CASE NO.:
Appeal (civil) 658 of 2008

PETITIONER:
Chief Engineer, Hydel Project & Ors

RESPONDENT:
Ravinder Nath & Ors

DATE OF JUDGMENT: 24/01/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.18774 of 2005)V.S. SIRPURKAR, J

1. Leave granted.

2. Chief Engineer, Superintending Engineer (Construction Circle) and Personnel Officer, Anandpur Sahib Hydel Project have filed this appeal to question the correctness of the judgment of the Punjab and Haryana High Court in Regular Second Appeal confirming the judgment passed by the Additional District Judge, Ropar and Senior Sub Judge, Ropar, basically on the ground that there was a complete lack of jurisdiction in the above three Civil Courts since the issues squarely fall within the ambit of the Industrial Disputes Act, 1947 and as such the remedy for the 9 respondents-workmen, who are workmen under the Industrial Disputes Act, lies with the authorities thereunder and not with the Civil Court.

BASIC FACTS

3. Nine respondents herein filed a Civil Suit before the Senior Sub Judge, Ropar for the relief of (i) declaration to the effect that the orders of their termination/retrenchment from service were illegal and (ii) that they were entitled to reinstatement in service with back-wages. It was pleaded that the plaintiffs-respondents were skilled workers and were working on the Anandpur Sahib Hydel Project (hereinafter called \023the Project\024) in various capacities such as T. Mate, Mixer Operator, Beldar, etc. for more than 5 years and, therefore, as per the Standing Orders and Rules they were regular employees of the defendants. It was alleged that the defendants did not maintain any seniority-list of the workers and various categories of services on the said Project and they arbitrarily removed the plaintiffs-respondents from service on the dates mentioned in Annexure A to the plaint by obtaining their signatures on papers under coercion and force and also forced them to accept payments. It was further alleged that while removing the plaintiffs-respondent, the defendants-appellants did not observe the seniority, meaning thereby while the juniors were retained in service, the seniors were retrenched. It was alleged that action was based on pick and choose policy and was discriminatory and amounted to victimization. It was also alleged that those workers who had completed service for 1000 days, could not have been retrenched (as was held by the Punjab & Haryana High Court in Mehanga Ram v. Punjab State \026 Civil Writ No.718 of 1986).

4. This claim was contested by the State of Punjab. It was firstly urged that the suit was bad as common suit could not have been filed since the cause of action of each defendant was distinct and separate. It was urged that the plaintiffs-respondents were appointed on purely temporary basis as work-charged employees and after the completion of the project, their services were validly terminated as per Rule 20(1) read with Rule 3(a) of the Certified Standing Orders for the work-charged staff on the said Project. Since the termination was complete on payment of necessary gratuity etc., there can be no cause of action and as such the present suit was not maintainable in the present form. It was also urged that notice under Section 80 CPC was not given and the suit was also barred by

limitation. It was reiterated that the principle of first come last go was strictly observed since there was a regular seniority-list maintained for the Project as a whole and that there was no discrimination or victimization. On merits also the suit was opposed on the ground that since the plaintiffs-respondent were work-charged employees for a work of temporary nature, on completion of the project their services were terminated as per the Rules which governed their service conditions (the Certified Standing Orders). The following issues were framed in between the parties by the Court:

\0231. Whether the impugned orders of termination retrenchment of the plaintiffs are illegal, unauthorized, ultravires and ineffective as alleged? OPP

2. Whether the suit is bad for misjoinder of parties? OPP

3. Whether the suit is maintainable in the present form? Opp

4. Whether no valid notice u/s 80 CPC has been served by the plaintiff on the defendants? OPP

5. Whether the suit is within limitation?

6. Whether the plaintiffs are entitled to the declaration and injunction prayed for? OPP

7. Relief.\024

5. The Trial Court, on the basis of the evidence, came to the conclusion that the defendants-appellants had not observed the principle of last come first go in making the retrenchments. The Trial Court also relied on the judgment of the Punjab and Haryana High Court in Piara Singh & Ors. V. State of Haryana[1989 PLR 396] and one another judgment, the copy of which was filed Vide Exhibit D-13 wherein the High Court had given directions that the workers so retrenched should be accommodated somewhere-else in some other projects and such appointments in the new projects would be treated as new appointments for the purpose of seniority and that the relief given to such workers would be without prejudice to the retrenchment and any other compensation that such workers would be entitled to under the provisions of the Industrial Disputes Act, 1947. Relying on these observations, the impugned orders of termination were held illegal. As regards issue regarding tenability of the suit, all that was said by the Trial Court was that the Government Pleader could not point out any defect in the form of the suit except that the plaintiffs had not challenged any specified orders regarding the termination of their services. (That is the only discussion in respect of the tenability). Though it was held that there was no evidence to hold that the persons junior to the plaintiffs-respondents were retained in service, there was no evidence on record to show that as to what would be the position of the plaintiffs in overall seniority-list when finalized vis-'-vis the other employees who have been retained or retrenched and, therefore, it was held that the plaintiffs were entitled to declaration and mandatory injunction only to the extent that they had right to be taken back in service and in case it was found that they were entitled to be retained on the project on the basis of the seniority, they would be entitled to be absorbed on other projects of the defendants according to their qualifications and fitness within a period of six months from the date of the judgment. A curious relief was granted in the following terms:

\02317. In view of my foregoing findings, the suit of the plaintiffs partly succeeds. Accordingly, I pass a decree in favour of the plaintiffs and against defendants no.1, 3 to 5 for declarations to the effect that the plaintiffs are entitled to be taken back in service. However, in case it is found that by virtue of their overall seniority in their respective categories of workers at the time of their retrenchment, they were not entitled to be retained on the APS Project, then they shall be absorbed in other projects under the defendants within a period of six months from the date of this judgment\005..\024

6. This order of the Trial Court was appealed against by the defendants-appellants before the Additional District Judge, Ropar which

appeal was dismissed. In its judgment the Appellate Court has referred to the arguments advanced by the appellants relying on Rule 20(1) of the Standing Orders governing the work-charged staff of the Project as also to the contention raised on behalf of the plaintiffs-respondent that the defendants-appellants had not violated principle of last come first go. The Appellate Court accepted that such principle was not strictly adhered to and further held that the Anandpur Hydel Project was a \023State\024 and the plaintiffs-respondents were entitled to the protection contained under the Constitution of India and CSR which provided that the work-charged employees could not be allowed to remain as such for more than six months. Relying on the decision of this Court reported in Supreme Court of India v. Cynamide India Ltd. (AIR 1987 SC 1801) and Piara Singh v. State of Haryana (1989 PLR (1) 396), the Appellate Court confirmed the findings of the Trial Court and dismissed the appeal.

7. The matter was taken before the High Court by way of a Second Appeal on various grounds. To begin with the High Court granted stay of the operation of the orders passed by the courts below. However, by the subsequent order, the stay application was dismissed and the said order granted on 20.12.1991 was vacated. This came to be challenged by way of a Special Leave Petition before this Court. In the Special Leave Petition a contention was raised by way of Ground (8) that the Civil Court had no jurisdiction to entertain the suit since the relief of reinstatement in the present case was available only under the Industrial Disputes Act. This Court, however, did not interfere at that stage and directed the High Court to dispose of the Second Appeal as expeditiously as possible. The High Court dismissed the Second Appeal necessitating the present appeal before us.

CONTENTIONS

8. Learned counsel appearing on behalf of the appellants urged that since the issues squarely fell within the ambit of the Industrial Disputes Act, 1947 and since there is a specific remedy available to the plaintiffs-respondents under that Act, the jurisdiction of the Civil Court was impliedly excluded and all the courts below erred in entertaining and deciding upon the issues much less adverse to the appellants. Learned counsel, relying on this Court\022s judgments in The Premier Automobiles Ltd. & Ors. v. Kamlekar Shantaram Wadke of Bombay & Ors. [(1976) 1 SCC 496], Jitendra Nath Biswas v. M/s.Empire of India & Ceylone Tea Co. & Anr. [(1989) 3 SCC 582]; Rajasthan State Road Transport Corporation & Anr. v. Krishna Kant & Ors. [(1995) 5 SCC 74]; and Rajasthan State Road Transport Corporation & Ors. v. Zakir Hussain [(2005) 7 SCC 447] urged that the legal position in this behalf was settled. On the other hand the learned counsel on behalf of the respondents urged that firstly this issue relating to jurisdiction was not raised by the respondents before any courts below and it is only for the first time that the objection to the jurisdiction has been raised before this Court. Learned counsel for the respondents also urged that the issue was not covered under the labour jurisprudence and under the provisions of the Industrial Disputes Act, 1947 and the jurisdiction of the Civil Court could not be said to be barred.

DISCUSSIONS

9. We would take into account the objection to the effect that the contention regarding the jurisdiction was not raised and, therefore, it could not be allowed to be raised at this late stage, for that it will have to be found as to whether the issue regarding the reinstatement and the payment of back-wages could be said to be covered under the provisions of Industrial Disputes Act. The question of the Civil Court\022s jurisdiction being excluded came, for the first time, before this Court in The Premier Automobiles\022s case (supra). In that case the court culled out following four principles:

(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 senior 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 33C or the raising of an industrial dispute, as the case may be.\024

10. The second decision came in Jitendra Nath Biswas\022s case (supra), wherein this Court specifically held, interpreting Section 9 of the CPC that the Civil Court shall have no jurisdiction where its jurisdiction is expressly or impliedly barred. The Court held:
\023It could not be disputed that a contract of employment for personal service could not be specifically enforced and it is also clear that except the industrial law, under the law of contract and the civil law, an employee whose services are terminated could not seek the relief of reinstatement with back wages. At best he could seek the relief of damages for breach of contract. The manner in which the relief has been framed by the appellant plaintiff in this case, although he seeks a declaration and injunction but in substance it is nothing but the relief of reinstatement and back wages. The relief could only be available to a workman under the Industrial Disputes Act.\024

The Court, therefore, proceeded to hold that the civil court\022s jurisdiction was barred. In this case very peculiarly it was not disputed that the Industrial Employment (Standing Orders) Act was also applicable to the workman and an inquiry for misconduct was conducted against the appellant in accordance with the standing orders. It was argued before the court, however, that since it was solely the discretion of the Conciliation Officer to proceed with the conciliation proceedings and since even after the report given by the Conciliation Officer it was the discretion of the State Government to make a Reference or not, the civil court\022s jurisdiction was not barred. This Court repelled that contention after discussing the duties of the Conciliation Officer and held that the civil court\022s jurisdiction was barred.
11. On its heels came the case of Krishana Kant (supra). This was a case where, pursuant to the disciplinary inquiry held against some of the workers on charges of misconduct, their services were terminated. The suits were filed for a declaration that the orders terminating their services were illegal and invalid and for further declaration that they must be deemed to have continued and still continuing in the service of the Corporation with all consequential benefits. This Court elaborately considered the law laid down earlier in the cases of Premier Automobiles\022s case and Jitendra Nath Biswas\022s (supra) and after considering the concept of \023industrial dispute\024 as covered under Sections 2(k) and 2-A of Industrial Disputes Act, 1947 came to the conclusion that the disputes not covered under Section 2(k) or 2-A could be determined by Civil Court or by arbitration but disputes relating to right or obligation created by the Industrial Disputes Act can be adjudicated only by the forum created by the Industrial Disputes Act. This was a case where the Corporation was armed with the Certified Standing Orders. The Court held that the Certified Standing Orders are not in the nature of delegated or subordinate legislation. It was held that the Certified Standing Orders were statutorily imposed conditions of service and the complaint made by the workman relating to breach thereof could only be tried under the machinery and the procedure provided by the Industrial Disputes Act and the civil court\022s jurisdiction was impliedly barred to that extent. The Court while referring to the seven principles culled out by this Court in Dhulabhai v. State of M.P. [(1968) 3 SCR 662: AIR 1969 SC 78] further explained the decision in Premier Automobile (supra) to hold that not only the disputes

under the Industrial Disputes Act were barred but the disputes arising out of the sister enactments like Industrial Employment (Standing Orders) Act also stood outside the jurisdiction of the civil court since they did not provide a special forum of their own for enforcement of the rights and liabilities created by them. The Court, therefore, held:
\023Thus 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 within the meaning of Sections 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 court have no jurisdiction to entertain such suits.\024

The Court further went on to say that the enforcement of the Industrial Employment Standing Orders is an industrial dispute and if it satisfies the requirement of Section 2(k) and/or Section 2-A of the Industries Disputes Act, it must be adjudicated in the forums created by the Industrial Disputes Act alone.

12. Though there are number of other cases followed, we would choose to consider the decision in Zakir Hussain\022s case (supra). This case also arose out of the termination simpliciter effected by the Corporation of the conductor who was appointed on probation basis for a period of two years and since his services were not found satisfactory, the same were terminated, ofcourse with necessary compensation prescribed as per the Rules of the Corporation. The court after considering all the earlier cases cited above and referring to the seven principles culled out in the case of Krishan Kant, came to the conclusion as arrived at in Krishan Kant\022s case. Two other cases were referred to, they being B.S. Bharti v. IBP Co. Ltd. [(2004) & SCC 550] and Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad [(2002) 2 SCC 542]. It was held by the court that the reliefs craved in the said cases squarely fell within the arena of Industrial Disputes Act and, therefore, civil court\022s jurisdiction was clearly barred. On the question of the adhoc appointment of the employee, the court came to the conclusion that the respondent was a probationer and did not have any substantive right to hold the post and was not entitled to a decree of declaration which was erroneously granted by the lower courts.

13. Now coming to the facts of the present case, there is no dispute that there are Certified Standing Orders in vogue. The nine plaintiffs-respondents were engaged on work-charged basis till the completion of the Project. Their services came to be terminated after the completion of the Project in January, 1985 as they were not required due to the completion of the Project and since they were engaged temporarily. It was pointed out before us and not disputed that the services were terminated vide order dated 6.7.1985 under Rule 20(1) read with Rule 3-A of the Certified Standing Orders for work-charged staff. It is also not disputed that they were paid gratuity, retrenchment compensation as also the compensation for notice and that they had duly accepted the order. In the civil suit it was prayed that a decree be passed for declaration to the effect that the orders of termination/retrenchment of their service were null and void and that they should be reinstated with back-wages. A mandatory injunction to that effect was sought for. It was urged before the trial court that the defendants-appellants have not maintained a proper seniority list and that had resulted in the breach of the principle of last come first go and, therefore, their termination was bad in law. In short, the original plaintiffs-respondents had averred the breach of Section 25-G of the Industrial Dispute Act, in that, they had alleged that the employer had shown discriminatory attitude and the plaintiffs-respondents were picked and chosen for being terminated and thus were victimized. On the other hand defence raised was that there were certain cut-off dates fixed for the retention of the employees and all the plaintiffs-respondent had actually joined the service after that cut-off date and, therefore, they were terminated in terms of Rule 20(1) read with Rule 3-A of the Certified Standing Orders relating to work-charged staff.

14. From the above discussion there is no doubt that the dispute and the main issue fell squarely under the premise of Industrial Disputes Act. Further as specifically held in Krishna Kant\022s case that where the Certified Standing Orders were applicable and where the breach thereof was complained of, such issues fell in the exclusive area of the machinery provided by the Industrial Disputes Act and as such the civil court\022s jurisdiction was specifically barred. We are left with no doubt that the situation is identical in the present case.

15. In the present case while the employers-appellants claimed that the termination simpliciter was effected in the light of the Rules under the Certified Standing Orders, the plaintiffs-respondents alleged that the principles under the provisions of the Certified Standing Orders were completely ignored and a highly arbitrary, discriminatory approach was adopted by the employer by picking and choosing the plaintiffs for the purposes of termination. The dispute, therefore, clearly fell outside the civil court\022s jurisdiction as per the decisions of this Court relied upon earlier.

16. However, the question is that this issue of jurisdiction was not raised either before the before the First Appellate Court or the Second Appellate Court. Learned counsel for the respondents very vociferously argued before us that for the reasons best known to the appellants, this objection regarding the jurisdiction was never raised specifically. We have seen the written statement. In the written statement the defendants-appellants have raised a plea though not specifically but there is a clear reference to Rule 20(1) read with Rule 3-A of the Certified Standing Orders for the work-charged staff on the Project. It is stated, which is apparent from the judgment of the trial court that \023since the services of plaintiffs have already been terminated on payment of necessary gratuity etc., they have no cause of action and that the present suit is not maintainable in the present form and is also not competent without notice under Section 80 CPC besides being barred by limitation\024. The tenability of the suit was, therefore, raised and vide Issue No.3, the trial court also considered the tenability of the suit in the present form. The trial court has not, however, adverted to the jurisdiction aspect as is being presently highlighted before us. Same is the story about the First Appellate Court and the Second Appellate Court. However, it is not as if this issue was not raised altogether. Atleast a notice of this issue was given to the respondents in SLP (C) 11086 of 1992 which was filed on behalf of the appellants to challenge the dismissal of the said application by the High Court. It is very specifically raised therein in Ground No.8, which is reproduced as under:

\023Because the civil court had no jurisdiction to entertain the suit. The relief of reinstatement in the present case was available only under the Industrial Disputes Act and therefore the jurisdiction of the Civil Court was expressly barred. [(1991) 1 RSJ 770]. The declaration claimed by the plaintiffs in his suit could be granted by the Labour Court under the Industrial Disputes Act and consequential relief was also exclusively outside the jurisdiction of the civil court. The plaintiff respondents are basing their case mainly on the provision of Industrial Disputes Act, 1947 and thus the claim of the plaintiffs/respondents could only be adjudicated by the Labour Court. The proposition of law is now well settled by repeated pronouncement made by the Apex Court.\024

Therefore, it is not that the respondents herein had no notice of such an objection. This Court only directed the High Court to dispose of the appeal before it expeditiously. However, it does not seem that the question was raised by the counsel of the appellants before the High Court in the present form. On the other hand the High Court has very specifically held that there was no substantial question of law involved in the matter.

17. In our considered opinion, it cannot be said that there was no question of law involved as we have pointed out that the issues squarely fell in the area covered by the Industrial Disputes Act and was, therefore, specifically barred. The question is whether this issue regarding the jurisdiction could be allowed to be raised before us. The question of jurisdiction came up before this Court in Harshad Chiman Lal Modi v.

DLF Universal Ltd. & Anr. [(2005) 7 SCC 791]. The Court therein was considering the question raised whether the court had jurisdiction under Section 16(d) CPC to deal with the matter in question. In short the court was considering whether the amendment could have been allowed raising objection to the territorial jurisdiction. This Court in para 30 observed as under:

\023We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdiction are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.\024

The Court then proceeded to rely on the case in Bahrein Petroleum Co. Ltd. v. P.J. Pappu [(1966) 1 SCR 461:AIR1966 SC 634] and observed in para 32 that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. The Court further observed that\024

\023It is well settled and needs no authority that \021where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing\022. A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.\024

The Court also relied upon the decision in Kiran Singh v. Chaman Pawan [(1955) 1 SCR 117: AIR 1954 SC 340] and quoted therefrom:

\023It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction\005strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.\024

Though in the aforementioned decision these observations were made since the defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity.

18. The aforementioned decision was followed again in Hasham Abbas Sayyad v. Usman Abbas Sayyad & Ors. [(2007) 2 SCC 355] where one of us, Sinha, J. was a party. Ofcourse while following this decision the Court referred to the decisions in Chief Justice of A.P. v. L.V.A. Dixitulu [(1979 2 SCC 34]; Zila Sahakari Kendrya Bank Maryadit v. Shahjadi Begum [(2006) 11 SCC 692] as also Shahabad Cooperative Sugar Mills Ltd. v. Special Secretary to Govt. of Haryana [(2006) 12 SCC 404].

CONCLUSION

19. Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage. It must, therefore, be held that the civil court in this case

had no jurisdiction to deal with the suit and resultantly the judgments of the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be allowed. In view of this verdict of ours, we have deliberately not chosen to go into the other contentions raised on merits. We, however, make it clear that we have not, in any manner, commented upon the rights of the plaintiffs-respondents, if any, arising out of the Labour Jurisprudence.

20. In the result the appeal is allowed but without any order as to costs.