(1992) 09 AHC CK 0124

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6191 of 1992

National Insurance Company Ltd. APPELLANT

Vs

Ashok Kumar Srivastava and Others RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 12, 226, 311
Court Fees Act, 1870 — Section 11, 7, 7(A)
General Insurance Business (Nationalisation) Act, 1972 — Section 1(2), 11, 16(4), 16(7), 17
Industrial Disputes Act, 1947 — Section 10, 12, 12(5), 2A
Insurance Act, 1938 — Section 64(R)
Penal Code, 1860 (IPC) — Section 32
Specific Relief Act, 1963 — Section 34

Citation : (1993) 1 AWC 353

Hon'ble Judges : A.K. Banerji, J

Bench : Single Bench

Advocate : P.K. Mukherji, for the Appellant; Lalji Sinha, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Banerji, J.—By means of this writ petition, the Petitioner has challenged the orders dated 7-9-1991, passed by Addl. Munsif, Gorakhpur rejecting the Petitioner''s objection u/s 47 CPC and the order dated 21-1-1992, passed by the VII Additional District'' Judge, Gorakhpur (Respondent No. 1) rejecting the revision filed by the Petitioner against the said order dated 7-9-1991, with the consent of the parties, the writ petition is being finally decided at the admission stage.

2. Briefly stated the relevant facts are that the Respondent No. 1. Ashok Kumar Srivastava filed a suit against the National Insurance Company (Petitioner) in the Court of Munsif, Gorakhpur alleging that he was appointed as an Inspector by the Defendant Insurance Company on Probation of one year vide the appointment letter dated 2-12-1980 with effect from 19-9-1980. The appointment letter

stated that the probation was extendable by another 12 months. According to the Plaintiff all of a sudden he received a notice dated 13-3-1982 terminating his services with effect from the same date i.e. 13-3-1982. It was alleged by him that he had not received any letter extending his Probation after one year and neither could Probation be extended to any period leaser than 12 months. It is this order of termination which was challenged by the Plaintiff-Respondent No. 1 by means of the aforesaid suit The Plaintiff pleaded in the plaint of the said suit that the notice terminating his services was illegal, unconstitutional and void. It was stated that the order of termination was not a termination order simplicitor but had cast a stigma on the Plaintiff and thus amputed to a punishment within the meaning of the General Insurance Conduct, Discipline and Appeal Rules, 1975. It was further pleaded that 30 days notice was not given to the Petitioner and neither any pay in lieu of notice was given, consequently the notice was null and void. The Plaintiff prayed for the following reliefs:

1. By decree of this Court it be declared that the notice of the Defendant dated 13-3-82 terminating the services of the Plaintiff is void, illegal and not a binding on the Plaintiff and the Plaintiff continues to be in the service of the Defendant as on 13-3-82 with all the benefits attached to the post and is entitled to recover all the emolument attached to the post of Probationary Inspector subsequent to 13-3-1982.

2. Cost of the suit be awarded to the Plaintiff.

3. The Plaintiff be awarded any other relief to which he is deemed entitled.

3. On summons being issued the Defendant Insurance Company appeared and filed their written statement. While denying the plaint allegations, they inter alia pleaded that the suit was not maintainable and the notice terminating the services of the Plaintiff was perfectly valid and legal. They also pleaded that the suit was barred u/s 34 of the Specific Reliefs Act. Further, they pleaded that no stigma was cast on the Plaintiff and the order terminating his services was a simple order of termination and not a punishment as alleged. They prayed that the suit should be dismissed with special cost. However, after filing the written statement, the Defendant failed to appear or to participate in the proceedings of the suit despite time being granted to them. The Court, therefore, ordered the suit to proceed ex-parte. No effort was made by the Defendant to set aside the order to proceed ex-parte and ultimately the suit was decreed ex-parte on 25-1-1991 The Court declared that the notice dated 13-3-1982 terminating the services of the Plaintiff was illegal. Inoperative and the Plaintiff was entitled to all the benefits available to him as in service.

4. The Plaintiff-Respondent No. 1, thereafter, put his decree in execution by claiming a sum of Rs. 1,02,861/- (Rupees One lac two thousand eight hundred sixty one) as arrears of salary for the period 13-3-1982 to 30-4-1991. Subsequently, he amended the execution application and claimed a sum of Rs. 3,90,342/- on account of arrears of salary. The Petitioner filed two objections u/s

47 CPC against the execution application and the amendment application. In its objections, the Petitioner inter alias stated that the ex-parte decree dated 25-1-1991 was of declaratory nature and the same was not legally executable and the execution application was not maintainable. It was further stated that the decree was not for any specified sum and therefore, not executable. The Plaintiff was, not a Government servant and the provisions of Article 311 of the Constitution was not applicable in case of the Plaintiff-decree-holder, on the contrary the Plaintiff was, simply an employee of the Defendant judgment debtor. His services were not terminated contrary to any statutory provision and therefore, he was not entitled to any declaration from the Civil Court. The execution application was defective, not maintainable and deserves to be dismissed. In the second objection, the Petitioner stated that the decree-holder was not in the employment of the Petitioner with effect from 13-3-1982 and hence not entitled to any amount Besides, the amount calculated by the decree - holder was incorrect, arbitrary and without any basis Further, the execution of the decree at the instance of the decree-holder, cannot proceed unless he pays Court fee on the amount of Rs. 3,90,342/-.

5. The executing Court after considering the objections filed by the Petitioner vide its order dated 7-9-1991 rejected the said objections by holding that the decree was not purely a declaratory decree but a consequential relief had also been claimed in the same hence the decree was executable. It was also held that execution can also be of an ascertained as well as on an unascertained amount. It further held that the National Insurance Company was a statutory body and has been shown in the schedule of the General Insurance Business (Nationalization) Act, 1972 and hence governed by the General Insurance Business (Nationalization) Act Since the Plaintiff had alleged contravention of statute on the part of the Defendant hence a declaratory decree could be granted and the decree passed was neither void nor a nullity. It WAS further held that Section 11 of the Court Fees Act was not applicable in the facts of the present case and the decree for consequential relief was executable.

6. Aggrieved against the aforesaid order dated 7-9-1991 passed by the executing Court, the Petitioner filed a civil revision against the said order before the District Judge, Gorakhpur which was transferred to the Court of the VII Additional District Judge. Gorakhpur who heard the matter and dismissed the revision vide his order dated 20-1-1992. The present writ petition is directed against the impugned order dated 7-9-1991 passed by the IV Additional Munsif Gorakhpur and the order dated 20-1-1992, passed by the Respondent No. 1.

7. I have heard the learned Counsel for the parties. The learned Counsel for the Petitioner has challenged the impugned order mainly on 4 grounds which are as follows:

(i) The first contention is that the suit of the Plaintiff-Respondent was not maintainable and barred under the provisions of Section 34 of the Specific Reliefs Act as well as by the provisions of Industrial Disputes Act

(ii) The second contention is that the ex-parte decree passed by the trial Court in favour of the Plaintiff was a declaratory decree and therefore, could not be executed.

(iii) Thirdly It was contended that no consequential relief having been claimed and no Court fee having been paid, the alleged arrears of salary could not be sought to be executed.

(iv) Finally it was urged that the decree being a unity and the grounds being raised goes to the root of the matter hence it could be challenged in execution proceedings.

I will deal with these contentions in the order in which they were canvassed before me.

8. In regard to the first contention regarding the maintainability of the suit or the suit being barred u/s 34 of the Specific Reliefs Act or the provisions of Industrial Disputes Act, the argument is two fold. It is urged firstly that the Plaintiff is seeking to enforce a contract of personal service and no declaration for enforcing a contract for personal service can be granted by the Civil Court as the same is barred u/s 34 of the Specific Reliefs Act. Secondly it is submitted that the Plaintiff will come within the definition of ''workman'' and as such, relief if any, is available under the Industrial Disputes Act and there is an apparent implied exclusion of the jurisdiction of the Civil Court to grant such a relief Elaborating his argument the learned Counsel forthe Petitioner submitted that the relationship of the Petitioner and the Plaintiff-Respondent No. 1 was purely contractual. The Plaintiff himself was relying upon the terms of the appointment letter and was seeking to base his right on the said appointment letter.

The Petitioner had reserved the right to terminate the services of the Plaintiff in the said appointment letter and they have done so, there was no breach of any statute and hence the suit before the Civil Court for declaratory relief was not maintainable in any case, the Petitioner could be a workman within the meaning of the Industrial Disputes Act which not only confer the right on the workers for re-instatement and back wages but also provides a detailed procedure and machinery for getting this relief. Under these circumstances, the scheme of the industrial Disputes Met clearly excludes the jurisdiction of the Civil Court by implication in respect of remedies which are available under the Act and for which a complete procedure and machinery has been provided under the industrial Disputes Act. In support of his submission, the learned Counsel for the Petitioner has placed reliance on the case of Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, . it was held in this case that normally a contract of personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. It is admitted that there are certain exception to this normal Rule but according to the learned Counsel the exceptions are not applicable in the facts of the present case.

9. The principle of law as laid down in the case reported in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, is now well established by a series of decisions. The question, however, which calls for a decision in this case is whether the exception to the normal rule that no declaration to enforce a contract of personal service will be granted as laid down in the aforesaid case are attracted in the facts of the present case before me. The exceptions which are laid down In the aforesaid decisions of the Supreme Court are as follows:

1. A public servant who had been dismissed from the service in contravention of Article 311 of the Constitution.

2. Re-instatement of a dismissed worker under Industrial Law or by Labour and Industrial Tribunal.

3. A statutory body when it has acted in breach of a mandatory provisions imposed by the statute.

10. According to the learned Counsel for the Respondents, the first two exceptions are not applicable in the facts of the present case. However, the third exception applies According to him National Insurance Company was a statutory body which was governed by a statute and statutory rules which regulated the service condition of the employees Since this statutory body has acted in breach of mandatory provisions imposed by a statute, a suit for a relief of declaration that the termination order is null and void and that the Plaintiff continues to be in service will be maintainable as it will not then be a mere case of master terminating the service of the servant.

11. Learned Counsel for the Respondent No. 1 has submitted that the terms and conditions contained in the appointment letter of the Plaintiff-Respondent are statutory conditions framed by the General Insurance Council u/s 64(R)(a) of the Insurance Act, 1938 which has been made applicable to General Insurance Corporation and its 4 subsidiaries including National insurance Co. Limited u/s 35 of the General Insurance Business (Nationalisation) Act, 1972. In this connection it will be worthwhile to notice certain provisions of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as the Nationalisation Act of 1972).

12. The Nationalisation Act of 1972 was framed by the Parliament with the object to provide for acquisition and transfer of shares of Indian Insurance Companies and Undertakings of other existing insurers in order to serve better needs of the economy by securing the development if general insurance business in the best interest of the community and for the regulation and control of such business and for matters connected therewith or incidental thereto. Section 4 of the said Act lays down that on the appointed day all the shares in the capital of every Indian Insurance Company shall by virtue of this Act. stand transferred to and

vested in the Central Government free of all trusts, liabilities and encumbrances affecting them. Section 5 lays down that on the appointed day the under taking of every existing insurer which is not an Indian Insurance Company shall stand transferred to and vested in the Central Government and the Central Government shall immediately thereafter provide by notification, for the transfer to and vesting in such Indian Insurance Company as it may specify In the notification of that undertaking Section 9 of the Act refers to the formation of General Insurance Corporation of India and it says that, as soon as may be, after commencement of this Act the Centra Government shall form a Government Company in accordance with the provisions of the Companies Act, to be known as the General Insurance Corporation of India for the purposes of superintendence, control ling and carving on the business of general insurance. Section 11 lays down that in the transfer of shares of each Indian Insurance Company to, and vesting in, the Central Government, u/s 4, there shall be paid by the Centra Government to the Corporation, for distribution to the share holders of each such Company the amount specified against such Company in the corresponding entry under Column 3 of Part A of the Schedule it Is noteworty that National Insurance Company is one of the names Insurance Company shown In Part A of the Schedule. Section 16 of the Act talks about a scheme for merger of Companies it lays down that if the Central Government is of opinion that for more efficient carrying on of general insurance business it is necessary so to do, it may by notification frame one or more schemes providing for all or any of the following matters:

(a) ...

(f) ...

g) the rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary.

Sub-section (7) of Section 16 reads as follows:

(7) The provision of this section and any scheme framed under it shall have the effect notwithstanding anything to the contrary contained in any other aw or any agreement, award or other instrument for the time being in force.

Section 17 lays down that a copy of every scheme and every amendment thereto framed u/s 16 shall be laid, as soon as may be, after it is made, before each House of Parliament Section 31 of the Act states that officers and employees of the Corporation or of acquiring companies shall be deemed to be public servants for the purposes of chapter IX of the Indian Penal Code, Section 35 of the Act states that the Central Government may by notification specify in "his behalf that the Insurance Act shall apply to or in relation to the Corporation and every acquiring company as if the Corporation or the acquiring company, as the case may be were an insurer carrying on general insurance business within the meaning of that Act. Section 39 gives power to the Central Government to make rules to carry out the provisions of this Act. In the same connection it will be necessary at this stage to mention the provisions of Section 64(R) of the Insurance Act of 1938. This provision lays down that for the efficient performance of its duties the Life Insurance Council or the General Insurance Council, as the case may be. may appoint such officers and servants as may be necessary and fix the conditions of their service.

13. In the background of aforesaid provisions it has to be examined whether the National Insurance Company will come under the expression "other authorities" in Article 12 and whether the rules framed under the Nationalisation Act or under the Insurance Act governing the service conditions of its employees will have the force of law and their employees will have a statutory status. In this connection reference may be made to the decision of Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . It was observed by the Supreme Court in the said case that the expression "other authorities" in Article 12 is wide enough to include within its authority created by a staute and functioning within the territory of India, under the control of the Government of India. The expression "other authorities" include all constitutional or statutory authorities on whom powers are conferred by law. Admittedly, the National Insurance Company alongwith three other Insurance Companies are one of the four companies formed persuant to Section 16 of the Nationalisation Act. Though these companies are registered under the Companies Act, the status of these 4 companies is not due exclusively to its registration under the Companies Act but to the scheme framed u/s 16 of the Nationalisation Act. It comes within "other authorities" under Article 12 for the three reasons; firstly, the general Insurance business monopoly u/s 24 of the Nationalisation Act; secondly, its employees are public servant for the purposes of Chapter IX of the Indian Penal Code and thirdly, the indemnity u/s 32 of the Nationalisation Act. In additional other provisions of the Nationalisation Act clearly establish that the four companies formed u/s 16 of the Act come within "other authorities" as mentioned in Article 12. As a matter of fact, this is now the established position and has been accepted by the Courts. Reference may be made to two cases reported in (i) 1978 Lab. I.C. 1062, (ii) 1981 Lab I.C. 1076 in these cases Madras High Court on considering a number of authorities has laid down that the United India Fire and General Insurance Company which Is one of the four companies mentioned above is a statutory body having a statutory status and will be authority within the meaning of Article 12 of the Constitution. To the same effect is the decision of Calcutta High Court reported in 1980 Lab IC. (NOC) 28. The Calcutta High Court in the light of the provisions of Sections 17, 19, 21, 31 and 33 of the Nationalisation Act has laid down that the New India Insurance Company Limited was an Instrumentality or agency of the Central Government or was a State or authority within the meaning of Article 12 and Article 226 of the Constitution As a matter of fact this aspect of the matter that the National Insurance Company is a statutory body has not been seriously disputed by the Counsel for the

Petitioner, rightly perhaps In view of the now settled position with regards to the said Companies. The National Insurance Company (Merger) Scheme 1973 came into force u/s 1(2) on the first of January, 1974 and in that Scheme which was published in the Government of India Gazette Extraordinary on 2lst December, 1973, there is a definition of the Act which means the General Insurance Business (Nationalisation) Act, 1972.

14. So far as the question whether the Rules framed for regulating service conditions of the employees of these companies are statutory rules or not, it will be worthwhile to refer to the decision of the Madras High Court in the case of P. Swaminathan v. Presiding Officer Central Government Labour Court 1982 Lab. I.C. 1069. It was held by the Court in the said case that the General Insurance (Rationalisation and Revision of Pay Scales and others conditions of Services of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 has been framed u/s 16 of the Nationalisation Act of 1972 after observing the formalities u/s 17 of the said Act and has statutory force. It has been further held that Section 16(1) of the Act states that the Central Government if it is of opinion that for more efficient carrying on of general insurance business it is necessary so to do, it may by notification frame one or more schemes providing for all or any of the matters set out in Clauses (a) to (j) therein. Clause (g) refers to rationalisation and revision of pay scales and other terms and conditions of services of officers and other employees. Sub-section (4) of Section 16 reads as follows:

If the rationalisation or revision of any pay scale or other terms and conditions of service under any scheme is not acceptable to any officer or other employee, the acquiring company may terminate his employment by giving him compensation equivalent to three months remuneration unless the contract of service with such employee provides for a shorter notice of termination.

15. Sub-section (7) of Section 16 of the Act which has already been quoted in the earlier part of this judgment lays down that the provision of the section and any scheme framed under it shall have the effect notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument for the time being in force. u/s 17 of the Act, as already discussed above, a copy of every scheme and every amendment thereto framed u/s 16 shall be laid, at soon as may be, after it is made before each House of Parliament. The Madras High Court therefore, in the case of P. Swaminathan (Supra) had come to the conclusion that the scheme has got a statutory force and there cannot be any manner of doubt with regards to the same.

16. In the case of Amitabh Bhattacharya v. Union of India 1980 Lab. I.C. (NOC) 28, the Calcutta High Court had held that for the purposes of recruitment of clerical and subordinate staff the procedure to be followed in the general Insurance industry was laid down by the General Insurance Corporation of India. This procedure was to be followed respect of each and every candidate. Further no relaxation in procedure could be made by the Insurance Company without the approval of the Corporation having regard to the direction of the Corporation.

Moreover, relaxation of a rule of recruitment was not permissible unless there was an express provision to that effect.

17. It is noteworthy that learned Counsel for the Petitioners has not argued before me that the General Insurance Conduct and Discipline Rules 1975, on which the Plaintiff-Respondent was heavily relying was not attracted in the case of the Plaintiff or that there has been no violation of the said Rules I therefore, proceed to assume that the General Insurance Conduct and Discipline Rules, 1975 applied in the case of the Plaintiff-Respondent. Agreeing with the view expressed in the above mentioned decisions I have no doubt that the Rules framed under the Nationalisation Act, 1972 including the General Insurance Conduct and Discipline Rules, 1975 are statutory rules and have statutory force. In this view of the matter I am of the opinion that if any order of dismissal against an employee of the aforesaid Company has been passed which is in violation of the statutory provision or in violation of a statutory obligation, the same is open to challenge and a Suit for declaration in such a situation would be maintainable in view of the exception No. 3 laid down in the case of U.P. Warehousing Corporation (Supra).

18. It has been held by the Supreme Court in the case of S.R. Tewari Vs. District Board Agra and Another, , that the powers of statutory body are always subject to the statute which has constituted it and must be exercised consistently with the statute and the Courts have, in appropriate cases, the power to declare an action of the body illegal or ultra vires even if the action relates to determination of employment of a servant. The Calcutta High Court has also in the case of Calcutta Electric Supply Corporation Ltd. v. Ramaratta Mahato AIR 1973 Pal. 258, held that a suit for declaration of an order of dismissal passed by an employer as illegal, inoperative and ultra vires as having been passed in transgression of material statutory provision or in violation of statutory obligation, was maintainable. Such a declaration is certainly different and far from a declaration granting enforcement of personal contract of service or reinstatement of a dismissed worker. After considering the decisions of various High Courts and after analysing the said decisions I am of the view that very rightly a distinction has been drawn between an attempt to enforce a contract and an attempt to have an order terminating a contract declared null and void. In the latter case the declaration would not proceed on the basis of enforcement of a contract but on the basis that there had been in fact, no order terminating the contract. A suit for declaration that the termination of Plaintiff''s service is ultra vires or illegal is maintainable in Civil Court. The conclusion, therefore, drawn in the present case by the trial Court that the Suit before the Civil Court for a declaration that the notice of termination of the services of the Plaintiff was null and void was maintainable before the Civil Court, was substantially correct.

19. In support of the second limb of the argument of the learned Counsel for the Petitioner, that the reliefs of reinstatement and back wages are available to the Plaintiff under the Industrial Disputes Act and the same cannot be granted by the

Civil Court as the provisions of the Industrial Disputes Act impliedly exclude the jurisdiction of Civil Courts as regards such reliefs, learned Counsel has placed strong reliance on the case Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, . The facts of the said case may be noticed, in brief. In that case the Plaintiff was an employee of M/s. Empire of India and Ceylone Tea Company Private Limited. The Plaintiff was served with a notice by his employers asking him to explain certain charges of misconduct. In domestic enquiry held by the management, the Plaintiff was found guilty and was dismissed from service. The Plaintiff filed a suit in the Court of Munsif seeking the relief of declaration that the dismissal was null and void and inoperative as he was not guilty of any misconduct and the dismissal was bad and contrary to the provisions of the Standing Orders. Before the trial Court the employers filed a written statement in which it was specifically pleaded that the suit was not maintainable as the relief which was sought was available to the Plaintiff u/s 2A of the Industrial Disputes Act. The trial Court came to the conclusion that the Civil Court had the jurisdiction to try the suit. The employers filed appeal before the High Court which held that the nature of relief which was sought by the Plaintiff was such which could only be granted under the Industrial Disputes Act and, therefore, the Civil Court had no jurisdiction to try the suit. The matter was taken before the Supreme Court by the employee. Before the said Court it was not disputed that the Industrial Disputes Act was applicable in the case. It was also not disputed that the Industrial Employment (Standing Orders) Act was also applicable.

It was also not disputed that the enquiry for misconduct was conducted against the Appellant-employee in accordance with the Standing Orders and the main plea which was raised was that the enquiry was not strictly in accordance with the Standing Orders. In this background the Supreme Court observed that it was not in dispute that the dispute which was raised by the Appellant fell within the ambit of definition of "Industrial dispute" as defined in Section 2(k) of the Industrial Disputes Act. It was further observed that it was not in dispute that the dispute could be taken up by the Conciliation Officer u/s 12 of the Industrial Disputes Act. It is in this background that the Supreme Court held that it was clear in view of the language of Section 10 read with Section 12(5) that an adequate remedy was available to the Plaintiff-Appellant under the scheme of Industrial Disputes Act itself which is the Act which provides for reliefs of reinstatement and back wages which, in fact, the Appellant sought before the Civil Court by filing a suit, It was thus held in that case that the scheme of the Industrial Disputes Act excludes the jurisdiction of Civil Court by implication in respect of the remedies which are available under this Act and for which a complete procedure and machinery has been provided by the said Act. On the basis of the aforesaid decision, learned Counsel for the Petitioner argued that the Plaintiff-Respondent No. 1 would be an workman within the meaning of the Industrial Disputes Act In support of his aforesaid submission, learned Counsel referred to the decision in the case of S.K. Verma Vs. Mahesh Chandra and

Another, , in which it was held that a Development Officer in the Life Insurance Corporation of India is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

20. Having heard learned Counsel on this aspect of the case I am of the view that the case reported in Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, is clearly distinguishable on facts in the aforesaid case before the Supreme Court it was not disputed that the Industrial Disputes Act was applicable and an inquiry for misconduct was conducted against the Plaintiff-Appellant In accordance with the Standing Orders. The main plea raised by the Appellant workman was that the inquiry was not strictly in accordance with the Standing Orders it is in this context that the High Court came to the conclusion that the Civil Court will have no jurisdiction to try the said suit and the dispute could be adjudicated by the Industrial Court. In the present case, in the written statement filed by the Petitioner the plea that the Plaintiff was a workman and in his case the Industrial Disputes Act was applicable and it was only the Industrial Court which could adjudicate the matter was neither taken nor raised. Even in the objections filed u/s 47 CPC the Petitioner had neither taken nor raised this plea. It is for the first time that this point is sought to be raised in the present petition. In the case Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, , it was held by the Supreme Court that when a decree is a nullity which is sought to be executed, objections in that behalf may be raised in a proceeding for execution. Again when a decree is made by a Court which has no inherent jurisdiction to make it, objection to its validity may be raised in execution proceedings if the objection appears on the face of the record, where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the question raised and decided at the trial or which could have been but not having been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

21. In the case of Hira Devi and Others Vs. Harinath Chaurasiya and Others, , which arose out of a suit for specific performance of contract and the Defendant-judgment-debtor did not raise any objection in the written statement about the lack of jurisdiction, and the decree had become final, this Court held that since this plea had not been raised, assuming that the Court had inherent lack of jurisdiction when the decree was put in execution, it was not open to the judgment-debtor to raise such objection nor the same could be permitted to be raised by the execution Court.

22. In view of the aforesaid decisions I am fortified in my view that the Petitioner having not raised this plea, that the Plaintiff was a workman within the meaning of Industrial Disputes Act and hence it is the Industrial Court which will have jurisdiction and not the Civil Court, either in its defence or in its objection u/s 47 CPC or before the Court below it will not be open for him to challenge the jurisdiction of the Civil Court on this ground for the first time in this writ petition.

In view of what has been held above I hold that the submission of the learned Counsel that the relief of reinstatement and back wages are available to the Plaintiff under the Industrial Disputes Act before the Industrial Court and the jurisdiction of the Civil Court was impliedly barred cannot be accepted.

23. The second contention of the learned Counsel for the Petitioner is that the exparte decree passed by the trial Court in favour of the Plaintiff was a declaratory decree and, therefore, could not be executed. In this connection the relief claimed in the plaint which has been quoted in the earlier part of the judgment may be noticed. It is apparent that the relief sought was not for declaration simplicitor but the Plaintiff had also sought a consequential relief inasmuch as he had claimed ail benefits attached to the post and also sought to recover the emoluments attached to the post of Probationary Inspector subsequent to 13-3-1982.

24. It has been held in the case of Managing Director, J. and K. Tourism v. Ghulam Mohammad Bhat 1985 Lab. IC. 124 that where the suit for declaration that the order terminating the services of the Plaintiff is illegal and demanding further relief by claiming emoluments attached to the post is decreed, the decree is not purely a declaratory decree in nature and is executable. Similar view has been taken by the Punjab and Haryana High Court in the case of Ram Swarup Bhalla v. State of Punjab 1985 SLR 433, in which it has been held that a declaratory decree reinstating an employee and deeming him in service throughout and entitling him for all consequential benefits are executable and the employee is entitled to get his salary in pursuance of the declaratory decree.

25. The Supreme Court in the case of Bhanwar Lal Vs. Smt. Prem Lata and others, , held in the facts of the said case, that once a decree which was the subject-matter of execution was declared to be not binding on the Plaintiffs, the execution sale would not bind and as a result they become entitled to restitution. The decree does contain a direction for restitution. Therefore, it is not a mere declaratory decree but coupled with a decree for restitution of the property in suit. Accordingly, the decree is executable.

26. In the present case before me also, the trial Court had decreed the Plaintiff''s suit by holding that the notice dated 13-3-1982 terminating the services of the Plaintiff was null and void and that he was entitled to all the benefits as if he were in service. Applying the ratio of the decision in the cases mentioned above to the facts of the present case I hold that the decree passed by the trial Court was executable and the view taken by the Courts below regarding the executabilty of the decree is correct.

27. Thirdly, it was urged by the Counsel for the Petitioner that no consequential relief was claimed by the Plaintiff and no Court fee having been paid, the decree for the alleged arrears of salary could not be sought to be executed. The expression "consequential relief" has been defined by our Court in the Full Bench decision of Kalu Ram Vs. Babu Lal and Others, as:

Some relief which would flow directly from the declaration given the valuation of which is not capable of being definitely ascertained, which is not specifically provided any where in the Act and cannot be claimed independently of the declaration as a substantive relief.

28. The test to determine whether a relief is a consequential relief is "where it flows directly from the declaration given". Where it is quite independent of the declaratory relief and thus can be granted or refused apart from the relief of declaration is not a consequential relief in other words, no relief is consequential unless it cannot be granted without declaration.

29. Applying the aforesaid test in the facts of the present case it will be seen that the Plaintiff had sought the relief for declaration that the notice terminating his services was null and void this was the substantial relief. If this relief refused, the relief for the benefit of the service and emoluments, which has been claimed in the plaint, will automatically fail. Thus the said relief regarding benefit of the service and emoluments was dependent on the relief for declaration and was thus a consequential relief The submission, therefore, that no consequential relief was claimed cannot be accepted.

30. So far as the argument of the Petitioner with regards to the payment of the Court fees by the Plaintiff was concerned, learned Counsel for the Respondent has in his reply referred to the provisions of Section 7(iv)(a) of the Court Fees Act which reads thus:

Section 7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(iv) In suits-(a) For a declaratory decree with consequential relief. To obtain a declaratory decree or order, where consequential relief other than the relief Specified in Sub-section (iv-A) is prayed;

31. Learned Counsel for the Respondent has argued that to a suit for declaration with a consequential relief Section 7(iv-A) of the Act does not apply and hence Section 7(iv)(a) of the Court Fees Act will apply. He has further argued that Section 11 of the Court Fees Act which deals with suits for mesne profits or account will not apply. He has further placed reliance GB paragraph 3 of the decision in the case of Managing Director, J. and K. Tourism v. Ghulam Mohammad Bhat (supra) in which it was held that where the suit is for declaration and for further relief, no valuation could be put by the Plaintiff on it for the purpose of jurisdiction and Court fees.

32. It has already been held by me that the relief for benefit of the service and emoluments claimed by the Plaintiff was consequential relief, and such relief was not specifically provided any where in the Act and could not have been claimed independently apart from the substantial relief for declaration. The Courts below, therefore, bad correctly held that the decree was executable and the Court fee paid was sufficient.

33. Lastly, it was contended that the decree being a nullity and the grounds raised go to the root of the matter, hence it could be challenged in execution proceedings and the objection filed u/s 47 CPC was well sustained. The Court has already taken the view that the ex parte decree passed by the trial Court in this case, cannot be said to be a nullity and the same is executable. In the case of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, the Supreme Court has held that a Court executing a decree can not go behind the decree between the parties or their representatives, it must take the decree according to it tenure and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision a decree even if it be erroneous, is still binding between the parties. It has been further laid down that when a decree is a nullity and it is sought to be executed an objection in that behalf may be raised in a proceeding for execution. However, a distinction has been drawn inasmuch as the Supreme Court has laid down that where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the question raised and decided at the trial or which could have been but not have been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

34. In view of the aforesaid, discussions I do not find any substance in the grounds raised by the Petitioner. The writ petition is, therefore, dismissed with costs.