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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.782 of 2009

1. P.V.Duraisamy (deceased)
2. Shanthi, w/o. Late Duraisamy
3. Sankar, S/o. late P.V.Duraisamy
4. Mouleeswaran, s/o. late P.V.Duraisamy ...Appellants 2
to 4/LR of the Sole Appellant/
Defendant/Plaintiff

Appellants 2 to 4 brought on record as LR's of the deceased sole appellant vide order of Court dated 10.07.2015 made in M.P. No.1 of 2011 in S.A. No.782 of 2009..

Vs.

Project Holder/Administrator
St. Mary's Leprosy Centre
Arisipalayam, Salem 636 009.

... Respondent/Appellant/Respondent

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 11.11.2008 passed in A.S. No.79 of 2008, on the file of the Principal Sub-ordinate Court, Salem, reversing the decree and judgment dated 10.03.2008 passed in O.S. No.224 of 2003, on the file of the II Additional District Munsif Court, Salem.

For Appellants : Ms.K.Ponmani.
for Mr.T.Murugamanikkam

For Respondent : Mr. P. Sathish

JUDGMENT

The appellant P.V. Duraisamy is the plaintiff in O.S. No.224 of 2003 on the file of the II Additional District Munsif Court, Salem and respondent in A.S. No.79 of 2008 on the file of the Principal Subordinate Court, Salem.



2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their ranking in the present appeal would also be indicated.

3. The appellant/plaintiff filed a suit in O.S.No.224 of 2003 for a relief of declaration that the relieving order dated 04.02.2003 issued by the defendant is illegal and null and void and for a consequential relief of permanent injunction directing the defendant not to relieve the plaintiff from his job except under due process of law.

4. The brief facts of the case of the appellant/plaintiff are as follows:

The appellant/plaintiff had been in service with the defendant St. Mary's Leprosy Centre, Arisipalayam, Salem, since 01.05.1975, as a para medical staff. His last designation was leprosy Inspector and suddenly on 04.02.2003, he was served with a notice Ex.A2 informing that he would be relieved from service from 31.03.2003 and due to this act of the defendant, the plaintiff suffered loss of employment and income. According to the plaintiff, the reasons cited in the notice dated 04.02.2003 (Ex.A2) were all far from truth. The National Leprosy Eradication Project was a continuing project and the retrenchment effected by the defendant citing the lower allocation of budget by the Damien Foundation India Trust, which was funding the project, was irregular, arbitrary and ultra vires. The further contention of the plaintiff is that there were 20 employees in the centre and the plaintiff was eleventh in the seniority and in such circumstances, any retrenchment had to be as per Section 25G of the Industrial Disputes Act. It is also his contention that basis for any retrenchment that the "last in first out" was not also followed and therefore, the defendant has violated the principles of natural justice and also Articles 14, 16 and 21 of the Constitution of India.

5. The suit was resisted by the defendant on the following grounds.

- 1) The suit filed by the plaintiff is not maintainable in Civil Court and therefore, the same has to be dismissed.
- 2) The defendant/Leprosy Centre is being run with the funding from Damien Foundation India Trust and since leprosy has been eradicated to a great extent, the Government of India had directed the



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- 1) The plaintiff has not established his contention that the defendant did not follow the principles of natural justice while issuing Ex.A2 notice.
- 2) The recitals of the relieving order Ex.A2 clearly shows that as per the Government order issued by the Tamil Nadu Government, the defendant was forced to cut down the man power and hence the plaintiff was relieved with effect from 31.03.2003.
- 3) The plaintiff admitted that he was relieved from his work as per the standing order during the course of cross examination and it is also admitted by him that he has completed 25 years of service and attained the age of 50 years on the date of issuance of Ex.A2. In such circumstances, there is no necessity for the defendant to offer explanation to the plaintiff before issuing the relieving order Ex.A2.
- 4) The plaintiff did not challenge the Government order issued by the Tamilnadu State Government. Since the plaintiff is relieved from his service on 31.03.2003, there is no privity of contract between the plaintiff and the defendant and hence the suit filed by the plaintiff is not maintainable.

8. Aggrieved over the decree and judgment dated 11.11.2008 passed by the Principal Sub-ordinate Court, Salem, the present second appeal is filed by the plaintiff.

9. Notice of motion was issued to the respondent and after several adjournments, the case was posted for hearing today. In the grounds of Memorandum of Second Appeal, the appellant has raised the following substantial questions of law.

- 1) Whether the lower appellate court was right in holding that the civil court lacks jurisdiction on a totally different point, that is, no privity of contract subsisting between the parties during the pendency of the suit, especially, when the trial court had held that there was no legal bar for the civil courts to try the suit?



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2) Whether an adverse inference ought not to have been drawn against the defendant, when the defendant has not examined any witness to prove his defence?

3) When a Government order is not issued, whether the finding of the lower appellate court that the appellant did not challenge the Government order is correct?

10. It is to be pointed out that the trial court has held that the civil court has jurisdiction to entertain the present suit even though it is alleged by the plaintiff that the procedures contemplated under Section 25G of the Industrial Disputes Act, were not followed by the defendant. However, the first appellate court held that the suit filed by the plaintiff is not maintainable since there is no privity of contract between the plaintiff and the defendant on the date of filing of the suit. The first appellate court did not render a finding as to whether the civil court's jurisdiction is ousted on account of the provisions of the Industrial Disputes Act.

11. On the one hand, the plaintiff has claimed that he has no relief to be sought under the Industrial Disputes Act, but, on the other hand, he has loudly claimed that his retrenchment was against Section 25 G of the Industrial Disputes Act. He has also taken the help of the Articles 14, 16 and 21 of the Constitution of India besides alleging that the principles of natural justice were given a go by. Ms.Ponmani, the learned counsel appearing for the appellant/plaintiff contended that since the suit filed by the appellant/plaintiff for a declaration and consequential relief of permanent injunction is under general or common law, he has every right to file a suit before the civil court and therefore, the jurisdiction of the civil court is not barred. She would further contend that when the respondent has not followed the principles of natural justice, the suit filed by the appellant/plaintiff is very much maintainable.

12. Per contra, Mr. P. Sathish, learned counsel appearing for the respondent urged at the time of hearing that the civil court's jurisdiction should not be exercised in view of the statutory remedy available to the employee (appellant / plaintiff) under the Industrial Disputes Act. He also drew the attention of this court to the averment made in paragraph 4 of the plaint, wherein the appellant/plaintiff had contended that the respondent/defendant did not follow the procedures prescribed under Section 25 G of the Industrial Disputes Act for



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retrenchment of the employee. He placed reliance on the following decisions in support of his contentions.

- 1) Rajasthan State Road Transport Corporation & another vs. Bal Mukund Bairwa reported in 2009 4 SCC 299.
- 2) M/s. Indian Rare Earths Ltd., Manavalakurichi vs. C. Sukumaran and another passed by single Judge of this Court in S.A. No. 273 of 1995 dated 01.08.2006.

13. It is to be pointed that Section 9 of the Code of Civil Procedure enforces the fundamental principles of law laid down in a Maxim "Ubi Jus Ibi Remedium" . A litigant having a grievance of civil nature, has the right to institute a suit before a competent civil court unless its cognizance is either expressly or impliedly barred by any statute.

14. The Industrial Disputes Act is a complete code in itself, which provides for the remedy to the employees against the retrenchment and in the instant case, the appellant/plaintiff has based his claim on the alleged violation of the provisions of the Industrial Disputes Act.

15. In the decision in Rajasthan State Road Transport Corporation & another vs. Bal Mukund Bairwa (cited supra) relied on by the learned counsel for the respondent, a reference was made to a three Judge Bench of the Hon'ble Supreme Court by a Division Bench for resolution of a purported conflict in the judgment rendered by the Hon'ble Supreme Court with regard to the jurisdiction of the Civil Court to entertain the suits questioning orders of termination passed by the employer. The Hon'ble Supreme Court, after discussing the decision in Dhulabai and others vs. State of M.P. (AIR 1969 SC 78) and also by referring to various other decisions, held that where the relationship between the parties is contractual in nature, the right to enforce the contract of service depending upon the personal volition of an employer is prohibited in terms of Section 14 (1) (b) of the Specific Relief Act 1963. In the said decision, the Hon'ble Supreme Court has laid down 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 services 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.

Ultimately, in paragraph No.28, the Hon'ble Supreme Court answered the reference and held as follows:

"28. In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. (supra) shall prevail."

16. In the decision in M/s. Indian Rare Earths Ltd., Manavalakurichi vs. C. Sukumaran and another (cited supra), a single Bench of this Court has held thus.

"8. It is well settled that where the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the Industrial Disputes Act. As contended by learned counsel for the appellant, the Industrial Disputes Act not only confers right on any worker for reinstatement and backwages but also provides a detailed procedure and machinery for getting appropriate relief, if the order of termination or dismissal are not in accordance with the Standing Order and the law. In JITENDRA NATH BISWAS case (1989 (3) S.C.C., 582, the Supreme Court has held as follows;- "The scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies which are available under this Act and for which a complete procedure and machinery has been provided this Act.



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In so far as the appellant is concerned, the Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances therefore there is an apparent implied exclusion of the jurisdiction of the civil court."

17. In the instant case, the plaintiff though had wanted the notice dated 04.02.2003 to be declared as null and void, did not seek for a relief of reinstatement. In fact, this plea, at the first instance, came after 31.03.2003 on which date he was relieved. The defendant's contention is that the appellant/plaintiff was already informed about his retrenchment with effect from 01.04.2003 citing certain reasons mentioned in Ex.A2 notice. It is seen from the relieving order Ex.A2 that the plaintiff was senior who joined way back in the year 1975 and was identified for retrenchment. The reasons for retrenchment have also been explained in the said notice. The appellant/plaintiff had filed the suit only on the basis of the relieving order dated 04.02.2003 and this is also mentioned in the cause of action.

18. The object of Industrial Disputes Act as per its preamble is to make provisions for investigation and settlement of disputes and adjudication of such disputes. The expression "Industrial Disputes" is defined in Section 2K, which reads as under:

Section 2K - Industrial Dispute is "any dispute of difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

19. The relief claimed by the appellant/plaintiff is with regard to the retrenchment made by the defendant and therefore, he can file a petition only before the Labour Court and the jurisdiction of the Civil Court is completely ousted as per the decision rendered by the Hon'ble Supreme Court in Rajasthan State Road Transport Corporation & another vs. Bal Mukund Bairwa (cited supra). It is also relevant to point out that the plaintiff, during the course of cross examination, contended that he already approached the Labour Court for getting salary from the respondent/defendant and that the same was dismissed. He also admitted that he did not file any appeal against the said order before the appropriate forum. It is seen from the



contention of the defendant that as per the standing order governing the employer and the employee, the plaintiff was relieved from his service as leprosy inspector with effect from 31.03.2003. It is not the case of the appellant/plaintiff that he was not given any opportunity of being heard before issuing the relieving order. According to the defendant, the termination notice was served on the plaintiff and this is not specifically denied by the plaintiff by filing a rejoinder. Hence, it cannot be held that there is a violation of principles of natural justice and Articles 14, 16 and 21 of the Constitution of India as alleged by the plaintiff and in the abovesaid circumstances, there is no substantial question of law involved in this second appeal.

20. In the result,

- 1) The Second Appeal is dismissed. There shall be no order as to costs.
- 2) The decree and judgment dated 11.11.2008 passed by the Principal Sub-ordinate Judge, Salem, in A.S. No.79 of 2008 is upheld.
- 3) The decree and judgment dated 10.03.2008, passed by the II Additional District Munsif, Salem, in O.S. No.224 of 2003, is set aside.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Principal Sub-ordinate Judge,
The Principal Subordinate Court,
Salem.
2. The II Additional District Munsif,
Salem.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.Sathish, Advocate Sr.41166

S.A.No.782 of 2009

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srg 01/11/2021