

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.6064 of 2002 (O&M)

Date of decision:04.03.2015

Madan Lal son of Shri Ram Sarup, resident of V&PO Jhanj Khurd,
Tehsil and District Jind.

... Petitioner

versus

The Meham Coop. Sugar Mills Limited, Meham, District Rohtak,
through its Managing Director, and another.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ramesh Hooda, Advocate,
for the petitioner.

Mr. S.K. Verma, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The simple point that arises for consideration is that a workman appointed after an interview process that was concluded on 11.10.1992 through an order issued for appointment on 14.10.1992 was ordered to be removed by the Deputy Commissioner (2nd defendant) acting on a complaint that there had been gross irregularities in the interview and that it had to be reviewed. The civil suit was filed for a declaration that the termination of the

plaintiff was illegal, null and void and he was entitled to be re-inducted in service with continuity of service and backwages. There was a contest taken on the maintainability of the suit and for want of notice under Section 124 of the Haryana Cooperative Societies Act. The trial Court held that the suit was maintainable but the relief could have been only for damages. The appellate Court denied both reliefs and stated that the civil suit itself is not maintainable. The appeal was dismissed. The petitioner has filed the civil revision petition. The justification is that the appellate Court, while dismissing the appeal, directed the trial court to return the plaint to the plaintiff for presenting it in a competent jurisdiction, if he so desired. The case must, therefore, be taken as an order of return that will be competent under Order 7 Rule 10 CPC and hence, it could not be taken as a decree to prefer a further second appeal, only revision is competent.

2. On the issue of maintainability of the revision petition itself, I must observe that if the first appeal was dismissed finding that the court had no jurisdiction, normally only a second appeal could have been filed under Section 100 CPC and a revision would not have been possible. If the appellate court was dismissing the appeal with an observation that the plaint could be returned to the plaintiff for presentation before the competent forum and the order must be taken as an order under Order 7 Rule 10 CPC even then a

revision is not maintainable, since Order 43 Rule 1(a) CPC provides for a right of appeal against an order returning the plaint under Order 7 Rule 10 CPC, revision is not competent at all.

3. I do not want to fend off an adjudication of the petitioner's right on a mere technical issue and, therefore, wanted to examine whether there was anything worthwhile for adjudication in the plaintiff's case. The plaintiff was seeking for a declaration that the order of termination of service was bad in law and that he should be reinstated in service with backwages and continuity of service. Section 14 of the Specific Relief Act sets down the nature of suits which are not specifically enforceable. A contract of service is precluded from being enforced in a civil court and the bar of the suit must be seen through the said provision only.

4. There are exceptions to Section 14, they must be seen through the provisions contained under the said Act itself. The exceptional situations do not also apply. Through judicial decisions only in three types of situations are reckoned where contract of specific enforcement by directing reinstatement have been approved: (i) when the service is regulated by protection under Article 311 of the Constitution in relation to civil service which can be a subject of judicial intervention by reinstatement; (ii) a contract of employment between employee and a Corporation established by statute by Act of Parliament or a State Legislature could also be specifically

enforced; and (iii) the rights and duties of the workmen and the Management which are regulated under the Industrial Disputes Act and to which the retrenchment could be complained of as requiring a procedure to be followed and a retrenchment that falls foul of such a procedure could be challenged and a reinstatement taken in the manner provided by the labour laws. The counsel for the petitioner would rely on a judgment of a Full Bench of this Court in **Sukhi Ram Versus State of Haryana-Recent Services Judgments (1950-1988) page 82** where the question at reference before the Full Bench was whether the civil court had jurisdiction to entertain a suit by a workman in connection with an industrial dispute arising out of the right and liability under the general or common law if no steps are taken by him to resort to the remedy of the Industrial Disputes Act. The court was holding that the civil court will have such jurisdiction to entertain a suit in connection with industrial dispute if no steps are taken by him to resort to the remedy to the Industrial Disputes Act. I must observe that lot of water had flowed under the bridge since the decision of this court in the year 1988 that consistent string of authorities that have addressed this issue that the exclusion of jurisdiction must be seen through the 3 principles enunciated above and would allow for no scope for a common law remedy of reinstatement into a service by a workman against a Cooperative Society. In **Apollo Tyres Limited Versus C.P. Sabastian-2009(14)**

SCC 360, the court was examining a claim of the plaintiff for declaration as a workman seeking for reinstatement on a plea that the dismissal was null and void. The trial Court had dismissed the suit for want of jurisdiction and the appellate Court had reversed the decision and confirmed by the High Court. In a SLP before the Supreme Court which was later numbered as Civil Appeal, the Court invoked Section 14 (b) of the Specific Relief Act that sets out the exclusion of civil court and the unavailability of the right of specific performance of a contract of personal service and that the power to enforce contracts of personal service could be done only by the Labour Courts and Industrial Tribunals but cannot be done by a civil court which does not enjoy those powers. The court ruled that the civil court will have no jurisdiction and was allowing the appeal and reversing the decision of the High Court. This judgment of the Supreme Court is just one of several decisions, but as I have observed, the whole string of authorities after 1988 hold the view that a common law remedy can exist only if there no statutory provision as regards the same. Common law itself must be understood as a remedy which was applied in English Courts whose source of law was custom and not established through statutory law. We have a statutory provision that dictates the manner of examination of jurisdiction and the exclusion of courts in certain situations. Of what may be possible in English law through common

law cannot be applied in India to situations which are regulated through Statute. The statutory provisions under Section 14(b) would stare at the plaintiff to exercise the right which he was trying to claim through the suit. The decisions of the courts below were perfectly in order and I find no scope for intervention in revision petition. The revision petition is dismissed.

(K.KANNAN)
JUDGE

04.03.2015
sanjeev