

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1340 of 2014

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A.K. Ojha, son of Late Hari Ganesh Ojha, resident of A/51, C/o- Late S.C. Pandey, Sachiwalaya Colony, P.O. Lohiya Nagar, P.S. Patrakar Nagar, Patna- 800020, represented through the General Secretary, National Life Insurance Employee's Association (INTUC), Brahmapura, North Street of Nazir Building, P.O. M.I.T., Muzaffarpur- 842003.

.... Appellant

Versus

1. Life Insurance Corporation of India, a body Corporate, constituted by the Life Insurance Corporation of India Act, 1956 having its Head Office at 'Yogakshema' Jeevan Bima Marge, Mumbai, through its constituted attorney, Patna Divisional Office No. 1, Fraser Road, Patna-800001.
2. The Union of India, through the Principal Secretary, Ministry of Labour and Employment, Government of India, New Delhi.
3. The Regional Labour Commissioner (Central), Ministry of Labour and Employment, Government of India, New Delhi.
4. The Assistant Labour Commissioner (Central) office of the Regional Labour Commissioner (Central), Maurya Lok Complex, A-Block, 2nd Floor, Room No. 6/16, Patna.
5. The Under Secretary, Ministry of Labour and Employment, Government of India, New Delhi.

.... Respondents

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Appearance :

For the Appellant : Mr. Rajendra Narayan, Sr. Advocate.
Mr. Kaushalesh Choudhary, Advocate.
For the Respondents : Mr. Rajeev Ranjan Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-03-2016

Heard learned counsel for the appellant and the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 22nd of July, 2014 in C.W.J.C. No. 6307 of 2013, whereby the writ application filed by Life Insurance Corporation of India (Respondent No. 1) (hereinafter referred to as the "Corporation") was allowed holding that the dispute raised by the respondent (for short "the workman") is not an industrial dispute in terms of Section 10 of the Industrial Disputes Act, 1947 (for short "the Act") and therefore, the same was quashed.

3. The Corporation is a body incorporated under the Life Insurance Corporation Act, 1956 (hereinafter referred to as "the L.I.C. Act"). The respondent

herein was charge-sheeted while working as Stenographer in Sales Training Centre, Patna. The Inquiry Officer found him guilty of the charges in his report dated 23rd of March, 2010. On the basis of such report, a show-cause notice was issued as to why penalty of reduction in the basic pay by two stages permanently in the time scale of Stenographer be not imposed. After considering the reply, an order of punishment was passed on 14th of December, 2010, which order was confirmed in appeal on 22nd of September, 2011. It is thereafter, the respondent raised an industrial dispute under Section 10 of the Act, which dispute was referred to the Industrial Tribunal-cum-Labour Court No. 2, Dhanbad on the following question:

“Whether the action of the management of Life Insurance Corporation of India while conducting the disciplinary proceeding, the principle of natural justice has not been applied by the management of LIC? If yes, what relief the workman is entitled for?”

4. The Corporation filed a writ application challenging the reference. The reliance was placed upon a Division Bench judgment of this Court reported as Life Insurance Corporation of India Limited Vs. Presiding Officer, Labour Court 2010(2) PLJR 174 holding that the jurisdiction of Industrial Tribunal to try disciplinary matters of the employees of the Corporation stood excluded after the amendment in the L.I.C. Act vide Life Insurance Corporation (Amendment) Act, 1981 (Act 1 of 1981). The learned Single Bench found that in view of the Division Bench judgment, there could not be any contest on the issue of jurisdiction of the Industrial Tribunal to adjudicate on matters arising from disciplinary proceedings of the staff of the Corporation.

5. By virtue of the Amending Act, Clause (cc) was inserted in Section 48 (2) of the Act. The relevant extract after the amendments reads as under:

“48. Power to make rules-

- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

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cc) the terms and conditions of service of the employees and agents of the Corporation, including those who became employees and agents of the Corporation on the appointed day under this Act;

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(2-C) The provisions of clause (cc) of sub-section (2) and sub-section (2-B) and any rules made under the said clause (cc) shall have effect, and any such rule made with retrospective effect from any date shall also be deemed to have had effect from that date, notwithstanding any judgment, decree or order of any Court, Tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law or any agreement, settlement, award or other instrument for the time being in force.”

6. The Supreme Court in a three judge Bench judgment in A.V. Nachane Vs. Union of India (1982) 1 SCC 205 examined the question as to whether the Amendment Act of 1981 lay down any legislative policy or furnish any guidance to indicate the nature and extent of the modifications that the rules will be permitted to make in the existing laws to carry out the purposes of the Life Insurance Corporation Act, 1956 as amended. The said question arose after the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981 were made applicable with retrospective effect from July 1, 1979 to nullify the settlements reached on January 24, 1974 and February 6, 1974. The argument was that the provisions of the Amendment Act of 1981 could not nullify the effect of the writ issued by the Supreme Court in its earlier order in L.I.C. Vs. D.J. Bahadur (1981) 1 SCC 315. It was held that Rule 3 operating retrospectively cannot nullify the effect of the writ issued earlier in D.J. Bahadu’ case (Supra) which directed the Life Insurance Corporation to give effect to the terms of the 1974 settlements relating to bonus until

superseded by a fresh settlement, an industrial award or relevant legislation. In these circumstances, it was held that the Life Insurance Corporation (Amendment) Act, 1981 and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981 can operate only prospectively, that is, from February 2, 1981, the date of publication of the Rules.

7. In another judgment in M. Venugopal Vs. LIC of India (1994) 2 SCC 323 the question examined was as to whether the termination of services of a Development Officer during the period of probation is governed by the provisions of Act or the LIC Act. It was held that by a statutory fiction, the regulations relating to the terms and conditions of the employees and agents of the Corporation framed under Section 49(2)(bb) shall be deemed to be now the rules framed under Section 48(2)(cc) of the L.I.C Act, and that such rules shall have overriding effect over the provisions contained in the Act. In respect of the terms and conditions of the employment of employees of the Corporation who also conform to the requirement of the definition of “workman” under the Act, are concerned, the Court held :-

“14. The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a “retrenchment” within the meaning of Section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2(oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act. ”

8. Thus, the issue examined was in respect of terms of appointment and not as to whether all the employees of the Corporation will cease to be workman

under the Act.

9. The Supreme Court in Life Insurance Corporation of India Vs. R. Suresh (2008) 11 S.C.C. 319 was considering two questions, firstly as to whether in view of the provisions of the 1956 Act, as amended in the year 1981, the provisions of the Act would have no application and secondly as to whether the respondent, in any event, being a Development Officer, was not a workman and, thus, the Tribunal could not have interfered with the quantum of punishment awarded by the management. The Court held the following:-

“19. Under the industrial law, and in particular the 1947 Act, the authorities specified therein, the appropriate Governments and the Industrial Courts have various functions to perform. Terms and conditions can be laid down thereunder. Violations of the terms and conditions of service are also justiciable. Safeguards have been provided under the Act to see that services of a workman 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 1956 Act ordinarily could have been a subject-matter of suit. The civil court, however, exercises a limited jurisdiction. If, however, the employee concerned is a “workman” within the meaning of the provisions of the 1947 Act, his remedy apart from the common law remedies may also lie before an Industrial Court. When a right accrues under two statutes vis-à-vis the common law right, the employee concerned will have an option to chose his forum.

20. Section 48 provides for a rule-making power. Clause (cc) of sub-section (2) whereof only empowers the Central Government to lay down the terms and conditions of service of the employees and agents of the Corporation. The Act does not contain any provision in terms whereof the jurisdiction of the civil court and/or Industrial Court is taken away. It is now a well-settled principle of law that any provision taking away the jurisdiction of a court shall be strictly construed. A presumption arises against the ouster of jurisdiction. Having regard to the provisions contained in Section 9 of the Code of Civil Procedure and as also the provisions of the 1947 Act, an endeavour should be made to construe the provisions in such a manner so as to retain the jurisdiction subject, however, to the ouster of jurisdiction either expressly or by necessary implication.

22. We have noticed hereinbefore that the 1956 Act does not contain any provision ousting the jurisdiction of the civil court or the Industrial Court. The question, therefore, would be as to whether the jurisdiction is ousted by necessary implication. For the said purpose, construction of clause (cc) of sub-section (2) of Section 48 of the Act is necessary. It is one thing to say that rules may provide for the terms and conditions of service of the employees but it is another thing to say that a person is entitled to avail his human right of access to justice to get his grievances adjudicated before an independent fora. Access to justice as is well known is a valuable right”

10. In a recent judgment reported as Chauharya Tripathi Vs. LIC (2015) 7 SCC 263, the Supreme Court was considering the question raised as to whether, the Development Officer in the L.I.C. can be treated as workman. The Supreme Court concluded that the Development Officers working in L.I.C. are not “workman” under Section 2(s) of the Act and, accordingly, did not find any flaw in the judgment rendered by the High Court. However, the Supreme Court held that the judgment in R. Suresh’s case (supra) has been rendered in ignorance of the ratio laid down by a Constitution Bench in H.R. Adyanthaya as also the principle stated by the three-judge Bench in Mukesh K. Tripathi. Thus, it was held that the pronouncement in R. Suresh’s case is *per incuriam*. It may be noticed that the three Bench judgment is S.K.Verma’s case held that the Development Officers of L.I.C are workman. The said judgment was also held to be *per incuriam* in Mukesh K. Tripathi’s Case (supra).

11. Still further in H.R. Adyanthaya’s case, the question was as to whether, the sales promotion employees are workman, whereas in Mukesh K. Tripathi’s case, an apprentice was held to be not a workman.

12. A Division Bench of this Court in a judgment reported as Life Insurance Corporation of India Limited Vs. The Presiding Officer, Labour Court & Anr. 2010 (2) PLJR 174 considered the judgment of the Supreme Court in A.V. Nachane’s case, M. Venugopal’s case and also R. Suresh’s case and held that the

judgment in A.V. Nachane and M. Venugopal has been rendered by a Bench of three judges whereas the judgment in R. Suresh has been rendered by a two Judge Bench. Therefore, the Bench decided to follow the law laid down by the Supreme Court in A.V. Nachane and M. Venugopal's case. The Court held to the following :

“10. We should now consider the judgment of the Supreme Court in L.I.C. Vs. R. Suresh (supra), rendered by a Bench of two Judges wherein, after noticing the aforesaid judgments in A.V. Nachane (supra), and M. Venugopal (supra), it has been held that in spite of the amendment brought about by Act 1 of 1981, the industrial courts will continue to have jurisdiction over such disputes. Learned counsel for the petitioner in reply places particular emphasis on paragraphs 20 and 22 of the judgment, and submits that the *non obstante* clause engrafted in Section 48(2C) of the Central Act has been overlooked in L.I.C. vs. R. Suresh, which are reproduced hereinbelow:-

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It will bear repetition to state that the earlier two judgments have been rendered by Benches of three Hon'ble Judges of the Supreme Court, whereas that of the L.I.C. vs. R. Suresh has been rendered by a Bench of two Judges, which seems to be the determining factor.

13. It has in substance been held that in such a situation the safest guide for the High Court is to follow the judgment of the larger Benches. We are, therefore, left with the only option to apply the law laid down by the Supreme Court in A.V. Nachane and M. Venugopal. Consequently, we hold that, in view of the amendments brought about in the Central Act by Act 1 of 1981, read with the Regulations, the industrial courts have no jurisdiction to deal with the disciplinary matters covered by the Regulations. In the facts and circumstances of the present case, we are convinced that in a case of disciplinary proceeding on account of embezzlement of Corporation's property leading to dismissal from service is covered by the Regulations and, therefore, the Labour Court, Patna, did not have the jurisdiction to deal with the complaint of respondent no. 2.”

13. It may be noticed that another Division Bench in L.P.A. No. 934 of 2004 (Life Insurance Corporation of India & Another Vs. Union of India & Ors.), returned a finding on 8th of April, 2015 that the proceedings taken out by the Labour

Commissioner in respect of disputes between the workman and the Corporation cannot be said to be without jurisdiction. In the said case, the Labour Commissioner has called the L.I.C. for conciliation meetings in respect of some of their alleged employees. However, there is no reference either to the earlier Division Bench judgment of this Court or any of the judgments of the Hon'ble Supreme Court.

14. With this background, the issue required to be examined is whether the Industrial Dispute raised by the Stenographer, an employee of the Corporation, is a referable dispute to the Industrial Tribunal-cum-Labour Court.

15. It may be noticed that both the three Bench judgments in A.V. Nachane and M. Venugopal's case (Supra) were noticed, considered and distinguished in the later two Bench judgment reported as R. Suresh's case (supra). Thus when the earlier Bench judgments have been considered, discussed and distinguished, this court could not ignore the later two Bench judgment rendered after discussing the earlier judgments, which is binding on this Court in terms of Article 141 of the Constitution.

16. The judgments of Supreme Court are binding on the High Courts. Such proposition is not in question. If there are contradictory views of the Supreme Court, a judgment given by the larger Bench is binding against the judgment rendered by the smaller Bench. The difficulty arises if there are two judgments of the Supreme Court which cannot be reconciled on equal strength of the Bench, which of the judgment should be prevailed. We are not seized of any of such issues. A.V. Nachane (supra) and M. Venugopal's case (supra) were considered in later case of R. Suresh (supra). It is R. Suresh's case which will be binding on this Court. The larger Bench would be binding if the later Supreme Court judgment has not noticed the earlier larger Bench Judgment. It may be noticed that A.V. Nachane's case as mentioned above, was a case relating to grant of bonus recognized by a settlement as approved by the Hon'ble Supreme Court. It is the said decision which was sought to be nullified by the

Amending Act of 1981. The Court has upheld the amendment but made it effective from the date of the amendment setting aside the retrospective application of such amendment. The issue raised in A. V. Nachane's case was thus altogether different than arising in the present case where the challenge is to an action against an employee of the Corporation pursuant to disciplinary proceedings.

17. In M.Venugopal's case (supra) the termination of the services of a probationer Development Officer of the Corporation is examined. The Court found that the conflict between definition of retrenchment within the meaning of Section 2 (oo) of the Act and that of termination within the meaning of the L.I.C. Act, as amended, it is L.I.C. Act which will prevail *inter alia* for the reason that both being Central laws; the L.I.C. Act being subsequent legislation and also the relevant provisions of L.I.C. Act start with non obstante clause. None of the situations arise in the present case. It is the case of disciplinary action against an employee of the Corporation and not a Development Officer, which action the employee has sought to dispute before the Labour Court.

18. The law of the binding precedence of the Supreme Court is clear that the judgments of Supreme Court are binding not only on account of propriety but in view of Article 141 of the Constitution. If a judgment of the Supreme Court, may be of larger Bench, has been considered and explained in a subsequent judgment, it is the subsequent judgment alone which will hold the field and is binding in terms of Article 141 of the Constitution. In Sunil Damodar Gaikwad Vs. State of Maharashtra (2014) 1 SCC 129, the Court held to the following:

“20. When there are binding decisions, judicial comity expects and requires the same to be followed. Judicial comity is an integral part of judicial discipline and judicial discipline is the cornerstone of judicial integrity. No doubt, in case there are newer dimensions not in conflict with the ratio of the larger Bench decisions or where there is anything to be added to the explained, it is always permissible to introduce the same.

19. In Usha Bharti Vs. State of U.P. (2014) 7 SCC 663, a judgment was found to be *per incuriam* because it had not noticed the earlier binding precedence. The Court held to the following:-

“65.3. Babu Parasu Kaikadi v. Babu-: This judgment also reiterated the well-known principle of *per incuriam*. It was held that the judgment in Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal was *per incuriam* as it had not noticed the earlier binding precedent of a coordinate Bench.....”

20. Though the judgment in R. Suresh has been held to be *per incuriam* in Chauharya Tripathi's case but it is in respect of an issue as to whether the Development Officer is a workman or not i.e. the second question decided by the Court. The first question was not even remotely an issue before the Supreme Court in Chauharya Tripathi's case (supra). Therefore, what has been held to be *per incuriam* is the finding of the Supreme Court in respect of a Development Officer being a workman but not in respect of the ousting of the jurisdiction of the Industrial Tribunal or the Civil Court by virtue of the L.I.C. or the Amendment Act. Therefore, the findings recorded in R. Suresh's case are binding on this Court and could not be ignored to rely upon the larger Bench judgment when the larger Bench judgment has been referred to and considered in a later judgment.

21. In fact the workman has multiple remedies against the action of the employer imposing punishment. Firstly, in terms of Section 2(a) of the Act, the right has been given to the workman to raise a dispute about dismissal, termination, removal or reduction in rank. Section 2(k) of the Act contemplates and defines an industrial dispute to mean any dispute or difference between employer and employee relating to terms of employment. Therefore, the workman has a right to dispute the disciplinary proceedings and the punishment imposed upon him pursuant to disciplinary

proceedings initiated against him before the Labour Court constituted under the Act.

22. The issue of jurisdiction of the Labour Court and that of the Civil Court has been examined by the Hon'ble Supreme Court in Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke (1976) 1 SCC 496. The jurisdiction of Civil Court is plenary in nature i.e. it has jurisdiction in respect of civil rights which can be agitated before the Civil Court unless the jurisdiction of Civil Court is expressly or impliedly barred. The Supreme Court held as under :

“23. 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 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.”

23. A three judge Bench in Rajasthan SRTC Vs. Bal Mukund Bairwa

(2) (2009) 4 SCC 299 held the following:

“12. Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim ubi jus ibi remedium. A litigant, thus having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless barred by the statute, either expressly or by necessary implication.

38. Where the relationship between the parties as employer and



employee is contractual, the right to enforce the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status i.e. his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.”

24. In view thereof, the conditions of service of the workman are governed by the rules framed under the Statute. The jurisdiction of the Civil Court or the Industrial Tribunal under the Act has not been barred either expressly or implied by the L.I.C. Act as amended. Therefore, there is no bar for the workman to seek redressal from the Industrial Tribunal. Thus, he can invoke the jurisdiction of the Labour Court since right has been created in favour of the workman in terms of Section 2(k) and 2(a) of the Act.

25. Section 48 of the L.I.C. Act confers power on the Central Government to make rules including the rules relating to terms and conditions of service of the employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act but the power to fix the terms and conditions of the employees is not and cannot oust the jurisdiction of the Civil Court. The Act does not provide for any machinery for adjudication of disputes under the Act. Therefore, the Civil Court will have jurisdiction to entertain a suit filed by an employee against his wrongful termination or wrongful action by the Corporation. Since the Act provides another right to the workman, therefore, the rights of a workman cannot be barred in view of the rule making

authority under Section 48 of the L.I.C. Act. The applicability of the Act cannot be barred by a rule making authority. The provisions of the Act can be barred only by a Statute and the Statute (L.I.C. Act as amended) does not provide for barring of the jurisdiction of either of the Civil Court or of the Industrial Tribunal-cum-Labour Court.

26. In view thereof, we find that the order passed by the learned Single Bench is not sustainable in law. Consequently, the Letters Patent Appeal is allowed, the order passed by the learned Single Bench is set aside and the matter is remitted back to the Industrial Tribunal for adjudication of disputes in accordance with law.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

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