

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

**RSA-1631 of 1995
DATE OF DECISION: 31.01.2017**

Mangat Ram

....Appellant.

VERSUS

State of Haryana and others

....Respondents.

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K. Arun Singh, Advocate for
Mr. Surender Dhull, Advocate for the appellant.

Mr. Saurav Girdhar, Assistant Advocate General, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties and perused the judgments of both the courts below.

2. Both the Courts below have erroneously non-suited the plaintiff/appellant and have asked him to knock at the doors of the Labour Court for relief claimed as the appropriate remedy available to him to claim back wages while holding that the dispute qualifies as an industrial dispute within the meaning of Section 2(k) of Industrial Disputes Act, 1947 (for short, “the 1947 Act”).

3. The learned courts below have been misled in holding that the claim for back wages is only an industrial dispute. The concept of back-wages is inherent in cases of reinstatement and can follow sequitur, depending on the merits of the case. Even in enquiry cases, which are upset

by courts of law and where reinstatement is ordered, even then back-wages could well follow. The learned Courts below have gravely erred in coming to the conclusion that the claim for back wages is exclusive to the industrial adjudicator and, therefore, they have wrongly held that the civil court has no jurisdiction to try the suit. As a result, the matter has been referred to industrial adjudication. This is failure to exercise jurisdiction vested in them with material irregularity.

4. It is completely wrong to say that a claim for back wages is just an industrial dispute to be adjudicated upon by the Labour Court alone. Section 9 of the Civil Procedure Code provides that all Civil Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of the civil court apparently is not expressly barred by the provisions of the 1947 Act unless the rights are industrial law based such as emanating from violations in chapter V-A or V-B of the Act, as the case may be.

5. The plaintiff's claim for back wages was in terms of common law under Section 32(2) of the Specific Relief Act, 1963. It is settled proposition of law that a claim under common law can be made by filing a civil suit before the civil court exercising territorial jurisdiction. In case of Rajasthan SRTC and others Vs. Mohar Singh, 2008 (5) SCC 542, the Supreme Court while dealing with the jurisdiction of the civil court for claim of back-wages, has held as under:

“29. The decision referred to hereinbefore clearly brings about a distinction which cannot be lost sight of. If a right is claimed under the Industrial Disputes Act or the sister laws, the jurisdiction of the Civil Court would be barred, but if no such right is claimed, civil court will have jurisdiction.

30. Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. It is created under a statute. As a State, it is bound to comply with the requirements of Article 14 of the Constitution of India as also other provisions of Part III of the Constitution. It is also bound to comply with the mandatory provisions of the statute or the regulations framed by it.

31. It is also bound to follow the principles of natural justice. In the event, it is found that the action on the part of a State is violative of the Constitutional Provisions or the mandatory requirements of a statute or statutory rules, the Civil Court would have the jurisdiction to direct reinstatement with full back wages.”

6. In the present case, the defendant is 'State' and not private body. As a result, it is bound to comply with the requirements of Article 14 of the Constitution of India as also other provisions of the Constitution. In case, it is found that the action on the part of a State is violative of the Constitutional provisions or the mandatory requirements of a statute or statutory Rules, the civil court would have the jurisdiction to try the civil suit for full back wages and which is not an exclusive industrial right claimable under Section 10 (1) (c) of the 1947 Act read with Section 2 (k) to be determined upon a reference of the claim by the appropriate government to the Labour Court, would not be attracted in such a case.

7. In view of the above, I have no hesitation in setting aside both the judgments by partially allowing the appeal since the courts below have failed to appreciate the law on the subject. Accordingly, the appeal is allowed. The judgments and decrees dated 01.06.1993 and 08.12.1994 passed by the Courts below are set aside. The case is remanded to the court of second instance for fresh adjudication because the suit is maintainable for

a claim of back wages. Since this is an appeal of 1995, the learned District Judge/ Additional District Judge, as the case may be, is requested to decide the appeal within three months on the materials on record, if they are sufficient, as this would save considerable time and effort and remove one layer of litigation. In case this is not so, then the court will have the choice of further remanding the case to the court of first instance. If the claim for back wages is justified and is decreed, the court will compel performance by all legal means and not leave the matter to execution proceedings to abridge time. The State is directed in advance to act accordingly in aid of the result of litigation.

8. Parties to appear before the learned District Judge at Bhiwani on 07.03.2017 who may keep the file himself or mark it to one of the coordinate courts.

(RAJIV NARAIN RAINA)
JUDGE

31.01.2017.

komal/MFK

Whether speaking/reasoned:

Yes

Whether reportable:

Yes