Jitendra Nath Biswas

Vs.

M/S. Empire of India & Ceylone Tea Co. and Another

Civil Appeal No. 1750 of 1974

(K. N. Saikia, G. L. Oza JJ)

01.08.1989

JUDGMENT

OZA, J :-

This appeal on leave has been filed against the judgment of the Gauhati High Court delivered in Civil Revision No. 96 of 1973 decided on March 7, 1974. The short question that arises in this appeal is in respect of the jurisdiction of the civil court to entertain a suit that was filed against the respondent defendant. The appellant plaintiff was an employee of M/s Empire of India and Ceylone Tea Co. Pvt. Ltd., Calcutta. The Manager of the company who was defendant 2, on 16th October 1971 served a notice on the appellant plaintiff asking him to explain certain charges of misconduct. In the course of domestic enquiry held by the management, the appellant plaintiff was ultimately dismissed from service on 28th November, 1971. According to the appellant plaintiff the order of dismissal is contrary the provisions of the Standing Orders framed under Industrial Employment (Standing Orders) Act, 1946 and on this ground he sought the relief of declaration that the dismissal is null and void and inoperative as he was not guilty of any misconduct and as no enquiry was conducted, the dismissal was bad in accordance with the Standing Orders. He also sought the relief of back wages and injunction not to give effect to the order of dismissal. This suit was filed by the appellant plaintiff before the court of Munsif. The defendant respondent in their written statement raised the plea that the suit is not maintainable as the relief which is sought is available to the appellant plaintiff under Section 2A the Industrial Disputes Act, 1947. It was also pleaded that the suit is not maintainable under Section 14(1)(b) of the Specific Relief Act and that the civil court has no jurisdiction to entertain the suit. The trial court on the basis of these pleadings framed two preliminary issues which were :

(i) Whether the suit is maintainable in the present form ?

(ii) Whether this Court has jurisdiction to try the suit ?

The trial court came to the conclusion that the civil court has the jurisdiction to try the suit and the suit is not barred because of Section 14(1)(b) of the Specific Relief Act. Against this order of the trial court a revision petition was taken to the High Court and by the impugned judgment the High Court held that the nature of relief which was sought by the appellant plaintiff was such which could only be granted under the Industrial Disputes Act and therefore the civil court had no jurisdiction to try the suit.

2. Learned counsel for the appellant on the basis of language of Section 9 of the Code of Civil Procedure contended that the civil court will have jurisdiction to try all kinds of suits except those

which are either expressly or impliedly barred and on this basis it was contended that there is no express bar on the jurisdiction of the civil court and the High Court was not right in reaching the conclusion that it was impliedly barred whereas learned counsel for the respondent contended that the relief which was sought by the appellant plaintiff in substance was the relief of reinstatement with back wages which relief is not the right of the appellant plaintiff under the contract or under the civil law. This right is only conferred on him because of the Industrial Disputes Act and the relief is available only in the Industrial Disputes Act. The Act itself provides the procedure and remedy and it is not open to the appellant to approach the civil court for getting the relief which he could only get under the scheme of the procedure of conciliation, reference to the labour court and ultimately decision of the labour court. It was in the scheme of the Industrial Disputes Act itself that the enforcement of the Standing Orders could be made and an order which is not in accordance with the Standing Orders could be set aside and the relief as was claimed by the appellant plaintiff could be granted. It is in this view that the jurisdiction of the civil court is impliedly barred, Learned counsel placed reliance on the decision of this Court in Bombay Union of Journalists v. State of Bombay ((1964) 6 SCR 22 : AIR 1964 SC 1617 : 1964 1 Lab LJ 351).

3. Section 9 of the Code of Civil Procedure reads :

> 9. Courts to try all civil suits unless barred. - The courts shall (subject to the provisions herein contained) have jurisdiction try all suits of a civil nature excepting suits of which their cognizance is either expressly of 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.

It is clear that wherever the jurisdiction of the civil court is expressly or impliedly barred, the civil court will have no jurisdiction. It could not be disputed that a contract of employment for personal service could not be specifically enforced and it is also clear that except the industrial law, under the law of contract and the civil law, an employee whose services are terminated could not seek the relief of reinstatement or back wages. At best he could seek the relief of damages for breach of contract. The manner in which the relief has been framed by the appellant plaintiff in this case, although he seeks a declaration and injunction but in substance it is nothing but the relief of reinstatement and back wages. The relief could only be available to a workman under the Industrial Disputes Act.

4. It is not disputed before us that the Industrial Disputes Act was applicable to the present case and it is also not disputed that the Industrial Employment (Standing Orders) Act was also applicable. It is also not in dispute that the enquiry for misconduct was conducted against the appellant in accordance with the Standing. Orders and the main plea which was raised by the appellant plaintiff was that the enquiry was not strictly in accordance with the Standing Orders. It is in this context that the learned Judge of the High Court came to the conclusion that the civil court will have no jurisdiction to try the present suit.

5. Learned counsel appearing for the appellant plaintiff mainly contended that in the scheme of the

Industrial Disputes Act, the starting point for an Industrial dispute is the conciliation proceedings and if the conciliation proceedings fail then the conciliation officer is expected to submit his report to the government as contemplated under Section 12 and thereafter it is the discretion of the government to make a reference to the labour court. He frankly conceded that if a reference is made them the labour court will have jurisdiction to determine the dispute as was raised by the appellant before the civil court but according to the learned counsel as firstly it is the discretion of the conciliation officer to proceed with the conciliation proceedings and even after the report of the conciliation officer, It is the discretion of the State Government to make a reference or not. Thus it could not be said that there is a remedy available to the appellant under the scheme of the Industrial Disputes Act and thus the jurisdiction of the civil court could not be barred by implication. Learned counsel placed reliance on the decision in Calcutta Electric Supply Corporation Ltd. v. Ramratan Mahato (AIR 1973 Cal 258 : 77 Cal WN 317 : (1973) 1 SLR 194). Learned counsel for the appellant also contended that the decision in Dhulabhai v. State of Madhya Pradesh (AIR 1969 SC 78 : 22 STC 416 : (1968) 3 SCR 662) also helps him to some extent. On the other hand the learned counsel for the respondent contended that in view of decision in Bombay Union of Journalists case ((1964) 6 SCR 22 : AIR 1964 SC 1617 : 1964 1 Lab LJ 351) the discretion of the government to make a reference or not is not arbitrary and in appropriate cases if the government chooses not to make a reference, a direction could be issued under Article 226 by the High Courts. It was contended that after this decision of this Court, the contention that remedy under the Industrial Disputes Act is merely discretionary is not at all available to the appellant. Learned counsel also placed reliance on the Dhulabhai case (AIR 1969 SC 78 : 22 STC 416 : (1968) 3 SCr 662) and Nanoo Asan Madhavan v. State of Kerala ((1970) 1 Lab LJ 272 (Ker HC))

6. It is not in dispute that the dispute which was raised by the appellant plaintiff fell within the ambit of the definition of 'industrial dispute' as defined in Section 2(k) of the Industrial Disputess Act. It is also not in dispute that the dispute can be taken up by conciliation officer under Section 12. Section 12 of the Industrial Disputes Act provides that when the conciliation officer fails he has to make a report a provided in sub-clause (4) of Section 12. Section 12 reads :

> 12. Duties of Conciliation Officers :- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall hold conciliation proceedings in the prescribed manner.
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> (2) The conciliation officer shall for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of including the parities to come to a fair and amicable settlement of the dispute.
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> (3) If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate government (or an officer authorised in this behalf by the appropriate Government) together with a memorandum of the settlement signed by the parties to the dispute.
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> (4) If no such settlement is arrived at the conciliation officer shall as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof,

together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate government is satisfied that there is a case for reference to a Board (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate government.

Provided that subject to the approval of the conciliation officer. the time for the submission of the report may be extended by such period as may be agreed upon in writing be all the parties to the dispute.

Sub-clause (5) provides for making a reference by the State Government to a labour court or an appropriate Tribunal. In Bombay Union of Journalists case ((1964) 6 SCR 22 : AIR 1964 SC 1617 : 1964 1 Lab LJ 351) it has been held that the discretion of the government is a discretion which has been exercised not arbitrarily and therefore it could not be said that reference to the labour court or tribunal not available to a worker who raise an industrial dispute. It was observed : (SCR pp. 27-28)

This argument must be rejected, because when the appropriate government considers the question as to whether a reference should be made under Section 12(5), it has to act under Section 10(1) of the Act, and Section 10(1) confers discretion on the appropriate government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted under Section 12(4) the appropriate government ultimately exercises its power under Section 10(1), subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made under Section 12(4). This question has been considered by this Court in the case of the State of Bombay v. K. P. Krishnan ((1961) 1 SCR 227 : AIR 1960 SC 1223 : 19 FJR 61 : (1960) 2 Lab LJ 592). The decision in that case clearly shows that when the appropriate government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider, prima facie, the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate government may take that into account in deciding whether a reference should be made or not. It must, therefore be held that a prima facie examination of the merits cannot

be said to be foreign to the enquiry which the appropriate government is entitled to make in dealing with a dispute under Section 10(1), and so, the argument that the appropriate government exceeded is jurisdiction in expressing its prima facie view on the nature of the termination of services of appellants 2 and 3, cannot be accepted.

It is therefore clear that in view of language of Section 10 read with Section 12(5) as has been held by this Court an adequate remedy is available to the appellant plaintiff under the scheme of the Industrial Disputes Act itself which is the Act which provides for the relief of reinstatement and back wages which in fact the appellant sought before the civil court by filing a suit. Section 10 of the Industrial Disputes Act reads :

> 10. Reference of dispute to Boards, Courts or Tribunals. - (1) Where the appropriate government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by the order in writing, -
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> (a) refer the dispute to a Board for promoting a settlement thereof; or
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> (b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or
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> (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
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> (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication :

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced :

> Provided also that where the dispute in relation to which the Central Government is the appropriate government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

It is therefore clear that this Act i.e. Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances therefore there is an apparent implied exclusion of the jurisdiction of the civil court. In Dhulabhai case (AIR 1969 SC 78 : 22 STC 416 : (1968) 3 SCR 662) a five Judges Bench of this Court considered the language of Section 9 and the scope thereof in respect of exclusion of jurisdiction and it was observed : (AIR p. 89, para 31)

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all question about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

It is therefore clear that the scheme of the Industrial Dispute Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies which are available under this Act and for which a complete procedure and machinery has been provided in this Act.

7. Under these circumstances therefore so far as the present suit filed by the appellant plaintiff is concerned, there appears to be no doubt that civil court had no jurisdiction and the High Court was right in coming to the conclusion. The appeal is therefore dismisses but as it is an appeal filed by an employee who lost his employment long ago, parities are directed to bear their own costs.

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