

(1994) 02 DEL CK 0047

In the Delhi High Court

Case No : Regular Second Appeal No. 16 of 1987

O.P. Kapoor

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1994) 53 DLT 831

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : Jagmohan Bari, for the Appellant;

Judgement

K.S. Bhat, J.

(1) The appeal is by the plaintiff. He sought a declaration and permanent/mandatory injunction against the defendant against denial of special allowance that was being paid to him by the defendant.

(2) The plaintiff was being paid a special allowance and Therefore he was referred as a "Daftri". There was a disciplinary enquiry against him resulting in the punishment whereby the special allowance was withdrawn. This is under challenge. The defendant inter alias questioned the jurisdiction of the Civil Court to entertain the suit.

(3) This preliminary objection was up held by the Trial Court as well as by the lower Appellate Court. Trial Court has not gone into the merits of the case. The short question that arises for consideration is whether the suit filed by the appellant is maintainable and whether the Civil Court has jurisdiction to entertain the suit.

(4) The Trial Court held that Civil Court cannot sit in judgment over the decision of the management imposing the penalty and this is not a case where the plaintiff was claiming any relief in reference to any legal character or to any right

in property. The plaintiff was seeking the relief of a declaration that the enquiry held against him was null and void and such a suit is not maintainable. The lower appellate Court affirmed this view and for this purpose the lower Appellate Court relied on a few decisions of the Supreme Court wherein the Supreme Court pointed out that if the dispute involved is not an industrial dispute nor does it relate to enforcement of any other right under the provisions of the Industrial Disputes Act, the remedy lies only in the Civil Court, but the present dispute does not fall within this preposition. The lower Appellate Court assumed that the right sought to be enforced is a right created under the provisions of Industrial Disputes Act such as Chapter 5-A and Therefore the remedy is to invoke Section 33(c)(2) of the said Act. The Appellate Court specifically finds that the "right which is contemplated by the plaintiff is under the Act" (the Act referred herein is the Industrial Disputes Act).

(5) The learned Counsel for the appellant pointed out that the provisions of the Industrial Disputes Act cannot be invoked by the petitioner because as an individual he is precluded from raising any such dispute and he should have the backing of a substantial number of workmen or that of the Union concerned. The learned Counsel also pointed out that Section 33(c)(2) of the Act is not applicable because this is not a mere computation of the benefits but the suit involves the validity of the punishment imposed on the plaintiff/appellant. Under the provisions of Industrial Disputes Act the right of an individual to approach the Industrial Tribunal is limited to the case of dismissal/discharge etc. and not to other kinds of punishments.

(6) I am of the view that the appellant is justified in attacking the judgment of the Courts below. The appellant has challenged the deprivation of the special allowance. This is not an allowance payable or paid under Chapter 5-A of the Industrial Disputes Act. The claim of the plaintiff is a monetary claim, though the said claim is sought to be defeated by the defendant by reference to the disciplinary proceedings against him. If the disciplinary proceedings are void for any reason such as violation of the principles of natural justice, certainly then the Civil Court will be competent to declare the said order void and grant to the plaintiff the consequential relief. The Trial Court has not framed the issues in the suit. It has assumed that the suit will not be maintainable and Therefore, took up the question for decision at the threshold. The question raised by the plaintiff and the defense of the defendant shall have to be considered after a regular trial is conducted, in which the parties will be required to lead their evidence in support of their respective cases. It is only thereafter that the Court will be in a position to examine whether the Civil Court is in a position to grant the reliefs. The decisions relied upon by the lower Appellate Court are not applicable.

(7) For the reasons stated above this appeal is allowed. Judgment and decree of the Courts below is set aside. The matter is remanded back to the Trial Court for deciding the question after framing proper issues according to law. The parties are directed to be present before the Trial Court on 4.4.1994. Learned Counsel

for the appellant shall deliver by hand or issue registered letters to the defendant informing the date before the Trial Court. The appellant shall be entitled to costs of this appeal as well as the costs in the lower Appellate Court.