
AIR 2008 SC 1315 : (2008) AIRSCW 1113 : (2008) AIRSCW 1412 : (2008) AIRSCW 3398 : (2008) 2 ALLMR 799 : (2009) 2 ALT 8 : (2008) 2 AWC 1475 Supp : (2008) 56 BLJR 820 : (2008) 1 CLT 623 : (2008) 116 FLR 790 : (2008) 2 JT 70 : (2008) 2 LLJ 294 : (2008) 2 LW 4

Supreme Court of India

Case No: Civil Appeal No. 658 of 2008 (Arising out of SLP (C) No. 18774 of 2005)

Chief Engineer, Hydel
Project and Others

APPELLANT

Vs

Ravinder Nath and
Others

RESPONDENT

Date of Decision: Jan. 24, 2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 16, 80, 9#Industrial Disputes Act, 1947 â€”
Section 2, 25G, 2A, 33C

Citation: AIR 2008 SC 1315 : (2008) AIRSCW 1113 : (2008) AIRSCW 1412 : (2008) AIRSCW 3398 : (2008) 2 ALLMR 799 : (2009) 2 ALT 8 : (2008) 2 AWC 1475 Supp : (2008) 56 BLJR 820 : (2008) 1 CLT 623 : (2008) 116 FLR 790 : (2008) 2 JT 70 : (2008) 2 LLJ 294 : (2008) 2 LW 4

Hon'ble Judges: V. S. Sirpurkar, J; S. B. Sinha, J

Bench: Division Bench

Advocate: Harinder Mohan Singh and Kaushal Yadav, for the Appellant; Prem Malhotra, for the Respondent

Final Decision: Allowed

Judgement

V.S. Sirpurkar, J.
Leave granted.

Chief Engineer, Superintending Engineer (Construction Circle) and Personnel Officer, Anandpur Sahib Hydel Project have filed this appeal to

question the correctness of the judgment of the Punjab and Haryana High Court in Regular Second Appeal confirming the judgment passed by the

Additional District Judge, Ropar and Senior Sub Judge, Ropar, basically on the ground that there was a complete lack of jurisdiction in the above

three Civil Courts since the issues squarely fall within the ambit of the Industrial Disputes Act, 1947 and as such the remedy for the 9 respondents-

workmen, who are workmen under the Industrial Disputes Act, lies with the authorities thereunder and not with the Civil Court.

BASIC FACTS

2. Nine respondents herein filed a Civil Suit before the Senior Sub Judge, Ropar for the relief of (i) declaration to the effect that the orders of their

termination/retrenchment from service were illegal and (ii) that they were entitled to reinstatement in service with back-wages. It was pleaded that

the plaintiffs-respondents were skilled workers and were working on the Anandpur Sahib Hydel Project (hereinafter called "the Project") in

various capacities such as T. Mate, Mixer Operator, Beldar, etc. for more than 5 years and, therefore, as per the Standing Orders and Rules they

were regular employees of the defendants. It was alleged that the defendants did not maintain any seniority-list of the workers and various

categories of services on the said Project and they arbitrarily removed the plaintiffs-respondents from service on the dates mentioned in Annexure

A to the plaint by obtaining their signatures on papers under coercion and force and also forced them to accept payments. It was further alleged

that while removing the plaintiffs-respondent, the defendants-appellants did not observe the seniority, meaning thereby while the juniors were

retained in service, the seniors were retrenched. It was alleged that action was based on pick and choose policy and was discriminatory and

amounted to victimization. It was also alleged that those workers who had completed service for 1000 days, could not have been retrenched (as

was held by the Punjab & Haryana High Court in Mehanga Ram v. Punjab State Civil Writ No. 718 of 1986).

3. This claim was contested by the State of Punjab. It was firstly urged that the suit was bad as common suit could not have been filed since the

cause of action of each defendant was distinct and separate. It was urged that the plaintiffs-respondents were appointed on purely temporary basis

as work-charged employees and after the completion of the project, their services were validly terminated as per Rule 20(1) read with Rule 3(a) of

the Certified Standing Orders for the work-charged staff on the said Project. Since- the termination was complete on payment of necessary

gratuity etc., there can be no cause of action and as such the present suit was not maintainable in the present form. It was also urged that notice u/s

80 CPC was not given and the suit was also barred by limitation. It was reiterated that the principle of first come last go was strictly observed

since there was a regular seniority-list maintained for the Project as a whole and that there was no discrimination or victimization. On merits also

the suit was opposed on the ground that since the plaintiffs-respondent were work-charged employees for a work of temporary nature, on

completion of the project their services were terminated as per the Rules which governed their service conditions (the Certified Standing Orders).

The following issues were framed in between the parties by the Court:

1. Whether the impugned orders of termination retrenchment of the plaintiffs are illegal, unauthorized, ultra vires and ineffective as alleged? OPP
2. Whether the suit is bad for misjoinder of parties? OPP
3. Whether the suit is maintainable in the present form? Opp
4. Whether no valid notice u/s 80 CPC has been served by the plaintiff on the defendants? OPP
5. Whether the suit is within limitation?
6. Whether the plaintiffs are entitled to the declaration and injunction prayed for? OPP
7. Relief.

4. The Trial Court, on the basis of the evidence, came to the conclusion that the defendants-appellants had not observed the principle of last come

first go in making the retrenchments. The Trial Court also relied on the judgment of the Punjab and Haryana High Court in 358328 and one

another judgment, the copy of which was filed Vide Exhibit D-13 wherein the High Court had given directions that the workers so retrenched

should be accommodated somewhere-else in some other projects and such appointments in the new projects would be treated as new

appointments for the purpose of seniority and that the relief given to such workers would be without prejudice to the retrenchment and any other

compensation that such workers would be entitled to under the provisions of the Industrial Disputes Act, 1947. Relying on these observations, the

impugned orders of termination were held illegal. As regards issue regarding tenability of the suit, all that was said by the Trial Court was that the

Government Pleader could not point out any defect in the form of the suit except that the plaintiffs had not challenged any specified orders

regarding the termination of their services. (That is the only discussion in respect of the tenability). Though it was held that there was no evidence to

hold that the persons junior to the plaintiffs-" respondents were retained in service, there was no evidence on record to show that as to what would

be the position of the plaintiffs in overall seniority-list when finalized vis-a-vis the other employees who have been retained or retrenched and,

therefore, it was held that the plaintiffs were entitled to declaration and mandatory injunction only to the extent that they had right to be taken back

in service and in case it was found that they were entitled to be retained on the project on the basis of the seniority, they would be entitled to be

absorbed on other projects of the defendants according to their qualifications and fitness within a period of six months from the date of the

judgment. A curious relief was granted in the following terms:

17. In view of my foregoing findings, the suit of the plaintiffs partly succeeds. Accordingly, I pass a decree in favour of the plaintiffs and against

defendants No. 1, 3 to 5 for declarations to the effect that the plaintiffs are entitled to be taken back in service. However, in case it is found that by

virtue of their overall seniority in their respective categories of workers at the time of their retrenchment, they were not entitled to be retained on the

APS Project, then they shall be absorbed in other projects under the defendants within a period of six months from the date of this judgment....

5. This order of the Trial Court was appealed against by the defendants-appellants before the Additional District Judge, Ropar which appeal was

dismissed. In its judgment the Appellate Court has referred to the arguments advanced by the appellants relying on Rule 20(1) of the Standing

Orders governing the work-charged staff of the Project as also to the contention raised on behalf of the plaintiffs-respondent that the defendants-

appellants had not violated principle of last come first go. The Appellate Court accepted that such principle was not strictly adhered to and further

held that the Anandpur Hydel Project was a ""State"" and the plaintiffs-respondents were entitled to the protection contained under the Constitution

of India and CSR which provided that the work-charged employees could not be allowed to remain as such for more than six months. Relying on

the decision of this Court reported in 274018 nd Piara Singh v. State of Haryana 1989 PLR (1) 396, the Appellate Court confirmed the findings of

the Trial Court and dismissed the appeal.

6. The matter was taken before the High Court by way of a Second Appeal on various grounds. To begin with the High Court granted stay of the

operation of the orders passed by the courts below. However, by the subsequent order, the stay application was dismissed and the said order

granted on 20.12.1991 was vacated. This came to be challenged by way of a SLP before this Court. In the SLP a contention was raised by way

of Ground (8) that the Civil Court had no jurisdiction to entertain the suit since the relief of reinstatement in the present case was available only

under the Industrial Disputes Act. This Court, however, did not interfere at that stage and directed the High Court to dispose of the Second

Appeal as expeditiously as possible. The High Court dismissed the Second Appeal necessitating the present appeal before us.

CONTENTIONS

7. Learned Counsel appearing on behalf of the appellants urged that since the issues squarely fell within the ambit of the Industrial Disputes Act,

1947 and since there is a specific remedy available to the plaintiffs-respondents under that Act, the jurisdiction of the Civil Court was impliedly

excluded and all the courts below erred in entertaining and deciding upon the issues much less adverse to the appellants. Learned Counsel, relying

on this Court's judgments in 273324 275363 ; 266616 and 292675 urged that the legal position in this behalf was settled. On the other hand the

learned Counsel on behalf of the respondents urged that firstly this issue relating to jurisdiction was not raised by the respondents before any courts

below and it is only for the first time that the objection to the jurisdiction has been raised before this Court. Learned Counsel for the respondents

also urged that the issue was not covered under the labour jurisprudence and under the provisions of the Industrial Disputes Act, 1947 and the

jurisdiction of the Civil Court could not be said to be barred.

DISCUSSIONS

8. We would take into account the objection to the effect that the contention regarding the jurisdiction was not raised and, therefore, it could not

be allowed to be raised at this late stage, for that it will have to be found as to whether the issue regarding the reinstatement and the payment of

back-wages could be said to be covered under the provisions of Industrial Disputes Act. The question of the Civil Court's jurisdiction being

excluded came, for the first time, before this Court in The Premier Automobiles's case (supra). In that case the court culled out following four

principles:

(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 senior concerned to choose his remedy for the relief which is competent to be granted in

a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor

is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either

Section 33C or the raising of an industrial dispute, as the case may be.

9. The second decision came in Jitendra Nath Biswas's case (supra), wherein this Court specifically held, interpreting Section 9 of the CPC that

the Civil Court shall have no jurisdiction where its jurisdiction is expressly or impliedly barred. The Court held:

It could not be disputed that a contract of employment for personal service could not be specifically enforced and it is also clear that except the

industrial law, under the law of contract and the civil law, an employee whose services are terminated could not seek the relief of reinstatement with

back wages. At best he could seek the relief of damages for breach of contract. The manner in which the relief has been framed by the appellant

plaintiff in this case, although he seeks a declaration and injunction but in substance it is nothing but the relief of reinstatement and back wages. The

relief could only be available to a workman under the Industrial Disputes Act.

The Court, therefore, proceeded to hold that the civil court's jurisdiction was barred. In this case very peculiarly it was not disputed that the

Industrial Employment (Standing Orders) Act was also applicable to the workman and an inquiry for misconduct was conducted against the

appellant in accordance with the standing orders. It was argued before the court, however, that since it was solely the discretion of the Conciliation

Officer to proceed with the conciliation proceedings and since even after the report given by the Conciliation Officer it was the discretion of the

State Government to make a Reference or not, the civil court's jurisdiction was not barred. This Court repelled that contention after discussing the

duties of the Conciliation Officer and held that the civil court's jurisdiction was barred.

10. On its heels came the case of Krishana Kant (supra). This was a case where, pursuant to the disciplinary inquiry held against some of the

workers on charges of misconduct, their services were terminated. The suits were filed for a declaration that the orders terminating their services

were illegal and invalid and for further declaration that they must be deemed to have continued and still continuing in the service of the Corporation

with all consequential benefits. This Court elaborately considered the law laid down earlier in the cases of Premier Automobiles's case and Jitendra

Nath Biswas's (supra) and after considering the concept of "industrial dispute" as covered under Sections 2(k) and 2A of Industrial Disputes Act,

1947 came to the conclusion that the disputes not covered u/s 2(k) or 2A could be determined by Civil Court or by arbitration but disputes

relating to right or obligation created by the Industrial Disputes Act can be adjudicated only by the forum created by the Industrial Disputes Act.

This was a case where the Corporation was armed with the Certified Standing Orders. The Court held that the Certified Standing Orders are not

in the nature of delegated or subordinate legislation. It was held that the Certified Standing Orders were statutorily imposed conditions of service

and the complaint made by the workman relating to breach thereof could only be tried under the machinery and the procedure provided by the

Industrial Disputes Act and the civil court's jurisdiction was impliedly barred to that extent. The Court while referring to the seven principles culled

out by this Court in 277315 further explained the decision in Premier Automobile (supra) to hold that not only the disputes under the Industrial

Disputes Act were barred but the disputes arising out of the sister enactments like Industrial Employment (Standing Orders) Act also stood outside

the jurisdiction of the civil court since they did not provide a special forum of their own for enforcement of the rights and liabilities created by them.

The Court, therefore, held:

Thus a dispute involving the enforcement of the rights and liabilities created by the certified standing orders has necessarily got to be adjudicated

only in the forums created by the Industrial Disputes Act within the meaning of Sections 2(k) and 2A of Industrial Disputes Act or such enactment

says that such dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes

Act. The civil court have no jurisdiction to entertain such suits.

The Court further went on to say that the enforcement of the Industrial Employment Standing Orders is an industrial dispute and if it satisfies the

requirement of Section 2(k) and/or Section 2A of the Industries Disputes Act, it must be adjudicated in the forums created by the Industrial

Disputes Act alone.

11. Though there are number of other cases followed, we would choose to consider the decision in Zakir Hussain's case (supra). This case also

arose out of the termination simpliciter effected by the Corporation of the conductor who was appointed on probation basis for a period of two

years and since his services were not found satisfactory, the same were terminated, of course with necessary compensation prescribed as per the

Rules of the Corporation. The court after considering all the earlier cases cited above and referring to the seven principles culled out in the case of

Krishan Kant, came to the conclusion as arrived at in Krishan Kant's case. Two other cases were referred to, they being 295318 and 279399 . It

was held by the court that the reliefs craved in the said cases squarely fell within the arena of Industrial Disputes Act and, therefore, civil court's

jurisdiction was clearly barred. On the question of the adhoc appointment of the employee, the court came to the conclusion that the respondent

was a probationer and did not have any substantive right to hold the post and was not entitled to a decree of declaration which was erroneously

granted by the lower courts.

12. Now coming to the facts of the present case, there is no dispute that there are Certified Standing Orders in vogue. The nine plaintiffs-

respondents were engaged on work-charged basis till the completion of the Project. Their services came to be terminated after the completion of

the Project in January, 1985 as they were not required due to the completion of the Project and since they were engaged temporarily. It was

pointed out before us and not disputed that the services were terminated vide order dated 6.7.1985 under Rule 20(1) read with Rule 3-A of the

Certified Standing Orders for work-charged staff. It is also not disputed that they were paid gratuity, retrenchment compensation as also the

compensation for notice and that they had duly accepted the order. In the civil suit it was prayed that a decree be passed for declaration to the

effect that the orders of termination/retrenchment of their service were null and void and that they should be reinstated with back-wages. A

mandatory injunction to that effect was sought for. It was urged before the trial court that the defendants-appellants have not maintained a proper

seniority list and that had resulted in the breach of the principle of last come first go and, therefore, their termination was bad in law. In short, the

original plaintiffs respondents had averred the breach of Section 25G of the Industrial Dispute Act, in that, they had alleged that the employer had

shown discriminatory attitude and the plaintiffs-respondents were picked and chosen for being terminated and thus were victimized. On the other

hand defence raised was that there were certain cut-off dates fixed for the retention of the employees and all the plaintiffs-respondent had actually

joined the service after that cut-off date and, therefore they were terminated in terms of Rule 20(1) read with Rule 3-A of the Certified Standing

Orders relating to work-charged staff.

13. From the above discussion there is no doubt that the dispute and the main issue fell squarely under the premise of Industrial Disputes Act.

Further as specifically held in Krishna Kant's case that where the Certified Standing Orders were applicable and where the breach thereof was

complained of, such issues fell in the exclusive area of the machinery provided by the Industrial Disputes Act and as such the civil court's

jurisdiction was specifically barred. We are left with no doubt that the situation is identical in the present case.

14. In the present case while the employers-appellants claimed that the termination simpliciter was effected in the light of the Rules under the

Certified Standing Orders, the plaintiffs-respondents alleged that the principles under the provisions of the Certified Standing Orders were

completely ignored and a highly arbitrary, discriminatory approach was adopted by the employer by picking and choosing the plaintiffs for the

purposes of termination. The dispute, therefore, clearly fell outside the civil court's jurisdiction as per the decisions of this Court relied upon earlier.

15. However, the question is that this issue of jurisdiction was not raised either before the before the First Appellate Court or the Second

Appellate Court. Learned Counsel for the respondents very vociferously argued before us that for the reasons best known to the appellants, this

objection regarding the jurisdiction was never raised specifically. We have seen the written statement. In the written statement the defendants-

appellants have raised a plea though not specifically but there is a clear reference to Rule 20(1) read with Rule 3-A of the Certified Standing

Orders for the work-charged staff on the Project. It is stated, which is apparent from the judgment of the trial court that ""since the services of

plaintiffs have already been terminated on payment of necessary gratuity etc., they have no cause of action and that the present suit is not

maintainable in the present form and is also not competent without notice u/s 80 CPC besides being barred by limitation"". The tenability of the suit

was, therefore, raised and vide Issue No. 3, the trial court also considered the tenability of the suit in the present form. The trial court has not,

however, adverted to the jurisdiction aspect as is being presently highlighted before us. Same is the story about the First Appellate Court and the

Second Appellate Court. However, it is not as if this issue was not raised altogether. Atleast a notice of this issue was given to the respondents in

SLP (C) 11086 of 1992 which was filed on behalf of the appellants to challenge the dismissal of the said application by the High Court. It is very

specifically raised therein in Ground No. 8, which is reproduced as under:

Because the civil court had no jurisdiction to entertain the suit. The relief of reinstatement in the present case was available only under the Industrial

Disputes Act and therefore the jurisdiction of the Civil Court was expressly barred [(1991) 1 RSJ 770]. The declaration claimed by the plaintiffs in

his suit could be granted by the Labour Court under the Industrial Disputes Act and consequential relief was also exclusively outside the jurisdiction

of the civil court. The plaintiff respondents are basing their case mainly on the provision of Industrial Disputes Act, 1947 and thus the claim of the

plaintiffs/respondents could only be adjudicated by the Labour Court. The proposition of law is now well settled by repeated pronouncement

made by the Apex Court.

Therefore, it is not that the respondents herein had no notice of such an objection. This Court only directed the High Court to dispose of the appeal

before it expeditiously. However, it does not seem that the question was raised by the counsel of the appellants before the High Court in the

present form. On the other hand the High Court has very specifically held that there was no substantial question of law involved in the matter.

16. In our considered opinion, it cannot be said that there was no question of law involved as we have pointed out that the issues squarely fell in

the area covered by the Industrial Disputes Act and was, therefore, specifically barred. The question is whether this issue regarding the jurisdiction

could be allowed to be raised before us. The question of jurisdiction came up before this Court in 295545 The Court therein was considering the

question raised whether the court had jurisdiction u/s 16(d) CPC to deal with the matter in question. In short the court was considering whether the

amendment could have been allowed raising objection to the territorial jurisdiction. This Court in para 30 observed as under:

We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i)

territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdiction

are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues.

The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage.

Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-

matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by

a court having no jurisdiction is a nullity.

The Court then proceeded to rely on the case in 282075 and observed in para 32 that neither consent nor waiver nor acquiescence can confer

jurisdiction upon a court, otherwise incompetent to try the suit. The Court further observed that

"It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to

nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a

foundation for a right, even at the stage execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non

judice."

The Court also relied upon the decision in 278244 and quoted there from:

It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up

whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of

jurisdiction...strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

Though in the aforementioned decision these observations were made since the defendants before raising the objection to the territorial jurisdiction

had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue

to be a nullity.

17. The aforementioned decision was followed again in 260864 where one of us, Sinha, J. was a party. Of course while following this decision the

Court referred to the decisions in 291829 ; 303115 as also 257487

CONCLUSION

18. Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question

of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second

Appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of

the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be

allowed. In view of this verdict of ours, we have deliberately not chosen to go into the other contentions raised on merits. We, however, make it

clear that we have not, in any manner, commented upon the rights of the plaintiffs-respondents, if any, arising out of the Labour Jurisprudence.

In the result the appeal is allowed but without any order as to costs.