Rajasthan State Road Transport Corpn. & ... vs Zakir Hussain on 22 August, 2005

Equivalent citations: AIRONLINE 2005 SC 996

Author: Ar. Lakshmanan

Bench: Ruma Pal, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  5176 of 2005

PETITIONER:
Rajasthan State Road Transport Corpn. & Ors.

RESPONDENT:
Zakir Hussain

DATE OF JUDGMENT: 22/08/2005

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P. (Civil) No. 5978 OF 2003) Dr. AR. Lakshmanan, J.

Leave granted.

The present appeal is directed against the final judgment and order dated 24.09.2002 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Second Appeal No. 239 of 1997 whereby the High Court has dismissed the second appeal filed by the appellant-Corporation.

The respondent was appointed as conductor on daily wages with the Rajasthan State Road Transport Corporation. He was appointed as conductor on probation for a period of two years. The services of the respondent were terminated on 08.05.1984 as the same were not found to be satisfactory. Necessary compensation was paid to the respondent as per the rules of the Corporation vide Order No. 297. Against the order of termination, the respondent-plaintiff filed an appeal before the appellate authority, which was dismissed on 22.10.1984.

The respondent filed a suit for declaration in the Court of Additional Munsiff, Jaipur alleging that the order of termination dated 08.05.1984 and the order of the appellate Authority dated 22.10.1984 being illegal, bad in law and against the principles of natural justice and, therefore, is liable to be set aside and that the respondent- plaintiff is entitled to continue in service without any break.

It was further alleged that the services of the respondent were terminated simpliciter but in fact, the same were terminated on the basis of the remarks made by the checking staff on 01.05.1984 when the respondent was on duty. The trial Court framed four issues. Issue No. 2 relates to the jurisdiction of the Civil Court to entertain and try the suit. The trial Court held that since the services of the respondent have been terminated on the basis of the remarks without holding any enquiry, the order dated 08.05.1984 terminating the services of the respondent and the order passed by the appellate Authority dated 20.10.1984 dismissing the appeal are illegal and against the principles of natural justice. Accordingly, the trial Court set aside the above two orders. The trial Court finally passed the following order:-

> "In the result, it is ordered that the suit of the plaintiff is decreed against the defendant. It is declared that the order No. 297 dated 08.05.1984 passed by the defendant terminating the services of the plaintiff, and the order passed by the Appellate authority dated 20.10.1984 dismissing the appeal is illegal, bad in law and against the principle of natural justice, therefore, is set aside. It is further declared that the plaintiff would be entitled to continue in service without any break and would also be entitled to all the monetary benefits and allowances, as he would have been entitled while continuing in service."

Aggrieved by the order passed by the trial Court, the appellant-Corporation filed an appeal before the District Judge, Jaipur City, Jaipur being Civil Regular Appeal No. 138 of 1989. The said Court dismissed the appeal. The second appeal filed by the Corporation before the High Court was also dismissed on 24.09.2002. The High Court declined to interfere with the orders passed by the lower Courts since there is concurrent finding of fact by both the Courts below and that no substantial question of law arises. Being aggrieved, the appellant-Corporation preferred the present Special Leave Petition No. 5978 of 2003 questioning the correctness of the orders passed by the Courts below and of the High Court particularly on the question of jurisdiction of the Civil Courts to entertain and try the suit in respect of an industrial dispute.

We heard Mr. Sushil Kumar Jain, learned counsel for the appellant and Mr. Anis Ahmed Khan, learned counsel for the respondent. We have been taken through the relevant pleadings, documents and annexures filed along with the appeal and also of the case laws cited by the counsel appearing on either side at the time of hearing. Mr. Sushil Kumar Jain, learned counsel for the appellant-Corporation submitted as follows: -

> 1. That the dispute between the parties being an industrial dispute, the Civil Court has no jurisdiction to entertain and try the suit;
>
> 2. That the respondent was appointed on probation and the services were terminated during the period of probation; it was not obligatory on the part of the Corporation to hold an enquiry before terminating the services;
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> 3. That the respondent was only an employee of the Corporation and not a Government servant and has got no protection under Article 311 (2) of the

Constitution of India;

4. That the respondent was not entitled to back wages on the principle of 'No Work, No Pay'.

Mr. Anis Ahmed Khan, learned counsel for the respondent submitted that a notice dated 05.05.1984 was given to the respondent in which a remark for carrying 11 passengers without ticket was mentioned and that the appellant-Corporation neither conducted any departmental enquiry nor gave the respondent an opportunity of being heard. Thus the termination order was illegal, unlawful and contrary to the principles of natural justice.

He invited our attention to the relevant discussion by the trial Court on this point. Citing the judgment of this Court in Rajasthan State Road Transport Corporation And Anr. Etc. v. Krishna Kant Etc. Etc. reported in [1995] 3 SCR 1118, learned counsel submitted that in the present case the decree in favour of the respondent has been passed by the trial Court on 28.07.1989 and that the appellant-Corporation filed an appeal before the District Court on 27.09.1989 which was pending prior to the judgment in Krishna Kant (supra). Thus, the entire judicial pronouncement of this Court favours the respondent and disfavours the appellant herein. He invited our attention to the two passages from the above judgment which are reproduced hereunder:-

"These principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the trial court and the matters are pending in appeal and second appeal, as the case may be."

"These orders are made in view of the fact that position of law was not clear until now and it cannot be said that the respondents had not acted bonafide in instituting the suits."

It was further submitted that the services of the respondent had not been terminated simpliciter, a remark against the respondent on the way bill was made which led to the termination of his services without enquiry. Therefore, the termination of the respondent was punitive and penal in nature and by lifting the veil a little, it manifests that the appellant has tried to camouflage the punitive order of termination by the cover of termination simpliciter but has failed. Learned counsel cited the case of The Management of Utkal Machinery Ltd., vs. Workman, Santi Patnaik, AIR 1966 SC 1051 in this regard.

Jurisdiction of Civil Courts in Industrial Dispute We shall first take up the question which relates to the jurisdiction of the Civil Courts in the industrial matters. The respondent was appointed by the appellant- Corporation on daily wages to the post of conductor. He was put on probation for a period of two years vide Order No. 225 dated 28.03.1984. According to the respondent, he has been working carefully and honestly and continuously. However, his services were terminated without complying with Section 35 of the Standing Orders and without conducting any enquiry and without affording an opportunity of being heard vide order No. 207 dated 08.05.1984. The appeal preferred against the order of termination was also dismissed on 20.10.1984 by the appellate Authorities. A

civil suit was, therefore, filed by the respondent to declare that the order of termination being illegal and unconstitutional are liable to be set aside and that the respondent is entitled to continue on the post of the conductor and is entitled to get wages, allowances and other monetary benefits till the relief is given by the Corporation. The appointment order has been filed and marked as Annexure-P5. It is seen from the appointment order that the respondent and several others were appointed as conductors on probation for a period of two years subject to several conditions mentioned in the order of appointment. It is also mentioned that the services of the respondent will be governed by the Standing Orders of the Rajasthan State Road Transport Corporation, Workshop Employees. Two things are clear from the appointment order, (a) the order of appointment is purely on adhoc basis and (b) the respondent was appointed as a daily wage employee and that the probation is for a period of two years. Premier Automobiles Limited vs. Kamlakar Shantaram Wadke and Ors., 1975 (2) LLJ 445 (Three Judges Bench) is a leading authority on jurisdiction of civil courts in industrial disputes. This Court, after elaborate discussion, held as under:

> "The principles applicable to the jurisdiction of the civil Courts in relation to an industrial dispute may be stated thus:
>
> (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 or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suit or 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 S. 33C or the raising of an industrial dispute as the case may be.

In relation to principle No.2 stated above, their Lordships feel there will hardly be a dispute which will be an industrial dispute within the meaning of S.2 (K) and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to dismissal of an unsponsored workman which in view of the provision of law contained in S. 2A will be an industrial dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle

2. Cases of industrial disputes, by and large, are invariably bound to be covered by principle 3 stated above."

Rajasthan State Road Transport Corporation And Anr. Etc. v. Krishna Kant Etc. Etc, 1994 Supp (1) SCC 268: In this case, the appellant Transport Corporation, constituted under the Road Transport Corporation Act, 1950 contended before this Court that the suits filed by the respondent-employees impugning the termination of their services for misconduct on the ground of contravention of standing orders were barred and that the only remedy available to the respondents was a reference of the dispute for adjudication to a Labour Court. This Court held as under:

> "The instant cases are governed by the decision in Jitendra Nath Biswas case and in accordance with the said decision it must be held that the jurisdiction of the civil courts is excluded. It may be stated that from the point of view of the workmen also the remedy of adjudication available under the Act would be more beneficial to them than that of a civil suit inasmuch as the civil court cannot grant the relief of reinstatement which relief can be granted by the Labour Court/Industrial Tribunal. But in view of the constraint placed by the Order dated October 18, 1989 in SLP No. 9386 of 1988 passed by a two-Judge Bench of the Supreme Court it is appropriate that the matter be heard by a Bench of three-Judges."

Pursuant to the above order, all the appeals were placed before a Bench comprising of Three Judges. This Court summarized the principles flowing from the discussion made by them in Rajasthan State Road Transport Corporation And Anr. v. Krishna Kant and Others, reported in (1995) 5 SCC 75.

> "(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.
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> (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.
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> (3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment 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 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 recommend to Parliament and the State Legislatures 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 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 principles 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 expensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

Applying the above principles, this Court held that the suits filed by the employees of the Corporation were not maintainable in law. However, considering the peculiar facts and circumstances of the case, this Court declined to set aside the decree concerned in the appeals. This Court, having regard to the facts and circumstances of those matters, modified the decrees in those matters by reducing the back wages to half. This Court also has further observed that these orders are made in view of the fact that the position of law was not clear until now and it cannot be said that the respondents had not acted bona fide in instituting the suits and disposed of the appeals accordingly in the peculiar facts and circumstances of the case. We have already reproduced the principles laid down in para 35 (supra). Applying the above principles, this Court has categorically held that the suits filed by the respondents in the appeals were not maintainable in law.

U.P. State Bridge Corporation Ltd. And Others vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, (2004) 4 SCC 268 The appellant, in this case, is a Government Construction Company within the meaning of Section 617 of the Companies Act. The terms and conditions of employees of the appellant were governed by standing orders certified under the U.P. Industrial Employment

(Standing Orders) Rules, 1946. According to the appellant, despite repeated notices, the workmen continued to absent themselves and ultimately on 19.01.1996 an order was issued putting an end to the services of the 168 workmen that they had abandoned their services with the appellant Corporation on their own. One of the workmen whose services were so terminated filed a writ petition in the High Court challenging the order of termination. The writ petition was dismissed on the ground that the workman could raise an industrial dispute if he so desired. A second writ petition was filed by the respondent Union in the High Court which was allowed. The appeal filed by the Corporation was rejected by the Division Bench. This Court allowed the appeals filed by the appellant Corporation. Ruma Pal, J. (one of us) speaking for the Bench after referring to the judgments cited and, in particular, Rajasthan State Road Transport Corporation And Anr. v. Krishna Kant and Others, 1995 (5) SCC 75 and Premier Automobiles Limited vs. Kamlakar Shantaram Wadke and Ors., 1975 (2) LLJ 445 (Three Judges Bench) observed in para 12 as follows: -

> "Although these observations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner."

It was further observed in paras 14, 15 and 17 as under:

> "It is an established practice that the Court exercising extraordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact.
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> In the present case, the nature of the employment of the workmen was in dispute. This was an issue which should have been resolved on the basis of evidence led. The Division Bench erred in rejecting the appellant's submission summarily as also in placing the onus on the appellant to produce the appointment letters of the respondent workmen. There was also a dispute as to the nature of the absence of the respondent workmen. Significantly, the High Court has not relied upon the correspondence said to have been exchanged between the parties with regard to the demands raised by the respondent Union nor has it come to any decision on the question whether the strike in question was illegal or legal. In fact the High Court has proceeded on the basis that it was the accepted case that there was no notice given by the workmen that they were on strike. It cannot, therefore, be said, without more, that the absence of the respondent workmen from work was because they were on strike.
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> Doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that a litigant is not prejudiced by the action of the Court since the objection is one in the nature of a demurrer."

In the case of Krishnan and Another Vs. East India Distilleries and Sugar Factories Ltd., Nellikuppam and Another reported in 1964 (1) LLJ 217, a learned Single Judge of the Madras High Court has held that the jurisdiction of the Civil Court is ousted impliedly to try a case which could form subject-matter of an industrial dispute collectively between the workmen and their employer.

In the case of Madura Mills Company, Limited vs. Guruvammal and another 1967 (2) LLJ 297, a learned Single Judge of the Madras High Court has pointed out that the Act creates a special machinery under Section 33C (2) to enforce specially created rights and that the parties could not, therefore, approach the ordinary Civil Court. This Court affirmed the above two decisions of the Madras High Court in the judgment reported in Premier Automobiles Ltd. (supra) (para 26).

In Jitendra Nath Biswas vs. M/s Empire of India and Ceylone Tea Co. and Another, (1989) 3 SCC 582, this Court held as under:

> "The scheme of the Industrial Disputes 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.
>
> In so far as the appellant is concerned, the 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.
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> It cannot be contended that merely because the conciliation officer has discretion to proceed or not and that after his report the government may make a reference or not, the jurisdiction of civil court is not impliedly barred. The discretion cannot be exercised arbitrarily and there is remedy against improper refusal to exercise the discretion."

This Court further held that the 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, there is an apparent implied exclusion of the jurisdiction of the civil court.

The case of Rajasthan State Road Transport Corporation vs. Krishan Kant above was relied upon by this Court in the case of B.S. Bharti Vs. IBP Co. Ltd. reported in (2004) 7 SCC 550 and Chandrakant Tukaram Nikam and Ors. Vs. Municipal Corpn. of Ahmedabad and Anr. reported in (2002) 2 SCC 542 In B.S. Bharti vs. IBP Co. Ltd., (2004) 7 SCC 550, this Court held as under:

> "The appellant was a probationer in the employment of the respondent Company. At the end of his extended probation period, finding his performance not to be satisfactory, the respondent terminated his service on 24-1-1974. The appellant sought to raise an industrial dispute challenging his termination but on 1-1-1975, the

> appropriate Government refused to make a reference. The appellant then filed a civil suit challenging his termination and claiming arrears of salary. The trial court decreed the suit. But, following Rajasthan SRTC case, (supra), the Delhi High Court set aside that decree. The appellant then filed the present appeal.
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> Referring to para 37 of Rajasthan SRTC case, the appellant contended before the Supreme Court that the principle of relief enunciated therein ought to have been extended to the appellant and the decree of the trial court ought to have been upheld.
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> Rejecting the appellant's contention and dismissing the appeal, this Court held:
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> The prayer of the appellant to refer the dispute to the Industrial Tribunal/Labour Court was refused by the appropriate Government on 1-1- 1975. The appellant did not challenge 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 (Standing Orders) Act, 1946, which was applicable to him and the remedy for which was under the Industrial Disputes Act which in terms clearly prohibited maintainability of a civil suit."

In Chandrakant Tukaram Nikam & Ors. Vs. Municipal Corpn. of Ahmedabad and Anr. reported in (2002) 2 SCC 542, this court held as under:-

> "The Industrial Disputes Act was enacted by Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the workmen do not get caught in the labyrinth of civil courts which the workmen can ill-afford. The procedures followed by civil courts are too lengthy and consequently, are not an efficacious forum for resolving the industrial disputes speedily. The power of the Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum. The legality of the order of termination passed by the employer will be an industrial dispute within the meaning of Section 2(k) and under Section 17, every award of the Labour Court, Industrial Tribunal or National Tribunal is required to be published by the appropriate government within a period of thirty days from the date of its receipt and such award published under Section 17(1) is held to be final. Therefore, having regard to the relief sought for in the suits filed in the civil court, it has to be held that in such cases the jurisdiction of the civil court is impliedly barred and the appropriate forum for resolution of such dispute is the forum constituted under the Industrial Disputes Act."

It is a well settled principle of law as laid down by this Court that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of Court. This Court in the case of A.R. Antulay vs. R.S. Nayak & Another reported in AIR 1988 SC 1531 paras 40 to 42 wherein it is, inter alia, held and

observed as under:-

> "40 ..This Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case when it did not possess such jurisdiction ."

41 .The power to create or enlarge jurisdiction is legislative in character ..Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal .."

42 But the superior Court can always correct its own error brought to its notice either by way of petition or ex debito justitiae. See Rubinstein's Jurisdiction and Illegality' (supra)"

> In the instant case, the respondent was appointed as a conductor purely on ad hoc basis for a period of two years. It is not in dispute that the appellant is governed by the Standing Orders of the Rajasthan State Road Transport Corporation, Workshop Employees and also governed by the terms of appointment.
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> This apart, the respondent has placed reliance on the standing order and, therefore, the only remedy available to the respondent was by way of reference under the provisions of the Industrial Disputes Act.
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> Appointment on Ad-hoc Basis Termination:
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> In Ravindra Kumar Misra vs. U.P. State Handloom Corporation Ltd. & Anr., JT 1987 (4) SC 105, this Court was considering termination of a service of a temporary employee. This Court held in paras 11 and 12 as under:-
>
> "Keeping in view the principles indicated above, it is difficult to accept the claim of the appellant. He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him the employer had the right to terminate his services by giving him one month's notice. The order to which exception is taken is expressly an order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit with any evil consequences. It is also not founded on misconduct. In the circumstances, the order is not open to challenge.
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> We may point out that the learned Solicitor General appearing for the Corporation had at the commencement of the arguments suggested that the appellant could be given some compensation for termination. Ordinarily, under the law he would not be entitled to compensation in a case of this type, but since he has been put out of employment at an advanced age and it may be difficult for him to get an alternate employment, while dismissing his appeal we think it reasonable to call upon the Corporation to pay a consolidated amount of Rs.25,000/ (Rupees Twenty-five Thousand only)."

Commodore Commanding, Southern Naval Area, Cochin vs. V.N. Rajan, AIR 1981 SC 965 (three Judges): This case deals with a temporary Government servant whose services were terminated on the ground of unsuitability for the post. This Court observed as follows:-

> "Where the decision to terminate the services of the servant had been taken at the highest level on the ground of unsuitability of the servant in relation to the post held by him and it was not by way of any punishment and no stigma was attached to him by reason of the termination of his services, termination could not be said to be vitiated for non-observance of Art. 311 (2)."

In State of Uttar Pradesh & Anr. vs. Kaushal Kishore Shukla, JT 1991 (1) SC 108, this Court has observed in para 6 as under:

> "The High Court held that the termination of respondent's services on the basis of adverse entry in the character roll was not in good faith and the punishment imposed on him was disproportionate. It is unfortunate that the High Court has not recorded any reasons for this conclusion. The respondent had earned an adverse entry and complaints were made against him with regard to the unauthorised audit of the Boys Fund in an educational institution, in respect of which a preliminary inquiry was held and thereupon, the competent authority was satisfied that the respondent was not suitable for the service. The adverse entry as well as the preliminary inquiry report with regard to the complaint of unauthorised audit constituted adequate material to enable the competent authority to form the requisite opinion regarding the respondents suitability for service. Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination."

The respondent in the instant case is a temporary employee of the Rajasthan State Road Transport Corporation on probation for a period of two years. His services were terminated by an order of termination simpliciter. The order, in our opinion, is innocuous without any stigma nor evil consequences visiting him. In our view, the order is not open to challenge.

Oil and Natural Gas Commission and Others vs. Dr. Md. S. Iskander Ali, AIR 1980 SC 1242 (Three Judges): In this case, the respondent was appointed on a purely temporary basis to the post of a Medical Officer in the Oil and Natural Gas Commission. Under the terms and conditions of his service, he was to remain on probation for a period of one year which could be extended at the discretion of the appointing Authority. This Court observed as under:-

> "Where the short history of the service of the probationer appointed in a temporary post clearly showed that his work had never been satisfactory and he was not found

> suitable for being retained in service and that was why even though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him and in these circumstances, if the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when the appointing authority had the right to terminate the service without assigning any reasons. In such a case even if misconduct, negligence, inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service could not be termed as penalty or punishment. Further adverse remarks in the assessment roll and recommendation therein to extend the probationary period could not be said to indicate that the intention of the appointing authority was to proceed against the employee by way of punishment."

Gujarat Steel Tubes Ltd. And Others vs. Gujarat Steel Tubes Mazdoor Sabha and Others, 1980 (2) SCC 593 (Three Judges) The termination order in the instant case would clearly show that the misconduct on the part of the workman-respondent is not the foundation of the order of discharge. For an order to be 'founded' on misconduct, it must, be intended to have been passed by way of punishment, that is, it must be intended to chastise or cause pain in body or mind or harm or loss in reputation or money to the concerned worker. Such an intention cannot be spelled out of the present order of discharge. It cannot be regarded as an order of dismissal. Such would be the case when the employer orders discharge in the interests of the Corporation. So, the real criterion which formed the touchstone of a test to determine whether an order of termination of services is an order of discharge simpliciter or amounts to dismissal is the real nature of the order, that is, the intention with which it was passed.

The respondent is a temporary employee of the Corporation and a probationer and not a Government servant and, therefore, is not entitled for any protection under Article 311 of the Constitution. He was a party to the contract. In view of the fact that the respondent was appointed on probation and the services were terminated during the period of probation simpliciter as the same were not found to be satisfactory, the appellant-Corporation is not obliged to hold an enquiry before terminating the services. The respondent being a probationer has got no substantive right to hold the post and was not entitled to a decree of declaration as erroneously granted by the lower Courts and also of the High Court.

Object of Industrial Disputes Act:

> The object of the Industrial Disputes Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes, which means adjudication of such disputes also. The act envisages collective bargaining, contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the Indian law of contract. The expression "industrial dispute" is defined in S. 2(k) to say that:

> "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

Section 2(p) gives the definition of the word "settlement" thus:

> "'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;"

The Act also provides for constitution of various committees and conferred extensive powers on different kinds of authorities in the matter of settlement of adjudication of industrial disputes. It also provide remedies under Section 10, 12, 18, 19 and 31(2), 33 (1) (a), 33C (1) and 33C (2).

WHETHER THE ORDER OF TERMINATION IN THE PRESENT MATTER WHERE THE RESPONDENT WAS ON PROBATION CAN BE HELD TO BE INVALID?

The order of termination in the present case is termination simpliciter order and does not amount to any stigma. In this respect following cases are important:

> (i) This Court in the case of Champaklal Chimanlal Shah vs. The Union of India reported in AIR 1964 SC 1854 at page 1862 in para 13 has held and observed:-
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> " ..The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service rules (e.g. R.5 in this case) would not mean that the termination of service amounted to infliction of punishment of dismissal or removal within the meaning of Article 311(2) ."

(ii) This Court in the case of Shamsher Singh & Anr. vs. State of Punjab reported in [1975] 1 SCR 814 (7 Judges Bench) has held and observed as under:-

> "The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment .A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2)."

(iii) This Court in the case of Oil and Natural Gas Commission and Others vs. Dr. Md. S. Iskender Ali reported in (1980) 3 SCC 428 in para 3 of the said matter shows that in the said matter departmental enquiry was initiated against the employee concerned but the employer neither

proceeded with the inquiry not imposed punishment and the order of termination simpliciter was passed. This Court after considering various cases in para 12 (at Page 434) has held:-

> "12. The facts of the present case appear to be on all fours with those of the aforesaid decision. From the undisputed facts detailed by us in an early part of the judgment, it is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as penalty or punishment."

(iv) This Court in the case of K.V. Krishnamani vs. Lalit Kala Academy reported in (1996) 5 SCC 89 in para 4 at page 90 has held and observed:-

> " ..They have explained that the driving of the staff car was not satisfactory and that, therefore, they have terminated the services of the appellant during probation. The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has power to terminate the services of the employee. Under these circumstances, it cannot but be held that the reasons mentioned constitute motive and not foundation for termination of service .."

(v) This Court in the case of Kunwar Arun Kumar vs. U.P. Hill Electronics Corporation Ltd. And Ors. reported in (1997) 2 SCC 191 at page 193 has held and observed as under:-

> " ..Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma .."

(vi) This Court in the case of State of Punjab and Others vs. Bhagwan Singh reported in JT 2001 (Suppl.1) SC 7 in para 6 at page 9 has held and observed as under:-

> "6. Learned counsel for the respondent however, contended that the reference in the impugned order to the reports of the inspectors on the basis of which the above assessment was made, would itself amount to stigma. This again cannot be accepted. The said reference has also become necessary because the respondent was working under the said officers and it was their assessment that was referred to and that was the source for the opinion expressed by the competent authority to discharge the respondent. The learned District Judge and the High Court were, therefore in error in treating that the removal order caused stigma."

(vii) This Court in the case of Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. And Anr. reported in (1999) 2 SCC 21 in para 33 at page 35 has held and observed as under:-

> "33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason whey they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case. It is done only with a view to decide whether he is to be retained or continued in service. The provision is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is why is held in Sukh Raj Bahadur case and in Benjamin case. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case the employer was entitled to say that he would not continue an employee against whom allegations were made in truth of which the employer was not interest to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive."

(vii) In the matter of Jagdish Mittar vs. Union of India reported in 1964 (1) LLJ 418, this Court has placed reliance on the judgment of Constitution Bench in the case reported in 1967 (1) LLJ 718, Benjamin (A.G.) vs. Union of India [Constitution Bench] and the judgment of Champaklal mentioned above.

It is settled law that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner.

It is seen from para 11 of the written statement that the management has subsequently raised the jurisdiction of the Civil Court in deciding an industrial dispute. Learned District Munsiff has also framed an issue in regard to the jurisdiction of the Civil Court to hear the suit. The same issue was

raised before the other forums. However, lower Courts and the High Court has miserably failed to advert to this issue and failed to render a satisfactory finding. As already noticed, the services of the respondent were terminated simpliciter and does not contain any stigma and, therefore, there was no requirement under the law to hold any enquiry before terminating the services. The Courts below have also committed serious error in granting back wages along with reinstatement. Even otherwise, the respondent has not led any evidence before the trial Court except his own ipsi dixit to show that his services were terminated on the ground of any alleged misconduct. Therefore, it was not obligatory on the part of the Corporation to hold an enquiry before terminating the services. It is also settled that the employees of the Corporation are not civil servants and, therefore, they are not entitled to protection under Article 311 of the Constitution of India. Their terms of appointment is governed by the letter of appointment and, therefore, the management was well within its right to terminate the services of the respondent-probationer during the period of probation if his services were not found to be satisfactory during the said period. The Courts below and the High Court have committed serious error in decreeing the suit as prayed for and for directing reinstatement with full back wages.

Learned counsel for the respondent placing strong reliance on the judgment in Rajasthan State Road Transport Corporation And Anr. v. Krishna Kant and Others reported in [1995] 3 SCR 1118 submitted that since the decree has been passed by the trial Court on 28.07.1989 and the appeal filed by the Corporation was dismissed on 27.09.1989 which was pending prior to the judgment reported in 1995 SCR (3) 1118, the respondent is right in approaching the civil court. This contention has no force. This Court has very explicitly summarised the principles flowing from the discussion in the judgment in para 35 and applying the above principles this Court has categorically held that the suits filed by the employees in those appeals were not maintainable in law. But, however, granted certain reliefs by reducing the back wages etc. etc. in the peculiar facts and circumstances of the case. Therefore, in our opinion, the above judgment will not be of any assistance or aid to the claim of the respondent.

For the foregoing reasons, we hold that the respondent ought to have approached the remedies provided under the Industrial Disputes Act. He has miserably failed to do so but approached the Civil Court, which on the facts and circumstances of the case has no jurisdiction to entertain and try the suit. The respondent has not acted bona fide in instituting the suit. It is seen from the order of the High Court that the respondent had been reinstated in service in the year 1990 and the back wages had also been paid to him. Though in law, the respondent is not entitled to any back wages, having regard to the facts and circumstances of this case, we are not inclined to order refund of the back wages already paid to the respondent. But we make it very clear that the respondent shall not be allowed to continue in service any further. He shall not be entitled to any further emoluments or service benefits except the amount, which has already been paid to him. The respondent shall be discharged forthwith. No costs. The appeal stands allowed.