

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3027 OF 2007

R.S.R.T.C. & Ors.

...Appellants

Versus

Deen Dayal Sharma

...Respondent

JUDGEMENT

R.M. Lodha, J.

The jurisdiction of civil court to order reinstatement of the respondent and grant of financial benefits of service to him has been questioned in this appeal.

2. The respondent was appointed as conductor by the Rajasthan State Road Transport Corporation – (for short, ‘appellants’) on October 11, 1982. On January 17, 1983, while

the respondent was on duty on Badi Chopad – Amer route, a surprise inspection was done and six passengers were found travelling in the bus without tickets. The respondent was dismissed from service vide order dated January 24, 1983. The respondent preferred departmental appeal against the order of dismissal dated January 24, 1983 but the said appeal was dismissed on September 5, 1985. He preferred review before the reviewing authority which too was dismissed on April 13, 1987. The respondent then filed a civil suit in the Court of Additional Munsif and Judicial Magistrate No.2, Jaipur City, Jaipur against the appellants praying therein that the order of dismissal dated January 24, 1983 be declared unlawful, illegal, void and ineffective being contrary to the Standing Orders as no departmental enquiry was held and he be held to be entitled to all benefits as if he continued in service.

3. Although no written statement was filed by the appellants, they challenged the jurisdiction of civil court orally and submitted that the dispute being an industrial dispute, it can only be resolved by the Industrial Tribunal.

4. The Trial Judge after recording the evidence of the respondent, heard parties and overruled the objection raised by

the appellants about the jurisdiction of the civil court and vide judgement and decree dated March 6, 1991 declared the order of dismissal dated January 24, 1983 illegal and ordered reinstatement of respondent and other financial benefits to him.

5. The appellants challenged the judgement and decree passed by the Trial Court in appeal before the District Judge, Jaipur City but that was dismissed on the ground of delay on January 20, 2001.

6. The second appeal preferred by the appellants before the High Court was dismissed on November 7, 2005 holding that concurrent finding of facts by the courts below warranted no interference. It is from this order that present appeal by special leave arises.

7. In *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and Others*¹, a three Judge Bench of this Court considered Section 9 of the Civil Procedure Code, 1908, the provisions of Industrial Disputes Act, 1947 and large number of decisions by this Court, as well as English and other Indian Courts and summed up the principles applicable to

¹ (1976) 1 SCC 496

the jurisdiction of the civil court in relation to an industrial dispute thus :

“23.

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

In paragraph 24 of the report, this Court further clarified:

“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(k) 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.”

8. In the case of *Rajasthan State Road Transport Corporation and Another v. Krishna Kant and Others*², this Court was concerned with the question, where the dispute between the employer and the workmen involves the recognition, application or enforcement of the certified Standing Orders, whether jurisdiction of civil court to entertain a suit with respect to such dispute is barred. A three Judge Bench extensively considered the nature of the Standing Orders; the scope of 'Industrial Dispute' and a long line of cases of this Court, including *Premier Automobiles*¹, and summarized the legal position as follows:

"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, 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

² (1995) 5 SCC 75

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 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.”

9. In *Rajasthan State Road Transport Corpn. and Others v. Zakir Hussain*³, this Court held that the employees of the State Road Transport Corporation are not civil servants, and they are not entitled to protection of Article 311 (2) of the Constitution. While dealing with the question of jurisdiction of civil court in the matters of industrial dispute, this Court applied the principles enunciated in *Krishna Kant*² in the following words :

“35.....This Court has very explicitly summarised the principles flowing from the discussion in the judgment in para 35 and applying the above principles this Court has categorically held that the suits filed by the employees in those appeals were not maintainable in law.....

36. For the foregoing reasons, we hold that the respondent ought to have approached the remedies provided under the Industrial Disputes Act. He has miserably failed to do so but approached the civil court, which on the facts and circumstances of the case has no jurisdiction to entertain and try the suit.”

10. A three Judge Bench of this Court in the case of *Rajasthan SRTC and Others v. Khadarmal*⁴, again considered the question regarding jurisdiction of civil court in the matter of termination of service of a probationer and following the

³ (2005) 7 SCC 447

⁴ (2006) 1 SCC 59

judgments of this Court in *Zakir Hussain*³ and *Krishna Kant*²

held :

“6. In our view, as the civil court had no jurisdiction, the decrees which were passed have no force of law. They are accordingly set aside. In our view, there can be no direction to reinstate or to continue reinstatement....”

11. It appears that in the case of *Rajasthan State Road Transport Corporation and another v. Bal Mukund Bairwa*⁵, a two Judge Bench of this Court noticed some conflict in the judgments of this Court in *Krishna Kant*² and *Khadarmal*⁴ and, accordingly, referred the matter to a larger Bench. A three Judge Bench of this Court in its decision titled *Rajasthan State Road Transport Corporation and Another v. Bal Mukund Bairwa (2)*⁶, revisited the issue with regard to jurisdiction of civil court to entertain suits questioning the orders of termination and held as follows :

“36. If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in

⁵ (2007) 14 SCC 41

⁶ (2009) 4 SCC 299

our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in *Rajasthan SRTC v. Mohar Singh* [(2008) 5 SCC 542]. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the facts of each case.

37. If the infringement of the Standing Orders or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

38. Where the relationship between the parties as employer and employee is contractual, the right to enforce the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) 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.

39. The appellant Corporation is bound to comply with the mandatory provisions of the statute or the regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act. It is also bound to follow the principles of natural justice. In the event it is found that the action on the part of the State is violative of the constitutional provisions or the mandatory requirements of a statute or statutory rules,

the civil court would have the jurisdiction to direct reinstatement with full back wages.”

12. The learned counsel for the respondent submitted that controversy with regard to the jurisdiction of civil court in entertaining a suit wherein the order of termination is challenged on the ground of violation of principles of natural justice has been set at rest in *Bal Mukund Bairwa (2)*⁶. She heavily relied upon paragraph 39 of the report quoted above and contended that civil court rightly entertained, tried and decreed the suit in the present matter.

13. We shall first notice the case set up by the respondent in the plaint. It was averred :

“(kha) That defendants did not hold any departmental enquiry against the plaintiff in respect of the said remark and nor in this regard the plaintiff was accorded any opportunity of defence and hearing. The plaintiff has been dismissed from service on the basis of the said false remark without according him the opportunity of defence and hearing. As per section 35 of Standing Orders if there is any allegation of misconduct against any employee then holding departmental enquiry against him is necessary and thereafter on proving the charges against him he may be punished but in the instant case Defendants did not hold any departmental enquiry for the said false remark put against the Plaintiff and nor the plaintiff was accorded opportunity of defence and hearing and order of dismissal of the plaintiff from service has been passed which being contrary to Section 35 of Standing Orders and principles of natural justice is liable to be quashed.

(ga) That the order of dismissal of service of the Plaintiff is of Penal nature. In the order of dismissal of service issued against the plaintiff the plaintiff's service being not satisfactory and breach of the terms and conditions of appointment due to which he has been dismissed from service which is a blot on the character of the Plaintiff. Which of the Conduct has been breached by the Plaintiff is not clear from the order of dismissal of service of Plaintiff. In this regard any departmental enquiry was not held against the Plaintiff and before passing the dismissal order, the plaintiff was not accorded opportunity of defence and hearing which being contrary to law and Section 35 of Standing orders is liable to be quashed."

14. The case of the respondent as set up in the plaint, therefore, is that in the absence of departmental enquiry as contemplated in Standing Orders, the order of dismissal is bad in law. It is true that respondent pleaded that he has been dismissed from service without affording any opportunity of defence and hearing and in breach of principles of natural justice but the said plea has to be understood in the backdrop of his pleading that the dismissal order has been passed contrary to Standing Orders without holding any departmental enquiry. The legal position that Standing Orders have no statutory force and are not in the nature of delegated / subordinate legislation is clearly stated by this Court in Krishna Kant². In that case (Krishna Kant²), this Court while summarizing the legal principles in paragraph 35(6) stated that

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' and any violation of these Standing Orders entitles an employee to appropriate relief either before the forum created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated therein. In *Bal Mukund Bairwa (2)*⁶, in para 37 of the report, the position has been explained that if the infringement of the Standing Orders is alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. In our opinion, nature of right sought to be enforced is decisive in determining whether the jurisdiction of civil court is excluded or not. In the instant case, the respondent who hardly served for three months, has asserted his right that the departmental enquiry as contemplated under the Standing Orders, ought to have been held before issuing the order of dismissal and in absence

thereof such order was liable to be quashed. Such right, if available, could have been enforced by the respondent only by raising an industrial dispute and not in the civil suit. In the circumstances, it has to be held that civil court had no jurisdiction to entertain and try the suit filed by the respondent.

15. In the result, appeal is allowed and impugned order of the High Court and judgements of the courts below are set aside. No order as to costs.

.....J
(R. V. Raveendran)

.....J
(R. M. Lodha)

New Delhi
May 5, 2010.