SUPREME COURT OF INDIA

B.S. Bharti

Vs.

I.B.P. Company Limited

C.A.No.682 of 2001

(N. Santosh Hegde and S. B. Sinha JJ.)

25.08.2004

JUDGMENT

Santosh Hegde, J.

1. This appeal arises out of the judgment of High Court of Delhi made in RFA No. 23 of 1989 whereby the High Court allowed the appeal filed by the respondent herein and set aside the judgment and decree of the Trial Court consequently dismissing the suit filed by the respondent herein. Brief facts necessary for the disposal of this appeal are as follows:-

2. Appellant herein was employed by the respondent company in the year 1971 in its I.B.P. Depot, Shakur Basti, Delhi as a Fitter on daily basis. He continued to work in that capacity till 23rd of October, 1973 when the respondent treated his appointment as on probation for a period of six months from 23rd of April, 1973. At the end of that period the respondent extended the period of probation for a further period of 3 months without confirming his appointment. Being not satisfied with the performance of the appellant, on 24th of January, 1974 it terminated the service of the appellant. The appellant tried to raise an industrial dispute questioning his termination which was rejected by the Government concerned. Hence, he filed a suit in the Court of Sub Judge, Ist Class, Delhi praying for a decree of Rs. 10, 993.53/- towards arrears of salaries on the ground that his termination was illegal, malafide, wrongful, without authority of law, without jurisdiction and being against principles of natural justice and for a declaration that he ought to be continued in employment with full salary and allowances and bonus etc. The Trial Court framed the following issues:-

> "(1) Whether the plaintiff has no civil rights enforceable by a civil court as alleged in preliminary objections of the written statement ? O.P.D.
>
> (2) Whether the order of termination dated 24-1-1974 is illegal, malafide, wrongful and against the principal of natural justice, if so, its effect ? O.P.P.
>
> (3) Whether the plaintiff is entitled to the amounts claimed in the suit ? O.P.P.

(4) Relief.

3. After trial, the Trial Court decreed the suit of the appellant. Being aggrieved by the judgment and decree of the Trial Court the respondent herein preferred a Regular First Appeal before the High Court of Delhi and by the impugned judgment the High Court following a judgment of this Court in the case of Rajasthan State Road Transport Corporation & Another Vs. Krishna Kant & Others. allowed the appeal, set aside the judgment and decree of the Trial Court. While doing so, it held that an amount of Rs. 10, 993.53/- which was paid to the plaintiff-appellant at the time of admission of the appeal need not be refunded to the respondent therein, i.e. the appellant herein. As stated above, it is against the said judgment of the Appellate Court plaintiff-appellant is before us.

4. As noted by us hereinabove the prayer of the appellant to refer the dispute to Industrial Tribunal/ Labour Court was refused by the appropriate Government on 1-1-1975. The appellant has not challenged that order till date. He filed a suit in the year 1975 without making an effort to get his dispute settled through the provisions of the *Industrial Employment in (Standing orders) Act, 1946* which even according to him was applicable to him, and the remedy for which was under the provisions of the Industrial Disputes Act which in term clearly prohibits maintainability of a civil suit.

5. This Court in the case of Rajasthan State Road Transport Corporation & Another (supra) after considering various judgments rendered earlier in these questions laid down the principles applicable in regard to seeking relief in labour disputes which are as follows:-

"We may now summarise the principles flowing from the above discussion:-

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

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2 (k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either

treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided.

The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislature to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly -- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

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

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

6. The High Court considered these principles laid down by this Court in Rajasthan State Road Transport Corporation & Another case (supra) and rightly came to the conclusion, the principles as laid down by this Court in paragraphs 2 and 3 clearly apply to the facts of the appellant's case. Hence, a civil suit questioning the termination of service and ancillary relief as sought for in the suit filed by the appellant herein was not maintainable and the only remedy was to approach the forum created under the Industrial Disputes Act. It is to be noticed that the appellant did invoke the provisions of the Industrial Disputes Act for getting the dispute referred to an appropriate forum under the said act for an adjudication but he

failed and he did not pursue the remedy any further though such refusal could have been challenged by way of a writ petition. He having failed to do so he cannot then resort to a remedy by way of a civil suit which is otherwise not maintainable in law.

7. We think the High Court was justified in coming to this conclusion.

8. However, the learned counsel for the appellant relied on para 37 of the Rajasthan State Road Transport Corporation & Another, wherein this Court having held that the civil court had no jurisdiction in regard to a dispute pertaining to the workman and management which is otherwise covered by the Industrial Disputes Act held thus :-

> "It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decree have been passed by the trial court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the trial court shall be governed by the principles enunciated herein as also the suits and proceedings to be instituted hereinafter".

9. Based on the above observations of the Court, the learned counsel submitted that the principle of relief enunciated in the said paragraph of the judgment of this Court ought to have been extended to him and the relief granted by the Trial Court ought to have been affirmed. It is to be noted in this context this principle does not apply to cases wherein the efforts of the workman to get the dispute referred to adjudication to an appropriate forum under the Industrial Disputes Act has been rejected. As stated above, in cases where the application for reference under the provisions of the Industrial Disputes Act has been rejected by the appropriate authority, the aggrieved party should pursue the same by way of a writ petition and if possible get the dispute referred under the Industrial Disputes Act. If he fails to do so even after such attempt or fails to make such an attempt, the directions issued in para 37 of the above judgment in the case of Rajasthan State Road Transport Corporation (supra) does not apply.

10. In the said view of the matter, we find no reason to interfere with the judgment of the High Court. This appeal fails and the same is dismissed.