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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-1195 of 1993

Reserved on:02.05.2024

Pronounced on:31.05.2024

Vinod Kumar

...Appellant

Versus

Haryana Seeds Development Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate, for the appellant.

Dr. Neha Awasthi, Advocate for the respondents.

SUVIR SEHGAL, J.

1. Plaintiff-appellant is in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court.
2. Pleaded case of the plaintiff-appellant is that he was appointed as a Salesman/Marketing Clerk vide appointment order dated 22.10.1984, Ex.P1, on *ad hoc* basis. He was granted annual grade increment on completing one year of service and his name figured at serial number 29 in the seniority list. His services were governed by the Haryana Civil Service (Punishment & Appeal) Rules 1987, (for short – “the Service Rules”). By order dated 08.09.1988, Ex.P-7, he was dismissed from service on the

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allegation of pilferage of stock and embezzlement of money. Departmental appeal filed by him was dismissed by order dated 25.03.1989, Ex.P-9. He filed a suit for declaration for declaring both the orders as illegal, null and void and for a decree that he is entitled to work as Salesman/Marketing Clerk under the defendants, along with all consequential benefits.

3. Upon service, defendants appeared and contested the suit by raising various objections including the jurisdiction of the civil court to entertain the suit. On merits, the service particulars were admitted and it was submitted that the Government Service Rules are applicable to the employees of the defendants in the absence of their own rules and regulations. A stand was taken that a show cause notice dated 24.02.1988, Ex.D2 was issued to the plaintiff and he submitted a reply dated 02.03.1988, Ex.D3, admitting the lapses. A memorandum dated 08.06.1988, Ex.D4, was served, to which, plaintiff submitted a reply and after considering it, by order dated 08.09.1988, Ex.D6, he was dismissed from service. It was submitted that as the plaintiff had admitted the allegations, there was no need to issue a charge-sheet upon him. Defendants supported the appellate order and prayed for dismissal of the suit. Plaintiff filed a replication reasserting the claim. Issues were framed on the pleadings of the parties and after they led evidence and were heard, Trial Court by judgment dated 25.04.1991, decreed the suit. Plaintiff was ordered to be deemed to be in service and was held entitled to the arrears of pay as well as service benefits including seniority, promotion, etc. A decree was also passed that payment of arrears of salary be made to him within a period of three months, failing which, plaintiff would be entitled to earn interest at the rate of 6% per annum till realization. Defendants preferred an appeal, which was accepted by the



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learned Additional District Judge by a judgment dated 03.04.1993, whereby the First Appellate Court reversed the finding recorded by the Trial Court on issue number (ii) and came to the conclusion that the Civil Court did not have the jurisdiction to direct the reinstatement of the plaintiff. However, the findings recorded by the Trial Court under issue number (i) were endorsed by the learned Additional District Judge and it was held that the orders, Ex.P6 and P9, cannot be sustained in the eyes of law.

4. In the above backdrop, plaintiff is in second appeal before this Court.

5. Placing reliance upon the judgments of the Supreme Court in **Rajasthan State Road Transport Corporation and another Versus Mohar Singh (2008) 5 SCC 542** and **Rajasthan State Road Transport Corporation and another Versus Bal Mukund Bairwa (2009) 4 SCC 299**, counsel for the appellant has contended that the provisions of the Industrial Disputes Act, 1947, do not constitute an absolute bar to the jurisdiction of the Civil Court.

6. On the other hand, counsel for the respondents while supporting the impugned judgment and decree, has made a reference to **Rajasthan State Road Transport Corporation Versus Deen Dayal Sharma, (2010) 6 SCC 697** to urge that the Civil Court does not have a jurisdiction to entertain a suit pertaining to an industrial dispute.

7. I have heard counsel for the parties and considered their rival submissions as well as examined the record with their able assistance.

8. The answer to the opposing contentions of the counsel for both the parties can be found in the following observations of the Supreme Court in ***Bal Mukund Bairwa's case (supra):-***



“33. A dispute arising in between an employer and employee may or may not be an industrial dispute. The dispute may be in relation to or arising out of a fundamental right of the employee, or his right under a Parliamentary Act and the regulations framed thereunder, and/or a right arising under the provisions of the [Industrial Disputes Act](#) or the sister laws and may relate to same or similar rights or different rights, or even may be based on common law right or contractual right. The question in regard to the jurisdiction of the civil court must, therefore, be addressed having regard to the fact as to which rights or obligations are sought to be enforced for the purpose of invoking or excluding the jurisdiction of a civil court.

34. The appellant, as noticed hereinbefore, is State within the meaning of [Article 12](#) of the Constitution of India. If an act on its part is found to be wholly unreasonable or arbitrary, the same would be violative of [Article 14](#) of the Constitution of India. In certain situations, even gross violation of the principles of natural justice has been held to come within the ambit of [Article 14](#).

35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In [A.R. Antulay vs. R.S. Nayak](#) (1988) 2 SCC 602, this Court held:

"55.No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity."



36. *If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the [Industrial Disputes Act](#) or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in Rajasthan SRTC v. Mohar Singh (2008) 5 SCC 542. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the facts of each case.*

37. *If the infringement of the Standing Orders or other provisions of the [Industrial Disputes Act](#) are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.*

38. *Where the relationship between the parties as employer and employee is contractual, the right to enforce the contract of service depending on personal volition of an employer, is prohibited in terms of [Section 14\(1\)\(b\)](#) of the Specific Relief Act, 1963. It has, however, 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 service 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.

39. The appellant Corporation is bound to comply with the mandatory provisions of the statute or the regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act. It is also bound to follow the principles of natural justice. In the event it is found that the action on the part of 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.”

9. Adverting to the facts of the present appeal, it cannot be disputed that the defendant/respondent is a Government Corporation and is a ‘State’ within the ambit of Article 12 of the Constitution of India. Its employees are governed by the service rules framed by the Government. Plaintiff-appellant filed the suit averring that service rules, which are statutory in character, have been breached and the dismissal order is not sustainable. As the plaintiff-appellant was seeking enforcement of a right under the statutory regulations, his suit was maintainable and has been

rightly entertained and decreed by the Trial Court. The finding recorded by



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the Lower Appellate Court on the issue of jurisdiction is perverse and deserves to be set aside.

10. Coming to the judgment in *Deen Dayal Sharma's case (supra)*, relied upon by the counsel for the defendants-respondents, it may be noticed that the employee had filed a civil suit assailing the dismissal order on the ground that it is contrary to the Standing Orders, which provide for holding a departmental inquiry. Supreme Court held that the Standing Orders have no statutory force and they are not in the nature of delegated/subordinate legislation and their violation entitles an employee to appropriate relief which can be enforced by him only by raising an industrial dispute and not in the civil suit. The Court came to the conclusion that the civil court had no jurisdiction to entertain and try the suit in such circumstances. This judgment, therefore, does not help the respondent.

11. For the foregoing reasons, appeal filed by the plaintiff/appellant is accepted and the finding recorded by the First Appellate Court under issue number (ii) is reversed. It is held that the civil court had the jurisdiction to entertain the suit and the judgment and decree passed by the Trial Court is restored. Plaintiff/appellant would be deemed to continue in service as if the impugned dismissal order and subsequent orders had never been passed and he would also be entitled to the benefit of seniority, promotion, etc. He is held entitled to the arrears of salary, which shall be paid to him within a period of three months along with interest at the rate of 6% per annum till realization. In case, the plaintiff/appellant has attained the age of superannuation, during the pendency of the litigation, he would be entitled to the arrears of salary along with 6% p.a. interest till retirement.

13. Pending applications, if any, shall also stand disposed of.

31.05.2024

(SUVIR SEHGAL)
JUDGE

sheetal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No