
(2014) 04 MAD CK 0054
In the Madras High Court
Case No : C.R.P. (NPD) No. 4137 of 2010

V. Vijayakumar

APPELLANT

Vs

M. Murugadoss Deputy General Manager, The Management of
TVS and Sons Ltd. And The Branch Manager, Villupuram

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 4 Rule 4
Constitution of India, 1950 — Article 12, 14, 227, 254, 254(1)
Industrial Disputes Act, 1947 — Section 2, 2(i), 2(k), 2(s), 25
Specific Relief Act, 1963 — Section 14(1)(b)

Citation : (2014) 3 CTC 266 : (2014) 8 MLJ 287

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The Revision Petitioner has come forward with this Civil Revision Petition under Article 227 of The Constitution aggrieved by the order dated 27.10.2010 passed by the learned Principal District Munsif, Villupuram, by which the unnumbered plaint filed by the Petitioner was rejected as not maintainable.

2. On 01.06.1996, the petitioner was appointed as Driver in the General Department of the second respondent factory. While the petitioner was working as such, on 03.06.2010, he was transferred from the Villupuram unit to Namakkal on administrative grounds. Challenging the order of transfer dated 03.06.2010, the petitioner has instituted the unnumbered suit before the court below by contending that the order of transfer has been passed only to inconvenience him. It is also contended that there are two other drivers engaged on contract basis at Villupuram unit and they ought to have been transferred to Namakkal unit. Since there is no genuine trade union to ventilate his grievance and the existing trade union is under the effective control of the management, the Union did not raise a dispute against the order of transfer passed against him

u/s 2(i) of the Industrial Disputes Act to get necessary relief to him. Under those circumstances, left with no other alternative remedy, he has filed the suit. On presentation of the suit, the Registry of the court below returned it to clarify as to how the suit is maintainable when alternative remedy is available before the labour Court. On compliance, the suit was posted before the trial court for deciding the question of maintainability. The trial court, by order dated 27.10.2010, relying on the decision of the Supreme Court reported in (1999) 5 SCC 75 dated 03.05.1995, held that the suit is not maintainable before the Court. As against the same, the present Civil Revision Petition is filed.

3. The learned senior counsel appearing for the revision petitioner would contend that the order dated 27.10.2010 of the court below is per se arbitrary and on an erroneous interpretation of law. The learned senior counsel for the petitioner would further submit that when there is no genuine trade union in existence, the petitioner has no other remedy except to approach the civil Court and that the suit as filed by the petitioner is maintainable. In support of his contentions, the learned senior counsel for the petitioner relied on the unreported decision of this Court passed on 23.10.2013 in Application No. 1207 of 2013 in C.S. No. 72 of 2013. The said suit was filed by the workmen before this Court praying for a declaration to declare that the action of the defendant/management in denying them access to the place of work and thereby not paying them wages is illegal and for a consequential injunction restraining the defendant/employer from denying the workmen wages from 17.12.2012 onwards. In the suit, the management has filed an application in A. No. 1207 of 2013 to reject the plaint on the ground that there is a bar of jurisdiction of Civil Court in the Industrial Disputes Act and Section 14(1)(b) of Specific Relief Act. The said application was dismissed by this Court holding that the suit is maintainable. Relying upon the same, the learned senior counsel for the petitioner seeks to set aside the order passed by the Court below.

4. The learned senior counsel for the petitioner also relied on the decision reported in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, to contend that where the relief sought is based on general law of contract, civil court has alternative jurisdiction and in such event, a suit is maintainable. It is further stated that when the dispute is not covered u/s 2(k) or 2-A of the Industrial Disputes Act, such disputes can very well be determined by the civil court or by resort to arbitration. In Para Nos. 22 to 25, it was held as follows:-

22. We may now indicate the area of dispute. It is this: where a dispute between the employer and the employee does not involve the recognition or enforcement of a right or obligation created by the Industrial Disputes Act and where such dispute also amounts to an industrial dispute within the meaning of Industrial Disputes Act, whether the Civil Court's jurisdiction to entertain a suit with respect to such dispute is barred? To put it nearer to the facts of these appeals, the question can be posed thus: Where the dispute between the employer and

the workman involves the recognition, application or enforcement of certified Standing Orders, is the jurisdiction of the Civil Court to entertain a suit with respect to such dispute is barred? This question involves the perennial problem concerning the jurisdiction of the Civil Court vis-?-vis Special Tribunals, a subject upon which the decisions of this Court, let alone other courts, is legion. We do not, however, propose to burden this judgment with all of them. We shall refer only to those which have dealt with the question in the context of Industrial Disputes Act. By way of introduction though, we may refer to the summary of principles enunciated in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, . They are the following:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authority and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act

must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

23. Dhulabhai, it must be remembered, concerned a dispute arising under a sales tax enactment. Most of the decisions referred to therein concerned taxing enactments. Having regard to the facts of that case, therefore, it would fall under principle No. 2 enunciated therein.

24. Premier Automobiles was decided by a Bench comprising A. Alagiriswami, P.K. Goswami and N.L. Untwalia, JJ. The Court found that the dispute concerned therein involved adjudication of rights/obligations created by the Industrial Disputes Act which means that it fell under Principle No. 2 in Dhulabhai. Even so, the Court considered several decisions, English and Indian, on the subject and enunciated the following principles in Paras 23 and 24:

23. 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 suiter 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 act 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 V-A then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to principle No. 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 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 No. 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle No. 3 stated above.

25. It is the Principle No. 2, and particularly the qualifying statements in Para 24, that has given rise to good amount of controversy. According to Principle No. 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 Industrial Disputes Act, the jurisdiction of the Civil Court is alternative and it is left to the person concerned either to approach the Civil Court or to have recourse to the machinery provided by Industrial Disputes Act. But Principle No. 2 does not stand alone; it is qualified by Para 24. Now what does Para 24 say? It says (i) in view of the definition of "industrial dispute" in the Industrial Disputes Act, there will hardly be an industrial dispute arising exclusively out of a right or liability under the general or common law. Most of the industrial disputes will be disputes arising out of a right or liability under the Act. (ii) Dismissal of an unsponsored workman is an individual dispute and not an industrial dispute (unless of course, it is espoused by the Union of Workmen or a body of workmen) but Section 2-A has made it an industrial dispute. Because of this "civil courts will have hardly an occasion to deal with the type of cases falling under principle No. 2". By and large, industrial disputes are bound to be covered by Principle No. 3. (Principle No. 3 says that where the dispute relates to the enforcement of a right or obligation created by the Act, the only remedy available is to get an adjudication under the Act.).

5. The learned senior counsel for the petitioner also relied on the decision of the Honourable Supreme Court in *Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa*, to contend that the suit filed by the petitioner is maintainable before the civil court. The dispute to be adjudicated by labour court depends upon the nature of the matter and the issue involved. When the dispute arise out of the right and obligations under the Industrial Disputes Act or sister laws like Industrial Employment (standing Orders) Act, 1946, only then the jurisdiction of the civil court is barred. However, in matters pertaining to employer-employee dispute like non-observance of principles of natural justice or constitutional provision, a civil suit is maintainable. In Para Nos. 42 to 49, it was held as follows:-

42. When there is a doubt as to whether civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction.

43. In *Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, , this Court held:

31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.

33. For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules.

44. In *M.P. Housing Board and Another Vs. Manoj Shrivastava*, this Court almost in a situation of this nature where the appellant was constituted under a statute and the conditions of service of its employees were governed thereunder as also Certified Standing Order, held:

8. A person with a view to obtain the status of a permanent employee must be appointed in terms of the statutory rules. It is not the case of the respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.

9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the respondent had worked for more than six months satisfactorily in terms of clause 2(vi) of the Standard Standing Orders, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the respondent.

10. It is one thing to say that a person was appointed on an ad hoc basis or as a daily-wager but it is another thing to say that he is appointed in a sanctioned post which was lying vacant upon following the due procedure prescribed therefor.

11. It has not been found by the Labour Court that the respondent was appointed by the appellant herein, which is "State" within the meaning of Article 12 of the Constitution, upon compliance with the constitutional requirements as also the provisions of the 1972 Act or the Rules and Regulations framed thereunder.

45. We may also notice that there is nothing to show that rights were created under the Certified Standing Orders. It has not been stated that the conditions of service in respect of an employee are different under 1950 Act and 1946 Act. The matter might have been different if a statute was brought into force later than the earlier statute which would attract the provisions of Article 254 of the Constitution of India one being in direct conflict with the other as was noticed in *M.P. Vidyut Karamchari Sangh Vs. M.P. Electricity Board*, . Thus, the rights and obligations of the employer having arisen under two Parliamentary Acts, the question of invoking the provisions of Article 254(1) of the Constitution of India

would also not arise herein. Provisions of both the statutes must be given effect to.

46. Mr. Ray, however, would submit that the application of principles of natural justice may be different keeping in view, (i) the common law principles; (ii) the statutory provisions; and (iii) the constitutional provisions. The principles of natural justice ensure fairness. It means that a result or process should be just. It is a harmless, though it may be a high-sounding expression; in so far as it attempts to reflect the old jus natural, it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous, so said Lord Shaw of Dunfermline in *Local Government Board v. Arlidge* [1915] AC 120 at p. 138.

47. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action. {See *Sawai Singh Vs. State of Rajasthan*, , *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, }

48. In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified 2 Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in *Premier Automobiles Ltd.* (supra) shall prevail.

49. An assumption on the part of this Court that all such cases would fall only under the Industrial Disputes Act or sister laws and, thus, the jurisdiction of the civil court would be barred, in our opinion, may not be the correct interpretation of *Premier Automobiles Ltd.* (supra) which being a three-Judge Bench judgment and having followed *Dhulabhai* (supra), which is a Constitution Bench judgment, is binding on us.

6. Lastly, the learned senior counsel for the petitioner relied on the decision of this Court reported in (*Tamil Nadu Electricity Board vs. D. Vasantha*) 1995 I Labour Law Journal page No. 107 to contend that when the suit is filed by the petitioner for declaration under general or common law the petitioner has a right to file a suit before the civil court or to choose the forum constituted under the Industrial Disputes Act. The jurisdiction of the Civil Court in such matters are not barred.

7. On the contrary, the learned counsel appearing for the second respondent would vehemently contend that the civil suit filed by the petitioner challenging

the order of transfer is not maintainable. The learned counsel for the second respondent also relied on the decision of the Supreme Court reported in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, , which was also relied on by the learned senior counsel for the petitioner, and submitted that in the said decision, a reference was made to a three judge bench of the Honourable Court by a Division Bench for resolution of a purported conflict in the judgment rendered by the Honourable Supreme Court with regard to jurisdiction of the civil court to entertain suits questioning the order of termination passed by the employer. The Honourable Supreme Court, after discussing the decision rendered in Dhulabai vs. State of Madhya Pradesh and also by referring to various other decisions, held that where the relationship between the parties as employer and employee is contractual in nature, right to enforce the contract of service depending upon personal volition of an employer, is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. In the said decision, the Honourable Supreme Court has referred to four exceptions namely (i) when an employee enjoys a status i.e., his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the industrial disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof. Ultimately, in para No. 48, the Supreme Court answered the reference and held that In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. (supra) shall prevail. Therefore, relying on this decision of the Honourable Supreme Court, the learned counsel for the second respondent prayed for dismissal of this Civil Revision Petition.

8. I heard the learned senior counsel for the petitioner and the learned counsel for the second respondent. The short point arise for consideration in this Civil Revision Petition is as to whether the suit filed by the revision petitioner, questioning the validity of the order of transfer passed by the employer, is maintainable or the petitioner's remedy is available only before the special forum

constituted under the Industrial Disputes Act.

9. The suit filed by the petitioner before the trial court is a suit in simpliciter challenging the order of transfer dated 03.06.2010 passed by the second respondent, transferring him from Villupuram to Namakkal. According to the petitioner, there are two other drivers available in Villupuram on contract basis but without transferring them, he alone was vindictively transferred by his employer. It is also his grievance that the existing trade union in the factory of the second respondent is under the control and clutches of the management and it has not come forward to expose his cause against the order of transfer. Therefore, he, without any other alternative relief, has filed the suit. The petitioner has not filed any document to show whether he has taken any steps to approach the labour Union, Court or whether he was reasonably prevented from doing so. Except the averment that the trade union in the second respondent factory is under the control of the management, there is no other reason assigned by the petitioner for not invoking the jurisdiction of the labour court. Admittedly, there is a trade union functioning in the factory of the second respondent where the petitioner is employed as a Driver. Therefore, the petitioner will come under the definition of workman within the meaning of Section 2(s) of the Industrial Disputes Act and he ought to have attempted to resolve his grievance through the labour Court. The grievance of the petitioner is that he was unceremoniously transferred by the second respondent and such transfer is vindictive. In other words, the disputes sought to be ventilated by the petitioner relates to his service condition. Therefore also, the petitioner ought to have invoked the jurisdiction conferred under the labour Court which was specially constituted to deal with the disputes of such nature between the employer and employee. It is needless to mention that transfer is an incident of service as per the terms and conditions of the contract and on the basis of such contract, during the course of employment, the employer has every right to transfer the petitioner on administrative grounds. If there is any malafide or ill intention on the part of the second respondent to transfer the petitioner, such dispute could well be agitated before the labour court. Further, the petitioner was transferred from Villupuram to Namakkal, a short distance.

10. In the decision of the Honourable Supreme Court reported in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, relied on by the learned senior counsel for the petitioner, it was held in para No. 29 that when there is a dispute involving the enforcement of the rights and liabilities created by certified standing orders, it has necessarily got to be adjudicated only in the forms created by the Industrial Disputes Act inasmuch as such dispute amounts to an Industrial Dispute within the meaning of Section 2(k) and 2A of the Industrial Disputes Act. In Para No. 28 of the same decision, it was also held that the whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employer. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the

elaborate procedural laws, which the workmen can ill afford. In the present case also, the dispute to be adjudicated is in respect of the enforcement of the right of the petitioner to remain in the present station without being transferred and therefore, the suit filed by the petitioner, as such, is not maintainable. The petitioner ought to have approached the labour Court, being a specially constituted forum to get his grievances ventilated speedily and effectively.

11. Similarly, in the decision of the Honourable Supreme Court reported in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, the three Bench judges of the Honourable Supreme Court laid down four exceptions for instituting a suit when the relationship between the parties as employer and employee, being contractual. Those four exceptions are (i) when an employee enjoys a status i.e., his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the industrial disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof. If those exceptions enumerated by the Honourable Supreme Court are applied to the present case, definitely, the suit, as filed by the petitioner is without jurisdiction and it is not maintainable.

12. When we refer to Section 25(k) of the Industrial Disputes Act, it defines the term "dispute" as any dispute or difference between employees 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. Even the definition to Section 25 of the Industrial Dispute Act, in relation to the term "dispute" indicates that a dispute is the one between the employer and employee for the purpose of the Act. It is also indicated therein that the dispute must be such which might have arisen during the course of the employment and for resolution of such dispute, the Labour Courts have been constituted. In the present case, the petitioner was transferred during the course of his employment and if he is aggrieved that he is unceremoniously transferred by the second respondent, he ought to have resorted to raise an industrial dispute before the labour court, instead of filing the suit.

13. For the foregoing discussion, I do not find any reason to interfere with the order passed by the court below. The Civil Revision Petition is therefore dismissed. No costs. Consequently, connected M.P. No. 1 of 2010 is closed.