

(1993) 09 SC CK 0034

In the Supreme Court Of India

Case No : Civil Appeal No's. 3100 of 1991 with C.A. No. 4948 of 1991 and with SLP (C) No. 10902 of 1992

Rajasthan State Road Transport Corpn. and Another

APPELLANT

Vs

Shri Krishna Kant and Others

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1993) 5 JT 454(1) : (1994) 1 LLJ 136 : (1993) 3 SCALE 884 : (1993) 3 SCALE 600 : (1994) 1 SCC 268 Supp

Hon'ble Judges : S. C. Agrawal, J;A. M. Ahmadii, J

Bench : Division Bench

Advocate : Sushil Kumar Jain and Jitendra Sharma, for the Appellant;

Judgement

1. These appeals and the SLP have been filed by the Rajasthan State Road Transport Corporation, hereinafter referred to as 'the Corporation' which is constituted under the provisions of Road Transport Corporations Act, 1950. The respondents in these matters were employees of the Corporation. Their services were terminated on charges of misconduct. They filed civil suits seeking declaration that the termination of their services was null and void and that they should be treated under employment of the Corporation. The orders of termination were assailed on the ground that the same had been passed in contravention of the Standing Orders framed by the Corporation under the Industrial Employment (Standing Orders) Act as well as Article 311(2) of the Constitution. The said suits have been decreed by the courts below.

2. The question which has been raised by the Corporation is with regard to jurisdiction of the civil courts to entertain the suits. It has been urged that dispute between the Corporation and the respondent-employees whose services have been terminated was an industrial dispute under the Industrial Disputes Act, 1947, hereinafter referred to as 'the Act', and in view of the decision of this Court in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of

Bombay and Others, the jurisdiction of the civil courts is barred and the only remedy available to the respondent-employee is that provided under the Act, viz. to have the dispute referred for adjudication to a labour court.

3. In the Premier Automobiles' case (supra) (decided by the bench of three Hon'ble Judges of this Court), the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute have been thus stated-

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving into the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

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

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that

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

4. A division bench of the Rajasthan High Court, in Rajasthan State Road Transport Corporation and Anr. v. Kaluram etc.etc. 1988(1) RLR 697 has considered the question of jurisdiction of the civil court in the light of the aforesaid principles. In that case, the services of the employees of the corporation had been terminated on charges of misconduct after holding an enquiry and the employees had filed a civil suit wherein they sought a declaration that the order of dismissal was null and void being violative of the principles of natural justice. The High Court examined the matter with particular reference to principle 2 laid down in Premier Automobiles' case (supra) and held that under the said principle workman may resort to the remedy in a civil court also in cases falling u/s 2A of the Act. It has been observed-

It is after the introduction of Section 2A that their Lordships laid down the

aforesaid four principles and principle 2 was laid down. Their Lordships held that there is an option to the workman for invoking the jurisdiction of Civil Court or to raise a dispute under the Act. The rider placed was that for invoking the jurisdiction of Civil Court it is essential that dispute must be one which may be the aforesaid deeming section be an industrial dispute yet the cause of action for giving rise to such dispute may be arising out of a right or liability under the general or common law. This is apparent from the words arising out of a right or liability under the general or common law and not under the Act the jurisdiction of Civil Court is alternative". Their Lordships have illustrated this position of law and the proposition has been well settled. Nevertheless it has posed problem in its practical application and different courts have given it different interpretations and there has become a conflict of judicial precedent on this point. It may be mentioned here that their Lordship visualised, there may be some cases which may not hold two distinct and separate fields and where the rights or liabilities might be giving rise to the industrial dispute though source may be under the general law or the common law. In those cases their Lordships have stated that there may be two alternative remedies. The word hardly used by their Lordships in para 24 does not mean none but it means rarely or very seldom. They were contemplating rare cases and have illustrated one as the case of unsponsored workman whose dispute could also be considered as an industrial dispute by virtue of the deeming clause of Section 2A of the Act. The words there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act", would clearly mean that very seldom there may be a dispute as they have illustrated by words 'may arise in regard to the dismissal of an unsponsored workman which, in view of the provisions of law contained in Section 2A of the Act, will be an industrial dispute even though it may otherwise be an individual dispute". These words again in our opinion mean that sometime there may be a case of an employee who is dismissed from service and his case is not espoused by an Union and he is, therefore, an unsponsored workman, yet his case becomes an industrial dispute by virtue of Section 2A of the Act, then he can opt for going to Civil Court or ask for a reference under S-10 of the Act. In case of the termination is in violation of principles of natural justice or is in violation of some statutory provisions, such as in the cases in hand where the employees are unsponsored workmen who challenged termination being violative of Standing Orders and also because of violation of principles of natural justice

5. SLP (C) No. 9386 of 1988 filed by the Corporation against the said judgment of the High Court was dismissed (by a bench of two Hon'ble Judges) by order dated October 18, 1989 wherein this Court has observed-

Learned Addl. Solicitor General supports the SLP relying upon the judgment of a three judge bench of this Court in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, . The summing up of the position has been made at page 446 of the Reports and we are of the view that the instant

case comes in category II as mentioned therein. The State has its own Transport Corporation and respondent was an employee thereof. We are of the view that the Civil Court has jurisdiction for taking cognizance of the dispute; what relief would be available in the cases from the Civil Court is a matter different the question of jurisdiction. Learned counsel also wanted us to refer to Section 14 of the Relief Act. Even if we do that we think it is connected with relief and not jurisdiction. SLP is dismissed".

6. Shri P.P. Rao, the learned senior counsel appearing for the Corporation has urged that the said decision of the Rajasthan High Court in Kaluram's case (supra), has not correctly construed the observations of this Court in Premier Automobiles' case (supra) defining the limits within which principle 2 is to be invoked. It has been urged that the order dated October 18, 1989 of this Court dismissing the SLP against the said decision of the High Court, also does not give effect to the narrow limits of the applicability of principle of the Premier Automobiles' case (supra). Shri P.P. Rao has also placed reliance on the decision of this Court in Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, (decided by a bench of two hon'ble Judges) wherein an employee who was dismissed from service on the basis of domestic enquiry conducted in respect of charges of the misconduct had filed a suit for declaration that the dismissal was null and void as the enquiry was conducted in disregard of the standing orders passed under the industrial Employment (Standing Orders) Act. It was held that the civil suit was not maintainable as the relief sought was in substance for reinstatement and back wages and such relief could only be available to a workman under the Act. This Court has laid down- It is therefore clear that this Act i.e. Industrial Dispute Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances therefore there is an apparent implied exclusion of the jurisdiction of the civil court.

7. Shri Jitendra Sharma, the learned counsel for the respondents, on the other hand has stressed that the Corporation, being a statutory corporation, is governed by the provisions of Road Transport Corporations Act and a declaration can be sought against the corporation from the civil court that the respondent-employees continue to be in service. In this regard Shri Sharma has placed reliance on the following observations of Ray, C.J. in Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr. 1975(3) SCR 618:

The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

8. In these cases, however, the impugned action of the Corporation terminating the services of the respondents has not been challenged on the ground that it is in violation of statutory Regulations framed by the Corporation in exercise of its

powers under the Road Transport Corporations Act. The case of the respondents is that the said action has been taken in contravention of the Standing Orders framed by the Corporation under the Industrial Employment (Standing Orders) Act. The instant cases are, therefore, governed by the decision in Jitendra Nath Biswas case (supra) and in accordance with the said decision it must be held that the jurisdiction of the civil courts is excluded. It may be stated that from the point of view of the workmen also the remedy of adjudication available under the Act would be more beneficial to them than that of a civil suit inasmuch as the civil court cannot grant the relief of reinstatement which relief can be granted by the Labour Court/ Industrial Tribunal. But in view of the constraint placed by the Order dated October 18, 1989 in SLP No. 9386/88 passed by a bench of two Hon'ble Judges of this Court we do not propose to finally dispose of these matters and we consider it appropriate that the matter is heard by a bench of three Hon'ble Judges. It is, therefore, directed that these matters be placed before the Hon'ble Chief Justice for suitable directions.