

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.662 of 1989(O&M)

Reserved on: 20.12.2023

Date of Order:01.01.2024

M/s Punjab Khand Udyog Ltd.

.Appellant

Versus

Major Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Singh, Advocate
Mr. A.S.Pannu, Advocate
Ms. Anamika Sheoran, Advocate
for the appellant.

Mr. Harinder Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's (respondent herein) suit for grant of decree of declaration to the effect that his suspension order dated 31.01.1989, the charge sheet dated 04.02.1985 and the dismissal order passed on 23.05.198, were illegal, unlawful, void and he is entitled to be reinstated in service with all emoluments has been decreed by both the courts below.
2. On 13.09.1989, Hon'ble Mr. Justice J.V.Gupta, as he then was, passed the following order:-

“Major Singh plaintiff-respondent filed a suit for declaration to the effect that suspension order of the plaintiff dated 31st January 1985 and the charge sheet served on him dated 4th February 1985 as well as the dismissal order dated 23rd May 1985 of the plaintiff from

the post of Cane Clerk in Punjab Khand Udyog Limited, Zira was illegal, unlawful and void etc. and that he is entitled for reinstatement on the said post with all emoluments. The said suit was contested on behalf of the defendant-appellant. Two preliminary objections were raised in the written statement. One was that the defendant-Punjab Khand Udyog Limited is an instrumentality of the State Government and is a State under Article 12 of the Constitution of India and since notice under Section 80 of the Code of Civil Procedure, which was mandatory, has not been issued, the suit was liable to be dismissed. Second objection was that the suit was barred by jurisdiction as the matters of promotion/suspension/dismissal are internal functions of the management and the same cannot be interfered with by the civil Court and the proper Court is the Labour Court. Issue with regard to first objection was framed and was found against the defendant. No issue, however, was framed as to the jurisdiction of the Court in view of the second objection. However, the said point was allowed to be argued before the lower appellate Court and in view of that the first objection was abandoned. Learned Additional District Judge found as under :

“In view of the discussion above, it is apparent that objection No.2 of written statement has not been pressed by the defendant in the lower Court and the same stands waived. No plea of relationship of master and servant was taken up in the lower Court and the same cannot be allowed to be taken in appeal. Also that the appellant is a creation of State under a statute and hence, instrumentality of the State.”

It is this finding of the lower appellate Court which is being primarily challenged in this appeal. According to

learned counsel for the appellant, the defendant (Punjab Khand Udyog Limited) is a Company registered under the Indian Companies Act and is not a creation under any statute as held by the lower appellate Court. According to the learned counsel, since it is a question which goes to the very root of jurisdiction of the civil Court, it could be taken up at any stage. Once it is proved that the defendant is not a creation under any statute but is a Company registered under the Indian Companies Act, then no suit for declaration as such was maintainable. In support of his contention the counsel referred to Chandrika Misir and another Vs. Bhaiyalal, A.I.R. 1973 S.C. 2391 and M/s. Tata Consulting Engineers Vs. The Workmen Employed under them, 1980(1) S.L.R.629. It was held in Chandrika Misir's case (supra) that where the Court is inherently lacking jurisdiction the plea may be raised at any stage even if it was not raised in the trial Court. Such a plea can be raised even in execution proceedings on the ground that the decree is a nullity. Similar view was taken by the Supreme Court in M/s. Tata Consulting Engineers's case (supra) that the consent by a party cannot confer jurisdiction on Court. Thus argued the learned counsel, in order to find out, as to whether the civil Court has jurisdiction to try the suit or not, it has become necessary to get a report as to whether the defendant is a Company registered under the Indian Companies Act and if so, what is its effect?

He also contended that since the proceedings were ex parte against the plaintiff before the enquiry officer and since he declined to take part in the domestic enquiry, he could not complain that he was not given sufficient opportunity to put forth his case. In support of this contention reference was made to M.H.

Devendrappa Vs. Karnatka State Small Industries Development Corporation, (1988) 72 F.J.R 143. On the other hand, the counsel for the plaintiff-respondent submitted that since no such specific objection was taken in the written statement, the same could not be now taken for the first time at this stage of second appeal. In any case, argued the learned counsel, the civil Court has jurisdiction and, therefore, the decree has been rightly passed in favour of the plaintiff. On appreciation of the evidence, both the Courts below have concurrently found that the enquiry initiated against the plaintiff violated the principles of natural justice, the said finding was binding on this Court in second appeal.

After hearing the learned counsel for the parties, I am of the considered view that before deciding this appeal, it is necessary that a report be sent for from the trial Court on the following issue :

“Whether defendant No.1, i.e. the Punjab Khand Udyog Limited, is a Company registered under the Indian Companies Act and, if so, what is its effect?

As observed earlier, since it involved the question of jurisdiction of the civil Court, it has become necessary to get the said report before deciding the appeal on merits. Consequently, the trial Court is directed to send its report within three months of the date when the parties appear before it on 29th September, 1989. Each party will be given one opportunity to produce its evidence at its/his own responsibility.

The appeal be set down for final hearing after the report aforesaid is received from the trial Court. Trial Court record be also sent forthwith.”

3. Pursuant to the direction of the court, report from Additional

Senior Sub Judge, Zira, dated 22.12.1989, was received. The Civil Judge has concluded as under:-

“In view of the above discussion, it is held that defendant no.1 i.e. Punjab Khand Udyog Limited, Zira, is a company registered under the Indian Companies Act. It is further held that the relationship between defendant no.1 and the plaintiff was that of master and servant. It is further held that there was a personal contract of service between the plaintiff and defendant no.1. It is further held that the personal contract of service between the plaintiff and defendant no.1 cannot be enforced. It is further held that the suit of the plaintiff for declaration regarding his reinstatement on the post of Cane Clerk even on the setting aside of the alleged illegal orders is not maintainable. It is further held that the plaintiff is entitled to seek the damages and compensation for his alleged wrongful dismissal from service.”

4. On 21.11.2023, after hearing the learned counsel representing the parties, the following order was passed:-

“M/s Punjab Khand Udyog Ltd., the appellant was a company registered under the Indian Companies Act, 1956 and the State or the Central Government had no shareholding and it is not an instrumentality of the State. In these circumstances, the learned counsel representing the appellant submits that the suit filed by the respondents for grant of decree of declaration that his dismissal from service is illegal, unlawful, void ab initio, was not maintainable.

On the other hand, the learned counsel representing the respondents submits that the State of Punjab has notified the Industrial Employment (Standing Order) Punjab Rules, 1978 and any infringement of the

standing orders/rules would entitle the respondent to file a suit for declaration.

The attention of the learned counsel representing the respondents has been drawn to Section 14 of the Specific Relief Act, 1963. He prays for a short adjournment to examine the aforesaid issue in detail before further assisting the Court.

List on 18.12.2023, in the urgent list.

The learned counsel representing the respondents has filed written synopsis, which is taken on record.”

5. Once again the learned counsel representing the parties have been heard at length and the Court with their able assistance has perused the paper book.

6. The learned counsel representing the appellant has informed the court that Punjab Khand Udyog Limited stands substituted by Zira Cooperative Sugar Mills Limited, Zira vide order dated 09.02.2017, which undergoing the liquidation process.

7. The learned counsel representing the appellant while relying upon the report submitted by the Additional Senior Sub Judge, Zira, submits that the jurisdiction of the civil court to grant decree of declaration indirectly results in a decree for specific performance of the contract of personal service and that is barred under Section 14 of the Specific Relief Act, 1963 (hereinafter referred to as ‘the 1963 Act’)

8. On the other hand, the learned counsel representing the respondent vehemently contended that the civil suit is maintainable because both the courts have found that there is violation of Rule 27 of the Industrial Employment (Standing Orders) Punjab Rules, 1964(hereinafter referred to

as ‘the 1964 Rules’) which have been notified under Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as ‘the 1946 Act’). It is submitted that the violation of Rule 27 of the 1964 Rules has been established by the respondent and therefore, now the court shall not interfere with the findings of fact arrived at by the courts below.

9. This court has considered the submissions of the learned counsel representing the parties and analyzed the arguments along with the requisitioned record.

10. A five Judge Bench of the Supreme Court in **Sirsi Municipality by its President, Sirso vs. Cecelia Kam Francis Tellis, (1973) 1 SCC 409,** after interpreting Section 14 of the 1963 Act, held that except the employees governed with the provisions of the Industrial Disputes Act, 1947, there is no provision for reinstatement of the employee of private organization which are not instrumentality of the government. It was also held that in an ordinary relationship of master and servant governed purely by contract, a declaration with respect to the unlawful termination would indirectly amount to the specific performance of contract of personal service which is not permissible under the provisions of the 1963 Act. Similar view was expressed by the Supreme Court in **Executive Committee of Vaish Degree College vs. Lakshmi Narain, (1976) 2 SCC 58.** With respect to cooperative societies, the Supreme Court in **(2017) 5 SCC 623** held that the suit for declaration that the employee is entitled to be reinstated is not maintainable. In **Chander Kant Tuka Ram Nigam vs. Municipal Corporation of Ahmedabad, (2002) 2 SCC 549,** the dispute with respect to the illegal termination of service of workmen covered by the Industrial

Disputes Act, 1947 was held to be maintainable before appropriate forum created under the Industrial Disputes Act, 1947 and the jurisdiction of the civil court was impliedly barred. A three Judge Bench in **Rajasthan State Road Transport Corporation vs. Krishna Kant and others, (1995) 5 SCC 75** also decided in the similar manner, however, it was held that all the matters pending in the first and second appeals shall remain unaffected.

11. On one hand, the civil court lacks jurisdiction to pass a decree for grant of declaration for letting the plaintiff continue in service, by declaring his dismissal bad as it results in grant of decree for specific performance of contract of personal service which is not permissible under the provisions of the 1963 Act. On the other hand, the matter has been pending in the courts for 38 years. It may be noted here that the learned counsel representing the respondent does not dispute the factual finding recorded by the Senior Sub Judge in its report dated 22.12.1989, however, he submits that the civil court has the jurisdiction to decide the matter. In support of the aforesaid contention, the learned counsel representing the respondent mainly relies upon the judgment passed by the Supreme Court in **The Premier Automobiles Limited vs. Kamlakar Shantaram Wadke and others, (1976) 1 SCC 496.**

12. This court has carefully read the aforesaid judgment. In the aforesaid judgement, it has held that where the right and the obligation arise out of general law, the civil court has the jurisdiction to decide the dispute. However, it was held that if the dispute arises from infringement of the provisions of the Industrial Disputes Act, 1947, the jurisdiction of the civil court shall be excluded. The learned counsel further relies upon the

judgment passed in the **Rajasthan Road Transport Corporation vs. Krishna Kant etc. AIR 1995 SC 1715**. In the aforesaid case, the Supreme Court also held that where the dispute involves the recognition, observance or enforcement of any of rights or obligations created by the provisions of the Industrial Disputes Act, 1947, the only remedy left with the aggrieved is to approach the forum created under the said Act. Similarly, the 1946 Act was treated as a sister enactment of the Industrial Disputes Act, 1947, and then the only remedy is to approach the forum created under the Industrial Disputes Act, 1947. Similar view was expressed in **Rajasthan Road Transport Corporation and another vs. Bal Mukand Bairwa, (2009) 4 SCC 299**, wherein it was held that when the relief claimed arises or is based on provisions of Industrial Disputes Act, 1947, or the subsidiary law made thereunder, the exclusive jurisdiction to entertain the same lies with the 'Labour Court' and jurisdiction of the civil court in those particular cases is expressly barred.

13. Keeping in view the aforesaid facts and discussion, this court is left with no choice but to relegate the respondents to the alternative remedy available under the Industrial Disputes Act, 1947.

14. With these observations, the appeal is disposed of.

15. All the pending miscellaneous applications, if any, are also disposed of.

01st January, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO