Beofore V.K. Bali & K.S. Garewal, JJ.

STATE OF PUNJAB AND ANOTHER,—Appellants

versus

DHARAM SINGH & ANOTHER,—Respondents

L.P.A. No. 706 of 1996

in

CWP No. 16214 of 1994

29th July, 2004

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S. 10(1)(c)—Code of Civil Procedure, 1908—S. 11—Termination of services of a Conductor pursuant to departmental enquiry—Workman failing in Civil Court—Industrial dispute raised—Maintainability of the reference—Labour Court finding the reference to be maintainable and ordering reinstatement with continuity of service and full back wages—High Court dismissing petition of the management—Challenge thereto—Whether jurisdiction of Civil Court to entertain such a suit is barred—Held, no—Civil Court has jurisdiction to try all suits of Civil nature unless there is express or implied bar under any statute, rule or regulation—Workman has a choice either to challenge the order of his termination before Civil Court or seek his remedy under the provisions of the 1947 Act—Having lost his matter before the Civil Court the workman has no right to re-agitate the matter before the Labour Court—Charges of embezzlement of Rs. 6.25 P. only against workman not proved—Record of workman of preious 10 years was clean and after reinstatment in 1994 remained unblemished—Having lost in civil Court even though it is not permissible to rake up the issue once over again yet with a view to do complete justice High Court has jurisdiction to order continuance of the petitioner in service—Procedural technicalities cannot come in the way of dispensation of justice—However, he is not entitled to back wages as granted by the Labour Court.

Held, that the petitioner having lost his matter before the Civil Court, could not have re-agitated the matter before the Labour Court. Reference, before the Labour Court was, thus, not competent.

(Para 9)

Further held, that this Court under Article 226 of the Constitution of India, can issue orders in equity and while doing so, procedural technicalities cannot come in the way of dispensation of justice. If it be the fact that the petitioner was not at fault at any stage and the charge framed against him with regard to embezzlement had since not been proved and it is rather a case where the petitioner became victim of circumstances, the Court cannot shut its eyes to such stark realities and has, thus, to find out as to what orders should be passed so as to dispense justice. In our considered view, the ends of justice would be met if the petitioner is not paid back wages from the date his services were terminated, till such time he was reinstated and that he should be allowed to complete the tenure and quit the same only on superannuation, unless of course, he may indulge into such activities that may call for any action against him.

(Para 14)

Nirmaljit Kaur, Addl. A.G. Punjab *for the appellant.*

Gaurav Chopra, Advocate, *for the respondent.*

JUDGMENT

V.K. BALI, J. (ORAL)

(1) The controversy in the present appeal pertains to the entitlement of the petitioner in the original lis to seek reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') when, concededly he had already even though unsuccessfully raked up the issue of termination of his services before the Civil Court, wherein, on the plea raised by the respondent-State that Civil Court had no jurisdiction to entertain and try the suit, an issue was, indeed, framed findings on which were returned against the respondent-State but wherein, the issue on merits was determined against the petitioner.

(2) The facts giving rise to the present Letters Patent Appeal reveal that Government of Punjab referred the following industrial dispute between the petitioner (respondent No. 1 in the present appeal) and the management, which happens to be the State of Punjab, for adjudication :—

> "Whether termination of the services of Shri Dharam Singh, workman is justified and in order ? If not, to what relief/ exact amounts of compensation is he entitled ?"

(3) Inasmuch as, one of the objections raised in the reply filed on behalf of the management before the concerned Labour Court was that the reference for the same relief had since been adjudicated by the Civil Court, the same was not maintainable, one of the issues that, thus, came to be framed by the Labour Court was with regard to maintainability of the reference.

(4) Learned Labour Court returned the finding on the aforesaid issue in favour of the workman and against the management holding that jurisdiction of the Civil Court was barred. While deciding the issue merits in favour of the workman, he was ordered to be reinstated with continuity of service and full back wages minus the amount of four increments. This order was challenged by the State in Civil Writ Petition No. 16214 of 1994, which has since been dismissed by learned Single Judge. Hence, the present Letters Patent Appeal under Clause X of the Letters Patent.

(5) Ms. Nirmaljit Kaur, learned Additional Advocate General, Punjab, appearing on behalf of the appellant, vehemently contends that it was not the kind of dispute where jurisdiction of the Civil Court might have been barred. It was a case of termination of services of the petitioner pursuant to departmental enquiry. The petitioner had a choice either to approach the Labour Court under the provisions of the Act or to rake up the matter of termination of services before Civil Court. It is then urged by her that even if it is assumed that the Civil Court had no jurisdiction in the matter yet, the petitioner having lost the matter before the Civil Court wherein, issue with regard to jurisdiction was framed and determined in favour of the petitioner, he could not be permitted to urge that Civil Court decision is not binding on him as the same had no jurisdiction in the matter.

(6) We find considerable merit in the contention of learned counsel, as noted above. It is clear from the reading of Section 9 of the Code of Civil Procedure that Civil Courts have the jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The dispute pertaining to termination of services is essentially of civil nature and unless, therefore, its cognizance may be expressly or impliedly barred under any statute, rule or regulation, the same can be entertained and tried by the civil Court. It is not disputed that provisions of the Act do not bar cognizance of a suit, such as termination of services by the civil Court.

There being no express bar contained under the statute, the implied bar for resort to Civil Court, in considered view of this Court, can only pertain to the matters, which are in exclusive domain of the Industrial Tribunal or Labour Court, as the case may be, To illustrate, right of precedure in the mater of appointment of retrenched workman, who had to be retrenched on account of surplus-age and other allied reasons, is in the exclusive domain of the authorities constituted under Section 25-H of the Act. Such a right is not normally available under the civil law. It is matters of the kind, as mentioned above, regarding which, it can well be urged that jurisdiction of civil Court to take cognizance may be impliedly barred. Facts of the present case do not reveal it to be the case of a kind which might have been in the exclusive domain of the authorities constituted under the Act. The petitioner had, thus, a choice either to challenge the order of his termination before the Civil Court or even seek his remedy under the provisions of the Act of 1947. Hon'ble Supreme Court in **The Premier Automobiles Ltd.** *versus* **Kamlakar Shantaram Wadke and other (1)** in the context of Section 9 of Code of Civil Procedure in relation to industrial dispute culled out the following principles applicable to the jurisdiction of Civil Court :—

> "(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
>
> (2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
>
> (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
>
> (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

(1) AIR 1975 S.C. 2238

(7) Perusal of the principles, as extracted above, would manifest that it is principle No. 2, which was applicable to the facts of this case as the dispute may be industrial but it had arisen out of a right or liability under the general common law. Jurisdiction of Civil Court was, thus, alternative, leaving the petitioner to choose his remedy. Mr. Chopra, learned counsel representing the petitioner, however, relies upon the judgment of Hon'ble Supreme Court in **Jitendra Nath Biswas's case (supra)** wherein, it was held that jurisdiction of the Civil Court to entertain suit would be barred by implication where right is conferred on a workman for his reinstatement and backwages if the order of termination or dismissal is not in accordance with the standing orders. Facts of the case aforesaid reveal that Manager of the company served a notice on the appellant asking him to explain certain charges of misconduct. In the course of domestic enquiry held by the management, the appellant was ultimately dismissed from service. As per the case set out by the appellant, order of dismissal was contrary to 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 order was null and void and inoperative as he was not guilty of any misconduct as no enquiry was conducted. Dismissal order, it was stated by him, was bad in view of the Standing Orders. This judgment, it appears to us, makes no departure from the principles culled out in judgment of Hon'ble Supreme Court in **The Premier Automobiles Ltd's case (supra)** as the relief asked for was on the dint of Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. It is under the provisions of the said Act the relief was available to the suitor in the said case. We have already held that if relief asked for may depend upon the provisions of the Act or the allied Acts, covering the industrial disputes, even if jurisdiction of civil court may not be specifically barred, it can be urged to have been impliedly barred.

(8) We are of the firm view that having exhausted the remedy before the civil court for which, civil Court had the jurisdiction and, indeed, as mentioned above, so was the finding of civil Court, the petitioner could not have availed the remedy under the Act. That apart, second contention raised by Ms. Nirmaljit Kaur, learned Additional Advocate General, Punjab, as mentioned above, also appears to be equally attractive and correct. The petitioner, having exhausted the remedy, could not have availed another as that procedure or course of action, if permitted, would result into endless litigation.

The principle enshrined under Section 11 of Code of Civil Procedure embodies public policy. Strict provisions of Section 11 of Code of Civil Procedure may not as such be applicable but the principle that no one should be vexed twice for the same cause of action can well be implied within the Forums other than the Civil Court as well. A Division Bench of this Court in **Central Co-operative Consumers Stores** *versus* **Home Secretary, Chandigarh and others. (2)** held that when issue referred to the Labour Court had already been decided in the earlier proceedings between the same parties, the same cannot be decided afresh by the Labour Court or Industrial Tribunal and that effort to re-agitate the matter cannot be sustained. Another Division Bench of this Court, of which one of us (V.K. Bali, J.) was a member, in **The Punjab State Co-operative Bank Limited Banking Square, Sector 17, Chandigarh, through its Managing Director,** *versus* **Presiding Officer, Labour Court, U.T., Chandigarh, Sector 17, Chandigarh, District Courts Complex and another (3),** held that when order terminating services of the petitioner was held to be legal by the High Court, the same could not be challenged before the Labour Court. Yet another Division Bench of this Court in **Ashok Kumar** *versus* **Presiding Officer and others, (4)** on facts where the petitioner therein had challenged the order of terminating his services by filing a civil suit and then approached the Labour Court for the same relief, which he had asked for before the Civil Court, held as follows :—

> "This then takes us to the question of the effect of the judgment in Civil suit on the rights of the workman before the Labour Court. Counsel for the petitioner has relied on the judgement in C.W.P. 16214 of 1994 General, Manager, Punjab Roadways and another Vs. Dharam Singh and another. It is a judgement of learned Single Judge of this Court in which he has held that the decree and judgement of the civil Court are not binding on the Labour Court and the same does not operate as res judicata. The reason for coming to this conclusion, according to learned Single Judge is that the jurisdiction of the Civil court is excluded to try such a suit and the civil court has no jurisdiction to grant a declaration that the order of termination is bad as the dispute relates to an industrial dispute. As against this, there is a judgement in the case of Sukh Ram Vs.

(2) 1996 (1) R.S.J. 519
(3) 1992 (2) R.S.J. 784
(4) 2001 (1) S.L.R. 37

State of Haryana, 1982 (1) S.L.R. 663. It is a judgement of Full Bench of this Court in which it has been laid down that dispute in connection with an industrial worker has got two alternative remedies available to him (i) to go to civil court and (ii) under the Industrial Disputes Act. It is further held that the civil court has got the jurisdiction to entertain a suit falling in second category. The Full Bench has referred to the case of Premier Automobiles Limited Vs. Kamalakar Shantaram Wadhke and others, 1982 P.L.R. 717 (1975(48) FJR 252). It has been held therein that if the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is an alternative remedy, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular case.

Therefore, when both the remedies are there, the suitor has to choose one remedy and cannot go for both."

(9) The petitioner, in our view, having lost his matter before the Civil Court, could not have re-agitated the matter before the Labour Court. Reference, in the facts and circumstances of this case, before the Labour Court was, thus, not competent.

(10) In view of the discussion made above, we hold that the petitioner having chosen to go to Civil Court, when he lost the matter before the Civil Court upto lower Appellate Court, could not re-agitate the matter before the Labour Court under the provisions of the Act.

(11) Even though, the question of law mooted in the present appeal turns in favour of the appellant-State yet, in the peculiar facts and circumstances of this, we are still of the view that the appellant would succeed only half way through and, therefore, the order passed by the Labour Court, which was confirmed by learned Single Judge, would need to be set aside to the extent that the petitioner would not be entitled to any backwages. Insofar as, reinstatement of the petitioner is concerned, we find from the records of the case and it is a conceded position as well, that during the proceedings of the writ petition,—vide order dated 14th November, 1994, operation of award passed by the Labour Court was stayed as it only pertains to backwages. We are informed that pursuant to orders passed by the Labour Court and further that High Court had not granted any stay insofar as reinstatement of the workman is concerned, he is working since 1994

and is in position till date. The Letters Patent Bench,—vide order dated 9th September, 1997 had stayed operation of the judgement of learned Single Judge insofar is it pertains to payment of backwages till further orders. Order aforesaid reads thus :

> "CM application is allowed. Operation of judgment of learned Single Judge under appeal, insofar as it pertains to payment of back wages, is stayed till further orders".

(12) A period of about 10 years has gone by since when the petitioner was reinstated in service and, it is stated that nothing adverse has come against the petitioner all this while.

(13) That apart, the facts, on which there is hardly any dispute, further reveal that the charge, for which departmental enquiry was held against the petitioner, remained non-substantiated. The Labour Court, in its award dated 5th April, 1994, observed that the charges against the petitioner were that he had not issued tickets to three passengers amounting to Rs. 5.45 in one case and in other he had not issued tickets to two passengers of the value of 0.40 paise each. The total amount of these tickets comes 6.25. Kashturi Lal, Inspector, who appeared in support of the charges framed against the workman, stated that the bus was full when checking was made. The workman also stated during the course of enquiry against him that he had clean record of ten years. On the basis of evidence, as referred to above, the Labour Court observed that "therefore, a person, who has clean record of 10 years, happens to be guilty of not issuing 3 tickets may be due to rush in the bus as is admitted in the enquiry by Shri Kashturi Lal Inspector in his statement recorded on 11th June, 1980, that the bus was full". The statement of the workman that he had clean record of ten years, it was further observed by the learned Labour Court, was not challenged by the Management in the cross-examination. The observations of the learned Labour Court, as mentioned above, are not under challenge and in fact, as mentioned above, during the course of arguments, before us as well, it remained undisputed that the charge of embezzlement against the petitioner was not proved. We do not have a copy of judgment passed by the learned trial Court as the appellant-State has rather chosen to bring on record judgment of the appellate Court, wherein, of course, it is recorded that previous record of the workman has been far from happy and the previous departmental punishments were taken into consideration and petitioner was also apprised of the same. However, as mentioned above, before the Labour Court, statement of the

petitioner that he had an unblemished record, was not questioned. There is no material placed on record nor any has been brought to our notice which may suggest that previous record of the petitioner was not good.

(14) The facts, as fully culled out above, thus, manifest that the plea of the Management that the petitioner might have embezzled the amount, is not proved. The petitioner was unable to issue tickets on account of the fact that the bus was over-loaded and before the petitioner could issue tickets to some passengers, there was checking by the inspecting staff. In the circumstances, as fully detailed above, the question that arises is as to whether, while adjusting the rights of the parties, this Court, in its jurisdiction under Article 226 of the Constitution of India, with a view to do complete justice, can order that even though it may not have been permissible for the petitioner to rake up the issue once over again having lost before the Civil Court yet order continuance of the petitioner in service. This Court under Article 226 of the Constitution of India, can issue orders in equity and while doing so, procedural technicalities can not come in the way of dispensation of justice. If it be the fact that the petitioner was not at fault at any stage and the charge framed against him with regard to embezzlement had since not been proved and it is rather a case where the petitioner became victim of circumstances, the Court can not shut its eyes to such stark realities and has, thus, to find out as to what orders should be passed so as to dispense justice. In our considered view, the ends of justice would be met if the petitioner is not paid back wages from the date his services were terminated, till such time he was reinstated and that he should be allowed to complete the tenure and quit the same only on superannuation, unless, of course, he may indulge into such activities that may call for any action against him.

(15) In view of the discussion made above, this appeal succeeds, even though partly. The appellant-Management is absolved from making payment of any back-wages to the petitioner, but, in the peculiar facts and circumstances of this case, the petitioner shall be allowed to continue in service in the manner, fully detailed above. The parties are, however, left to bear their own costs.

R.N.R.