

CASE NO.:
Appeal (civil) 2945 of 2008

PETITIONER:
Rajasthan SRTC & Ors

RESPONDENT:
Mohar Singh

DATE OF JUDGMENT: 24/04/2008

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2945 OF 2008
(Arising out of SLP (C) No.6756 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. First appellant (Corporation) is a statutory corporation constituted and incorporated under the Road Corporation Act, 1951. Respondent herein was a driver of a bus employed by the Corporation.
3. On the charges of alleged commission of misconduct on the part of the respondent, a disciplinary proceeding was initiated against him on or about 6.11.1982. The Enquiry Officer found him guilty of the said charges. By reason of an order dated 31.5.1985, the disciplinary authority, upon considering the report of enquiry officer inflicted the punishment of dismissal from services on him with immediate effect. It was furthermore directed that he shall not be entitled to further wages save and except what has already been paid to him by way of subsistence allowance.
4. An appeal preferred by him was dismissed by the Appellate Authority by an order dated 16.6.1987.
5. Respondent filed a civil suit in the Court Additional Munsif, Jaipur which was marked as Civil Suit No.632/88 (290/86). In his written statement, the appellant, inter alia, contended that the Civil Court had no jurisdiction to entertain the suit. Some of the issues framed by the Civil Court were :
"(1) Whether the order of termination No.1516 dated 31.5.1985 and the order of the Appellate Authority dated 16.6.1987 are illegal and bad in law?
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(3) Whether the Court has got no jurisdiction to entertain and try the suit?"
6. While determining issue No.1, the Trial Court, inter alia, held that the order of termination dated 31.5.1985 as also the order of the appellate authority were illegal, bad in law and against the principles of natural justice, opining :
 - i) The documents mentioned in the charge-sheet whereupon the appellant relied, had not been supplied to the respondent;
 - ii) He was not permitted to cross-examine the witnesses examined on behalf of the department; and
 - iii) The enquiry officer acted like a prosecutor.
7. On the said findings, the suit was decreed, opining :

"In the result, it is ordered that the suit of the plaintiff is decreed against the defendant declaring that the order No.1516 dated 31.5.1985 passed by the defendant and the order of the Appellant Authority dated 16.6.1987 is held to be illegal, bad in law non est being against principle of natural justice and, therefore, is set aside. It is also declared that the plaintiff would be treated to be in continuous service of the defendant without any break and would also be entitled to receive all the monetary benefits as he would have been entitled has he been in continuous service."

8. An appeal preferred thereagainst by the appellant was dismissed by the Additional District and Sessions Judge, Jaipur City by a judgment and order dated 5.5.2000.

The High Court, by reason of the impugned judgment has dismissed the second appeal filed by the appellant, holding that no substantial question of law arose for its consideration.

9. Mr. Thanvi, learned counsel appearing on behalf of the appellant, would submit that the Civil Court, in the facts and circumstances of this case, had no jurisdiction to entertain the suit.

It was pointed out that as there exists conflict between two three Judge Bench decisions of this Court in Rajasthan State Roadways Transport Corporation & Anr. v. Krishna Kant & Ors. [(1995) 5 SCC 75] and Rajasthan SRTC & Ors. v. Khadarmal [(2006) 1 SCC 59], a Division Bench of this Court in Civil Appeal No.3428 of 2005 referred the matter to a larger Bench.

10. Section 9 of the Code of Civil Procedure provides that all Civil Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

The jurisdiction of the Civil Court apparently is not expressly barred by the provisions of Industrial Disputes Act, 1947. The question which arises for our consideration would be as to whether the same is barred by necessary implication.

11. Civil Court may have a limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit. It may not be entitled to sit in appeal over the order passed in the disciplinary proceedings or on the quantum of punishment imposed. It may not in a given case direct reinstatement in service having regard to Section 14(1)(b) of the Specific Relief Act, 1963 but, it is a trite law that where the right is claimed by the plaintiff in terms of common law or under a statute other than the one which created a new right for the first time and when a forum has also been created for enforcing the said right, the Civil Court shall also have jurisdiction to entertain a suit where the plaintiff claim benefit of a fundamental right as adumbrated under Article 14 of the Constitution of India or mandatory provisions of statute or statutory rules governing the terms and conditions of service.

12. Under the industrial law, and in particular the 1947 Act, the authorities specified therein including the Appropriate Governments and the Industrial Courts have various functions to perform. Terms and conditions can be laid down thereunder. Violation of the terms and conditions of service at the hands of the employer is also justiciable. Safeguards have been provided under the Act to see that services of workmen are not unjustly terminated. The 1947 Act provides for a wider definition of 'termination of service'. Conditions precedent for termination of service have been provided for thereunder.

A decision taken by the Disciplinary Authority under the 1951 Act ordinarily would be a subject matter of suit. The Civil Court, however, as noticed hereinbefore exercises a limited jurisdiction. If however, the concerned employee is a 'workman' within the meaning of the provisions of the 1947 Act, he apart from the common law remedies, may take recourse to the remedies available before an industrial court.

When a right accrues under two statutes vis-à-vis the common law

right, the concerned employee will have an option to chose his forum.
13. We must also notice the distinction between a right which is conferred upon an employer under a statute for the first time and also providing for a remedy and the one which is created to determine the cases under the common law right. Only in a case of the former, the Civil Court's jurisdiction may be held to be barred by necessary implication. The question came up for consideration before a Three Judge Bench of this Court in The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke & Ors. [AIR 1975 SC 2238]. The distinction as noticed hereinbefore, was noticed therein. The Court extensively quoted from Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CB (NS) 336] as under :

"There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy; there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it\005.. "With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute."

Having analysed the other ratio of decisions, it was summed up :

"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 and 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."

14. The said principle, in our opinion, should be applied in a case of this nature. The Courts ordinarily do not adopt an interpretation which takes

away the jurisdiction of the Court.

15. We may in this behalf profitably notice the following excerpts from the Principles of Statutory Interpretation (11th Edn) by Justice G.P. Singh :

" 'It is a principle by no means to be whittled down' and has been referred to as a "fundamental rule". As a necessary corollary of this rule provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed. The existence of jurisdiction in civil courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of jurisdiction of civil court is not to be readily inferred is based on the theory that civil courts are courts of general jurisdiction and the people have a right, unless expressly or impliedly debarred to insist for free access to the courts of general jurisdiction of the State. Indeed, the principle is not limited to civil courts alone, but applies to all courts of general jurisdiction including criminal courts. The rule as stated above relating to strict construction of provisions excluding jurisdiction of courts of general jurisdiction was recently expressly approved by the Supreme Court."

16. In Krishna Kant (supra), this Court opined that where a dispute involves recognition of servant and enforcement of rights and obligations created under the Industrial Disputes Act and/or its sister enactments such as Industrial Employees (Standing Orders) Act, the Civil Court will have no jurisdiction.

Premier Automobiles (supra) was explained, stating : "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.)"

However, in that case, this Court declined to set aside the decree which was the subject matter of the appeals.

17. We are not concerned with such a situation here as the same is not being claimed by the plaintiff on the basis of right arising either under the Industrial Disputes Act, 1947 or Industrial Employees (Standing Orders) Act, 1946.

We may also notice that in Rajasthan State Road Transport Corporation & Ors. v. Zakir Hussain [(2005) 7 SCC 447], whereupon the learned counsel also replied on, this Court noticed Krishna Kant (Supra), but in paragraph 32 of the judgment having regard to object of the Industrial Disputes Act held that the termination of the workman concerned was a simpliciter one and did not contain any stigma and, thus, the law does not require holding of any enquiry before terminating the services of the employee being not on the ground of any misconduct.

It was held that the Civil Court has no jurisdiction as the Management was fully entitled to terminate the services of the probationary officer during the period of probation, if his services were not found to be satisfactory.

18. However, this Court in State of U.P. v. Shatrughan Lal & Anr. [AIR 1998 SC 3038], opined that where copies of the statement of the witnesses were not supplied to the delinquent employee, the same would constitute violation of the principles of natural justice, stating :

"It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge-sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."

19. In Khadarmal (supra), it was held that the Civil Court had no jurisdiction and the decrees which were passed have no force of law. Apparently, this Court in CA No.3428 of 2005 (supra) found an apparent conflict in the said decision vis-à-vis Krishna Kant (supra) and Khadarmal (supra).

In Khadarmal (supra) also, however, this Court directed that if any back wages had been paid, the same shall not be recovered.

20. The decisions referred to hereinbefore clearly brings about a distinction which cannot be lost sight of. If a right is claimed under the Industrial Disputes Act or the sister laws, the jurisdiction of the Civil Court would be barred, but if no such right is claimed, civil court will have jurisdiction.

21. Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. It is created under a statute. As a State, it is bound to comply with the requirements of Article 14 of the Constitution of India as also other provisions of Part III of the Constitution. It is also bound to comply with the mandatory provisions of the statute or the regulations framed by it.

22. It is also bound to follow the principles of natural justice. In the event, it is found that the action on the part of a 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.

23. In Praga Tools Corporation v. C.V. Imanuel & Ors. [AIR 1969 SC 1306], it was held :

"Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities."

24. For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed accordingly. As the respondent has not appeared, there shall be no orders as to costs.