

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.31 of 1993(O&M)

Date of Decision: September 03, 2015

Krishan Lal

.....Appellant.

Versus

State of Haryana and others

.....Respondents.

CORAM:- HON'BLE Ms. JUSTICE RITU BAHRI

Present:- Mr. Deepak Girotra, Advocate for the appellant.

Mr. Siddharth Sanwaria, DAG Haryana.

RITU BAHRI, J.

Plaintiff-appellant has preferred the present second appeal against the judgment of reversal dated 31.08.1992 passed by the District Judge, Rohtak, whereby appeal filed by the defendants-respondents against the judgment and decree dated 30.04.1991 passed by the Senior Sub Judge, Rohtak, has been allowed and the suit filed by the plaintiff for declaration has been dismissed.

Facts necessary for disposal of the present second appeal are that plaintiff-appellant being regular and permanent employee of Haryana Roadways was posted as conductor with defendant no.3. On 25.09.1979, when the plaintiff was on duty on a bus started from Delhi to Bathinda via Sirsa, due to overloading of passengers he was not able to issue tickets to all the passengers from its starting point and started issuing tickets on the way

from the front gate of the bus. In the meantime a ticket checker boarded the said bus from rear gate and started checking the tickets of the passengers. The said ticket checker, in order to help the conductor (plaintiff-appellant), collected fare amounting to Rs.7.35 paise from seven passengers, who were to alight the bus at village Sahuwala. He gave the said amount to the conductor (plaintiff) on the pretext of issuing tickets to the said passengers. The plaintiff-appellant gave punched tickets with request to the ticket checker to hand over the same to the passengers, from whom he had collected the fare. The said ticket checker namely Phool Singh again collected a fare of Rs.5.25 paise from another three passengers who were to alight the bus at village Paniwala. Plaintiff-appellant again issued punched tickets and handed over the same to the checker for giving the same to those passengers. Thereafter Phool Singh, Inspector got down from the bus after sometime and submitted a false report to defendant no.3-General Manager, Haryana Roadways, Rohtak Depot regarding misappropriation of an amount of Rs.12.60 paise against the plaintiff-appellant. On the basis of the aforesaid report, a show cause notice was issued to the plaintiff and an enquiry was held. It was further submitted that after conclusion of the aforesaid enquiry, plaintiff-appellant was held guilty of embezzling a sum of Rs.12.60 paise. On the basis of the above enquiry report, another show cause notice was given to the plaintiff asking him as to why his services should not be terminated, to which plaintiff submitted his reply, but finding his reply to be unsatisfactory, his services were terminated vide order dated 10.12.1980. As per plaintiff-appellant, the order dated 10.12.1980 terminating his service was illegal, null, void and without any evidence.

Upon notice defendants filed their written statement stating

therein that Phool Singh, Inspector, checked the bus in question on which plaintiff-appellant was posted as conductor and found that ten passengers who were to get down at village Sahuwala and Paniwala were without tickets despite payments of fare of Rs.7.35 paise and Rs.5.25 paise respectively. The plaintiff-appellant had embezzled a sum of Rs.12.60 paise by not issuing tickets despite having received aforesaid amount from those ten passengers. On the basis of the report submitted by the Phool Singh, Inspector, plaintiff was found guilty of embezzlement in an enquiry conducted against him by the department and vide order dated 10.12.1980 his services were terminated. It was further submitted that plaintiff's case was also referred for arbitration under the Industrial Dispute Act, which was also dismissed.

Replication was filed wherein the entire contents of the plaint were reiterated and those of the written statement filed on behalf of the defendants were denied.

From the pleadings of the parties following issues were framed :-

1. Whether the order dated 10.12.1980 passed by the defendant no.2 is illegal, unconstitutional, unjust and null and void and liable to be set aside on the grounds stated in para 4 of the plaint?OPP.
2. Whether the sit is barred by time?OPP.
3. Whether the suit is liable to be dismissed for want of notice under Section 80 CPC?OPD.
4. Whether the suit is not maintainable in the present form?OPD.
5. Whether the suit is barred by the principle of resjudicata?OPD.

6. Whether Civil Court has no jurisdiction to file and maintain the present suit?OPD.

7. Relief.

The trial Court, vide judgment dated 30.04.1991, decreed the suit of the plaintiff-appellant and set aside the order dated 10.12.1980 being illegal and void. However, the lower appellate Court accepted the appeal filed by the State of Haryana-defendant. While accepting the appeal, reference was made to a judgment passed by Full Bench of this Court in Sukhi Ram Vs. State of Haryana, 1982 (1) SLR 663, wherein it was held that where a right or obligation giving rise to the industrial dispute springs from a source other than the Industrial Disputes Act, the workman is expressly given two alternative remedies; firstly, he can approach the Civil Court and secondly, he can seek the remedy under the Industrial Disputes Act. In such a case, it is his discretion either to make resort to the ordinary jurisdiction of the Civil Court or the Labour Court. It was held that he must, however, distinctly elect his remedy and he could not have both. He has to choose one or the other remedy. It was further held that the Labour Court had jurisdiction to entertain a suit by workman in connection with an industrial dispute arising out of the right of liability under the general law, if no step had been earlier taken by him to resort to the remedy under the Industrial Disputes Act. The plaintiff-appellant had approached the authorities under the Industrial Disputes Act and in that regard, a reference was made by the State Government to the Labour Court, Rohtak. The said reference was enquired into by the Presiding Officer, Labour Court. However, it was declined by the Presiding Officer, Labour Court, Rohtak on the ground that it was bad in law as the State Government, before making

the aforesaid reference to the Labour Court, had failed to hear the other side. On this technical ground, the reference was declined. The order declining the reference had been upheld by this Court while dismissing the writ petition on 11.09.1996 (Ex.D14). However, liberty was given to the plaintiff-appellant to take recourse his remedy afresh. The relevant extract of the order passed by this Court is reproduced as under:-

“In case the petitioner institutes fresh appropriate proceedings, findings recorded by the Tribunal on other issues involved in the case before it, would not be binding on the parties to the reference.”

As per the order passed by this Court, the petitioner could institute fresh appropriate proceedings. The lower appellate Court, held that as per the order dated 11.09.1986 (Ex.D14) passed by this Court in a writ petition, the plaintiff-appellant could take fresh steps under the Industrial Dispute Act for referring the dispute. However, once having chosen to proceed under the Industrial Dispute Act by making reference to the State Government, he could not file a suit before the Labour Court. Hence, in view of the Full Bench judgment of this Court in Sukhi Ram's case (supra), the lower appellate Court came to a conclusion that the plaintiff's suit before the Civil Court was not maintainable. With these observations, findings of the trial Court on issue no.6 were reversed by the lower appellate Court.

The lower appellate Court further observed that the order of termination was passed by the General Manager, Haryana Roadways on 10.12.1980 and the present suit was filed by the plaintiff-appellant on 03.04.1987. Therefore, the suit was barred by time as the limitation for filing such kind of suit was three years. Ultimately, the findings of trial Court on issue no.2 were reversed by the lower appellate Court.

Learned counsel for the appellant has argued that the evidence

of Phool Singh, Inspector, before the Enquiry Officer was not sufficient to prove the charges of embezzlement of Rs.12.60/- against the appellant-plaintiff, who was posted as conductor in the Haryana Roadways, Haryana. This argument will be examined only when the suit filed by the plaintiff-appellant could be held to be maintainable. As per the Full Bench judgment of this Court in Sukhi Ram's case (supra), the object of the Industrial Disputes Act was to make provision for the investigation and settlement of industrial dispute, which inevitably include within it their adjudication as well. The Act originally envisaged collective bargaining contracts between the union representing the workmen and the management. This matter, otherwise, was outside the realm of the common law or the Contract Law. The expression “Industrial Disputes”, as per Section 2 (k) of the Act is defined as under:-

“Industrial dispute' means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

By Act No.35 of 1965, Section 2-A was inserted in the statute, which is reproduced as under:-

“2-A. Dismissal, etc. of an individual workman to be deemed to be industrial dispute- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

After the above said amendments, the powers of the authorities deciding industrial disputes under the Act became much more extensive and

wider than the powers of Civil Court while adjudicating a dispute, which may also be an industrial dispute. The act conferred very valuable rights and remedies on a workman which would otherwise be not available to him under the general or the common law. Under Section 10 of the Act, the Government can make reference to the Labour Courts or Tribunals for laying down industrial policy for industrial peace creating new contracts and order reinstatement of dismissed workman.

The provisions of Industrial Disputes Act came up for consideration before the Hon'ble Supreme Court in **The Premier Automobiles Ltd. Vs. Kimlakar Shantaram Kadke and others**, AIR 1975 Supreme Court 2238. In that case, the Hon'ble Supreme Court laid down 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 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 V-A then the remedy for its enforcement is either section 33-C or the raising of an industrial dispute, as the case may be.

The Full Bench of this Court in **Sukhi Ram's** case (supra) further observed as under:-

“10. Coming now to the second distinct category where the right or obligation giving rise to the industrial dispute springs from a source other than the Act - that is, under the general law (including therein any other statutes) then under principle, (2) the workman is expressly given two

alternatives remedies. In such a case, it is in his discretion to either make resort to the ordinary jurisdiction of the civil Courts or to seek the remedies under the Act. However, he must distinctly elect his remedy. It is now authoritatively settled that he cannot have both. He is to choose one or the other.”

Based on the above principle, the workman after choosing his remedy under the Industrial Disputes Act, could not choose simultaneously to take recourse to a Civil Court.

In the present case, against the Award of the Labour Court, the plaintiff-appellant had filed a writ petition before this Court, which was dismissed vide order dated 11.09.1986 (Ex.D14) by giving liberty to the petitioner-plaintiff to institute fresh appropriate proceedings. The plaintiff-appellant having chosen to approach the authorities under the Industrial Disputes Act, as per the Full Bench judgment of this Court in **Sukhi Rams'** case (supra) after dismissal of the writ petition, could approach the Government afresh for referring the dispute, as the Labour Court had dismissed the earlier reference on technical ground that the said reference had been ordered without giving notice to the other party. The plaintiff-appellant, instead of approaching the State Government under Section 10 of the Act for referring the dispute afresh, filed the present suit on 03.04.1987. As per the judgment passed by Full Bench of this Court in **Sukhi Ram's** case (supra), the suit before the Civil Court was not maintainable, as initially the plaintiff-appellant had chosen one remedy under the Industrial Disputes Act, therefore, he could not choose to file fresh suit in a Civil Court. While dismissing the writ petition, this Court had observed that the observations on merits expressed by the Labour Court would not affect the parties. The only remedy available with the plaintiff-appellant was to approach the authorities under the Industrial Disputes Act and not to file a

civil suit.

In view of the above, this Court refrains to examine the termination order on merits because as per the Full Bench judgment of this Court in Sukhi Ram's case (supra), the suit was not maintainable. Accordingly, no illegality, much less perversity, has been found in the impugned judgment passed by the lower appellate Court warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

September 03, 2015
ajp