

(2003) 08 MAD CK 0113

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 1123 of 2003 and C.M.P. No. 7776 of 2003

The Special Officer, Dharmapuri District Co. op. Sugar Mills

APPELLANT

Vs

T.N. Sekar

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 1 LLJ 407 : (2003) 4 LW 443 : (2003) 3 MLJ 503

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : G. Thilagavathi, for the Appellant; R. Selvakumar, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—The revision petitioner, who is the Special Officer, Dharmapuri District Co-op. Sugar Mills, Palacode, is the defendant in the suit O.S. No. 121 of 1998 on the file of the District Munsif, Palacode. The respondent/plaintiff filed the suit for a mandatory injunction to appoint him on permanent basis on the basis of seniority and also a Government Order, and for a permanent injunction restraining the defendant from appointing anybody-else on permanent basis.

2. The averments in the plaint are that the plaintiff is a N.M.R. employee of the defendant from 1979 and that since his family members including his father have sold 5.28 acres of land to the defendant for the purpose of constructing a sugar factory and as per a Government Order, priority must be given to the family members who have given lands for the construction of the sugar factory. But, the defendant has not made him permanent and hence, the suit.

3. The defendant has filed a written statement stating that the dispute raised by the plaintiff falls within the purview of Section 2(k) of the Industrial Disputes Act and as such, the appropriate forum constituted under the said Act alone has got

jurisdiction to try and decide this dispute and that since Section 156 of the Tamil Nadu Cooperative Act, 1983, expressly bars the jurisdiction of the Civil Court, the dispute also falls within the purview of Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, and therefore, the suit is not maintainable before the Civil Court.

4. The learned District Munsif dismissed the suit in respect of the prayer seeking permanent injunction, but decreed the suit granting mandatory injunction. Aggrieved over this, the defendant/employer has filed this revision./

5. The learned Counsel appearing for the petitioner/defendant would contend that since the dispute between the plaintiff and the defendant is that of the dispute between an employee and employer, it is squarely covered by the Industrial Disputes Act and that the plaintiff cannot file a suit in Civil Court and the jurisdiction of the Civil Court is ousted and the remedies lie in an appropriate forum constituted under the Industrial Disputes Act.

6. The learned Counsel appearing for the respondent/plaintiff would contend that the suit is seeking for permanent employment as ordered by the Government of Tamil Nadu in G.O.Ms. No. 656 Labour and Employment Department dated 29.06.1978, wherein the Government has ordered that at least one member of the family, which has been displaced on account of acquisition of the land for the establishment of a project, must be given priority in the matter of appointment in the said project and also on the basis of seniority.

7. The fact that about 5 acres of land belonging to the plaintiff's family has been acquired for the purpose of construction of the sugar factory is not in dispute. The learned Counsel appearing for the petitioner/defendant would also submit that one of the brothers of the plaintiff has been already given permanent employment in the defendant's sugar factory and thus, the obligation under the said G.O. has already been fulfilled. According to the seniority list of 2002 maintained by the defendant, the plaintiff figures in rank No. 87 and therefore, the defendant contends that it is impossible to appoint the respondent as a permanent employee in the sugar mill. The most vital contention on the part of the petitioner/defendant is that the dispute between the plaintiff and the defendant is an industrial dispute, which could be resolved only by the appropriate forum constituted under the Industrial Disputes Act.

8. The respondent/plaintiff prays appointment on permanent basis not only on the basis of the said G.O., but also on seniority. Whether a workman was kept as temporary workman for a longer period than required under law and whether the action of the employer in not making him permanent, are questions which have to be resolved by raising a dispute before the appropriate forum.

9. Section 2(k) of the Industrial Disputes Act recites as under:-

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and

workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

According to the definition, any dispute or difference between the employers and workmen which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person, is an industrial dispute.

10. The dispute between the plaintiff and the defendant is squarely covered by Section 2(k) of the Industrial Disputes Act. The dispute between an employer and employee cannot be raised in Civil Court as found by the various decisions of this Court and the Supreme Court.

11. In *Tamil Nadu Cement Corporation Ltd. v. Jabamalai and Others* 1996 (III) LLJ 471, this Court has held as under:-

"In effect and subsisting prayer of plaintiffs is that the settlement between management and Union is not binding upon them. Such a settlement cannot be filed in a Civil Court."

It has been also held as under:-

"The dispute which plaintiffs raised being one connected with the seniority, there cannot be any doubt that the same is an Industrial Dispute u/s 2(k) of the Industrial Disputes Act, 1947.

It has been further held as under:-

"The dispute raised by plaintiffs in the suit relates to the enforcement of rights created under the Industrial Disputes Act and therefore the plaintiffs have to get an adjudication only under the Industrial Disputes Act. The plaintiff's claim, a right, which the Industrial Disputes Act has created. It is not as if their claim is one which exists as common law and it is only re-enacted by the statute. The reliefs claimed by the plaintiffs is not existing one under the Common-law."

It has been also held as under:-

"In the present case, the transfer of plaintiffs from Alangulam Cement Factory to Ariyalur Cement Factory is not said to be an illegal one and they have asked for the transfer for their own convenience and the Unions have arrived at a settlement with 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 be said to be flowing only under the Industrial Disputes Act and therefore, the Civil Court's jurisdiction has to be ousted impliedly."

12. In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , it has been held by the Hon"ble Supreme Court as under:-

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

(1) Where the dispute arises from general 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, 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 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 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 unguarded. 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 workman to approach the Labour Court/Industrial Tribunal directly - i.e., without the requirement of a reference by the Government -in case 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 appeals 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 an industrial dispute."

It has been also held as under:-

"34. It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the Trial Court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the Trial Court shall be governed by the principles enunciated herein as also the suits and proceedings to be instituted hereinafter."

13. A dispute which can be agitated only in a forum created under the Industrial Disputes Act, cannot be adjudicated for resolving such grievance before Civil Court, which will have no jurisdiction to entertain a suit. The position as on date is an affected employee/workman need not wait for a reference to be made by the Government, but he can directly approach the appropriate forum created under the Act. As held by the Hon'ble Supreme Court and this Court, the Civil Court has no jurisdiction to entertain disputes concerning the workmen and the employer with regard to the service condition of the workmen. Hence, the judgment and decree of the learned District Munsif, Palcode, made in O.S. No. 121 of 1998 are set aside, since the suit itself is not maintainable in Civil Court. This Civil Revision Petition is allowed. Consequently, C.M.P. No. 7776 of 2003 is closed. No costs.