National Insurance Company Ltd. Vs Ashok Kumar Srivastava and Others

Court: Allahabad High Court

Date of Decision: Sept. 21, 1992

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 47
Constitution of India, 1950 â€" Article 12, 226, 311
Court Fees Act, 1870 â€" Section 11, 7, 7(A)
General Insurance Business (Nationalisation) Act, 1972 â€" Section 1(2), 11, 16(4), 16(7), 17
Industrial Disputes Act, 1947 â€" Section 10, 12, 12(5), 2A
Insurance Act, 1938 â€" Section 64(R)
Penal Code, 1860 (IPC) â€" Section 32
Specific Relief Act, 1963 â€" Section 34

Citation: (1993) 1 AWC 353

Hon'ble Judges: A.K. Banerji, J

Bench: Single Bench

Advocate: P.K. Mukherji, for the Appellant; Lalji Sinha, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Banerji, J.
By means of this writ petition, the Petitioner has challenged the orders dated 7-9-1991, passed by Addl. Munsif,

Gorakhpur rejecting the Petitioner''s objection u/s 47 CPC and the order dated 21-1-1992, passed by the VII Additional District'' Judge,

Gorakhpur (Respondent No. 1) rejecting the revision filed by the Petitioner against the said order dated 7-9-1991, with the consent of the parties,

the writ petition is being finally decided at the admission stage.

2. Briefly stated the relevant facts are that the Respondent No. 1. Ashok Kumar Srivastava filed a suit against the National Insurance Company

(Petitioner) in the Court of Munsif, Gorakhpur alleging that he was appointed as an Inspector by the Defendant Insurance Company on Probation

of one year vide the appointment letter dated 2-12-1980 with effect from 19-9-1980. The appointment letter stated that the probation was

extendable by another 12 months. According to the Plaintiff all of a sudden he received a notice dated 13-3-1982 terminating his services with

effect from the same date i.e. 13-3-1982. It was alleged by him that he had not received any letter extending his Probation after one year and

neither could Probation be extended to any period leaser than 12 months. It is this order of termination which was challenged by the Plaintiff-

Respondent No. 1 by means of the aforesaid suit The Plaintiff pleaded in the plaint of the said suit that the notice terminating his services was

illegal, unconstitutional and void. It was stated that the order of termination was not a termination order simplicitor but had cast a stigma on the

Plaintiff and thus amputed to a punishment within the meaning of the General Insurance Conduct, Discipline and Appeal Rules, 1975. It was further

pleaded that 30 days notice was not given to the Petitioner and neither any pay in lieu of notice was given, consequently the notice was null and

void. The Plaintiff prayed for the following reliefs:

1. By decree of this Court it be declared that the notice of the Defendant dated 13-3-82 terminating the services of the Plaintiff is void, illegal and

not a binding on the Plaintiff and the Plaintiff continues to be in the service of the Defendant as on 13-3-82 with all the benefits attached to the post

and is entitled to recover all the emolument attached to the post of Probationary Inspector subsequent to 13-3-1982.

2. Cost of the suit be awarded to the Plaintiff.

3. The Plaintiff be awarded any other relief to which he is deemed entitled.

3. On summons being issued the Defendant Insurance Company appeared and filed their written statement. While denying the plaint allegations,

they inter alia pleaded that the suit was not maintainable and the notice terminating the services of the Plaintiff was perfectly valid and legal. They

also pleaded that the suit was barred u/s 34 of the Specific Reliefs Act. Further, they pleaded that no stigma was cast on the Plaintiff and the order

terminating his services was a simple order of termination and not a punishment as alleged. They prayed that the suit should be dismissed with

special cost. However, after filing the written statement, the Defendant failed to appear or to participate in the proceedings of the suit despite time

being granted to them. The Court, therefore, ordered the suit to proceed ex-parte. No effort was made by the Defendant to set aside the order to

proceed ex-parte and ultimately the suit was decreed ex-parte on 25-1-1991 The Court declared that the notice dated 13-3-1982 terminating the

services of the Plaintiff was illegal. Inoperative and the Plaintiff was entitled to all the benefits available to him as in service.

4. The Plaintiff-Respondent No. 1, thereafter, put his decree in execution by claiming a sum of Rs. 1,02,861/- (Rupees One lac two thousand eight

hundred sixty one) as arrears of salary for the period 13-3-1982 to 30-4-1991. Subsequently, he amended the execution application and claimed

a sum of Rs. 3,90,342/- on account of arrears of salary. The Petitioner filed two objections u/s 47 CPC against the execution application and the

amendment application. In its objections, the Petitioner inter alias stated that the ex-parte decree dated 25-1-1991 was of declaratory nature and

the same was not legally executable and the execution application was not maintainable. It was further stated that the decree was not for any

specified sum and therefore, not executable. The Plaintiff was, not a Government servant and the provisions of Article 311 of the Constitution was

not applicable in case of the Plaintiff-decree-holder, on the contrary the Plaintiff was, simply an employee of the Defendant judgment debtor. His

services were not terminated contrary to any statutory provision and therefore, he was not entitled to any declaration from the Civil Court. The

execution application was defective, not maintainable and deserves to be dismissed. In the second objection, the Petitioner stated that the decree-

holder was not in the employment of the Petitioner with effect from 13-3-1982 and hence not entitled to any amount Besides, the amount

calculated by the decree -holder was incorrect, arbitrary and without any basis Further, the execution of the decree at the instance of the decree-

holder, cannot proceed unless he pays Court fee on the amount of Rs. 3,90,342/-.

5. The executing Court after considering the objections filed by the Petitioner vide its order dated 7-9-1991 rejected the said objections by holding

that the decree was not purely a declaratory decree but a consequential relief had also been claimed in the same hence the decree was executable.

It was also held that execution can also be of an ascertained as well as on an unascertained amount. It further held that the National Insurance

Company was a statutory body and has been shown in the schedule of the General Insurance Business (Nationalization) Act, 1972 and hence

governed by the General Insurance Business (Nationalization) Act Since the Plaintiff had alleged contravention of statute on the part of the

Defendant hence a declaratory decree could be granted and the decree passed was neither void nor a nullity. It WAS further held that Section 11

of the Court Fees Act was not applicable in the facts of the present case and the decree for consequential relief was executable.

6. Aggrieved against the aforesaid order dated 7-9-1991 passed by the executing Court, the Petitioner filed a civil revision against the said order

before the District Judge, Gorakhpur which was transferred to the Court of the VII Additional District Judge. Gorakhpur who heard the matter

and dismissed the revision vide his order dated 20-1-1992. The present writ petition is directed against the impugned order dated 7-9-1991

passed by the IV Additional Munsif Gorakhpur and the order dated 20-1-1992, passed by the Respondent No. 1.

7. I have heard the learned Counsel for the parties. The learned Counsel for the Petitioner has challenged the impugned order mainly on 4 grounds

which are as follows:

(i) The first contention is that the suit of the Plaintiff-Respondent was not maintainable and barred under the provisions of Section 34 of the Specific

Reliefs Act as well as by the provisions of Industrial Disputes Act

(ii) The second contention is that the ex-parte decree passed by the trial Court in favour of the Plaintiff was a declaratory decree and therefore,

could not be executed.

(iii) Thirdly It was contended that no consequential relief having been claimed and no Court fee having been paid, the alleged arrears of salary

could not be sought to be executed.

(iv) Finally it was urged that the decree being a unity and the grounds being raised goes to the root of the matter hence it could be challenged in

execution proceedings.

I will deal with these contentions in the order in which they were canvassed before me.

8. In regard to the first contention regarding the maintainability of the suit or the suit being barred u/s 34 of the Specific Reliefs Act or the

provisions of Industrial Disputes Act, the argument is two fold. It is urged firstly that the Plaintiff is seeking to enforce a contract of personal service

and no declaration for enforcing a contract for personal service can be granted by the Civil Court as the same is barred u/s 34 of the Specific

Reliefs Act. Secondly it is submitted that the Plaintiff will come within the definition of "workman" and as such, relief if any, is available under the

Industrial Disputes Act and there is an apparent implied exclusion of the jurisdiction of the Civil Court to grant such a relief Elaborating his

argument the learned Counsel forthe Petitioner submitted that the relationship of the Petitioner and the Plaintiff-Respondent No. 1 was purely

contractual. The Plaintiff himself was relying upon the terms of the appointment letter and was seeking to base his right on the said appointment

letter.

The Petitioner had reserved the right to terminate the services of the Plaintiff in the said appointment letter and they have done so, there was no

breach of any statute and hence the suit before the Civil Court for declaratory relief was not maintainable in any case, the Petitioner could be a

workman within the meaning of the Industrial Disputes Act which not only confer the right on the workers for re-instatement and back wages but

also provides a detailed procedure and machinery for getting this relief. Under these circumstances, the scheme of the industrial Disputes Met

clearly excludes the jurisdiction of the Civil Court by implication in respect of remedies which are available under the Act and for which a complete

procedure and machinery has been provided under the industrial Disputes Act. In support of his submission, the learned Counsel for the Petitioner

has placed reliance on the case of Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, . it was held in this case that

normally a contract of personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to

accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a

claim for damages for wrongful dismissal or for breach of contract. It is admitted that there are certain exception to this normal Rule but according

to the learned Counsel the exceptions are not applicable in the facts of the present case.

9. The principle of law as laid down in the case reported in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, is

now well established by a series of decisions. The question, however, which calls for a decision in this case is whether the exception to the normal

rule that no declaration to enforce a contract of personal service will be granted as laid down in the aforesaid case are attracted in the facts of the

present case before me. The exceptions which are laid down In the aforesaid decisions of the Supreme Court are as follows:

1. A public servant who had been dismissed from the service in contravention of Article 311 of the Constitution.

2. Re-instatement of a dismissed worker under Industrial Law or by Labour and Industrial Tribunal.

3. A statutory body when it has acted in breach of a mandatory provisions imposed by the statute.

10. According to the learned Counsel for the Respondents, the first two exceptions are not applicable in the facts of the present case. However,

the third exception applies According to him National Insurance Company was a statutory body which was governed by a statute and statutory

rules which regulated the service condition of the employees Since this statutory body has acted in breach of mandatory provisions imposed by a

statute, a suit for a relief of declaration that the termination order is null and void and that the Plaintiff continues to be in service will be maintainable

as it will not then be a mere case of master terminating the service of the servant.

11. Learned Counsel for the Respondent No. 1 has submitted that the terms and conditions contained in the appointment letter of the Plaintiff-

Respondent are statutory conditions framed by the General Insurance Council u/s 64(R)(a) of the Insurance Act, 1938 which has been made

applicable to General Insurance Corporation and its 4 subsidiaries including National insurance Co. Limited u/s 35 of the General Insurance

Business (Nationalisation) Act, 1972. In this connection it will be worthwhile to notice certain provisions of the General Insurance Business

(Nationalisation) Act, 1972 (hereinafter referred to as the Nationalisation Act of 1972).

12. The Nationalisation Act of 1972 was framed by the Parliament with the object to provide for acquisition and transfer of shares of Indian

Insurance Companies and Undertakings of other existing insurers in order to serve better needs of the economy by securing the development if

general insurance business in the best interest of the community and for the regulation and control of such business and for matters connected

therewith or incidental thereto. Section 4 of the said Act lays down that on the appointed day all the shares in the capital of every Indian Insurance

Company shall by virtue of this Act. stand transferred to and vested in the Central Government free of all trusts, liabilities and encumbrances

affecting them. Section 5 lays down that on the appointed day the under taking of every existing insurer which is not an Indian Insurance Company

shall stand transferred to and vested in the Central Government and the Central Government shall immediately thereafter provide by notification,

for the transfer to and vesting in such Indian Insurance Company as it may specify In the notification of that undertaking Section 9 of the Act refers

to the formation of General Insurance Corporation of India and it says that, as soon as may be, after commencement of this Act the Centra

Government shall form a Government Company in accordance with the provisions of the Companies Act, to be known as the General Insurance

Corporation of India for the purposes of superintendence, control ling and carving on the business of general insurance. Section 11 lays down that

in the transfer of shares of each Indian Insurance Company to, and vesting in, the Central Government, u/s 4, there shall be paid by the Centra

Government to the Corporation, for distribution to the share holders of each such Company the amount specified against such Company in the

corresponding entry under Column 3 of Part A of the Schedule it Is noteworty that National Insurance Company is one of the names Insurance

Company shown In Part A of the Schedule. Section 16 of the Act talks about a scheme for merger of Companies it lays down that if the Central

Government is of opinion that for more efficient carrying on of general insurance business it is necessary so to do, it may by notification frame one

or more schemes providing for all or any of the following matters:

(a) ...

(f) ...

g) the rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary.

Sub-section (7) of Section 16 reads as follows:

(7) The provision of this section and any scheme framed under it shall have the effect notwithstanding anything to the contrary contained in any

other aw or any agreement, award or other instrument for the time being in force.

Section 17 lays down that a copy of every scheme and every amendment thereto framed u/s 16 shall be laid, as soon as may be, after it is made,

before each House of Parliament Section 31 of the Act states that officers and employees of the Corporation or of acquiring companies shall be

deemed to be public servants for the purposes of chapter IX of the Indian Penal Code, Section 35 of the Act states that the Central Government

may by notification specify in ""his behalf that the Insurance Act shall apply to or in relation to the Corporation and every acquiring company as if

the Corporation or the acquiring company, as the case may be were an insurer carrying on general insurance business within the meaning of that

Act. Section 39 gives power to the Central Government to make rules to carry out the provisions of this Act. In the same connection it will be

necessary at this stage to mention the provisions of Section 64(R) of the Insurance Act of 1938. This provision lays down that for the efficient

performance of its duties the Life Insurance Council or the General Insurance Council, as the case may be. may appoint such officers and servants

as may be necessary and fix the conditions of their service.

13. In the background of aforesaid provisions it has to be examined whether the National Insurance Company will come under the expression

other authorities"" in Article 12 and whether the rules framed under the Nationalisation Act or under the Insurance Act governing the service

conditions of its employees will have the force of law and their employees will have a statutory status. In this connection reference may be made to

the decision of Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance

Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . It was

observed by the Supreme Court in the said case that the expression ""other authorities"" in Article 12 is wide enough to include within its authority

created by a staute and functioning within the territory of India, under the control of the Government of India. The expression ""other authorities

include all constitutional or statutory authorities on whom powers are conferred by law. Admittedly, the National Insurance Company alongwith

three other Insurance Companies are one of the four companies formed persuant to Section 16 of the Nationalisation Act. Though these

companies are registered under the Companies Act, the status of these 4 companies is not due exclusively to its registration under the Companies

Act but to the scheme framed u/s 16 of the Nationalisation Act. It comes within ""other authorities"" under Article 12 for the three reasons; firstly, the

general Insurance business monopoly u/s 24 of the Nationalisation Act; secondly, its employees are public servant for the purposes of Chapter IX

of the Indian Penal Code and thirdly, the indemnity u/s 32 of the Nationalisation Act. In additional other provisions of the Nationalisation Act

clearly establish that the four companies formed u/s 16 of the Act come within ""other authorities"" as mentioned in Article 12. As a matter of fact,

this is now the established position and has been accepted by the Courts. Reference may be made to two cases reported in (i) 1978 Lab. I.C.

1062, (ii) 1981 Lab I.C. 1076 in these cases Madras High Court on considering a number of authorities has laid down that the United India Fire

and General Insurance Company which Is one of the four companies mentioned above is a statutory body having a statutory status and will be

authority within the meaning of Article 12 of the Constitution. To the same effect is the decision of Calcutta High Court reported in 1980 Lab IC.

(NOC) 28. The Calcutta High Court in the light of the provisions of Sections 17, 19, 21, 31 and 33 of the Nationalisation Act has laid down that

the New India Insurance Company Limited was an Instrumentality or agency of the Central Government or was a State or authority within the

meaning of Article 12 and Article 226 of the Constitution As a matter of fact this aspect of the matter that the National Insurance Company is a

statutory body has not been seriously disputed by the Counsel for the Petitioner, rightly perhaps In view of the now settled position with regards to

the said Companies. The National Insurance Company (Merger) Scheme 1973 came into force u/s 1(2) on the first of January, 1974 and in that

Scheme which was published in the Government of India Gazette Extraordinary on 2lst December, 1973, there is a definition of the Act which

means the General Insurance Business (Nationalisation) Act, 1972.

14. So far as the question whether the Rules framed for regulating service conditions of the employees of these companies are statutory rules or

not, it will be worthwhile to refer to the decision of the Madras High Court in the case of P. Swaminathan v. Presiding Officer Central Government

Labour Court 1982 Lab. I.C. 1069. It was held by the Court in the said case that the General Insurance (Rationalisation and Revision of Pay

Scales and others conditions of Services of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 has been framed u/s 16 of the

Nationalisation Act of 1972 after observing the formalities u/s 17 of the said Act and has statutory force. It has been further held that Section 16(1)

of the Act states that the Central Government if it is of opinion that for more efficient carrying on of general insurance business it is necessary so to

do, it may by notification frame one or more schemes providing for all or any of the matters set out in Clauses (a) to (j) therein. Clause (g) refers to

rationalisation and revision of pay scales and other terms and conditions of services of officers and other employees. Sub-section (4) of Section 16

reads as follows:

If the rationalisation or revision of any pay scale or other terms and conditions of service under any scheme is not acceptable to any officer or other

employee, the acquiring company may terminate his employment by giving him compensation equivalent to three months remuneration unless the

contract of service with such employee provides for a shorter notice of termination.

15. Sub-section (7) of Section 16 of the Act which has already been quoted in the earlier part of this judgment lays down that the provision of the

section and any scheme framed under it shall have the effect notwithstanding anything to the contrary contained in any other law or any agreement,

award or other instrument for the time being in force. u/s 17 of the Act, as already discussed above, a copy of every scheme and every amendment

thereto framed u/s 16 shall be laid, at soon as may be, after it is made before each House of Parliament. The Madras High Court therefore, in the

case of P. Swaminathan (Supra) had come to the conclusion that the scheme has got a statutory force and there cannot be any manner of doubt

with regards to the same.

16. In the case of Amitabh Bhattacharya v. Union of India 1980 Lab. I.C. (NOC) 28, the Calcutta High Court had held that for the purposes of

recruitment of clerical and subordinate staff the procedure to be followed in the general Insurance industry was laid down by the General Insurance

Corporation of India. This procedure was to be followed respect of each and every candidate. Further no relaxation in procedure could be made

by the Insurance Company without the approval of the Corporation having regard to the direction of the Corporation. Moreover, relaxation of a

rule of recruitment was not permissible unless there was an express provision to that effect.

17. It is noteworthy that learned Counsel for the Petitioners has not argued before me that the General Insurance Conduct and Discipline Rules

1975, on which the Plaintiff-Respondent was heavily relying was not attracted in the case of the Plaintiff or that there has been no violation of the

said Rules I therefore, proceed to assume that the General Insurance Conduct and Discipline Rules, 1975 applied in the case of the Plaintiff-

Respondent. Agreeing with the view expressed in the above mentioned decisions I have no doubt that the Rules framed under the Nationalisation

Act, 1972 including the General Insurance Conduct and Discipline Rules, 1975 are statutory rules and have statutory force. In this view of the

matter I am of the opinion that if any order of dismissal against an employee of the aforesaid Company has been passed which is in violation of the

statutory provision or in violation of a statutory obligation, the same is open to challenge and a Suit for declaration in such a situation would be

maintainable in view of the exception No. 3 laid down in the case of U.P. Warehousing Corporation (Supra).

18. It has been held by the Supreme Court in the case of S.R. Tewari Vs. District Board Agra and Another, , that the powers of statutory body

are always subject to the statute which has constituted it and must be exercised consistently with the statute and the Courts have, in appropriate

cases, the power to declare an action of the body illegal or ultra vires even if the action relates to determination of employment of a servant. The

Calcutta High Court has also in the case of Calcutta Electric Supply Corporation Ltd. v. Ramaratta Mahato AIR 1973 Pal. 258, held that a suit for

declaration of an order of dismissal passed by an employer as illegal, inoperative and ultra vires as having been passed in transgression of material

statutory provision or in violation of statutory obligation, was maintainable. Such a declaration is certainly different and far from a declaration

granting enforcement of personal contract of service or reinstatement of a dismissed worker. After considering the decisions of various High Courts

and after analysing the said decisions I am of the view that very rightly a distinction has been drawn between an attempt to enforce a contract and

an attempt to have an order terminating a contract declared null and void. In the latter case the declaration would not proceed on the basis of

enforcement of a contract but on the basis that there had been in fact, no order terminating the contract. A suit for declaration that the termination

of Plaintiff"s service is ultra vires or illegal is maintainable in Civil Court. The conclusion, therefore, drawn in the present case by the trial Court that

the Suit before the Civil Court for a declaration that the notice of termination of the services of the Plaintiff was null and void was maintainable

before the Civil Court, was substantially correct.

19. In support of the second limb of the argument of the learned Counsel for the Petitioner, that the reliefs of reinstatement and back wages are

available to the Plaintiff under the Industrial Disputes Act and the same cannot be granted by the Civil Court as the provisions of the Industrial

Disputes Act impliedly exclude the jurisdiction of Civil Courts as regards such reliefs, learned Counsel has placed strong reliance on the case

Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, . The facts of the said case may be noticed, in brief. In that case

the Plaintiff was an employee of M/s. Empire of India and Ceylone Tea Company Private Limited. The Plaintiff was served with a notice by his

employers asking him to explain certain charges of misconduct. In domestic enquiry held by the management, the Plaintiff was found guilty and was

dismissed from service. The Plaintiff filed a suit in the Court of Munsif seeking the relief of declaration that the dismissal was null and void and

inoperative as he was not guilty of any misconduct and the dismissal was bad and contrary to the provisions of the Standing Orders. Before the

trial Court the employers filed a written statement in which it was specifically pleaded that the suit was not maintainable as the relief which was

sought was available to the Plaintiff u/s 2A of the Industrial Disputes Act. The trial Court came to the conclusion that the Civil Court had the

jurisdiction to try the suit. The employers filed appeal before the High Court which held that the nature of relief which was sought by the Plaintiff

was such which could only be granted under the Industrial Disputes Act and, therefore, the Civil Court had no jurisdiction to try the suit. The

matter was taken before the Supreme Court by the employee. Before the said Court it was not disputed that the Industrial Disputes Act was

applicable in the case. It was also not disputed that the Industrial Employment (Standing Orders) Act was also applicable.

It was also not disputed that the enquiry for misconduct was conducted against the Appellant-employee in accordance with the Standing Orders

and the main plea which was raised was that the enquiry was not strictly in accordance with the Standing Orders. In this background the Supreme

Court observed that it was not in dispute that the dispute which was raised by the Appellant fell within the ambit of definition of ""Industrial dispute

as defined in Section 2(k) of the Industrial Disputes Act. It was further observed that it was not in dispute that the dispute could be taken up by the

Conciliation Officer u/s 12 of the Industrial Disputes Act. It is in this background that the Supreme Court held that it was clear in view of the

language of Section 10 read with Section 12(5) that an adequate remedy was available to the Plaintiff-Appellant under the scheme of Industrial

Disputes Act itself which is the Act which provides for reliefs of reinstatement and back wages which, in fact, the Appellant sought before the Civil

Court by filing a suit, It was thus held in that case that the scheme of the Industrial Disputes Act excludes the jurisdiction of Civil Court by

implication in respect of the remedies which are available under this Act and for which a complete procedure and machinery has been provided by

the said Act. On the basis of the aforesaid decision, learned Counsel for the Petitioner argued that the Plaintiff-Respondent No. 1 would be an

workman within the meaning of the Industrial Disputes Act In support of his aforesaid submission, learned Counsel referred to the decision in the

case of S.K. Verma Vs. Mahesh Chandra and Another, , in which it was held that a Development Officer in the Life Insurance Corporation of

India is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

20. Having heard learned Counsel on this aspect of the case I am of the view that the case reported in Jitendra Nath Biswas Vs. M/s. Empire of

India and Ceylon Tea Co. and Another, is clearly distinguishable on facts in the aforesaid case before the Supreme Court it was not disputed that

the Industrial Disputes Act was applicable and an inquiry for misconduct was conducted against the Plaintiff-Appellant In accordance with the

Standing Orders. The main plea raised by the Appellant workman was that the inquiry was not strictly in accordance with the Standing Orders it is

in this context that the High Court came to the conclusion that the Civil Court will have no jurisdiction to try the said suit and the dispute could be

adjudicated by the Industrial Court. In the present case, in the written statement filed by the Petitioner the plea that the Plaintiff was a workman and

in his case the Industrial Disputes Act was applicable and it was only the Industrial Court which could adjudicate the matter was neither taken nor

raised. Even in the objections filed u/s 47 CPC the Petitioner had neither taken nor raised this plea. It is for the first time that this point is sought to

be raised in the present petition. In the case Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, , it was held by the Supreme

Court that when a decree is a nullity which is sought to be executed, objections in that behalf may be raised in a proceeding for execution. Again

when a decree is made by a Court which has no inherent jurisdiction to make it, objection to its validity may be raised in execution proceedings if

the objection appears on the face of the record, where the objection as to the jurisdiction of the Court to pass the decree does not appear on the

face of the record and requires examination of the question raised and decided at the trial or which could have been but not having been raised, the

executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

21. In the case of Hira Devi and Others Vs. Harinath Chaurasiya and Others, , which arose out of a suit for specific performance of contract and

the Defendant-judgment-debtor did not raise any objection in the written statement about the lack of jurisdiction, and the decree had become final,

this Court held that since this plea had not been raised, assuming that the Court had inherent lack of jurisdiction when the decree was put in

execution, it was not open to the judgment-debtor to raise such objection nor the same could be permitted to be raised by the execution Court.

22. In view of the aforesaid decisions I am fortified in my view that the Petitioner having not raised this plea, that the Plaintiff was a workman within

the meaning of Industrial Disputes Act and hence it is the Industrial Court which will have jurisdiction and not the Civil Court, either in its defence

or in its objection u/s 47 CPC or before the Court below it will not be open for him to challenge the jurisdiction of the Civil Court on this ground

for the first time in this writ petition. In view of what has been held above I hold that the submission of the learned Counsel that the relief of

reinstatement and back wages are available to the Plaintiff under the Industrial Disputes Act before the Industrial Court and the jurisdiction of the

Civil Court was impliedly barred cannot be accepted.

23. The second contention of the learned Counsel for the Petitioner is that the exparte decree passed by the trial Court in favour of the Plaintiff was

a declaratory decree and, therefore, could not be executed. In this connection the relief claimed in the plaint which has been quoted in the earlier

part of the judgment may be noticed. It is apparent that the relief sought was not for declaration simplicitor but the Plaintiff had also sought a

consequential relief inasmuch as he had claimed ail benefits attached to the post and also sought to recover the emoluments attached to the post of

Probationary Inspector subsequent to 13-3-1982.

24. It has been held in the case of Managing Director, J. and K. Tourism v. Ghulam Mohammad Bhat 1985 Lab. IC. 124 that where the suit for

declaration that the order terminating the services of the Plaintiff is illegal and demanding further relief by claiming emoluments attached to the post

is decreed, the decree is not purely a declaratory decree in nature and is executable. Similar view has been taken by the Punjab and Haryana High

Court in the case of Ram Swarup Bhalla v. State of Punjab 1985 SLR 433, in which it has been held that a declaratory decree reinstating an

employee and deeming him in service throughout and entitling him for all consequential benefits are executable and the employee is entitled to get

his salary in pursuance of the declaratory decree.

25. The Supreme Court in the case of Bhanwar Lal Vs. Smt. Prem Lata and others, , held in the facts of the said case, that once a decree which

was the subject-matter of execution was declared to be not binding on the Plaintiffs, the execution sale would not bind and as a result they become

entitled to restitution. The decree does contain a direction for restitution. Therefore, it is not a mere declaratory decree but coupled with a decree

for restitution of the property in suit. Accordingly, the decree is executable.

26. In the present case before me also, the trial Court had decreed the Plaintiff"s suit by holding that the notice dated 13-3-1982 terminating the

services of the Plaintiff was null and void and that he was entitled to all the benefits as if he were in service. Applying the ratio of the decision in the

cases mentioned above to the facts of the present case I hold that the decree passed by the trial Court was executable and the view taken by the

Courts below regarding the executabilty of the decree is correct.

27. Thirdly, it was urged by the Counsel for the Petitioner that no consequential relief was claimed by the Plaintiff and no Court fee having been

paid, the decree for the alleged arrears of salary could not be sought to be executed. The expression ""consequential relief"" has been defined by our

Court in the Full Bench decision of Kalu Ram Vs. Babu Lal and Others, as:

Some relief which would flow directly from the declaration given the valuation of which is not capable of being definitely ascertained, which is not

specifically provided any where in the Act and cannot be claimed independently of the declaration as a substantive relief.

28. The test to determine whether a relief is a consequential relief is ""where it flows directly from the declaration given"". Where it is quite

independent of the declaratory relief and thus can be granted or refused apart from the relief of declaration is not a consequential relief in other

words, no relief is consequential unless it cannot be granted without declaration.

29. Applying the aforesaid test in the facts of the present case it will be seen that the Plaintiff had sought the relief for declaration that the notice

terminating his services was null and void this was the substantial relief. If this relief refused, the relief for the benefit of the service and emoluments,

which has been claimed in the plaint, will automatically fail. Thus the said relief regarding benefit of the service and emoluments was dependent on

the relief for declaration and was thus a consequential relief The submission, therefore, that no consequential relief was claimed cannot be

accepted.

30. So far as the argument of the Petitioner with regards to the payment of the Court fees by the Plaintiff was concerned, learned Counsel for the

Respondent has in his reply referred to the provisions of Section 7(iv)(a) of the Court Fees Act which reads thus:

Section 7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(iv) In suits-(a) For a declaratory decree with consequential relief. To obtain a declaratory decree or order, where consequential relief other than

the relief Specified in Sub-section (iv-A) is prayed;

31. Learned Counsel for the Respondent has argued that to a suit for declaration with a consequential relief Section 7(iv-A) of the Act does not

apply and hence Section 7(iv)(a) of the Court Fees Act will apply. He has further argued that Section 11 of the Court Fees Act which deals with

suits for mesne profits or account will not apply. He has further placed reliance GB paragraph 3 of the decision in the case of Managing Director,

J. and K. Tourism v. Ghulam Mohammad Bhat (supra) in which it was held that where the suit is for declaration and for further relief, no valuation

could be put by the Plaintiff on it for the purpose of jurisdiction and Court fees.

32. It has already been held by me that the relief for benefit of the service and emoluments claimed by the Plaintiff was consequential relief, and

such relief was not specifically provided any where in the Act and could not have been claimed independently apart from the substantial relief for

declaration. The Courts below, therefore, bad correctly held that the decree was executable and the Court fee paid was sufficient.

33. Lastly, it was contended that the decree being a nullity and the grounds raised go to the root of the matter, hence it could be challenged in

execution proceedings and the objection filed u/s 47 CPC was well sustained. The Court has already taken the view that the ex parte decree

passed by the trial Court in this case, cannot be said to be a nullity and the same is executable. In the case of Vasudev Dhanjibhai Modi Vs.

Rajabhai Abdul Rehman and Others, the Supreme Court has held that a Court executing a decree can not go behind the decree between the

parties or their representatives, it must take the decree according to it tenure and cannot entertain any objection that the decree was incorrect in

law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision a decree even if it be erroneous, is still binding between the

parties. It has been further laid down that when a decree is a nullity and it is sought to be executed an objection in that behalf may be raised in a

proceeding for execution. However, a distinction has been drawn inasmuch as the Supreme Court has laid down that where the objection as to the

jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the question raised and decided

at the trial or which could have been but not have been raised, the executing Court will have no jurisdiction to entertain an objection as to the

validity of the decree even on the ground of absence of jurisdiction.

34. In view of the aforesaid, discussions I do not find any substance in the grounds raised by the Petitioner. The writ petition is, therefore,

dismissed with costs.