

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.467 of 2018

and

CMP.No.2484 of 2018

The Deputy Manager
Mr.S.Veerapandi
Nonsuch Tea Estates Ltd.,
Coonoor, Coonoor Taluk,
The Nilgiris District.

... Petitioner

Vs.

Mellina Mary

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 22.12.2016 in I.A.No.384 of 2016 in O.S.No.35 of 2016 passed by the learned District Munsif, Coonoor, The Nilgiris.

For Petitioner

: Mr.R.Subburaj

For Respondents

: M/s.AL.Gandhimathi

ORDER

This Civil Revision Petition is directed against the fair and final order passed in I.A.No.384 of 2016 in O.S.No.35 of 2016 dated 22.12.2016 on the file of the learned District Munsif, Coonoor, The Nilgiris, thereby dismissing the petition for rejection of plaint.

2. The petitioner is the second defendant and the respondent is the plaintiff. The respondent filed a suit for declaration to declare that the de-promotion order dated 29.04.2016 as null and *void ab initio* and not binding on the respondent. She also prayed for direction to direct the petitioner to withdraw the order of de-promotion dated 29.04.2016 and permit the respondent to report for work as Assistant Factory Officer. While pending the suit, the petitioner filed a petition for rejection of plaint and the same was dismissed and aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that the

respondent was appointed as Supervisor in the year 2011 and she was governed by the Standing Orders for Estate Workmen. Thereafter, the respondent had been promoted as Assistant Factory Officer on 01.05.2015 and placed on probation for a period of 12 months with effect from 01.05.2015. The probation period ends on 30.04.2016 and she was governed by joint standing orders for the estate staff. An appointment on probation is always deemed to be made against an existing permanent vacancy and the period of probation is a period for testing the suitability of a candidate for that post in all respects. The services of the respondent as probationary Assistant Factory Officer was found to be unsatisfactory and as such, she was transferred as Assistant Field Officer with effect from 01.12.2015. However, at the end of the probationary period, the service of the petitioner was found not satisfactory and found to be unsuitable for promotion and as such, she was reverted back to her substantive post of Supervisor. As per proviso to clause 4 (b) of the prevailing Joint Standing Orders for Estate Staff, she was reverted back from the post of Assistant Field Officer to the substantive post of Supervisor with effect from 01.05.2016 by an order dated 29.04.2016.

4. He further submitted that the respondent is the employee and the petitioner is the employer and they are governed by laws applicable in the Industrial Disputes Act, 1947. The Industrial Dispute means any dispute or difference between the employer and employee or between the employers and the workmen or between the workmen and the workmen which is connecting with the employment or non-employment or the terms of the employment or with the conditions of labour of any person as defined under Section 2(k) of the Industrial Disputes Act, 1947. Therefore, the respondent ought to have taken remedy before the Labour Court separately established for that purpose. In fact, the respondent also filed a petition before the conciliation officer and the same had failed. Instead of raising Industrial disputes, the respondent filed the present impugned suit and the Civil Court has no jurisdiction to entertain the labour disputes. The promotion is not a matter of Civil Right. Therefore, the Civil Court has no jurisdiction to entertain the Civil Suit challenging the de-promotion order and the cause of

action involved recognition of promotion and enforcement of rights of the sister enactment, viz., the Standing Orders. Therefore, the respondent has to approach the labour forum in accordance with law. Unfortunately, without considering the above, the Court below dismissed the petition for rejection of plaint. In support of his contentions, he relied upon the judgment reported in (2002) 2 SCC 542 (*Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad*) and further, he relied upon the judgment reported in (2005) 4 MLJ 685 (*Bharat Petroleum Corporation Limited -vs- D.Nagendra*).

5. Per contra, the learned counsel for the respondent contended that the respondent filed a suit as per the provision laid under the Civil Procedure Code and it is very much maintainable. The respondent was promoted to the post of Assistant Field Officer and thereafter, without even conducting any enquiry, she was de-promoted to the post of Supervisor. It is a clear violation of natural justice and the respondent has right of promotion and as such, the respondent rightly filed the suit for declaration to declare the de-promotion order dated 29.04.2016 as null and void. The respondent

approached the Civil Court for the breach of statutory obligation of the right under the general common law and not under the Industrial Disputes Act. Therefore, the jurisdiction of the Civil Court is not ousted under the Industrial Disputes Act and the Civil Court has got jurisdiction to deal with the issue. She further submitted that when the suit is not barred by any law, there is no prohibition under the Industrial Disputes Act and the respondent can very well maintain the suit. The very issue is the dispute between the employee and the employer and the right of promotion is in dispute. Therefore, the Civil Suit is very much maintainable and the Court below rightly dismissed the petition for rejection of plaint. In support of her contentions, she relied upon the judgment reported in 1995 (5) SCC 75 (*Rajasthan State Road Transport Corporation -vs- Krishna Kant & Ors*).

6. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondent.

7. The respondent is the plaintiff and the petitioner is the second defendant. The respondent filed a suit for declaration to declare that the

de-promotion order dated 29.04.2016 as null and void and also for direction to direct the petitioner and another to withdraw the de-promotion order dated 29.04.2016 and permit the respondent to report for working as Assistant Factory Officer. The petitioner had taken a specific stand that the respondent was governed by her Joint Standing Orders for the estate staff. Under the provision of Joint Standing Orders for the Estate Staff, the petitioner's estate is not vested with any power to extend the probationary period of any person appointed as staff beyond 12 months. Whether to confirm or revert back to substantive post for un-satisfactory work, the decision has to be taken within 12 months. Accordingly, no enquiry is required or compliance of any notice would be necessary. Since the service of the respondent as probationary Assistant Factory Officer was found to be un-satisfactory, she was transferred as Assistant Field Officer with effect from 01.02.2015. However, at the end of the probationary period, the petitioner found the service of the respondent both as Assistant Factory Officer as well as the Assistant Field Officer to be un-satisfactory and found her to be unsuitable for promotion. Hence, she was reverted back to her substantive post as Supervisor. Therefore, the petitioner filed a petition for

rejection of plaint on the ground that the Civil Court does not have jurisdiction to entertain the suit with regard to an Industrial Dispute between the employer and the employee. The respondent has to approach only the Labour Court under the Industrial Disputes Act, which is an exhaustive legislation applicable for labour disputes and separately framed for that purpose.

8. The Court below dismissed the petition for rejection of plaint on the ground that the dispute between the respondent and the petitioner is not an Industrial Dispute. The Court below further observed that under Order VII Rule 11 (d) of the Code of Civil Procedure deal with the rejection of plaint where the suit appears from the statement in the plaint to be barred by any law. The Court below is of the view that the impugned suit is not barred by any law and therefore, dismissed the petition for rejection of plaint.

9. The learned counsel for the petitioner relied upon the judgment reported in (2002) 2 SCC 542 (***Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad***), wherein it is held as follows:-

"5.It may be borne in mind that the Industrial Disputes Act was enacted by Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the workmen do not get caught in the labyrinth of civil courts which the workmen can ill-afford, as has been stated by this Court in Rajasthan SRTC case [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] . It cannot be disputed that the procedure followed by civil courts are too lengthy and consequently, are not an efficacious forum for resolving the industrial disputes speedily. The power of the Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum. To our query Mr Ahmadi, learned counsel appearing for the appellants was not in a position to tell that the relief sought for in the cases in hand, cannot be given by a forum under the Industrial Disputes Act. The legality of the order of termination passed by the employer will be an industrial dispute within the meaning of Section 2(k) and under Section 17 of the Industrial Disputes Act, every award of the Labour Court, Industrial Tribunal or National Tribunal is required to be published by the appropriate government

within a period of thirty days from the date of its receipt and such award published under sub-section (1) of Section 17 is held to be final.

6. In the aforesaid premises and having regard to the relief sought for in the suits filed in the civil court, we have no manner of hesitation to come to the conclusion that in such cases the jurisdiction of the civil court must be held to have been impliedly barred and the appropriate forum for resolution of such dispute is the forum constituted under the Industrial Disputes Act. We, therefore, do not find any infirmity with the impugned judgment of the High Court requiring our interference. The appeals accordingly fail and are dismissed. We would however observe that it would be open for the appellant workmen to approach the appropriate industrial forum and such forum if approached, will dispose of the matter on its own merits. There will be no order as to costs."

10. The Three Judges of the Hon'ble Supreme Court of India held that in the dispute between the employer and employee, the jurisdiction of the Civil Court must be held to have been impliedly barred and the appropriate

forum for resolution of such dispute is the forum constituted under the Industrial Disputes Act. Originally, the above cited judgment was referred to the Five Judges Bench of the Hon'ble Supreme Court of India and again, it was referred to the Three Judges Bench of the Hon'ble Supreme Court of India. The above cited judgment also considered the principle enunciated in the case reported in 1995 (5) SCC 75 (***Rajasthan State Road Transport Corporation -vs- Krishna Kant & Ors***) in which the Three Judges Bench of the Hon'ble Supreme Court of India summarized the principles as below:-

"(1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an 'industrial dispute' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, 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 said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like the Industrial Employment (Standing

Orders) Act, 1946 — which can be called ‘sister enactments’ to the Industrial Disputes Act — and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of the Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial

Tribunal directly — i.e. without the requirement of a reference by the Government — in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to 'statutory provisions'. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from the Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as

they think appropriate in the circumstances for putting an end to an industrial dispute."

11. The Hon'ble Supreme Court of India held that where, however, 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 said Act. Where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called as "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of the Industrial Disputes Act.

12. In the case on hand, the respondent was governed by the Joint Standing Orders for the Estate Staff of the petitioner. The petitioner being the employer, it is well within his rights to terminate or de-promote the

services of the probationer as the case may be, if she is found unsuitable for the post. In fact, the learned counsel for the respondent also cited the above judgment reported in reported in 1995 (5) SCC 75 (***Rajasthan State Road Transport Corporation -vs- Krishna Kant & Ors***). The Industrial disputes Act was enacted by the Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers the underlying idea being to ensure that the workmen does not get caught in the labyrinth of civil courts which the workmen can ill afford. Therefore, the Civil Court is barred to entertain the dispute between the employee and the employer.

13. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.384 of 2016 in O.S.No.35 of 2016 is set aside. The impugned plaint in O.S.No.35 of 2016 is hereby rejected. However, the respondent is at liberty to approach the appropriate forum under the Industrial Disputes Act in the manner known to law, if she is so advised. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

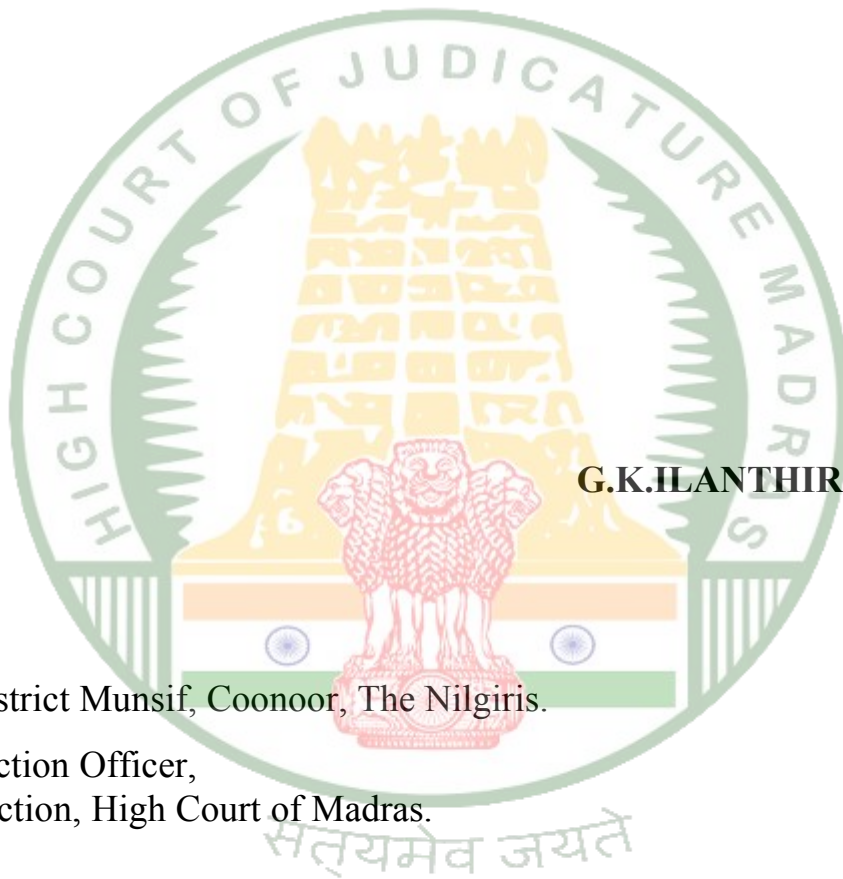
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

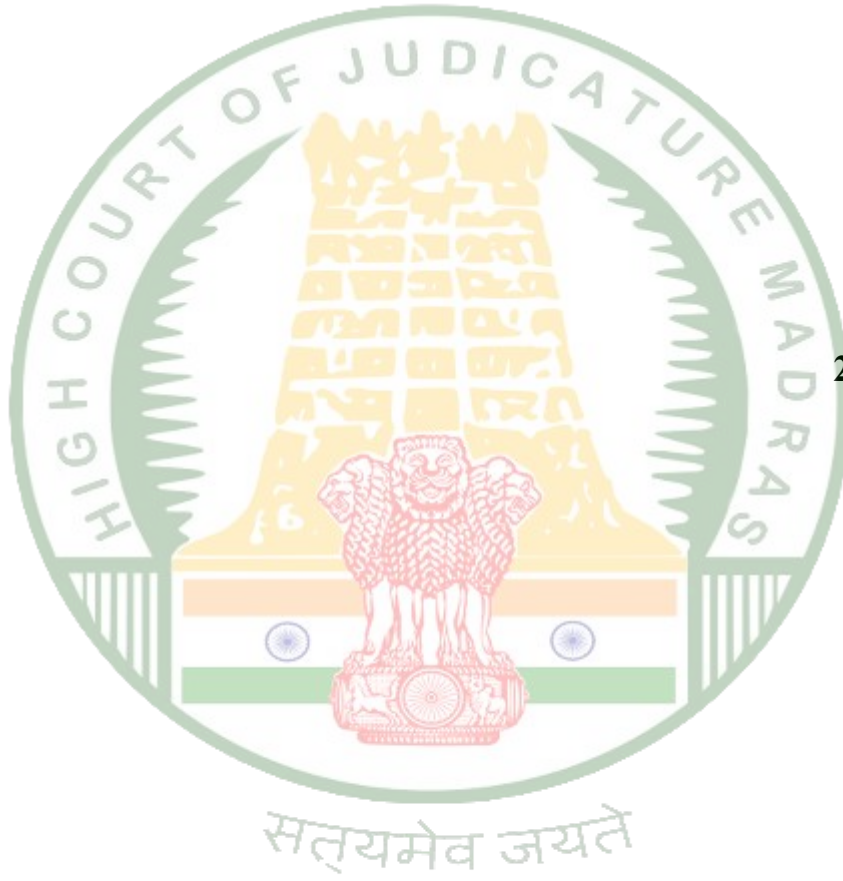
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To

1. The District Munsif, Coonoor, The Nilgiris.
2. The Section Officer,
V.R.Section, High Court of Madras.

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