

**(1995) 02 MAD CK 0127**

**In the Madras High Court**

**Case No : C.M.A. No"s. 54 to 57 of 1987**

Tamil Nadu Cement Corporation Ltd.

APPELLANT

Vs

Jabamalai and ors

RESPONDENT

**Date of Decision :** 02-02-1995

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2, 33C

**Citation :** (1995) 71 FLR 308 : (1995) 1 LW 440

**Hon'ble Judges :** Govardhan, J

**Bench :** Single Bench

## **Judgement**

1. These appeals arise out of a common judgment passed by the learned Subordinate Judge, Ariyalur, in As. Nos. 128 to 131 of 1985. The common case of the plaintiffs in all the suits is briefly as follows :

The plaintiffs were working in the Alangulam Cement Factory, a sister concern of Ariyalur Cement Factory. They were transferred from the Alangulam Cement Factory to Ariyalur Cement Factory. In Alangulam Cement Factory, they were enjoying certain benefits such as leave, quarters, medical facilities, etc. The transfer orders are silent with regard to these benefits. The defendant factory is now depriving all such facilities which the plaintiffs were enjoying in Alangulam Cement Factory. They were denied promotion, they were not provided with quarters and their seniority was also fixed below the juniors who are working in the defendant factory. Hence the suits.

2. The common case of the defendant in all the suits is as follows : The plaintiffs are workmen as contemplated under the provisions of the Industrial Disputes Act. The subject-matter of the suit falls within the definition of Section 2(k) of the Act. The suits are, therefore, not maintainable in a civil Court. A settlement has been arrived at between the union in the Ariyalur unit and the management and the same is binding on the plaintiffs who are now employed in Ariyalur unit. The transfers were made for the convenience of the plaintiffs at their request. The right to seniority has been waived and the plaintiffs are estopped from

raising any dispute regarding the same. The facilities like the quarters, etc., will be provided depending upon the existing conditions. The suits are not maintainable and they are liable to be dismissed.

3. On the above pleadings in the suits OS Nos. 12 to 15 of 1985, the learned District Munsif, Ariyalur, held a common trial in which issue No. 1 "whether the civil court has no jurisdiction to try the suit as per the provisions of the Industrial Disputes Act" has been tried as a preliminary issue. The learned District Munsif has held that the civil court has no jurisdiction to entertain the suit filed by the plaintiffs since the relief of seniority can be granted only under the Industrial Disputes Act, and dismissed the suits. Aggrieved by the said common judgment, the plaintiffs preferred the appeals before the Subordinate Judge, Ariyalur.

4. The learned subordinate judge has held that the plaintiffs are entitled to file the suits in the civil courts since the civil court alone can grant declaration and mandatory injunction and set aside the judgment of the trial court and remitted the suits to the trial court for fresh disposal on merits. Aggrieved by the said order of remand, the defendant has come forward with these appeals.

5. These appeals arise out of the common order passe by the learned Sub-Judge, Ariyalur, remanding the suits for fresh disposal to the trial court, viz, District Munsif's Court, Ariyalur.

6. In all the suits issue No. 1 has been framed by the trial court to decide the question whether the civil court has got jurisdiction to entertain the suit arising out an industrial dispute and the learned District Munsif has held that the civil court has no jurisdiction and dismissed the suits.

7. The appellate court had held that the civil court has got jurisdiction to entertain the suits and set aside the order passed by the District Munsif in the suits on the preliminary, issue and remanded the suits for fresh disposal. The remand order made by the appellate court in compliance with Order 41, rule 23 of the Code of Civil procedure, since the learned Sub-Judge has given a specification finding that the decision of the trial court cannot be sustained, in view of his decision, that the cases of the nature of these suits do not come under the Industrial Disputes Act. We have, therefore, to decide whether the finding of the learned Sub-Judge is proper to decide the appeal arising out of the judgment of the learned Sub-Judge. The prayer in the plaints is almost the same in that the plaintiff in each suit seeks declaration that he is entitled to seniority along with quarters facilities and consequential injunction restraining the defendant by means of mandatory injunction to reinstate the plaintiff to the higher post as per their original seniority if he had been Alangulam. The suit have been resisted by the respondent-defendant on the ground that the transfer of all these plaintiffs to Ariyalur Cement Works was only in pursuance of the request made by them to come and reside at Ariyalur, which is their native place and at that time, it was made clear that the plaintiffs will have to forgo their seniority and they will be considered as the juniormost employee after the

employees of Ariyalur Cement Factory and they cannot claim any benefit which they were enjoying while they were working in Alangulami Cement Factory. It is also contended that as far as the allotment of quarters is concerned, it be provided as per the seniority and the benefits will be given to them only as per the regulations prevailing in Ariyalur Cement Factory and the plaintiffs have accepted all these things and have given up their seniority and have come and joined the Ariyalur Cement Factory only to be in their native place and after joining in the Ariyalur Cement Factory, they have raised these claims and filed the suits. The plaintiffs do not dispute that in exhibits B-3 to B-7, they have given an undertaking as contended by the defendants in the written statement that they will not claim any seniority and other benefits. But, then would contend that their signatures in these documents have been obtained by compelling them. But, this theory that the defendant who is a Government of Tamil Nadu undertaking has compelled them and obtained the signatures in exhibits B-3 to B-7 and then transferred the plaintiffs to Ariyalur Cement Factory is unbelievable since there is no necessity for the defendant to have the service of the plaintiffs transferred from Alangulam to Ariyalur Cement Factory. The dispute which the plaintiffs have raised being one connected with their seniority, there cannot be any doubt that the same is an industrial dispute u/s 2(k) of the Industrial Disputes Act. Learned counsel appearing for the respondent would argue that when the various recognised unions of the employees in the defendant factory have raised a dispute u/s 2(k) of the Act, a settlement has been arrived at before the Deputy Commissioner of Labour on April 18, 1985, in which all the unions have represented the workers and in that settlement, it has been decided that the seniority of all the employees who come to Ariyalur Cement Factory on transfer from Alangulam and other factories, will have to be decided as on the date of their joining the Ariyalur Cement Factory and promotion to higher posts and other things will depend only upon this seniority to be fixed to those who come on transfer. As regards the rest of the claims, the settlement is to the effect that the unions have to negotiate with the management directly and come to a decision. This settlement has been arrived at between the management and the various unions functioning in Ariyalur Cement Factory and is binding on the plaintiffs who are employed there. Therefore, by coming forward with these suits claiming seniority above the workers already working in Ariyalur Cement Factory and in accordance with the seniority already fixed to them in their Alangulam Cement Factory, the plaintiffs want an order which is opposed to the terms of the settlement. It would amount to setting aside the settlement arrived at between the management and the unions. Therefore, the argument of learned counsel appearing for the respondents that the remedy of the plaintiffs is only under the Industrial Disputes Act and not before the civil court and the plaintiffs cannot bypass the settlement which have already been arrived at, is in my opinion a very valid one. The rights which the plaintiffs claim flow under the Industrial law and the question whether they are entitled to those rights cannot be decided in a civil suit. In this connection I wish to refer to the decision in *Krishnan v. East India Distilleries and Sugar Factories Ltd.*, 1964 1 LLJ 217 Mad, in which it has

been held as follows (headnote) : P.218

"The civil court has no Jurisdiction to entertain a suit filed by certain workmen for declaration that an agreement entered into between the management and the labour union was invalid and not binding on them and for an injunction restraining the management from implementing the terms of the agreement."

Even though the plaintiffs have not specifically prayed for a declaration that the agreement between the management and the unions is not binding on them, the prayer in the plaint in all the four suits is only to that effect and, therefore, I am of the opinion that the plaintiffs cannot file the suits in civil court. This decision of our High Court has been approved in the decision which has been subsequently passed in the Supreme Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . In this decision, the Supreme Court has held the principles applicable to the jurisdiction of the civil courts in relation to the industrial disputes as follows at P.459.

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under 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 it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a 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 33-C or the raising of an industrial dispute, as the case may be."

In the above decision, three classes of cases are enumerated and they are as follows (at page 451-452)

"These 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 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 hold, that the party must adopt the form of remedy given by the statute."

When we approach the case on hand in the light of the above decision, we have to necessarily hold that the industrial disputes raised in these suits relate to the enforcement of a right or obligation created under the Industrial Disputes Act and, therefore, the plaintiffs have to get an adjudication only under the Industrial Disputes Act. The plaintiffs claim a right which the Industrial Disputes Act has created and, therefore, their claim comes under the second class. It is not as if their claim is one which exists in the common law and it is only re-enacted by the statute in which case, the contention of learned counsel appearing for the respondent that choice to choose the form is that of the suit can be given consideration. The plaintiffs cannot claim any choice since the relief sought for is not an existing one under the common law.

8. Learned counsel appearing for the respondents (sic) would argue that u/s 9 of the Code of Civil procedure, the court shall have jurisdiction to try, all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred and there is no bar for the plaintiffs coming forward with these suits in the civil court and the learned counsel relies upon the decision in Prathama Bank, Head Office, Moradabad, through its Chairman Vs. Vijay Kumar Goel and Another, , for the above proposition, wherein it has been held that in a suit filed by an employee challenging the termination of his service by an instrumentality of State, the court can pass a decree for his reinstatement in service with consequential benefits if termination is found to be illegal. The above ruling has a rider that the court can pass a decree for reinstatement with consequential benefits if termination is found to be illegal. In the present case, the transfer of the plaintiffs from Alangulam to Ariyalur Cement Factory is not said to be an illegal one. They have asked for the transfer for their own convenience and the unions have arrived at a settlement with the management as to how these transferred employees are to be accommodated for seniority, promotion and other benefits. Therefore, the availability of the rights and benefits for which the plaintiffs make a claim can be said to be flowing only under the Industrial Disputes Act and, therefore, the civil court's jurisdiction has to be ousted impliedly. The transfer order has not been challenged by the plaintiffs as a malafide one. The transfer order is accepted by the plaintiffs, but they want to have the benefits which they were enjoying while they were in Alangulam, and which they have given up, by raising this industrial dispute in the civil court. I am of opinion that the settlement between the management and the various unions in Ariyalur Cement Factory where the plaintiffs are employed has put an end to such claims and the plaintiffs therefore, have to work out their remedy, if any, only by raising industrial disputes and they are not entitled to file the suits for declaration and injunction for the said purpose. In that view, I am of the opinion that the judgment passed by the learned Sub-Judge, Ariyalur, remanding the suit for fresh disposal to the trial court holding that the civil court can entertain these suits is erroneous and they are liable to be set aside.

9. In the result, Civil Miscellaneous Appeals Nos.54 to 57 of 1987 are allowed setting aside the judgment and decree passed by the learned Sub-Judge,

Ariyalur, and the suits are dismissed. No costs.