

MILKHI RAM

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v.

HIMACHAL PRADESH STATE ELECTRICITY BOARD

(Civil Appeal No. 1346 of 2010)

OCTOBER 08, 2021

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[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

Industrial Disputes Act, 1947 – Termination – Suit before civil court – Maintainability of – Held: Civil court lacks jurisdiction to entertain a suit structured on the provisions of the ID Act – Thus, in the present case the decree favouring the appellant-employee is a legal nullity – Finding of the High Court to this extent, upheld – However, considering the hardship to the appellant, the arrear paid pursuant to the court's decree not to be recovered.

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Dismissing the appeal, the Court

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Held: 1.1 The civil courts may have the limited jurisdiction in service matters, but jurisdiction may not be available to Court to adjudicate on orders passed by disciplinary authority. The authorities specified under the Industrial Disputes Act, 1947 including the appropriate government and the industrial courts perform various functions and the ID Act provides for a wider definition of “termination of service”, the condition precedent of termination of service. The consequence of infringing those, are also provided in the ID Act. When a litigant opts for common law remedy, he may choose either the civil court or the industrial forum. In the present matter, the appellant has clearly founded his claim in the suit, on the provision of the ID Act and the employer therefore is entitled to raise a jurisdictional objection to the proceedings before the civil court. The courts below including the executing court negated the jurisdictional objection. The High Court in Revision, however overturned the lower court's order and declared that the decree in favour of the plaintiff is hit by the principle of *coram non judice* and therefore, the same is a nullity. This Court is unable to accept the view propounded by the courts below and is of the considered opinion that the civil court lacks jurisdiction to entertain a suit structured on the

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- A provisions of the ID Act. The decree favouring the plaintiff is a legal nullity and the finding of the High Court to this extent is upheld. However, considering the hardship to the terminated employee, the arrear sum paid to him pursuant to the court's decree, should not be recovered. [Paras 13, 14, 16 and 17][1135-E-H; 1136-A-B, E-F]

B *Rajasthan SRTC & Ors. Vs. Khadarmal 2006 (1) SCC 59; Rajasthan SRTC & Anr. vs. Ugma Ram Choudhary 2006 (1) SCC 61; Rajasthan SRTC vs. Krishna Kant 1995 (5) SCC 75 : [1995] 3 SCR 1118; Rajasthan SRTC vs. Zakir Hussain 2005 (7) SCC 447 : [2005] 2 Suppl. SCR 786 – relied on.*

C *Transport Corporation and Ors. vs. Mohar Singh 2008 (5) SCC 542 : [2008] 6 SCR 890 – referred to.*

Case Law Reference

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|-------------------------|-------------|---------|
| D [2008] 6 SCR 890 | referred to | para 11 |
| [1995] 3 SCR 1118 | relied on | para 15 |
| [2005] 2 Suppl. SCR 786 | relied on | para 15 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1346 of 2010.

E From the Judgment and Order dated 06.11.2018 of the High Court of Himachal Pradesh at Shimla in Civil Revision No.16 of 2006.

Ajit Singh Pundir, Arijeet Singh, Advs. for the Appellant.

Naresh K. Sharma, Adv. for the Respondent.

F The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Heard Mr. Ajit Singh Pundir, learned counsel appearing for the appellant (plaintiff). Also heard Mr. Naresh K. Sharma, learned counsel appearing for the respondent (defendant).

G 2. The challenge here is to the judgment dated 6.11.2008 of the High Court of Himachal Pradesh whereunder the defendant's Civil Revision No. 16/2006 was allowed with the observation that the civil court lacked jurisdiction to entertain the civil suit based on the Industrial Disputes Act, 1947 (for short "the ID ACT") and therefore, the judgment

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and decree in favour of the plaintiff are a nullity. The Court also opined A
that a plea on absence of jurisdiction can be raised even at the stage of
execution of proceedings.

3. The appellant was a daily wage employee under the Himachal B
Pradesh State Electricity Board (hereinafter referred to as the “Board”).
The service of the temporary employee was dispensed with by order
dated 1.1.1985 issued by the Executive Engineer. This was challenged
in the Civil Suit No. 100/1985. The plaintiff claimed to have rendered
uninterrupted service for 2778 days and asserted the right to be regularized
after completion of 240 days of continuous service. The defendant per- C
contra contended that the plaintiff never worked for a continuous period
of 240 days and as such he is disentitled to claim regularization.

4. Whether the civil court has jurisdiction and whether the Plaintiff D
had completed 240 days of uninterrupted service were the main issues
framed by the civil court. Both the issues were answered in favour of
the plaintiff. The learned Judge referred to the provisions of Section
25B and 25F of the ID Act and noted that the plaintiff had rendered
service for well above 240 days in one year and therefore his service
could not have been terminated without complying with the statutory
requirement. Accordingly, the suit was decreed ordering reinstatement
of the plaintiff with back wages. The defendant was directed to also
consider regularization of service, for the plaintiff. E

5. The Board challenged the above decision in the Civil Suit No. F
100 of 1985, before the District Judge, Dharamshala by filing the Civil
Appeal No. 123/1988. The jurisdiction of civil court was again questioned
but the appellate court observed that the question of jurisdiction is a
mixed question of law and facts and since the litigation is continuing for
long, it would not be proper to relegate the plaintiff to the labour court.
According to the appellate court the workman was entitled to choose
the remedy either before the civil court or before the Industrial Court.
As the service of a daily wager was terminated, the same was treated
to be a retrenchment without compliance with Section 25F of the ID
Act. The decree favouring the plaintiff was accordingly upheld by G
rejecting the jurisdictional objection raised by the Board.

6. The judgment debtor's further challenge to the decree were H
not entertained and then the Board made the offer to appoint the
terminated daily wager to the post of LDC in the regular pay scale, with
effect from 1.9.2001 (Annexure P4). Responding to the appointment

- A offer, the appellant gave a joining report on 1.9.2001 (Annexure P5), but since the same was hedged with various conditions, the joining report was not acted upon by the management.
 - 7. Following the above, the decree holder applied for execution of the decree (12.10.1988) in the Civil Suit No. 100 of 1985 before the Civil
- B Judge (Junior Division). The judgment debtor raised a preliminary objection on the maintainability of the application with the projection that all back wages were paid to the decree holder and he was also offered the post of LDC on 22.8.2001 and since the decree holder gave a conditional joining report and was required to re-submit a joining report as per rules, nothing further is required to be done for execution of the decree. The
- C executing court negated the Board's objection and the application of the decree holder under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (for short "the CPC") was allowed by directing the Board to give effect to the decree.
 - 8. The order of executing court was challenged by the Board in
- D Civil Revision No. 16/2006. The Board contended before the High Court that the civil court had no jurisdiction to adjudicate a claim arising out of the ID Act and relief for the aggrieved employee could have been granted, only by the industrial court. It was further contended that plea of absence of jurisdiction can be raised at any stage and the present decree is a legal nullity.
- E 9. On the other hand, the decree holder pointed out that concurrent findings are recorded in favour of the plaintiff. Moreover, the Court had answered the jurisdiction issue in favour of the plaintiff. As such the maintainability of the challenge in Revision before the High Court by the judgment debtor, was questioned by the terminated employee.
- F 10. To address the jurisdictional question posed by the employer, the learned Judge referred to the judgments in *Rajasthan SRTC & Ors. vs. Khadarmal¹*, *Rajasthan SRTC & Anr. vs. Ugma Ram Choudhry²* and opined that the civil court did not have jurisdiction to entertain a claim based on the ID Act and if any decree is passed by the court
- G without jurisdiction, the same shall have no force of law. Following the ratio in these two judgments, the High Court held that the civil court lacked inherent jurisdiction to entertain the suit based on the ID Act and the judgment and decree so passed, are nullity. It was further observed that the plea of decree being a nullity can also be raised at the stage of

H ¹(2006) 1 SCC 59
²(2006) 1 SCC 61

execution. The Revision petition filed by the judgment debtor was accordingly allowed by setting aside the decree passed in favour of the plaintiff.

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11. Challenging the intervention of the High Court against the decree holder, Mr. Ajit Singh Pundir, the learned counsel submits that the appellant has rendered service as a daily wager since 11.12.1976 and his service could not have been terminated without following the due process. According to the appellant's counsel even when relief is claimed based on the provisions of the ID Act, the jurisdiction of the civil court is not entirely barred. In support of his contention, Mr. Pundir relies upon *Rajasthan State Road Transport Corporation and Ors. vs. Mohar Singh*³.

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12. On the other hand, Mr. Naresh K. Sharma, the learned counsel for the respondent Board, in support of the impugned judgment, reiterates the contention made before the High Court and submits that jurisdiction of the civil court is ousted when claimed relief is founded on the ID Act. It is further argued that when the civil court had no jurisdiction, the decree is nothing but a nullity and no relief on the basis of such void decree can be claimed by the plaintiff. In order to demonstrate the bonafide of the employer, Mr. Sharma refers to the letter dated 22.8.2001, offering the post of LDC and how the said offer did not fructify only because of the adamancy of the appellant, who failed to furnish a proper joining report. Insofar as the relief of back wages ordered by the civil court, the counsel submits that the Board has already remitted the arrear salaries to the appellant.

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13. The above contentions of the parties indicate that the only issue to be considered here is whether the suit before the civil court at the instance of the terminated employee, was maintainable. The civil courts may have the limited jurisdiction in service matters, but jurisdiction may not be available to Court to adjudicate on orders passed by disciplinary authority. The authorities specified under the ID Act including the appropriate government and the industrial courts perform various functions and the ID Act provides for a wider definition of "termination of service", the condition precedent of termination of service. The consequence of infringing those, are also provided in the ID Act. When a litigant opts for common law remedy, he may choose either the civil court or the industrial forum.

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³(2008) 5 SCC 542

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- A 14. In the present matter, the appellant has clearly founded his claim in the suit, on the provisions of the ID Act and the employer therefore is entitled to raise a jurisdictional objection to the proceedings before the civil court. The courts below including the executing court negated the jurisdictional objection. The High Court in Revision, however has overturned the lower court's order and declared that the decree in favour of the plaintiff is hit by the principle of *coram non judice* and therefore, the same is a nullity.

B 15. The cited cases i.e. *Khadarmal* (supra) and *Ugma Ram Choudhry* (supra) pertain to employees under the Rajasthan State Road Transport Corporation. The three judges Bench of this Court while advertiring to the challenge to termination of service opined that the civil court has no jurisdiction to entertain such cases. For such conclusion, the court referred to two earlier decisions in *Rajasthan SRTC vs. Krishna Kant*⁴ and *Rajasthan SRTC vs. Zakir Hussain*⁵ and held that when civil court has no jurisdiction, the decree passed in those proceedings can have no force of law. On the back wages already disbursed to the terminated employee, in *Ugma Ram Choudhry* (supra), the court on equitable principles observed that the disbursed amount should not be recovered from the employee.

C 16. As can be seen from the material on record, the challenge to the termination was founded on the provisions of the ID Act. Although jurisdictional objection was raised and a specific issue was framed at the instance of the employer, the issue was answered against the defendant. This Court is unable to accept the view propounded by the courts below and is of the considered opinion that the civil court lacks jurisdiction to entertain a suit structured on the provisions of the ID Act.

D F The decree favouring the plaintiff is a legal nullity and the finding of the High Court to this extent is upheld.

E 17. Consequently, the appeal is found devoid of merit and the same is dismissed. However, considering the hardship to the terminated employee, the arrear sum paid to him pursuant to the court's decree, should not be recovered. It is ordered accordingly. The parties to bear their own cost.

Divya Pandey

Appeal dismissed.

⁴(1995) 5 SCC 75

⁵(2005) 7 SCC 447