

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

**LPA No.2088 of 2014 (O&M)
Date of decision : July 23, 2015**

Gulzar Singh

.....Appellant

Versus

Director State Transport and others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

Present : Mr. Dinesh Ghai, Advocate
for the appellant.

Ms. Deipa Singh, Addl. A.G. Punjab,
for respondents No.1 and 2.

GURMIT RAM, J.

CM No.4385-LPA of 2014

1. This application under Section 5 of the Limitation Act read with Section 151 CPC has been filed by learned counsel for the applicant/appellant for condonation of 363 days' delay in refiling the instant LPA.
2. For the reasons recorded in the application, delay of 363 days in refiling the instant LPA is condoned, subject to all just exceptions.

3. CM stands disposed of accordingly.

CM No.4386-LPA of 2014

1. This application under Section 5 of the Limitation Act read with Section 151 CPC has been filed by the applicant/appellant for condonation of 2 days' delay in filing the present LPA.
2. For the reasons recorded in the application, delay of 2 days in filing the LPA is condoned subject to all just exceptions.
3. CM stands disposed of accordingly.

LPA No.2088 of 2014

1. This Letters Patent Appeal under clause X of the Letters Patent is preferred by Appellant-Gulzar Singh against the order dated 05.09.2013 passed by the learned Single Judge of this Court praying for setting aside the said order as well as for the dismissal of the CWP No.13179 of 2001 with further prayer to implement the Award dated 09.01.2001(Annexure P-6), passed by the learned Labour Court, Bathinda (respondent No.3).
2. Facts in brief pertaining to the background of this LPA are that the appellant-herein (hereinafter referred to as the workman), was employed as a Conductor in Punjab Roadways on temporary basis. His bus was checked on 22.03.1986 and during checking five passengers without tickets were found travelling in it. The workman did not issue any tickets to them despite charging the bus fare from them. For his this mis-conduct, a regular departmental inquiry was conducted against him. He was given complete opportunity to defend himself but he was nevertheless found guilty of the misconduct in the said inquiry. He was served with a show cause notice. Opportunity of personal hearing was also given to him. His services were

ultimately terminated vide order dated 02.04.1987.

3. The workman preferred a civil suit against the abovesaid order terminating his services instead of raising an industrial dispute under the provisions of the Industrial Disputes Act, 1947 (in short - 'the Act'). The said suit was contested by the respondent (hereinafter referred to be as the 'Management'). The suit was dismissed by the learned trial Court and the order terminating his services was upheld vide judgment and decree dated 09.11.1989. The workman preferred an appeal against the aforesaid judgment and decree of the learned trial Court which was dismissed by the Court of learned Additional District Judge, Ferozepur vide judgment and decree dated 29.07.1992.

4. Thereafter the workman issued a demand notice on 07.01.1996 thereby raising an industrial dispute that his services had been terminated illegally by the Management. This dispute was referred by the competent authority to the Labour Court for adjudication vide reference dated 06.01.1998 under the provisions of Section 10(1) (c) of the Act. Before the Labour Court the Management raised a preliminary objection that the workman had already availed his remedy before the Civil Court by assailing the aforesaid order terminating his services and the findings recorded by Civil Court qua the said order had become final and resultantly, the same operate as res judicata against the workman. A prayer was made for dismissal of the reference.

5. The learned Labour Court, however, accepted the plea of the workman and set aside order dated 02.04.1987 terminating his services vide Award dated 09.01.2001 (Annexure P-6). In terms of the said Award the

workman was ordered to be reinstated in service with continuity in service but without backwages. Further he was directed to join his duty within 30 days from the date of publication of the Award.

6. The Management feeling aggrieved against the said Award passed by the learned Labour Court, Bathinda (respondent No.3) assailed the same vide CWP No.13179 of 2001, which came up for hearing before the learned Single Judge of this Court. The learned Single Judge of this Court accepted the writ petition and the Award dated 09.01.2001 (Annexure P-6) passed by the Labour Court was set aside vide impugned judgment dated 05.09.2013.

7. The workman, feeling aggrieved against the judgment passed by the learned Single Judge of this Court, has filed the present LPA, notice of which was given to the respondents.

8. We have heard learned counsel for both the parties and have also perused the record on the file with their eminent assistance.

9. The learned counsel for the workman (appellant-herein) has contended that the impugned judgment dated 05.09.2013 passed by the Learned Single Judge is liable to be set aside since it is the result of mis-interpretation of the judgment as passed by a Full Bench of this Court in ***Sukhi Ram v. State of Haryana, 1982(1) SLR 663***. It is also his contention that the learned Single Judge while passing the impugned Judgment has failed to apply the ratio of the judgment as reported in ***General Manager, Punjab Roadways, Amritsar-I and another v. Dharam Singh and another, 1996(4) SLR 170 (P&H)*** and ***The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others, AIR 1975 SC 2238*** and on this count also,

the impugned judgment passed by the learned Single Judge is not sustainable in the eyes of law. He has also referred to the opinion as given by the Director Prosecution and Litigation to the effect that the present case was not fit for appeal. It is submitted that the petitioner was having five years' and nine months' service to his credit at the relevant time, when his services were terminated vide order dated 02.04.1987 without any notice, charge-sheet, inquiry, etc. It is also his contention that any finding given by the Civil Court in the case is not to operate as res-judicata, since the learned Labour Court was the only competent authority to decide the dispute in issue under Section 11 of the Act. It is also his contention that since the jurisdiction of the Civil Court is barred to entertain and try such like disputes under Section 11 of the Act, so, as such on this account also, the findings, if any, given by the Civil Court are not to operate as res-judicata. It is submitted that the Labour Court (respondent No.3) had rightly passed the Award dated 09.01.2001, since it was the only competent forum to deal with such a dispute. Lastly, he has prayed that the LPA be accepted, the impugned judgment dated 05.09.2013 be set aside and the Award (Annexure P-6) dated 09.01.2001 passed by the Labour Court (respondent No.3) be upheld.

10. In the light of the above contentions of the learned counsel for the workman, the issue revolves around the case law cited supra, which is to be considered.

11. In ***General Manager, Punjab Roadways, Amritsar-I and another vs. Dharam Singh and another*** (supra), this Court in para No.4 held as under:-

“The principles of res judicata are embodied in Section 11 of the Code of Civil Procedure. Section 11 of the Code of Civil Procedure says that the decision of a Court will be binding in a subsequent suit/proceeding if the Civil Court is competent to try the latter suit or proceeding initiated subsequently. There cannot be any dispute that the Civil Court has no jurisdiction to decide an industrial dispute. There cannot be any doubt that the dispute between the workman and the management in regard to the order of termination comes within the definition of an industrial dispute. Therefore, the jurisdiction of Civil Court is excluded to try such a suit and the Civil Court has no jurisdiction to grant a declaration that the order of termination is bad as the dispute relates to an industrial dispute. Therefore, I am of the opinion that decree and judgment of the Civil Court are not binding on the Labour Court and the same does not operate as res judicata.

12. In **Premier Automobiles Ltd. vs. Kamlakar Shantaram Wadke and others** (supra), the Hon'ble Supreme Court after considering the entire matter laid down certain principles which are detailed in para No.23 as under:-

“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 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”.*

13. The learned counsel for the workman in order to strengthen his contentions has contended that the matter in issue is covered under principle No.3 of above-mentioned judgment in ***Premier Automobiles Ltd.*** (supra) and as such, the only remedy available to the appellant was to get an adjudication qua the industrial dispute under the Act.

14. In response, learned counsel for the Management (respondent-herein) has rebutted the above contention of the learned counsel for the appellant and has contended that the principles laid down in the case, General Manager, Punjab Roadway, Amritsar-I and another v. Dharam Singh and another (supra) is contrary to the judgment of a Full Bench of this Court in Sukhi Ram v. State of Haryana (supra). It is also his contention that at the time of passing the judgment in case of General Manager, Punjab Roadway, Amritsar-I and another vs. Dharam Singh and another (supra), the judgment passed by the Hon'ble Full Bench of this Court in Sukhi Ram's case (supra) was not brought to the notice of learned Single Judge of this Court while deciding the said case. Certainly, the judgment passed by the Full Bench of this Court, which till date stands and has not been overruled, is binding on the benches other than the Full Bench. In Sukhi Ram's case (supra), the petitioner-workman was a bus conductor and his services after

departmental inquiry were terminated on account of mis-appropriation of bus fare collected by him. Instead of referring the dispute to the Labour Tribunal, he preferred to file a civil suit before the Civil Court assailing his termination from service, which was dismissed. Appeal filed against the trial Court judgment was also dismissed. During the course of proceedings of Regular Second Appeal, an issue cropped up that the matter in issue was an industrial dispute governed exclusively by the Act and not within the cognizance of Civil Courts. It was held that it was the discretion of the workman to select his remedy either under the Act or with the Civil Court. In the said judgment, the principles as laid down in the case of the Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others (supra) were also discussed. To decide the matter in issue effectively, para No.8 and 10 of **Sukhi Ram's** case (supra) judgment are relevant which are as under:

8. *Stage is now set for the true application of principle (2) enunciated by their Lordships in The Premier Automobiles Ltd., case (supra). A close analysis of principles (2), (3) and (4) collectively would make it plain that what is visualised therein are two distinct and separate fields. Firstly, where the right of liability claimed has its fountain head within the Industrial Disputes Act itself and from no other source. This forms a distinct class by itself. So far as this arena is concerned, it is now authoritatively laid down that if the right or liability flows from the Act itself then the remedy therefore would also lie within the procedural provisions of the same statute alone. Principles (3) and (4) makes this patently manifest. For example, if a claim is rested on sections 25-B, 25-F and 25-FF or 25-G (without being exhaustive), it would be an industrial dispute relating to the enforcement of a right or an obligation created under the Act. The aforesaid rights*

and obligations are specifically creatures of the statute alone. For instance, if the Act was not on the statute book, no such 'industrial dispute' in their context could possibly arise. Therefore, the first test, in evaluating the issue is – whether the right or obligation giving rise to the dispute arises from the Act and Act alone. If this is so, then the only remedy available is to make resort to the Act and the forum and procedures prescribed by it. The jurisdiction of the civil Courts would be impliedly barred totally in view of the principles (3) and (4) supra.

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 alternative 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.

15. Besides, there is another Division Bench judgment of this Court with regard to the abovesaid issue titled as ***Ashok Kumar v. Presiding Officer, Labour Court, Jalandhar and others, 2001(1) SCT 197***. In the said case all the afore-mentioned three judgments i.e. ***General Manager, Punjab Roadways, Amritsar-I and another v. Dharam Singh and another*** (supra); ***Sukhi Ram vs. State of Haryana*** (supra) and ***The Premier Automobiles Ltd. vs. Kamlakar Shantaram Wadke and others*** (supra) have been discussed. In the said case, the petitioner who was a workman and he filed a civil suit challenging the termination of his services, which was decreed. In appeal, the judgment and decree of the trial Court were set aside

and the suit was dismissed. Regular Second Appeal filed in this regard was also dismissed. So was the fate of the SLP filed before the Hon'ble Apex Court. Thereafter the workman approached the Labour Court for adjudication of the matter in issue by taking a plea that the dispute therein was an industrial dispute. It was held that both the remedies were independently co-existent and available to a workman, but he cannot invoke the other remedy after availing one of them unsuccessfully. He must distinctly avail one of these remedies and cannot avail both.

16. In the light of the principle as laid down in the abovesaid case law, the contentions as raised by the learned counsel for the workman do not hold any water. If the Director, Prosecution and Litigation had given its opinion that, the case in hand was not fit for appeal, the same is not binding upon any Court of law. If the above contentions of learned counsel for the appellant (workman) are taken to be correct then it would create a duplicacy as well as multiplicity of litigation and also an anarchy in the administration of justice.

17. In the light of the above discussion, this LPA is held to be utterly bereft of merit, as such it stands dismissed and disposed of accordingly.

July 23, 2015

Gaurav Sorot

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE