

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

Date of decision: 24.03.2017

RSA No.1464 of 1992 (O&M)

The Sonapat Urban Cooperative Bank Ltd., Sonapat ...Appellant

Vs.

Tapan Kumar (deceased) through LRs ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Adarsh Jain, Advocate, for the appellant.

Mr. R.S.Mamli, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

Learned Additional District Judge, Sonapat vide judgment and decree dated 09.04.1992 decreed the suit against termination of the respondent-employee by applying the principles of the Industrial Disputes Act, 1947 in a civil proceeding which the civil court had no jurisdiction to apply in a suit. This is clear from reasoning contained in Para.15 of the judgment.

The employee had a right to opt for either civil or industrial adjudication against his termination order, but the two jurisdictions could not be intermingled by borrowing industrial law principles and applying them to the case declaring the termination illegal and issuing a mandatory injunction to the defendant to reinstate the plaintiff to service of the Bank. Civil Court cannot enforce industrial rights and obligations

This case was admitted and the decree stayed prima facie in view of the law laid down in Jitendra Nath Biswas Vs. M/s Empire of India & Ceylone Tea Company, AIR 1990 SC 255 cited by the Bank to stay the decree. In that case, the Supreme Court held that an employee whose

services were terminated cannot seek relief of reinstatement or back-wages in a civil suit instituted before the Civil Court. Before the Civil Court, an employee could seek the relief of damages for breach of contract in case the employer was not a 'State' within the meaning of Article 12 of the Constitution or 'other authority' under Article 226. I do not express any opinion, whether the appellant Bank qualifies there under. However, the law propounded in *Jitendra Nath Biswas's* case (supra) has been reiterated time and again by the Supreme Court and other High Courts.

In Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke, (1976) 1 SCC 496, at page 513 of the report, the legal position has been summed up. *Jitendra Nath Biswas's* case follows *Premier Automobiles Ltd.* where the law on the subject was elaborately expounded by the Supreme Court for the first time with the discussion starting in Para.10 quoting from principle in English law: "In *Doe Vs. Bridges* [1831 IB & Ad. 847: 199 ER 1001] at p.859 are the famous and oft-quoted words of Lord Tenterden, C.J. saying: "Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."

The relevant extract from *Premier Automobiles Ltd.* case reads:-

"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.”

See also; law in *Rajasthan SRTC Vs. Krishna Kant*, (1995) 5 SCC 75.

Thus, I have no option, but to allow this appeal by setting aside the judgment and decrees of the Courts below and leave the legal heirs of the respondent (deceased) to approach the Industrial Tribunal, if advised, and if they wish to press any monetary relief in the event of success against the termination order in the appropriate forum. In which case, the Tribunal will remain uninfluenced by the findings in the judgments in appeal but may in its judicious discretion retain the testimonies of the witnesses recorded, produced in certified copies from the civil court record, and, permit further evidence, if claimed, by either of the parties. The LRs may approach the appropriate labour Court under amended Section 2A inserting Sub-sections (2) & (3) in 2010. The labour Court may, if approached, take into account the period spent in the present proceedings from the date of the suit and exempt the same under Sub-section (3) of Section 2A of the ID Act by applying Section 14 of the Limitation Act, 1963.

24.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes