
(1995) 01 MAD CK 0035
In the Madras High Court
Case No : C.R.P. No. 3657 of 1993

Virudhunagar Sarvodaya Sangh, Virudhunagar

APPELLANT

Vs

S. Sathiyathinakaran

RESPONDENT

Date of Decision : 30-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Industrial Disputes Act, 1947 — Section 2, 2A
Specific Relief Act, 1963 — Section 14, 33C

Citation : (1995) 1 CTC 318 : (1995) 70 FLR 973

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Judgement

S.S. Subramani, J.—The defendant in O.S. No. 106 of 1992, on the file of the Additional District Munsiff's Court, Sattur, is the revision

petitioner. The defendant is an Institution known as Virudhunagar Sarvodaya Sangh. It is aggrieved by the order of the Court below in I.A. No.

1582 of 1993 filed by it. By virtue of the order, the Court below has held that it has jurisdiction to deal with the matter, and that there is no

statutory bar in proceeding with the suit.

2. The relevant facts are as follows :

The plaintiff is an employee of the defendant-Sangh. There was some departmental proceeding against him, and on the basis of some enquiry, the

plaintiff was suspended as per order dated 28-2-1992. The plaintiff in the suit challenges the order of suspension on the grounds that the enquiry

officer to conducted the enquiry has violated the principles of natural justice, that a copy of the enquiry report was not furnished to him, and the

proceedings are vitiated for various reasons mentioned in the plaint. On the date

of suit, the plaintiff was under suspension. The reliefs sought for in the plaint are : (a) for declaring that the order of suspension dated 28.2.1992 from service, of the plaintiff, is illegal, null and void, (b) for directing the defendant to pay the sum of Rs. 1,355.90 due to he paid to the plaintiff byway of pay for the period from 1.3.1992 to 31.3.1992, and (c) for further reliefs regarding costs of suit.

3. In written statement filed by the defendant the main question that is agitated is, regarding the lack of jurisdiction of the Civil Court to entertain the suit. According to it, only Industrial Tribunal or the Labour Court has not jurisdiction to decide the case. On merits also, the claim of the plaintiff regarding the enquiry is challenged.

4. After written statement was filed, the defendant filed I.A. No. 1582 of 1993 to determine the question of jurisdiction as a preliminary issue. The same was objected by the plaintiff.

5. By the impugned order, the Court below decided the preliminary issue against the defendant.

6. The only question that arises for consideration in this revision is, whether the over of the Court below holding that Civil Court has jurisdiction to try the suit is illegal or incorrect.

7. As stated earlier, the reliefs sought for in the plaint are : (1) to declare the suspension as illegal, and (2) to recover the salary for the period from 1.3.1992 to 31.3.1992.

8. The bar of suit in a Civil Court is governed by Sec. 9 of the Code of Civil Procedure. Sec. 9 says that the Courts shall have jurisdiction to try all suits of civil nature except the suits for which their cognizance is expressly or impliedly barred.

9. The contention of the petitioner is that since the plaintiff wants a declaration that the suspension is invalid, that amounts to a declaration that the non-employment is invalid. That is, according to the learned counsel, an industrial dispute and takes away the jurisdiction of the Civil Court. Main reliance is placed by the learned counsel on two decisions, namely, The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, (hereinafter referred to as Bharat Coking Coal Ltd. Vs. Presiding Officer and Another, .

10. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , the Apex Court has given the guidelines as to the

principles applicable to the jurisdiction of the Civil Court in relation to industrial dispute. The guidelines are :

(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 disputes is an industrial dispute arising out of a right or liability under the general 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

Sec. 33C or the raising of an industrial dispute, as the case may be.

It is on the principles enunciated by the Apex Court, this Court has to decide whether the jurisdiction of the civil court is ousted. Guideline I says

that 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.

11. So far as the facts of this case are concerned, as stated earlier, the reliefs prayed for are two, and the second is for recovery of salary, which is

a common law dispute, arising on the basis of the contract between the employer and employee. It is one of the service conditions that the

employee will be paid his dues every month. It is not an industrial dispute, nor does it relate to enforcement of any other right under the Act. So, by

no stretch of imagination, can it be said that the second relief sought for in the plaint is in any way barred under Sec. 9, C.P.C. The second

guideline given in the *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , is "if the dispute is an industrial

dispute arising out of a right or liability under the 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. The learned counsel

for the respondent also did not dispute that the plaintiff is an employee of the defendant and, going by the definition of "industrial dispute" under the

Industrial Disputes Act, it could be construed as an industrial dispute. "Industrial dispute" has been defined under Sec. 2(k) of the Industrial

Disputes Act. It reads thus :

2(K) "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,

or any person.

It is also relevant to take note of Sec. 2A of the Act. It says thus :

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference

between that workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed

to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Under the definition given as per S. 2(k) (extracted supra), to be an "industrial dispute", the case must be taken by the union or other workers

even though it pertains to the conditions of labour of a particular person. In the case of Sec. 2A of the Industrial Disputes Act, in a case where the

workman is discharged, dismissed or retrenched, even if it is a case where the union does not take the cause, it will be an industrial dispute. In this

case, admittedly, the plaintiff has not been dismissed, discharged or retrenched. He has only been suspended for a period of 30 days. So, Sec. 2A

of the Act has no application. Sec. 2(k) of the Act also may not have any application, because, the respondent's cause is not taken up by any

other union or other workmen. So, even if it is a case of industrial dispute, the Act does not provide for any remedy. Further, in the suit, the plaintiff

is not seeking for any specific performance. He seeks only a declaration that the suspension is invalid.

12. When a workman is dismissed from service, it is settled law that he can seek his grievance redressed through a Civil Court by seeking a

declaration that his dismissal is invalid and also sue for damages. Only in a case where he seeks for reinstatement, i.e., specific performance of

reinstatement, the question of enforcement of a right provided under the Act arises. In such a case, he may have to move only the labour court. In

this case, the question of reinstatement does not arise. An enforcement which is provided under the Industrial Disputes Act also does not arise in

this case, for, he continues to be in employment. A suspension will not amount to non-employment. It is only keeping away the employee from

work during the time of investigation. It is also not a case where any condition of labour is violated. It is within the power of the Master to suspend

an employee for any alleged misconduct. There is no condition of service that an employee shall not be suspended during enquiry.

13. The Industrial Disputes Act also does not take away that right of the Master. Only for wrongful dismissal, or retrenchment, or discharge from

duties, Industrial Disputes Act makes a provision for a redressal through the Labour Court. According to the Guideline 2 enunciated in the The

Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, by the Apex Court, even if the dispute is an industrial dispute,

arising out of a right or liability under the general common law and not under the Act, the employee has got a right to move the Civil court, to get a

declaration that the action of the employer is illegal. The machinery under the Industrial Disputes Act is not necessary, for the is not enforcing a

right or obligation created under that Act. Under the General Law, the employee is always entitled to move the Civil Court for the wrong done to

him except for which provisions have been made under the Industrial Disputes Act. The common law right is not taken away. If that be so, he has

the option to move the civil court.

14. In the The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, their Lordships of the Supreme Court held

that the suit filed by the respondents in that case was barred since they wanted not to implement a settlement arrived at under a labour dispute. In

that view, their Lordships held that that is a right created under the Industrial Disputes Act and hence the suit was barred. But, taking into account

clauses 1 and 2 of the Guidelines, it cannot be held that the suit filed by the plaintiff is barred. The decision reported in Chandrakant Tukaram

Nikam Vs. Municipal Corporation of Ahmedabad, also has no application to the facts of this case. That is also a case where the workman wanted a declaration that the dismissal was invalid since it has violated the Standing Orders, and also wanted a relief of continuation in service and reinstatement in service with back wages. That relief can be granted only by an Industrial Tribunal. In that view, their Lordships held that the suit is barred.

15. In Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, , also a similar question came up for consideration and

the learned Judges held thus :

Industrial Disputes Act not only confers the right on a worker for reinstatement and backwages 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 to grant such relief... ..

A reading of the said passage implies that the relief of reinstatement with or without backwages, with a declaration that the termination of service is

invalid is a relief that can be granted only under the Industrial Disputes Act, for which an elaborate machinery is provided under that Act. The

learned counsel for the petitioner in this case was not in a position to explain any machinery that is provided under the Act that how far a

suspension can be held under that act. While dealing with that case, the Apex Court held that for the relief sprayed for in that case, i.e.

reinstatement with backwages, the jurisdiction of the Civil Court is barred.

16. In Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), , following the The Premier Automobiles Ltd. Vs. Kamlekar

Shantaram Wadke of Bombay and Others, , Apex Court held thus :

Generally speaking, the "broad guiding consideration for determining whether civil court jurisdiction its excluded are that wherever a right, not pre-

existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the

remedy having been created uno flatu and finality is intended to the result of the statutory proceedings, then even in the absence of an exclusionary

provision the civil courts" jurisdiction is impliedly barred. If, however, a right pre-

existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil Court's jurisdiction then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inheritance.

17. In *Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co.*, the suit was one for a declaration that the dismissal is invalid and

also for reinstatement, and alternatively for compensation and costs. Considering that case, their Lordships, after following the principles

enunciated in the *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, held that the suit is maintainable

before the Civil Court. While explaining the position, their Lordships held thus :

The Court is obliged to Mr. K. Jayaram for assisting it *amicus curiae* in this case. After having appreciated the entire facts and the circumstances

of the case, we are of the opinion that it is not quite correct to say that the suit filed by the appellant is not maintainable at all in a Civil Court. The

correct position of law is that the main reliefs asked for by him which when granted will amount to specific performance of the contract of service

and therefore they cannot be granted.....

That decision also makes it clear that the enforcement of a personal contract of service, a civil court may not be in a position to grant. In the instant

case, the plaintiff has not asked for enforcement of any contract of service. Sec. 14 of the Specific Relief Act also does not bar any such relief

being granted by a civil Court.

18. In *Ram Kumar v. State of Haryana*, 1987 II CLR 252, also the same view has been taken. In that case, the appellant who was a conductor

was removed from service in view of certain misconduct. The trial Court dismissed the suit holding that the Civil Court has no jurisdiction to

entertain the suit. On appeal, the first appellate Court held that the civil court has jurisdiction to entertain and try the suit. In that suit, the legality of

the termination was challenged on the ground that it violated the principles of natural justice. Against the said decision of the first appellate Court,

the State of Haryana took up the matter before the High Court. The High Court also held that the jurisdiction of the civil court was not ousted, but

on facts, their Lordships held that there are no grounds to set aside the order of

dismissal. The Apex Court also confirmed that finding.

19. In view of the binding precedents, the finding of the court below that it has got jurisdiction to decide the case is correct, and it does not call for

any interference. The civil revision petition is, therefore, dismissed, with no order as to costs.

20. Petition dismissed.