

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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C.R.P.No.3185 of 2015

Between:

Dr.S.A.Rahman Siddiqui and another.

.. Petitioners

and

V.V.V.Satya Subba Rao.

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 18.8.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.3185 of 2015

ORDER:

This Civil Revision Petition is filed challenging the order dated 16.6.2015 passed in I.A.No.728 of 2014 in O.S.No.150 of 2011 on the file of the Senior Civil Judge, Nizamabad whereby, the petition filed under Order VII Rule 11 C.P.C. was dismissed.

2. The petitioners are the defendants in O.S.No.150 of 2011 filed by the respondent herein for grant of damages of Rs.2,00,000/- together with interest at 24% p.a. from the date of the suit till the date of realisation of the entire amount for the harassment tactics employed by the defendants (revision petitioners) and put the plaintiff (respondent) to a great mental agony, which led to further physical discomfort as well as financial loss.

3. The main contention of the petitioners in the petition filed under Order VII Rule 11 C.P.C. is that the Civil Court has no jurisdiction as the claim of the plaintiff is barred by law i.e., the Administrative Tribunals Act, 1985 (for short, "the Act"), which bars a suit pertaining to any service matters.

4. The learned Senior Civil Judge dismissed the petition holding that the Civil Court has got jurisdiction and the plaint cannot be rejected at this stage.

5. Aggrieved by the order of the trial Court, the present Revision Petition is filed under Article 227 of the Constitution of India raising several contentions mainly contending that the dispute involved in this suit is a service matter as defined under Section 3(q) of the Act, and the jurisdiction of the Civil Court is ousted by express bar or by necessary implication and that apart, the damages claimed is only in lieu of salary the respondent lost and therefore, the subject matter of the dispute is within the jurisdiction of the Central Administrative

Tribunal and the Civil Court has no jurisdiction.

6. Learned counsel for the revision petitioners, while reiterating the contentions urged in the grounds of revision, mainly contended that the dispute is purely a service dispute between the respondent and the revision petitioners and when the relief claimed in the suit is barred by any other law, under Order VII Rule 11(d) of C.P.C., the plaint can be rejected. Therefore, the order under challenge is erroneous on the face of the record and prayed to set aside the order and reject the plaint by exercising the jurisdiction under Order VII Rule 11 C.P.C.

7. Though notice was served on the respondent, none appeared.

8. At the stage of admission, the counsel for the revision petitioners advanced argument.

9. Considering the contentions of the revision petitioners, the sole point that arises for consideration is:

“Whether the jurisdiction of the Civil Court is ousted by express bar or by necessary implication?”

10. **POINT:-** The only ground urged before the trial Court and this Court is that since the claim involved in the suit is purely a service matter, as defined under Section 3(q) of the Act, and the jurisdiction of the Civil Court is barred thereby, the plaint is liable to be rejected by exercising jurisdiction under Order VII Rule 11(d) of C.P.C. In view of the specific contention, it is appropriate to extract the definition of “service matters,” as defined under Section 3(q) of the Act and it is extracted hereunder:

“service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the

Government, as respects -----

- (i) remuneration (including allowances), pension and other retirement benefits;*
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;*
- (iii) leave of any kind;*
- (iv) disciplinary matters; or*
- (v) any other matter whatsoever.”*

So, the learned counsel for the revision petitioners, basing on the definition under Section 3(q) of the Act, contended that the dispute involved in this suit is covered by Clauses (iii) and (v) of Section 3(q) of the Act and drawn the attention of this Court to Section 14(b) of the Act regarding jurisdiction, powers and authority of the Central Administrative Tribunal, which reads as follows:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal. -- (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to ____
(a)
(b) all service matters concerning ____
(i) a member of any All-India Service; or
(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence.....”

11. There is no quarrel about the jurisdiction of the Tribunal to decide the service matters relating to various categories mentioned in clause (b) (i) to (iii) of Section 14 of the Act, but in the present case, the respondent claimed damages of Rs.2,00,000/- together with interest at 24% p.a. from the date of the suit till the date of realisation contending at para Nos.15 and 16 in the plaint as under:

“15. It is submitted that the attitude of both the defendants was inhuman. Both the defendants violated the rights of the plaintiff. The defendants’ attitude towards a small employee is against the spirit of

human rights.

16. It is submitted that the harassment tactics employed by the defendants put the plaintiff to a great mental agony, which led to further physical discomfort as well as financial loss. Plaintiff sent notice dated 28.7.2009 as required by Section 30 of CPC to the defendants to correct the wrongs committed by them within 60 days from the date of the receipt of the legal notice or to pay damages of Rs.2,00,000/-. Both the defendants received the notices. But they did not comply with the notice on 1.8.2009.”

In view of the specific allegations made in para Nos.15 and 16, the respondent herein claimed damages for mental agony, physical discomfort and financial loss sustained by him on account of the harassment he met in the hands of the revision petitioners. No doubt, the Central Administrative Tribunal is not competent to award damages, as claimed by the respondent, in any Original Application filed before the Administrative Tribunal in normal course, but the Civil Court alone is competent to award damages for the alleged mental agony, physical discomfort and financial loss sustained by the respondent herein.

12. It is the specific contention of the revision petitioners that under Order VII Rule 11(d) C.P.C., when the suit is barred by any other law, the Court is bound to reject the plaint. A perusal of the provisions of the Act shows that the claim for damages is not barred either expressly or impliedly. Therefore, it is difficult to accept the contention of the revision petitioners at this stage that the claim of the plaintiff for award of damages towards mental agony, physical discomfort and financial loss etc. is barred by any other law.

13. According to Section 9 C.P.C., the Civil Courts shall have jurisdiction to try all suits of civil nature except the suits either expressly or impliedly barred. Here, there is no express bar to entertain the suit for damages or to take cognizance of the suit filed for

award of damages, but the Apex Court, time and again, laid down certain guidelines to assume jurisdiction of the matter or any suit or proceeding filed before it. In judgment rendered in **Dhulabai Vs. State of Madhya Pradesh**, a Larger Bench of Apex Court laid down the following seven guidelines either to assume jurisdiction of any subject matter of civil nature or to oust the jurisdiction of the Civil Court:

- "(1) *Whether the statute gives 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 decision to sustain the jurisdiction of the Civil Court.*
Where there is no express exclusion the examination of the remedies and scheme of 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 the 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 is ultra vires cannot be brought before Tribunals constitutes 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 or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities is 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."*

14. Time and again, the Hon'ble Apex Court reiterated principles as to when jurisdiction can be exercised by the Civil Court. In the judgment of Larger Bench consisting of 7 judges of the Apex Court in **M/s. Kamala Mills Limited Vs. State of Bombay**, it was held as under:

"Exclusion of jurisdiction of civil court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then court will enquire whether remedies normally available in civil court are prescribed by such statute."

15. In view of the law declared by the Apex Court in the above two judgments, when an effective alternative remedy under the statute is prescribed, the Civil Court is deemed to have ousted from entertaining a civil suit. Apart from that, when the relief claimed in the suit by the plaintiff can be granted by an Administrative Tribunal or any other Forum, the jurisdiction of the Civil Court can be said to be ousted by necessary implication, but in the instant case, the damages claimed by the plaintiff for mental agony, physical discomfort as well as financial loss cannot be granted by an Administrative Tribunal. Therefore, it is difficult to accept the contention of the learned counsel for the revision petitioners at this stage. Hence, I find no ground to allow the revision petition and the revision petition is devoid of merits and deserves to be dismissed.

16. However, since it is a matter pertaining to the inherent lack of jurisdiction of Civil Court, the petitioners are at liberty to raise the plea of lack of inherent jurisdiction to pass a decree during trial. The finding recorded herein above as to jurisdiction of Civil Court is for limited purpose and the trial Court is bound to decide the suit notwithstanding the finding of this Court.

17. With the above observation, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 18.8.2015

AMD

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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