



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 20.05.2023
Judgment pronounced on : 01.06.2023

+ **RSA 69/2012**

UNION OF INDIA & ORS. Appellants

versus

OP MATHUR Respondent

Advocates who appeared in this case:

For the Appellants: Mr. Vivek Goyal, CGSC with Mr. Gokul Sharma, Ms. Aneeta Goyal, Advocates and SI/S.K. Meena (CISF)

For the Respondent: Mr. R.K. Saini and Mr. Dashmesh Tripathi, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a Second Appeal filed by the Appellant challenging the impugned judgement and decree dated 22.09.2011 passed by the First Appellate Court which dismissed the First Appeal filed by the Appellant bearing RCA No. 05/2011 seeking reversal of the judgement and decree dated 08.05.2003 passed by the learned Trial Court in CS No.472/1988.
2. This court has heard the arguments of the Appellant represented by Mr. Vivek Goyal, learned Central Government Standing Counsel



(hereinafter referred to as “CGSC”) and Mr. R. K. Saini, learned counsel for the respondent. This Court has also perused the learned Trial Court as well as the First Appellate Court record, their judgements and other related documents.

3. The substantial questions of law which arise in the present appeal have already been crystallized vide the order dated 26.07.2013 and are as under:

“Whether the respondent could have filed a suit for declaration challenging the departmental proceedings and the punishment imposed on him despite the dismissal of his writ petition by the High Court without reserving any liberty to go to the Civil Court, and if so, to what effect?”

Another substantial question of law which was additionally framed on 21.02.2014, is as under:-

“Whether the courts below have committed a gross illegality and perversity in holding that the respondent-plaintiff has been imposed a punishment of removal from service without following the principles of natural justice, although, as per the case of the appellant respondent was duly served in the departmental proceedings?”

4. Another question, which this Court considers to be relevant to the dispute would be:

“Whether the suit was barred under Rule 57 of the CISF Rules, 2001?”

5. On behalf of the appellant, Mr. Vivek Goyal, learned CGSC submits that the respondent was a Head Constable of the Central Industrial Security Force which is an admitted case of the parties. It is also an admitted case of the parties that the respondent was, as such, bound by the provisions of the Central Industrial Security Force Act,



1968 (hereinafter referred to as “the Act”) and the Rules made thereunder called Central Industrial Security Force Rules, 2001 (hereinafter referred to as “the Rules”).

6. Though, the misconduct of the respondent while in service need not detain this Court, however, it is relevant to note that the respondent was imposed a major penalty of dismissal from service by the Competent Authority under the Act and the Rules. Suffice it would be, also to note that the respondent had preferred a Statutory Appeal as contemplated in Rule 46. The same was also dismissed.

7. Against such dismissal, the respondent approached this Court in W.P.(C) No. 3025/1987 which was heard and dismissed on 30.11.1987. It is an undoubted case that the respondent did not further challenge the order dated 30.11.1987 passed by the learned Division Bench of this Court in W.P.(C) No. 3025/1987 by way of a Special Leave to Appeal before the Supreme Court.

8. However, the respondent did challenge the Appellate Order dated 11/13.04.1987 of the Appellate Authority designated under the Act by way of a Civil Suit before the District Courts at Delhi. This was filed despite the fact that the same was already tested before the learned Division Bench of this Court in the aforementioned Writ Petition.

9. The civil suit filed by the respondent was dismissed on the grounds of *res judicata* keeping in view of the order dated 30.11.1987 in W.P.(C) No. 3025/1987. This was taken in Appeal before the Appellate Court in RCA No. 312/1993 which remanded the suit to the learned



Trial Court to consider the same afresh vide its decision dated 11.03.1994.

10. This time around, the learned Trial Court, by its judgement and decree dated 08.05.2003 had allowed the suit of the respondent and after quashing the punishment order, directed the CISF Authorities to proceed *de novo* with the Disciplinary Proceedings.

11. However, instead, the appellant filed the First Appeal taking the grounds of the dismissal of the Writ Petition by the learned Division Bench of this Court as *res judicata*. By the impugned judgement and decree the First Appellate Court dismissed the First Appeal bearing RCA No. 05/2011.

12. It is against this judgement and decree of the First Appellate Court, the appellant has filed the present Second Appeal under the provisions of Section 100, Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").

13. The arguments of Mr. Goyal are as under:

- a. The appeal is barred by the principles of *res judicata* keeping in view the judgement of the learned Division Bench of this Court in W.P.(C) No. 3025/1987 dismissing the writ on 30.11.1987 after hearing the respondent and considering all the grounds raised. For this proposition, reliance is placed on ***Gulabchand Chotalal Parikh Vs. State of Gujarat*** reported in **AIR 1965 SC 1153**.
- b. The appeal is also barred by the principles of *res judicata* also in respect of the fact that whether there can be two



rounds of challenge to the same disciplinary proceedings, in that, one before the Appellate Authority envisaged under the Rules, followed by challenge to the same in writ proceedings before this Court, followed by another round of litigation challenging the very same punishment before the Civil Court.

- c. The provisions of Rule 57 of the CISF Rules, 2001, is a complete bar to jurisdiction of Civil Courts.
- d. The provisions of section 105 (2) CPC will not bar the appellant from challenging the order of remand passed by the First Appellate Court in the first round of appeal, as per the ratio laid down by the Supreme Court in ***Krishna Pillai Rajasekharan Nair (Dead) by LRs vs. Padmanabha Pillai (Dead) by LRs and Others***, reported in **2004 (12) SCC 754**.

14. Arguing on the first issue, Mr. Goyal, learned CGSC submits that the respondent was proceeded against by the appellant for the misconduct alleged and proved by way of statutory disciplinary proceedings whereby, the punishment was imposed after evidence was recorded, respondent was afforded an opportunity to conduct cross examination, afforded an opportunity to produce his evidence and finally accorded an opportunity to give reply and argue his case. It was thereafter only that the punishment of dismissal from service was passed.

15. He further contends that the respondent had challenged the said dismissal by preferring a Statutory Appeal before the duly constituted



Appellate Authority as envisaged by the Act and the Rules thereunder. This was an established procedure in accordance with an Act governing the conditions of service, discipline and punishment rules, retirement etc., of the members of the Force. The said Statutory Appeal was heard, considered and dismissed by the Appellate Authority as per Rule 46 vide the order dated 11/13.04.1987.

16. Mr. Goyal contends that though, as per Rule 54, a Statutory Revision is provided, however, the respondent did not avail of the same and thus, the Appellate Authority's order became final.

17. The respondent, thereafter, challenged the Appellate Authority's order dated 11/13.04.1987 by way of a writ bearing W.P.(C) No. 3025/1987. This writ petition, according to Mr. Goyal was the correct procedure availed of by the respondent, to impugn the Appellate Authority's order confirming the dismissal of the respondent from service.

18. Mr. Goyal submits that the said writ was heard at length by the learned Division Bench of this Court and dismissed after considering all the grounds, arguments and documents placed on record and after recording the finding that the procedure followed by the appellant herein called for no interference. He thus submits that the dismissal of the Writ Petition was on merits and would therefore bar the Civil Suit under the doctrine of *res judicata*.

19. The other related argument is that whether the respondent is also not barred by the principles of *res judicata*, in that, after having exhausted the statutory remedy available to the respondent under the



provisions of the Act and the Rules made thereunder and failing, the respondent would otherwise be barred under law from agitating the issue which already stands considered, deliberated, mind applied by the Competent Authority as well as the Appellate Authority under the Rules and finally tested by the Writ Court.

20. He further submits that the Civil Court would be precluded from re-examining the evidence already on record which has been tested by an Authority under an enactment and is not competent to record fresh evidence in respect of the said disciplinary proceedings. He thus submits that the procedure adopted and the reasoning given while rendering the punishment as well as the Appellate Authority upholding the same cannot become subject matter of another trial under the Code of Civil Procedure this time. Simply put, the action and decision of the Appellate Authority under the Act and Rules thereunder constitute, *res judicata*.

21. The third submission of Mr. Goyal is with respect to the bar of jurisdiction of the Civil Court as per the provisions of Rule 57. So far as this submission is concerned, Mr. Goyal very fairly submits that the same was never taken up as an objection, however, submits that the said objection is inherent and goes to the root of the matter and would, perhaps, render the judgement and decree of the learned Trial Court as well as the Appellate Court, a nullity in law. In which case, according to Mr. Goyal, the same can be taken up at any stage even before the Supreme Court.

22. To buttress his arguments of lack of inherent jurisdiction, Mr. Goyal learned CGSC relied upon the judgements of a Coordinate Bench



of this Court in *Ex. Const. Krishan Kumar Vs. Union of India & Ors*, reported in **2016 SCC OnLine Del 4965**, *Union of India and Ors Vs. Shri Ishwar Singh*, reported in **2016 SCC OnLine Del 5038**, and *Union of India Vs. Braham Pal Singh* reported in **2016 SCC OnLine Del 5556**. The Coordinate Bench of this Court in identical matters had, in fact, framed the question of law relating to whether Rule 57 can be interpreted to mean a bar to the jurisdiction of Civil Courts in matters relating to the members of the Force of CISF. By a detailed examination of various provisions of the Rules, the learned Coordinate Bench concluded that Rule 57 would, indeed, bar the jurisdiction of the Civil Courts and resultantly, dismissed the suits.

23. So far as the fourth submission of the appellant is concerned, Mr. Goyal, learned CGSC submits that the bar of section 105 (2) CPC would not prohibit the appellant from including in its appeal the challenge to the said order of remand dated 11.03.1994 passed by the First Appellate Court in the first round of appeal filed by the respondent. He relies upon the judgement of the Supreme Court in *Krishna Pillai (supra)*. According to Mr. Goyal, the Supreme Court in the aforesaid judgement had clearly enunciated that a party is not precluded from challenging the previous order of remand passed by the First Appellate Court and thus, the bar of section 105(2) CPC would not be a bar to the First Appeal filed by the appellant herein.

24. Mr. Goyal invites attention of this Court to the order dated 08.12.2017 passed by this Court in a Review Petition filed by the appellant against the order dated 06.10.2015 passed by this Court.



25. Mr. Goyal, thus submits that in view of the clear law enunciated by the Supreme Court in *Krishna Pillai (supra)* as also the overwhelming judgements of the Coordinate Bench of this Court, the suit as laid by the respondent is not maintainable, both in law as well as on facts and ought to be dismissed.

26. *Per contra*, Mr. R.K. Saini, learned counsel for the respondent submits as under:

- a. The submission of the appellant that the dismissal of the writ petition by the learned Division Bench of this Court in W.P.(C) No. 3025/1987 would construe to mean that the suit was barred by *res judicata* is unfounded. The dismissal of the Writ Petition could not be deemed to be *res judicata* since the same was dismissed *in limine* without considering merits of the matter. To buttress the same, the respondent relies upon the judgement of the Supreme Court in *Gulabchand (supra)*. The respondent also places reliance upon the judgement of the Supreme Court in *Pujari Bai Vs. Madan Gopal*, reported in (1989) 3 SCC 433.
- b. That so far as the argument of the appellant that even otherwise the suit is barred by the principles of *res judicata* on the basis that under the Act and Rules, a full-fledged inquiry was held and after completion of disciplinary proceedings the Competent Authority had imposed punishment, coupled with the fact that the respondent had filed a Statutory Appeal before the



Appellate Authority under the provisions of the Act and Rules, which had confirmed the punishment of dismissal whereagainst the respondent had filed a Writ Petition before this Court and lost, is concerned, the same is amenable to Civil Court jurisdiction under section 9 CPC.

- c. The other issue in respect of bar of the jurisdiction of the Civil Court under the Rule 57 is concerned, the same is incorrect and the plain reading of the said Rule does not warrant that interpretation. According to the respondent, there is nothing explicit, or even implicit, in Rule 57 by virtue whereof, one can conclusively draw the inference that there is a bar to the maintainability of the suit. It is also submitted that in the judgements of the learned Single Judge, in the cases relied upon by the appellant, the interpretation is incorrect and wrong and do not apply to the facts of the case.
- d. So far as the argument regarding applicability or otherwise of the bar under section 105(2) CPC to the appeal on the basis that the order of remand by the First Appellate Court in the first round of the First Appeal dated 11.03.1994, which was never appealed against, is concerned, the respondent relies upon the provisions of Order XLIII Rule 1(u), CPC, to submit that since the remand order was appealable under this provision and having not availed that remedy, the prohibition under sub-section (2) of Section 105 CPC, would apply and the First Appeal of the



appellant itself was barred. According to the respondent the judgement of the Supreme Court in ***Krishna Pillai (supra)*** is distinguishable and even the ratio does not apply to the present facts.

27. The thrust of Mr. Saini, is consistent in respect of his opposition to the submissions that the dismissal of the Writ Petition of the respondent by the learned Division Bench of this Court, would constitute *res judicata*. In that, Mr. Saini vehemently submits that the said dismissal order is non-speaking and cryptic and therefore could not constitute *res judicata* since it is trite that to constitute *res judicata* there has to be an issue framed, a consideration of disputed facts and submissions, deliberations, application of mind after hearing both parties and then a rationale, in the absence whereof, the *in limine* dismissal cannot be construed as binding.

Mr. Saini places complete reliance on the judgement of the Supreme Court in ***Gulabchand (supra)*** to submit that as per the law laid down therein, in sub-para (6) of para 53, *in limine* dismissal without anything more, would not be *res judicata*. He thus submits that the *in limine* dismissal of the Writ Petition will not tantamount to *res judicata*, as such, will not be a bar to the suit filed.

28. Mr. Saini next submits, that so far as the argument of the appellant that the respondent had availed of the remedies available under the Act and Rules and being bound by the said final order passed by the Appellate Authority which would constitute *res judicata*, are concerned, there is no express or implied bar against the jurisdiction of Civil Court.



He submits that the ouster of Civil Courts' jurisdiction, it is trite, cannot be inferred easily. Ordinarily, the Civil Courts would have complete and pervasive jurisdiction over all matters arising, whether it is inherent or territorial or pecuniary. He further submits that the challenge to the Appellate Authority's order of dismissal for being violative of procedures and principles of natural justice is amenable to the jurisdiction of the Civil Court and would therefore, not form *res judicata*. According to Mr. Saini, provisions of section 9 CPC are all encompassing and would subsume within itself all challenges including that passed by the Appellate Authority under the Act and Rules.

29. Mr. Saini, next contends that the assumption that Rule 57 creates a bar against jurisdiction of the Civil Court is completely baseless and without any substance. According to Mr. Saini, the language employed in Rule 57 gives absolutely no indication that it even, remotely, refers to any such bar, leave alone an express prohibition. He submits that the only prohibition referred to in the said rule is with respect to the Force Personnel taking recourse to any other redressal mechanism except for the one provided under the Rules and it further cautions the members that the violation thereof would be considered as misconduct entailing disciplinary action. On this, Mr. Saini submits, cannot be the language of a prohibitory provision. In other words, he submits, that a provision presumed to be a bar, as argued by the appellant, cannot have a service condition attached to it, in that, the violation whereof would entail disciplinary proceedings at the maximum. On that basis, Mr. Saini submits that there is no bar at all, clear or unclear, ambiguous or



unambiguous, contained in Rule 57. Thus, he submits the suit is maintainable.

30. The next contention of Mr. Saini is in respect of the applicability of bar under section 105 (2), CPC, against the First Appeal filed by the appellant herein. This is predicated on the ground that the order of remand dated 11.03.1994, passed in the first round by the First Appellate Court, not having been challenged despite availability of remedy of appeal under Order XLIII Rule 1 (u), CPC, would manifestly, fall within the bar prescribed by section 105(2), CPC. He further submits that the reliance upon the order dated 08.12.2017 passed by this Court reviewing its order dated 06.10.2015, is misplaced. This is for the reason that while considering the Review Petition, this Court had not considered the impact of Order XLIII Rule 1(u), CPC. That apart, according to Mr. Saini, para 24 in the judgement of the Supreme Court in **Krishna Pillai (supra)**, itself observed that provisions of section 105(2), CPC are not applicable to it and thus, the Supreme Court proceeded to decide the appeal on that ground. He submits that in that case, it was the non-challenge of the order of remand passed by this Court and its impact *vis-à-vis* the jurisdiction of the Supreme Court to exercise its appellate powers was being considered, in terms of the Supreme Court being the Superior Court to the High Court, as prescribed in sub-section (2) of section 105 CPC. He thus submits that the said judgement is not applicable to the present case and the reliance thereon is misplaced. According to Mr. Saini, if the judgement in **Krishna Pillai (supra)** is eschewed from consideration, the First Appeal



filed by the appellant itself would be barred and the question of entertaining the present Second Appeal does not arise.

ANALYSIS AND CONCLUSIONS:

31. This Court has considered the rival submissions, the impugned judgement, the pleadings and the judgements relied upon by the learned counsel for the parties.

32. The substantial questions of law that arise in this appeal and formulated by this Court are as under:

“Whether the respondent could have filed a suit for declaration challenging the departmental proceedings and the punishment imposed on him despite the dismissal of his writ petition by the High Court without reserving any liberty to go to the Civil Court, and if so, to what effect?”

Whether the courts below have committed a gross illegality and perversity in holding that the respondent-plaintiff has been imposed a punishment of removal from service without following the principles of natural justice, although, as per the case of the appellant respondent was duly served in the departmental proceedings?

Whether the jurisdiction of the civil court was barred under Rule 57 of the CISF Rules, 2001?”

33. Since the aforesaid questions of law are apparently intertwined, this Court shall examine the same in order of the arguments addressed by the respective parties.

a. The appeal is barred by the principles of *res judicata* keeping in view the judgement of the learned Division Bench of this Court in W.P.(C) No. 3025/1987 dismissing the writ on 30.11.1987 after hearing the respondent and considering all the



grounds raised. For this proposition, reliance is placed on ***Gulabchand (supra)***.

b. The appeal is also barred by the principles of *res judicata* also in respect of the fact that whether there can be two rounds of challenge to the same disciplinary proceedings, in that, one before the Appellate Authority envisaged under the Rules, followed by challenge to the same in writ proceedings before this Court, followed by another round of litigation challenging the very same punishment before the Civil Court.

c. The provisions of Rule 57 is a complete bar to jurisdiction of Civil Courts.

d. The provisions of section 105 (2) CPC will not bar the appellant from challenging the order of remand passed by the First Appellate Court in the first round of Appeal, as per the ratio laid down by the Supreme Court in ***Krishna Pillai (Supra)***.

34. The first issue is with respect to whether the dismissal of the Writ Petition of the respondent by the learned Division Bench of this Court would constitute *res judicata* barring the Civil Suit. To consider the aforesaid it would be apposite to extract the order dated 30.11.1987 by the learned Division Bench which is as under:

“The decision has been taken on the basis of a fair and proper departmental enquiry. We find no reason to interfere. Dismissed.”

35. With utmost respect, the learned Division Bench appears to have considered the arguments addressed on behalf of the respondent herein and after such consideration, dismissed the Writ Petition. *Ex facie*, the



learned Division Bench had dismissed holding that the procedure followed by the Authorities was fair and proper. This Court is called upon to examine as to whether the same would constitute *res judicata*.

36. Though this Court is not and cannot examine the correctness of the said order, nor has it been called for, a perusal of the order dated 30.11.1987, makes it evident that the same was without any finding upon any issue of fact or law. The learned Division Bench of this Court seems to have made up its mind that the Competent Authority as well as the Appellate Authority under the Act and Rules, had acted fairly and afforded ample opportunity to the respondent to defend as well as present his case and thus, concluded that the facts obtaining before it did not warrant interference under Article 226 of the Constitution of India. However, so far as determination afresh of issues arising or challenge raised therein is concerned, one cannot discern such aspect from the perusal of order dated 30.11.1987 of the learned Division Bench. It also cannot be overlooked that the Writ Petition was dismissed *in limine* at the admission stage itself without calling for a response from the other side. In view whereof, this Court, keeping in view the settled position of law, is of the opinion that there was neither any “determination of issues” as contemplated under the doctrine of “*res judicata*” nor would it operate as a bar under the principles of constructive *res judicata*. The principles as to what constitutes “*res judicata*” or “*constructive res judicata*” is too well settled to brook any doubt. The order of learned Division Bench also would not fall within the definition of “*judgement*” though it lay to rest a controversy arising between the parties.



37. This view is further fortified by the judgement of the learned Full Bench of this Court in ***Jaswinder Singh Vs Mrigendra Pritam Vikramsingh Steiner***, reported in **2012 SCC OnLine Del 5506** whereby, relying upon the judgement of the Supreme Court in ***Babulal Shah Khimji Vs Jayben D. Kania***, reported in **(1981) 4 SCC 8**, this Court had in para 28, held that, the question as to the maintainability of appeals from orders passed by a learned Judge exercising ordinary original civil jurisdiction which are not appealable under Order XLIII Rule 1 CPC.

“28. The question as to the maintainability of appeals from orders passed by a learned Judge exercising ordinary original civil jurisdiction which are not appealable under Order 43 Rule 1 of the said Code has been examined by the Supreme Court in Shah Babulal Khimji v. Jayaben D. Kania (1981) 4 SCC 8. An appeal was held to be maintainable if the order was within the meaning of “Judgment”. If the order purports to decide valuable rights of parties and what are called the orders of the moment, an appeal was held to be maintainable if it is not categorized in the nature of an order which is appealable under Order 43 Rule 1 of the said Code. The expression “Judgment” has been held to be capable of taking three different characters. It may be a final Judgment, it may be a preliminary judgment or it may be an intermediary or interlocutory Judgment. The third category are cases which possess characteristics and trappings of finality and may have direct and immediate effect rather than an indirect or remote one. It is against such orders also that an appeal has been held to be maintainable while discussing the scope of clause 15 of the Letters Patent of the Chartered High Courts as the case emanated from the Bombay High Court. As noticed aforesaid that clause 10 of the Letters Patent of Lahore as applicable to Delhi is distinct on view of the absence of any ordinary original civil jurisdiction in the High Court Judicature at Lahore, not being a Presidency town.”



Though what was *in seisin* of the learned Full Bench was in respect of scope of intra Court appeal arising from the judgement of the Single Judge, however, it is an authority for what would constitute a “judgement”. Applying the guidelines of the learned Full Bench, *ex facie*, the order dated 30.11.1987 passed by the learned Division Bench of this Court in W.P.(C) No. 3025/1987 in the writ filed by respondent would not constitute a “judgement”.

38. Both the parties rely upon the judgement of the Supreme Court in ***Gulabchand (supra)***, particularly to para 53. The same is extracted hereunder:

“53. In *Daryao* case this Court had again dealt with the question of the applicability of the principle of *res judicata* in writ proceedings. The matter was going through very exhaustively and the final conclusions are to be found at p. 592. We may summarise them thus:

1. If a petition under Article 226 is considered on the merits as a contested matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution.

2. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.

3. If the petition under Article 226 in a High Court is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32.

4. Such a dismissal may however constitute a bar to a subsequent application under Article 32 where and if the facts thus found by the High Court be themselves relevant even under Article 32.

5. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the



dismissal would constitute a bar would depend on the nature of the order. If the order is on the merits, it would be a bar.

6. If the petition is dismissed in limine without a speaking order, such dismissal cannot be treated as creating a bar of res judicata.

7. If the petition is dismissed as withdrawn, it cannot be a bar to a subsequent petition under Article 32 because, in such a case, there had been no decision on the merits by the Court.”

The appellant is relying upon sub para (5) of para 53, whereas, the respondent is relying upon sub para (6) of the same paragraph. If one were to consider both the sub paragraphs (5) and (6) and construe them harmoniously and keeping in mind the ratio laid down therein, there is no doubt that any judgement or order, to be construed as *res judicata*, has to be a speaking one and contain reasons after the merits of the matter are considered. The findings of fact or issue, if they so arise, ought to have also been taken into account before the decision is rendered.

39. Applying the aforesaid principles to the facts obtaining in the present case, it is clear that the principles laid down in sub para (6) of para 53 of ***Gulabchand (supra)*** appears to be applicable. Thus, it cannot be asserted with certainty that the dismissal of the writ petition by the learned Division Bench, would constitute, in strict terms “*res judicata*” so as to bar the suit of the respondent.

40. However, having said that, whether or not the suit would be barred on the ground that the entire disciplinary proceedings, the order of dismissal and the rejection of the Appeal thereagainst by the



Appellate Authority under the CISF Act and the Rules is concerned, is altogether a different proposition.

41. It is one thing to say that the dismissal of the Writ Petition in limine is not a bar but altogether another thing to submit that once having exercised all the remedies available under the said Act and Rules thereunder, the respondent also having exercised the right to challenge the appellate order before the learned Division Bench of this Court, he would still be entitled to reagitate the dismissal, this time round, by way of filing a suit. This Court does not agree with the contentions of Mr. Saini on this aspect of the matter. This is for the reason that the Act and the Rules are a complete Code in itself where a show cause notice is issued, reply taken and considered, delinquent official chargesheeted, evidence lead, opportunity to cross examine is afforded, finally after providing ample opportunity of personal hearing, the order imposing punishment or exonerating the delinquent official is taken. All of the above is also preceded by an inquiry by the Inquiry Officer. All the above proceedings are in tune with the principles of Natural Justice. In case the arguments of Mr. Saini are applied it would result in an incongruous situation, where no such disciplinary proceedings would ever attain finality. Another counter proposition to that would be, if the delinquent official is not imposed any punishment, would that provide the department or the Force to challenge the same in a suit after exhausting the remedy by way of a writ petition under Article 226 of the Constitution of India? That is impermissible in law. Thus, what is right for the geese, is right for the gander too.



42. Another relevant provision which would need consideration in the present case is Section 9 CPC regarding jurisdiction of the Civil Court. It would be appropriate to extract Section 9 CPC, hereunder:

“Section. 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.

[Explanation I].--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”

Though, section 9 CPC, takes within its ambit all suits, however, wherever there exists any specific bar in a statute or an implied bar, the suit would be barred. In the present case, the respondent having exhausted the statutory remedy available to him under the Act and the Rules made thereunder, cannot be heard to say that despite a full round of disciplinary proceedings entailing all basic tenets of civil law jurisprudence including the principles of Natural Justice, can, after the same have been upheld by this Court in writ jurisdiction, would still be entitled to challenge the dismissal order or any purported defect in procedure in the disciplinary proceedings by filing a Civil Suit in a Civil Court. In the considered opinion of this Court, such suit would be impliedly barred.



43. As a result, this Court holds that the suit is not maintainable before the Civil Court, not for the reason of *res judicata* but for the aforesaid reasons.

44. The next issue argued by the learned counsel for the appellant was with respect to whether Rule 57 would specifically bar institution of a suit in respect of disciplinary proceedings initiated against members of the Force. To appreciate this issue, it would be apposite to extract Rule 57 hereunder:

“57. Other methods forbidden- The supervisory officers and enrolled members of the Force are forbidden from resorting to any method other than that prescribed in these rules for pressing their claims or for obtaining redress of alleged grievances or reversal, any such attempt on their part shall be deemed to be an act of indiscipline.”

So far as the language employed in Rule 57 is concerned, there appears to be no clear and unambiguous bar to the exercise of jurisdiction of Civil Courts. More particularly, for the reason that, if one were to construe the same as bar to Civil Courts’ jurisdiction, the same would not have provided for the consequence of such alleged transgression, inasmuch as it warns the defaulter of the attempt as an act of indiscipline. A provision of a statute has to be construed in the plain language in which it is framed and the intention of the framer ought to be gathered therefrom without adding or supplying missing links thereto. If one were to examine Rule 57 in that light, it appears that the framers did not have the bar to Civil Courts’ jurisdiction in mind and only wanted to bind the personnel within the framework of the Rules. Otherwise, the phrase *“any such attempt on their part shall be deemed to*



be an act of indiscipline”, would be rendered otiose. It is trite that the Courts, while interpreting a provision would give effect to the whole provision rather than split the same.

45. This Court is aware of the judgements rendered by the learned Coordinate Bench in *Ex. Const. Krishan Kumar (supra)*, *Ishwar Singh (supra)* and *Braham Pal Singh (supra)*. Upon a closer examination of the aforesaid judgement rendered by brother Justice Valmiki J. Mehta, this Court finds that none of the parties to the earlier cases had brought the last few words in Rule 57 to the attention of the Court then. In other words, the phrase “*any such attempt on their part shall be deemed to be an act of indiscipline*”, was not considered while rendering the judgements in the cases of *Ex. Const. Krishan Kumar (supra)*, *Ishwar Singh (supra)* and *Braham Pal Singh (supra)*. It is trite that no words in a statute can be overlooked or ignored, specially while the said provision is called upon to be interpreted. Particularly, in a situation like the present case, where Rule 57 is being considered as to whether it would completely oust the jurisdiction of the Civil Court in matters pertaining to the members or personnel of the Force. Thus, the said aspect not having been considered earlier, this Court, with utmost respect, is of the opinion, that the phrase as noted above calls for a re-look.

46. The relevant paragraphs of *Ishwar Singh (supra)* are extracted hereunder:

“9. In my opinion Rule 57 of the CISF Rules, and which rule comes after the rules providing for orders of the Disciplinary Authority; Appellate Authority and Revisional Authority, bars filing of a suit. Though the rule is not very happily worded,



however, the first part of Rule 57 of the CISF Rules will bar filing of a suit, with the second part of Rule 57 pertaining only to petitions which are the subject matter of Rule 56. Rules 56 and 57 of the CISF Rules read as under : -

“56. Petitions - (1) Any enrolled member of the Force may submit a petition in respect of any matter connected with his official position in which his personal interests are involved other than a matter covered by the rule relating to appeals and revision.

(2) Each such enrolled member of the Force shall submit a petition solely relating to his individual case.

(3) Joint petitions of any kind whatsoever shall not be taken notice of and submission of such petitions shall be deemed to be an act of indiscipline.”

(4) Such petition shall be in proper form and not couched in improper language and be submitted to the immediate superior even if the petitioner be on leave at the time. A petition submitted in contravention of this rule shall be summarily rejected.

(5) Such immediate superior shall submit it through his immediate superior to the authority competent to dispose it of. An officer superior to him may withhold any such petition if it is couched in intemperate language or is otherwise improperly written, in which case he shall inform the petitioner in writing that his petition has been withheld.

(6) In any subsequent petition to the competent authority, the petitioner shall also attach to his petition a copy of the order on his previous petition as communicated to him by his immediate superior officer.

57. Other methods forbidden - The supervisory officers and enrolled members of the Force are forbidden from resorting to any method other than that prescribed in these rules for pressing their claims or for obtaining redress of alleged grievances or reversal, any such attempt on their part shall be deemed to be an act of indiscipline.”

11. With utmost humility, I would like to note that the Judgment of the learned Single Judge dated 5.11.2015 in Anand Narayan's case (supra) talks of suit not being barred because of Section 9 CPC and under which provision a suit lies unless the suit is barred, however, the issue is not whether the suit is barred under Section 9 CPC but that when the suit is filed because the same is not barred under Section 9 CPC, the suit filed is however to be dismissed by application of the general principles of res judicata as per the judgment of the Supreme Court in the case of Ghulam Abbas (supra). Also, attention of the learned Single



Judge deciding Anand Narayan's case (supra) was not drawn to Rule 57 of the CISF Rules which in its first part bars the filing of a suit and as already discussed above.

12. Accordingly, since the Judgment of the learned Single Judge dated 5.11.2015 does not consider the binding precedent of the Supreme Court in Ghulam Abbas's case as also Rule 57 of the CISF Rules, and this Court being bound by the judgment of the Supreme Court in Ghulam Abbas's case, therefore in my opinion it has to be held that a suit cannot be filed against the orders which are passed by the statutory authorities under different Statutes, and that if orders of the statutory authorities passed under respective Statutes have to be challenged, then they can be only challenged by means of proceedings in a writ petition under Articles 227 and/or 226 of the Constitution of India and not by way of the suit. I would also note that in suits which are filed challenging the orders of the statutory authorities under the CISF Act a wrong practice has developed of evidence being led after framing of issues although evidence qua the charges/issues is already recorded before the departmental authorities and thus no evidence can thereafter be led again."

47. On a deeper consideration, this Court respectfully differs with the interpretation given to Rule 57. The question that needs to be determined is, as to why the framers would insert this phrase as part of Rule 57, in that, the same could have conveniently, been inserted or drafted as a separate rule. What appears to this Court is that the Rule itself is a warning or construed as a condition of Service, which, if violated, would be a misconduct by itself, rendering the violator liable to be proceeded against by way of disciplinary proceedings. By no stretch of imagination, can a provision of such nature be interpreted to be a bar to Civil Courts' jurisdiction other than to simply mean that a member of the Force who may resort to means other than those prescribed under the said Rules would render himself liable to be punished in accordance with the same, departmentally. Thus, there is a consequence attached to the said Rule which would at the best, for the appellant, be another



provision to initiate disciplinary proceedings against the violator, but nothing more. The language itself indicates that it is like any other residuary provision, generalized in its application upon the members of the Force. The language of Rule 57 has to be read as a whole and no part can be overlooked or ignored. Looking at Rule 57 from such angle, along with the phrase “*any such attempt on their part shall be deemed to be an act of indiscipline*”, it is evident that all that the framers had in mind while engrafting the said rule, was to use the same as a residuary provision and a condition of service, to initiate disciplinary proceedings, in case any member of the Force violates the mandate and nothing more.

48. Thus, this Court is of the view that there is no specific or express bar against Civil Courts’ jurisdiction. Having said that, the suit of the respondent is otherwise barred for the reasons given in the preceding paragraphs.

49. The last argument of the learned counsel for the parties is in respect of whether section 105(2) CPC, would bar the first appeal itself, for, the appellant never challenged the order of remand dated 11.03.1994 passed by the First Appellate Court in the first round. Section 105(2) CPC reads as under:-

“Section 105. Other orders.

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

*(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand 2*** from which an appeals lies does not appeal therefrom, he*



shall thereafter be precluded from disputing its correctness.”

50. The appellant relied upon the judgement of the Supreme Court in ***Krishna Pillai (supra)*** to buttress that provisions of section 105 (2) CPC will not bar the appellant from challenging the order of remand passed by the First Appellate Court in the first round of appeal section 105(2) CPC while laying challenge to the final judgement and decree passed by the learned Trial Court after such remand in the First Appeal filed by the appellant. Learned counsel for the appellant relied upon para 24 of ***Krishna Pillai (supra)*** which is extracted hereunder:

“24. Sub-section (2) of Section 105 of the Civil Procedure Code, 1908 provides that where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. The provision is not without exceptions and limitations. First is, when the order of remand is illegal, and more so, if it is without jurisdiction. (See Kshitish Chandra Bose v. Commr. of Ranchi.) The High Court had in exercise of second appellate jurisdiction illegally reversed the concurrent findings of fact and ordered remand. It was held that in an appeal to the Supreme Court from the final order of the High Court after remand, challenge even to the first order of the High Court making remand, and, all the proceedings taken thereafter as a result of the illegal order of remand, was available to be laid. When the matter reaches a forum, superior to one which had made the order of remand earlier, it can go into the question of legality or validity of the order of remand. The bar enacted by Section 105(2) applies up to the level of that forum which had remanded the matter earlier. Secondly, Section 105(2) has no applicability to the jurisdiction exercisable by this Court by reference to Article 136 of the Constitution. This is for the reason that no appeal lies to this Court against an order of remand; an appeal under Article 136 of the Constitution is only by special leave granted by this Court. It is settled law that Section 105(2) has no applicability to the Privy Council and to the Supreme Court. (Satyadhyan Ghosal v. Deorajin Debi.) In the



present appeal, preferred against the judgment and decree passed by the High Court in an appeal arising from the proceedings held pursuant to the earlier order of remand dated 10-2-1981, the correctness of the order of remand can be examined and gone into by this Court.”

(emphasis supplied)

From a closer reading of the aforesaid judgement of the Supreme Court in ***Krishna Pillai (supra)***, it is clear that the rigors of section 105(2) CPC is not a bar to the Supreme Court in view of its powers conferred by Article 136 of the Constitution of India. However, the Supreme Court has also laid down that such bar cannot be read into those orders of remand which are illegal or without jurisdiction.

51. When the ratio laid down in ***Krishna Pillai (supra)*** is applied to the facts of the present appeal, it is clear that the order of remand dated 11.03.1994 passed in the First Appeal filed by the respondent against the dismissal of his suit, would fall within the meaning of illegal order in view of the findings on the implied bar created by exhausting the remedies so prescribed under the Act and the Rules. Hence, to that extent, the bar under section 105 (2) CPC would not apply against the appellant.

52. In view of above, the suit being impliedly barred, the appeal of the appellants is allowed with the parties left to bear their own costs.

53. Pending applications, if any, also stand disposed of.

TUSHAR RAO GEDELA, J.

JUNE 01, 2023/rl