

(1996) 11 MAD CK 0006
In the Madras High Court

Tamil Nadu Electricity Board

APPELLANT

Vs

A. Krishnan, Lineman Grade I (O and M) Vellore Electricity
System

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Industrial Disputes Act, 1947 — Section 18

Citation : (1997) 2 MLJ 79

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The above second appeal has been filed by the defendant in O.S. No. 810 of 1979 on the file of the Court of the District Munsif

of Vellore, North Arcot Ambedkar District. The respondent/Plaintiff filed the suit for a declaration that the memo No. SEV/Adm. 2/A-4/701-1/

78, dated 26.8.1978 of the defendant and subsequent memos are void.

2. The case of the plaintiff as disclosed in the plaint filed before the trial court was that the plaintiff was appointed as nominal Muster Roll Worker

on 14.2.1947, that by virtue of his hard work, he was promoted as Helper on 8.8.1955, later as Assistant Wireman during 1959 and again as

Wireman during July, 1970 and once again promoted as Lineman Grade-I on 15.12.1978 and that as per the memorandum of settlement dated

11.7.1969 entered into between the Tamil Nadu Electricity Board and its workmen and particularly, as per term No. 9 it was mandatory on the

part of the defendant Electricity Board, to abolish the category of the post of Assistant Wireman in operation subordinate service in distribution

systems and the existing incumbents in that category shall be fitted into the

Grade of Wireman at the next appropriate stage and as per term No. 15

of the said settlement, the settlement shall come into effect with effect from 1.4.1969 for the purpose of promotion, seniority and future increment.

The further case of the plaintiff was that the defendant Board issued proceedings Ms. No. 1345 dated 6.8.1969 confirming the terms of the above

settlement and in spite of all these, there was delay of several years in properly implementing the terms of the settlement by making a proper fitment

and placement in the seniority list of the workers for determining the future avenues of promotion. The defendant was said to have issued a

memorandum No. SEV/Adm. 2/A-4/Integration/R-200/77, dated 30.4.1977 and though it benefited the plaintiff monetarily to get back the

increments as arrears on the integration, the plaintiff claimed that his due seniority and promotion to the post of Wireman were denied at the

appropriate point of time and all these occurred on account of the irregular method of integration and the illegal procedure said to have been

adopted therefor. It has also been claimed before the trial Court that on account of the delay in implementing the board's proceedings dated

6.8.1969, the plaintiff was denied due promotion as Lineman along with his juniors and it resulted in the juniors stealing a march over him by

securing promotion as Lineman before the plaintiff and in spite of representations made, no relief was given to the plaintiff. The plaintiff also

furnished illustrations that in the list of seniority published in the proceedings dated 26.8.1978 the persons shown as Serial Nos. 73, 76, 102, 117

and 118 were really juniors to the plaintiff, but promoted earlier to him as Lineman Grade-I and in spite of such anomalies having been brought to

the notice of the defendant Board, the defendant Board was adopting a defiant and indifferent attitude driving the plaintiff to the necessity of filing

the suit in question. A grievance is also made repeatedly that the defendant has not given proper effect to the settlement arrived at between the

union and the defendant Board. It was claimed that since the memo, which was challenged in the suit, was said to be an order passed outside the

Industrial Disputes Act, a civil court was competent to entertain the suit and that no notice u/s 80 of the CPC was necessary, since the Electricity

Board is not a Government. As a matter of fact, in paragraph 15 of the plaint, it is stated that the plaintiff is obliged to file the suit to quash the

impugned order dated 26.8.1978 restraining the defendants from giving effect to the said order till the name of the plaintiff finds place as Serial No.

72 in the seniority list and the court should give directions to the defendant Board to place the plaintiff as serial No. 72 in the seniority list in

question. It may be noticed that the proceedings dated 26.8.1978 is nothing but a seniority list of Linemen Grade-I as on 23.8.1978.

3. The defendant filed a written statement contending that the suit for the relief in question was not maintainable before the civil court and also either

in law or on facts as projected for the plaintiff. The defendant contended that the plaintiff was appointed temporarily as Helper and he joined as

such on 8.8.1955, that he was appointed as Assistant Wireman with effect from 8.1.1960 and was integrated as Wireman with effect from

1.4.1969 as per B.P.Ms. No. 1345, dated 6.8.1969 and that the dates as furnished by the plaintiff to the contrary are not correct. It was also

contended, that the plaintiff was a party to the Board's proceedings and the agreement, which was binding on him and the plaintiff cannot go back

against the terms of the agreement and challenge the seniority list published by the Board. The defendant also contended that the terms of the

settlement were implemented and the proceedings dated 30.4.1977 in effect gives retrospective effect from 1.4.1969 and the claim made by the

plaintiff that his juniors have been given promotion earlier to the plaintiff was baseless and incorrect. The factual claim made by the plaintiff that

persons in Serial Nos. 73,76,101,117 and 118 are juniors of the plaintiff was denied and it is claimed that they were all seniors to the plaintiff.

Similarly, in respect of V. Surian, who was Helper during 1968, it was pointed out that he was appointed as Wireman with effect from 23.3.1968

and the allegations and claims to the contra were denied. It is also stated that pursuant to the agreement between the Union and the defendant

Board, the union agreed to give a list of persons in whose case anomalies have to be set right and such list was given only on 21.4.1979 and it

contained about 229 persons. The seniority list communicated on 26.8.1978 was for Linemen Grade-I as on 23.8.1978 and since the plaintiff was

promoted only with effect from 15.12.1978, his name did not find in the said seniority list and factually his name found place as serial No. 43 in the

list of Wiremen and there was no procedural illegality as alleged in the procedure adopted by the defendant. It was also specifically contended that

the plaintiff could not seek relief of this nature before the Forum of Civil Court and that too, without impleading the persons, who will be affected

even according to the plaintiff, being made as party defendants and as a matter of fact without impleading the persons, who were already

promoted, the suit could not be maintained. It was also again reiterated by the defendant that the mandatory part of the prayer to implement the

terms of settlement cannot be sought for and obtained before the Civil Court.

4. On the above claims and counter claims, the suit came to be tried and both parties adduced oral and documentary evidence. The learned trial

Judge by his judgment and decree dated 5.4.1980 dismissed the suit on the view that the plaintiff has failed to substantiate his grievance by

concrete materials and prove that the juniors of the plaintiff were really promoted as alleged. In other respects, the learned trial Judge was of the

view that the suit was maintainable and that the same was also not bad for non-joinder of necessary parties and no notice u/s 80 of the CPC need

be given, the defendant being merely the Electricity Board and not the State Government.

5. Aggrieved the plaintiff pursued the matter on appeal in A.S. No. 188 of 1981 (A.S. No. 242 of 1981 on the file of District Court, North Arcot

at Vellore) and the learned Second Additional Subordinate Judge, Vellore, by his judgment and decree dated 11.1.1982 has differed from the

conclusions arrived at by the learned trial Judge on merits of the claim and while allowing the appeal decreed the suit as prayed for. Hence, the

above second appeal.

6. Mr. V. Ranghabashyam, learned Counsel appearing for the appellant/Electricity Board, contended that the courts below committed an error in

coming to the conclusion that the Civil Court had jurisdiction to try the suit for the relief of the nature in question and that the courts below ought to

have held that the right of the plaintiff's claim in the suit are capable for being agitated only before the Special Forums created under the Industrial

Disputes Act, 1947 and the suit ought to have been therefore dismissed. It was also contended that the courts below ought to have held that the

suit was bad for non-joinder of necessary parties, namely, the workmen, who will be really affected by the judgment and decree and whose

position of seniority will be disturbed to their detriment if the judgment and

decree as rendered has to be implemented.

7. Per contra, Mr. P.K. Gopal Raj, learned Counsel appearing for the plaintiff/respondent, while adopting the reasons assigned by the first

Appellate Court in respect of the maintainability of the suit, contended that the first Appellate Court is right in holding that the relief sought for was

maintainable and consequently, no interference is called for on merits. It was also contended that the suit cannot be held to be bad for non-joinder

of necessary parties and the relief sought for being merely for declaration of the rights of the plaintiff, there is no need for impleading the other

workers as contended for by the Electricity Board.

8. The learned Counsel appearing on either side invited my attention to some of the decisions touching the claim for consideration in the appeal and

a reference to the same will be made hereafter at the appropriate stage.

9. The appeal involves consideration of the following questions, namely,

(a) Whether the grievance relating to the relief sought for could be maintained before a Civil Court?

(b) Whether the suit is bad for non-joinder of parties on account of the failure to implead the workers, who will be affected by implementing the

judgment and granting the relief prayed for by the plaintiff in the case? and

(c) Whether the plaintiff has sufficiently proved his claim of prejudice or damage on merits?

10. So far as the question of maintainability of the suit is concerned, Section 9 of the CPC deals with this aspect while laying down that the courts

below shall, subject to the provisions contained therein, have jurisdiction to try all suits of a "civil nature" excepting suits of which their cognizance

is either expressly or impliedly barred.

11. The sum and substance of the claim on behalf of the appellant in this regard is that the settlement entered into between the Union and the

appellant Electricity Board u/s 18 of the Industrial Disputes Act, even assuming without conceding the position that there has been any violation in

its implementation so far as the plaintiff is concerned, cannot be sought to be raised as a dispute, which could be agitated before the Civil Courts

and if any dispute arises in respect of the scope of extent of the terms of the settlement or any clause or provisions contained therein or of any

alleged violation, the same could be and ought to be agitated under the provisions of the Industrial Disputes Act only.

12. In *Krishnan v. East India Distilleries & Sugar Factories* (1964) I L.L.J. 217 a learned single Judge of this Court has held that any dispute

pertaining to the settlement entered into between the Management and the Union cannot be challenged in a Civil Court and the scheme and

provisions of the Industrial Disputes Act impliedly would exclude the jurisdiction of the Civil Court to entertain disputes which can well form the

subject matter of any claim or proceedings under the said special enactment, the said Act being a self-contained code providing for settlement of

industrial disputes by special forums.

13. In the case of *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, the Supreme Court had an occasion to

review elaborately the entire case law on the subject including two decisions of this Court, namely, *Krishnan and Another Vs. The East India*

Distilleries and Sugar Factories Ltd. and Another, and *Madura Mills Company Ltd. Vs. Guruvammal and Another*, . In paragraph 26 of the

judgment it is observed as follows:

In the case of *Krishnan and Another Vs. The East India Distilleries and Sugar Factories Ltd. and Another*, the learned Single Judge of the Madras

High Court has held that the jurisdiction of the Civil Court is ousted impliedly to try a case which could form subject-matter of an industrial dispute

collectively between the workmen and their employer. One of us (Alagiriswami, J.) as the Judge of the Madras High Court in the case of *Madura*

Mills Company Ltd. Vs. Guruvammal and Another, has pointed out that the Act creates a special machinery u/s 33-C(2) to enforce specially

created rights. The parties could not, therefore, approach the ordinary civil Court. We affirm the aforesaid two decisions of the Madras High

Court....

Ultimately, the Court also summed up the principles governing such matters in the following terms:

To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:

(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 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.

14. In *General Secretary, National and Grindlays Bank Employees' Union Vs. I. Kannan and Others*, a learned single Judge of this Court held that

an agreement between the Bank and the union is not a settlement u/s 2(q) of the Industrial Disputes Act, 1947 and when the employees seek to

enforce, is a validly entered contract between them and the employer, the jurisdiction of the Civil Court cannot be said to have been ousted. The

said view was taken in the light of the decision of the learned Judge that he was unable to hold that the right which the plaintiffs wanted to enforce

in that case before the civil court was one recognised and enforceable only under the Industrial Disputes Act, though it is seen that the declaration

sought for therein was that the seniority of the workers concerned was to be based on the total number of years of service put in by them in both

the banks and the settlement reached between the Bank and the Union was not binding on them.

15. In *Andhra Bank Employees' Association Vs. Andhra Bank Ltd. and Others*, when the Government made a reference to the Industrial Tribunal

(Central) regarding fitment of clerical employees on promotion to Grade III Officers in the Andhra Bank Ltd. and the matter came before the

Tribunal, the Management raised a preliminary objection that the demand related to fitment of Grade III Officers and since they were not

"workmen" within the meaning of the Industrial Disputes Act, the reference was incompetent. A Division Bench of the Andhra Pradesh High Court

held that the dispute was of an industrial nature within the meaning of the Act

and the reference was therefore competent.

16. In *Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited*, the Apex Court was considering the question as to whether a

demand for confirmation of employees in an acting capacity in a grade is an industrial dispute. Since the demand involved both classification of the

employees and classification by grade and not merely for promotion and the expression "terms or conditions of employment" would ordinarily

include not only contractual terms and conditions, but those terms which are understood and applied by the parties in practice or habitually or by

common consent without even being incorporated in the contract and consequently it would be an industrial dispute.

17. In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, the Apex Court was concerned with the

jurisdiction of Civil Courts in matters relating to disputes involving the enforcement of the rights and liabilities created by the certified standing

orders. Those were cases wherein the Employees of the Rajasthan State Road Transport Corporation were terminated from service on the basis

of proved charges in disciplinary enquiries and the aggrieved employees filed suits for declaration that the order terminating the services is illegal

and invalid and for a further declaration that they must be deemed to have continued and are still continuing in the services of the Corporation with

all benefits. It was held therein as hereunder concerning the jurisdiction of the Civil Court to entertain such a suit;

Now let us examine the facts of the appeals before us in the light of the principles adumbrated in *The Premier Automobiles Ltd. Vs. Kamlekar*

Shantaram Wadke of Bombay and Others, . The first thing to be noticed is the basis upon which the plaintiffs-respondents have claimed the

several reliefs in the suit. The basis is the violation of the certified Standing Orders in force in the appellant establishment. The basis is not the

violation of any terms of contract of service entered into between the parties governed by the Law of Contract. At the same time, it must be said,

no right or obligation created by the Industrial Disputes Act is sought to be enforced in the suit. Yet another circumstance is that the Standing

Orders Act does not itself provide any forum for the enforcement of rights and liabilities created by the Standing Orders. The question that arises is

whether such a suit fails under Principle No. 3 of Premier Automobiles or under Principle No. 2? We are of the opinion that it falls under Principle

No. 3. The words "under the Act" in Principle 3 must, in our considered opinion, be understood as referring not only to Industrial Disputes Act but

also to all sister enactments - (lime Industrial Employment (Standing Orders) Act which do not provide a special forum of their own for

enforcement of the fights and liabilities created by them. Thus a dispute involving the enforcement of the rights and liabilities created by the certified

Standing Orders has necessarily got to be adjudicated only in the forums created by the Industrial Disputes Act, provided, of course, that such a

dispute amounts to an industrial dispute within the meaning of Section 2(k) and 2-A of Industrial Disputes Act or such enactment says that such

dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes Act. The civil

courts have no jurisdiction to entertain such suits. In other words, a dispute arising between the employer and the workman/workmen under, or for

the enforcement of the Industrial Employment Standing Orders is an Industrial Dispute, if it satisfies the requirements of Section 2(k) and/or

Section 2-A of the Industrial Disputes Act and must be adjudicated in the forms created by the Industrial Disputes Act alone. This would be so

even if the dispute raised or relief claimed is based partly upon certified Standing Orders and partly on general law of contract.

In the very same judgment in para. 32 it was held as hereunder:

32. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in

civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of

Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition's observance or enforcement of any of the rights or obligations created by the Industrial

Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial

Employment (Standing Orders) Act, 1946 which can be called "sister

enactments"" to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act.

Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workmen to approach the Labour Court/Industrial Tribunal directly - i.e. without the requirement of a reference by the Government-in once of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to ""statutory provisions"". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil court where recourse to Civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to

the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeal, upon

appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more

extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to industrial dispute.

18. In view of the above settled principles of law, it is appropriate to assess the nature of right claimed in the present suit filed by the plaintiff for

coming to the conclusion whether the claim of the respondent/board that the suit is not maintainable, is tenable. While narrating the facts leading to

the filing of the suit and also the nature of the grievance expressed in the plaint, I have specifically adverted to the various claims made, which go to

show that the and substance of the claim in the suit is for the proper enforcement of the settlement, which has been marked in the present case as

Exhibit A-I and the grievance of the plaintiff is that the appellant-Board has not properly implemented the settlement entered into between the union

and the appellant management, that the procedure adopted by it for implementation was illegal and that unjustifiably juniors to the plaintiff were

allowed to steal a march over the plaintiff to his detriment in the seniority list. The right to seniority or claims arising out of it cannot be said to be a

civil right known to and arising in common law.

19. That apart, in the case on hand the right as claimed is based upon only the terms and conditions contained in the settlement entered into u/s

18(1) of the Industrial Disputes Act by the Management and the workers union and not under any general or common law as such. Merely

because the plaintiff was filed a suit for declaration that a particular memorandum dated 26.8.1978 is void, it cannot be readily assumed by the

Civil Courts that such declaratory rights can be considered and granted by civil Courts de hors the nature and character of the claim involved as

also the nature of the cause of action and the thesis of such cause of action and the basis of such cause of action or rights claimed. The question as

to whether the rights claimed or issues sought to be urged in a proceedings before the civil court are matters of civil nature would very much

depend upon the cause of action forming the basis of suit claim and the nature of such claim. Viewed thus, it would be obvious so far as the claim

projected in the suit filed by the plaintiff is concerned that they have the root and basis only in the settlement entered into between the workers"

union and the appellant Board u/s 18(1) of the Industrial Dispute Act. Since the very rights claimed are based on a settlement under the Industrial

Disputes Act, the rights conferred thereunder or any denial of such rights flowing from the said settlement and implementation or enforcement of the

settlement arrived at had origin under the special enactment any dispute relating to the same could be vindicated or enforced only under the

provisions of the said Act and in the forms constituted therein and not before ordinary Civil Courts. The Apex Court also in the decision in The

Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, in laying down the various principles, has specifically noticed

that if the dispute relates to the enforcement of a right or an obligation created under the Act, the only remedy available to the suitor is to get an

adjudication under the Act, meaning thereby only the Industrial Disputes Act. Consequently, the view taken by the courts below does not conform

to the correct position of law on the subject. As a matter of fact, the courts below, as could be seen from the judgments rendered by them, have

dealt with this issued in a cryptic and summary manner without an objective consideration taking into account all the relevant aspects. The claim

projected on behalf of the appellant that the suit cannot be maintained for the relief of the nature before the ordinary civil courts is therefore

sustained and the findings and conclusions arrived at by the courts below in this regard are set aside.

20. That apart, yet another serious infirmity, which goes to the root of the matter and for which also, the suit is liable to be dismissed has been over

looked by the Court below. The appellant-Board has taken an objection on the ground that the suit was bad for non-joinder of necessary parties.

In cases where seniority lists were challenged and the relief sought for involves, if granted to the claimant, prejudice to others whose interests and

rights will be vitally affected the proceedings instituted without such parties before the court, would be bad for non-joinder of necessary parties.

The court below, in my view, over-simplified the matter by observing that the plaintiff is seeking for a declaration of his rights. As could be seen

from the plaintiff's averments, the specific case is that by virtue of the defective manner of implementation of the agreement entered into u/s 18(1)

of the Industrial Disputes Act, juniors of the plaintiff have stolen a march over the plaintiff and derived undue benefits to the detriment of the plaintiff and that being the position if the relief has to be granted and in this case actually has been granted by the court below, necessarily the other parties, who were said to be nearly 42 in number as per the claim of the defendant/appellant projected even before the trial court, will be seriously and adversely affected. Such parties are therefore necessary and proper parties to the proceedings before the Court. This is not a case where any validity of rule or a statutory provision is alone being challenged, in which case only an exception had been made that individual workers or employees or officers who may be affected need not necessarily be made parties, but in a case of the nature where no such claim was involved and the very claim is competing claim of seniority and rights, based on such claim, of seniority, inter se between various workers the other workers who, according to the plaintiff, have undeservedly stolen a march over the plaintiff in the matter of seniority and further promotions, ought to have been necessarily made parties to the suit and their absence renders the suit itself bad for non-joinder of necessary parties. On this ground also, the suit ought to have been dismissed.

21. As far as the merits of the claim are concerned, I am of the opinion that in the light of the findings on the earlier two issues, it may not be even required to adjudicate on the claim on merits, but, even in this regard, I am of the view that the first Appellate Court has chosen to proceed on surmises in readily accepting the grievance of the plaintiff to have been established without any concrete material or proof that the plaintiff had a legitimate grievance or that the plaintiff suffered any injury in law in the teeth of the claim that normally the seniority has to be counted on the basis of the length of service, in that particular category and that the total length of service alone could not be the basis for determining the interse seniority in a particular grade or category and even in respect of the same the required particulars were absolutely lacking to demonstrate that the other persons, who, even according to the plaintiff, have been given higher ranks in seniority were really juniors to the plaintiff in the particular grade or category in question. In the absence of any positive proof or particulars to support such a claim made, for the plaintiff, the first Appellate

Court could not have sustainable the grievance of the plaintiff even on merits. In this regard, though even the trial court has not considered the issue

meticulously and elaborately, the conclusion arrived at by the trial court that the plaintiff has not substantiated his grievance deserves approval and

acceptance.

22. For all the reasons stated above, the second appeal is allowed. The judgment and decree of the learned first Appellate Court is hereby set

aside and that of the learned trial Judge dismissing the suit is restored, though not for the reasons assigned by the learned trial Judge, but for the

reasons assigned in this Judgment in the second appeal No costs throughout.