



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.509 of 2016

Ponnusamy

.. Appellant/Appellant/Plaintiff

vs.

1.K.T.Suresh Babu
2.Krishnaveni Sekar
3.Natarajan
4.The General Manager,
(Personnel and Administration),
BHEL, Trichy-14.
5.Xavier Lawrence,
Inspector,
Security Board, BHEL,
Trichy-14.

.. Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Decree and Judgment in A.S.No.196 of 2009, passed by the learned Subordinate Judge, Trichy, dated 24.01.2013 confirming the Decree and Judgment in O.S.No.624 of 2003, dated 30.06.2009, passed by the learned III Additional District Munsif, Trichy.

For Appellant : Mr.N.R.Murugesan

JUDGMENT

The plaintiff, who lost the legal battle in both the Courts, has come forward with the Second Appeal, challenging the Decree and Judgment passed in A.S.No.196 of 2009, dated 24.01.2013, by the Subordinate Judge, Trichirappalli by confirming the Judgment and Decree, passed in O.S.No.624 of 2003, dated 30.06.2009, by the learned III Additional District Munsif, Trichirappalli.

2. Heard the learned counsel for the appellant and perused the materials available on record.

3. The appellant as plaintiff filed a suit in O.S.No.624 of 2003 by stating that he was appointed as a Security Guard in B.H.E.L on 03.01.1986. As he was not taking part in daily parade, a charge memo has been issued and disciplinary action has been taken on the ground of insubordination and on that basis, a show cause notice was



issued on 05.12.2002 directing him to give a reply within 3 days. Another notice has been issued on 26.02.2003. During the pendency of enquiry, the plaintiff filed a writ petition in W.P.No.9123 of 2003 and in W.M.P.No.11641 of 2003, a direction has been given to allow him to be examined by the Medical Board regarding his disability and consider the Medical Board's report in this regard during the enquiry. Enquiry has been conducted. He was awarded a punishment of reducing the pay scale to the minimum of the pay scale from the existing scale of pay with effect from 01.06.2003 for two years with cumulative effect. Against which, he filed the suit for declaration that the order passed by the fourth defendant on 03.06.2003 by reducing the pay scale of the plaintiff to the minimum pay scale from existing scale of pay by giving effect from 01.06.2003 is illegal, null and void, ultravires and injunction restraining the defendants from giving effect to the said illegal order with effect from 01.06.2003.

4. Against which the defendants filed a written statement and in that even though they have raised so many defences, they raised a plea that the civil Court has no jurisdiction and would submit that the enquiry has been conducted and insubordination has been proved and on that basis, the punishment has been given.

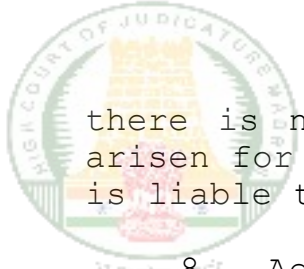
5. The trial Court, after considering the averments in the plaint and written statement, framed issues and dismissed the suit stating that the civil Court has no jurisdiction and in that it was specifically mentioned that the plaintiff ought to have gone before the Labour Court. Instead of go before the Labour Court, the plaintiff filed an appeal in A.S.No.196 of 2009 before the first appellate Court. The first appellate Court has also held that the civil Court has no jurisdiction and it is only an industrial dispute and that has to be decided by the Labour Court and dismissed the appeal. Against which, the plaintiff has preferred the Second Appeal.

6. The learned Counsel for the appellant would submit that the order passed by the fourth respondent affected his civil right and hence, the civil suit is maintainable before the civil Court.

7. At this juncture it is appropriate to extract Section 9 of the Code of Civil Procedure which is as follows:

"9. Courts to try all civil suits unless barred:- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

Admittedly, BHEL is an industry and the appellant was working in that industry and hence, any dispute between them has to be decided only before the Labour Court and not before the civil Court, as per section 9 of the Code of Civil Procedure. That factum was rightly considered by both the Courts below. Hence, I am of the view that



there is no question of law that too substantial question of law arisen for consideration in this second appeal and the second appeal is liable to be dismissed at the stage of admission.

8. Accordingly, this second appeal is dismissed in the admission stage itself. No costs. However, considering the fate of this appellant, the appellant is at liberty to approach the appropriate Forum in accordance with law.

Sd/-
Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

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To

1. The Subordinate Judge, Trichy.
2. The III Additional District Munsif, Trichy.

+1 cc TO MR.N.R.MURUGESAN, ADVOCATE, SR.NO.42975

JAM /29.08.16/KBM/3P-4C

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