

(1980) 06 MAD CK 0020
In the Madras High Court

Madurai District Co-operative Supply and Marketing Society
Limited

APPELLANT

Vs

S. Sankaranarayanan and Others

RESPONDENT

Date of Decision : 16-06-1980

Acts Referred:

Citation : (1982) 95 LW 178 : (1982) 1 MLJ 140

Hon'ble Judges : V. Balasubrahmanyam, J

Bench : Division Bench

Judgement

V. Balasubrahmanyam, J.—The common question in all these second appeals is whether the suits out of which they arise, are maintainable. The Courts below held that they were maintainable. The correctness of their decision is disputed by the appellant who was the defendant in all the suits.

2. Four suits figure in this controversy. The plaintiff in each suit was an employee of a Cooperative Society called the Madurai District Co-operative Supply and Marketing Society Limited. Each of them was in charge of a godown of the Society storing foodgrains. On the ground that there were shortages in the stock, each of the godown keepers was dismissed by the Society after a domestic inquiry. Each of them filed a suit against the Society for a declaration that his dismissal was wrongful.

3. The Society resisted the suits on the ground, among others that they were not maintainable. The Courts below negated this contention, proceeded on the merits of the case and decreed the suits as prayed for.

4. The issue as to maintainability was rested before the lower Courts under two different sets of statutory provisions. One was u/s 73 read with Section 100 of the Tamil Nadu Co-operative Societies Act, 1961. The other was under the Industrial Disputes Act, 1947. No argument, however, was addressed before me by the Society's learned Counsel on the basis of Section 73 of the Tamil Nadu Cooperative Societies Act, 1961, for disputes arising out of disciplinary action

taken by a Society or its Committee against a paid servant of Society stands specifically excluded from the class of disputes which are covered by the special procedure drawn up u/s 73 of the Act.

5. Learned Counsel for the Society accordingly pressed for my consideration the other objection to the maintainability of the suits namely -that the Industrial Disputes Act provides for a comprehensive procedure and an adequate remedy for dismissed workmen, and thereby the jurisdiction of Civil Courts is impliedly barred in such matters. He relied on two decisions of learned Single Judges of this Court in Krishnan and Another Vs. The East India Distilleries and Sugar Factories Ltd. and Another, and Madura Mills Co. Limited v. Guruvammal and Anr. (1967) 2 Lab. L.J. 397 Learned Counsel pointed out that these decisions were cited with approval by the Supreme Court in Premier Automobiles Limited v. K.S. Wadke (1975) 48 FJR 252 Learned Counsel further pointed out that in a more recent decision in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, the Supreme Court had laid down that Co-operative Societies carrying on any industry, cannot fall outside the ambit of Section 2(j) of the Industrial Disputes Act. Learned Counsel accordingly submitted that the courts below were in error in entertaining the suits filed by the dismissed employees and in proceeding to adjudicate them on merits.

6. I accept the submission that the appellant Society in this case might well be brought within the ambit of the Industrial Disputes Act as carrying on an "industry" which includes any business, trade, undertaking, manufacture or calling of employers. Maintaining a godown for storage and distribution can be treated either as a business or as a trade or at any rate as an undertaking. I have also no hesitation in holding that a dispute concerning the employment or the non-employment of a workman as between the co-operative society and its workmen must be regarded as an industrial dispute within the meaning of Section 2-A of the Industrial Disputes Act, whether the non-employment can be treated as a discharge, dismissal, retrenchment or termination of employment.

7. Granting that the appellant co-operative society maintaining a godown and engaging godown keepers is an industry and granting that the dismissal of the godown keepers raises an industrial dispute, still the question is whether the suits filed by the present plaintiffs against their dismissal by the Society are not maintainable. For an answer to this question we will have to go to the decision of the Supreme Court in the Premier Automobiles v. K.S. Wadke (1975) 48 FJR 252 In that case the Supreme Court laid down the following, among other, propositions of law on the subject of bar of suits.

(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 an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his

remedy for the relief which is competent to be granted in a particular dispute.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

8. It may be observed that where the dispute does not touch any right conferred or liability imposed peculiarly by the Industrial Disputes Act itself, but arises out of a controversy regarding a right or liability under the general law or the common law, then, according to the Supreme Court, the jurisdiction of the Civil Court is not impliedly ousted, but survives as an alternative forum. In such a case, it is a matter for the election of the party concerned to choose his remedy either by way of a suit before a Civil Court or by way of reference before the Labour Court or Industrial Tribunal under the Industrial Disputes Act.

9. In the present case, the cause of action pleaded is the suits out of which these second appeals arise, is the dismissal of the employees concerned. It is a well-known feature of the law relating to master and servant, that an employee who is wrongfully terminated from his employment has a remedy to sue his employer in a civil Court. A dispute between an employer and an employee in a matter concerning the latter's dismissal must, therefore, be regarded as a dispute which does not arise out of a right conferred or liability, imposed for the first time by the Industrial Disputes Act. The right or liability, on the contrary, has been in existence ever since the law relating to master and servant became part of our common law. In these circumstances, applying the decision of the Supreme Court; the present suits filed by the dismissed employees against the Society must be held to be maintainable, and not barred by the Industrial Disputes Act.

10. There is yet another consideration. The relief claimed by the workmen in their suits is not only a declaration that their dismissal from service was wrongful, but they also ask for a permanent injunction restraining the Society from putting into effect the orders of dismissal. Learned Counsel for the Society cannot suggest that these reliefs are beyond the powers of a civil Court to grant. Under our common law, a civil Court is quite competent to give a declaratory relief to a dismissed workman as to his wrongful dismissal. The common law only withholds from the Court's powers, the power to order reinstatement of the dismissed workman in the event of its holding that the dismissal is invalid. In the instant cases, no difficulty is created by the form of relief asked for by the employees as against the Society. For both declaration and injunction are reliefs well within the Court's province.

11. All things considered, I am satisfied that the Courts below were right in entertaining the suits and proceeding to dispose of them on merits. No argument other than that of the maintainability of the suits was addressed in these second appeals. In any case, the decisions of the Courts below on the merits must be regarded as based on the evidence on record. They do not leave any scope for interference by me in the second appeals.

12. The second appeals are, accordingly, dismissed and the judgment and decree of the Courts below are confirmed. The respondents will have their costs in the appeals (one set).