituted u/s 42 of the Act, the procedure is that of a Civil Court, and the Tribunal shall have all the powers vested with the Civil Court, provided under the Code of Civil Procedure, for the purpose of hearing the appeal. So, it is clear from the above provisions that an effective alternative forum has been constituted under the Act. Hence, in view of Section 53 read with Section 54 of the Act, the bar of jurisdiction is complete, and the orders of the authorities under the Act are final.

44. The learned Counsel for the plaintiff then contended that what he is seeking is, the enforcement of the agreement executed by the plaintiff as provided under Rule 15 of the Rules. According to him, it is a statutory agreement and that can be enforced through a Civil Court. Therefore, the said contention also cannot be

accepted. Even if it is a statutory agreement, the enforcement of the same can be only under the provisions of the Specific Relief Act.

45. Section 14 of the Specific Relief Act is a bar for the enforcement of personal service, and the remedy can only be for damages. That apart, the Form to be executed by the teacher and the management is provided in Form 7-A. A reading of the relevant clauses under the agreement will show that relief of a teacher due to want of vacancy is not a matter that is provided under the agreement. Again, the management, while taking aid from the Government, is bound to enforce the orders of the Government, and they cannot by-pass the same by taking an agreement contrary to the directions. A want of vacancy is not something provided for in the agreement, and the management cannot appoint a person when there is no post recognised or approved by the Government. In that view also, the contention of the learned Counsel for the plaintiff cannot be sustained.

46. From the above discussion, it follows that the suit is misconceived, and the decision of the courts below that they have got jurisdiction to decide the matter, is illegal and cannot be sustained.

47. As stated earlier, this finding alone is sufficient to non-suit the plaintiff. But since he insisted that the matter should be heard on merits, I proposed to do the same also.

48. It is admitted that there is only one post for Tamil Pandit. In paragraph 7 (iii) of the plaint, she says thus:

...Accordingly all teachers were absorbed in Panchayat Union except the abovesaid Lilli Bai. Since all teachers who were working in the school were directed to join in Panchayat Board Schools, the management of the school has made appointments in those places. In the place of Lilli Bai, one M. James Iruthayaraj was posted by the management. He was working in the school from 1973 to 1975, and his post was approved by the Department. As a fact, he was given increment by which his post was approved as permanent. In 1975, he has resigned and one J. Chellasamy was appointed in that place. He was working in that place from 1975 to 1978. In 1978, he abstained from duty of so many months. After that, the plaintiff was appointed as Tamil Pandit in the school in the place of Chellasamy.

A reading of the relevant portion of the plaint (extracted above) will show that the plaintiff was appointed only in the place of the second defendant, while she (second defendant) was out of service for some time. Naturally, the claim of the plaintiff can only be subject to the claim of the second defendant. The matter did not end there. When the second defendant moved the Tribunal, she was directed to be reinstated. The matter was challenged before this Court in W.P. No. 10334 of 1981. The Tribunal upheld the contention of the second defendant on three grounds. It was found by the Tribunal that the services of the teachers were not terminated, and they were not removed from service. Secondly, it was found that they are entitled to continue in service. When the Tribunal dismissed the appeal

of the management (first defendant), it was only on the ground that they had not complied with the conditions contemplated u/s 44 of the Act, i.e., they did not deposit the amount that is due to the teachers before filing the appeal. This Court only disturbed that part of the finding of the tribunal. This Court directed that the management should be given an opportunity to deposit the amount. In the concluding portion of the order, this Court held thus:

A reading of the order of the tribunal shows that at no point of time, did the tribunal hold an inquiry and decide whether and in what amount, the petitioner is liable to make a deposit. Instead of deciding that issue of the preliminary stage, the point relating to that plea has been relegated to be heard along with the main appeal and a finding is rendered. This has resulted in failure of justice. It is therefore necessary to quash that portion of the order of the tribunal's finding that the appeal was not maintainable for non-deposit or failure to deposit the amount as contemplated u/s 44 of the Act. The appeal in C.M.A. No. 376 of 1978 would stand restored to the file of the Subordinate Judge, Madurai (Appellate Tribunal) and shall be disposed of in accordance with law after affording an opportunity to both sides. The writ petition is allowed accordingly with no order as to costs.

49. It was against this remand order, the second defendant filed Writ Appeal No. 357 of 1990. The management unconditionally agreed to reinstate the second defendant forth-with. It was further declared that the second defendant shall be granted continuity of service from the date of termination till the date of her reinstatement, for the purpose of fixation of her seniority, fixation of her salary, etc. In turn the second defendant agreed that she will not claim any backwages which she was entitled to as per the tribunal's order. So, on the basis of the promise made by the first defendant management, the second defendant relinquished her part of the claim, to her detriment. The principle of estoppel, therefore, applies. In that writ appeal, the authorities under the Act were also parties. Therefore, the judgment rendered in the writ appeal binds them also.

50. The lower Appellate Court held that the second defendant is not qualified to be appointed as a Tamil Pandit-Grade I, It relied on a notification by the Government dated 9.10.1974 (G.O. No. 1750). In fact, that Government Order was not an exhibit before the trial court or before the lower Appellate Court. But, being a Government order, a copy of the same was placed before this Court. Clause 3 of the said Government order enables the second defendant to hold the post if she had completed 15 years of service from 1.1.1974. On the date of suit, she (second defendant) had completed more than 15 years of service and she was eligible to continue in service. The finding of the lower Appellate Court was without considering the Government Order, which was not before it. In effect, I hold that the second defendant is also entitled to hold the post and she is fully qualified to hold the same. If so, when the plaintiff is appointed in her place, the plaintiff's claim can be only subject to the claim of the second defendant. Hence, the order of the management dated 1.10.1990, relieving the plaintiff from the

post is proper, and the plaintiff is not entitled to any of the reliefs prayed for in the suit. The suit is therefore dismissed.

51. The question then remains is, what is the order to be passed as to costs.

52. I have already stated that the second defendant had to fight litigations one after the other against the first defendant. The first defendant had also agreed to reinstate her (second defendant) with all service benefits, except backwages. But they did not want to keep up their promise, and for one reason or the other, the second defendant was kept out of service. She had to move this Court with a contempt application when the judgment in Writ Appeal No. 357 of 1990 was not obeyed. Even thereafter, she was suspended from service, on the basis of some allegations made in the suit filed by the present plaintiff. A reading of the plaint in this case also shows that all the papers, to substantiate the case of the plaintiff were submitted by the management and the plaintiff was only acting as an agent of the first defendant. It is also clear from a reading of the plaintiff that she must be aware of the litigations pending between the second defendant and the 1st defendant-management. The plaintiff was not given salary for more than three years. Even after the appointment, she was given only the salary, and not the increment. In spite of all this, when the second defendant was about to be reinstated, the plaintiff filed the present suit and sought injunction. The said conduct of the 1st defendant and the plaintiff which is collusive in nature, compels me to award exemplary costs. I award a sum of Rs. 15,000 (Rupees fifteen thousand only) as exemplary costs to the second defendant. Out of the said amount of Rs. 15,000 - Rs. 5,000 (Rupees five thousand only) shall be paid by the plaintiff and Rs. 10,000 (Rupees ten thousand only) will be paid by the first defendant.

53. The plaintiff has also filed a cross appeal claiming that the suit should have been decreed as prayed for.

54. In the cross objection, she wanted the directions given by the trial court to be modified. Such a contention cannot be taken by her in cross-appeal since she has not filed any appeal before the lower Appellate Court, nor was this argument put forward by her. Further, on the merits of the case, I have already held that the plaintiff is not entitled to any relief. In view of that, the cross objection is dismissed, without any order as to costs.

55. In the result, this second appeal is allowed with exemplary costs of the second defendant (appellant) which is fixed at Rs. 15,000. This exemplary costs of Rs. 15,000 shall be borne by the plaintiff and the first defendant, as indicated above. The cross objection is dismissed without any order as to costs.

JUDGMENT

This second appeal and memorandum of cross-objections having been posted this day for being mentioned pursuant to the order of this Court dated 21.12.1994 and made herein and in the presence of the aforesaid Advocates, the

following Judgment of the Court was delivered by

S.S. Subramani, J.

56. The matter is listed to-day for being mentioned, at the request of the 2nd respondent.

57. After hearing the learned Counsel for all the parties, I am of the view that no further orders are necessary.