

N. Ramasamy Vs Bharat Heavy Electricals Ltd.

Court: Madras High Court (Madurai Bench)

Date of Decision: March 16, 2015

Acts Referred: Industrial Disputes Act, 1947 - Section 2 A, 25 (k), 7

Citation: (2015) 4 CTC 328 : (2015) 146 FLR 881 : (2015) 3 LLN 494 : (2015) 3 LW 129 : (2015) 4 MLJ 591

Hon'ble Judges: Pushpa Sathyanarayana, J.

Bench: Single Bench

Advocate: D. Rajkumar, for the Appellant; A.V. Arun, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Pushpa Sathyanarayana, J.

The plaintiff in O.S. No.106 of 1997 on the file of the District Munsif Court, Tiruchirapalli is the petitioner

herein.

2. The suit is filed by the plaintiff against his employer for a declaration that the proceedings against him that culminated into a penalty advice dated

9/6/1984 is void and nonest and for consequential relief of mandatory injunction, directing the defendant to restore all the benefits.

3. The plaintiff was working as a Machinist Grade III under the defendant which is a corporate body undertaken by the Government of India.

4. The revision is filed by the plaintiff, who is the worker with the defendant Company who had filed the above suit. The revision petitioner is

aggrieved by the order holding that the Civil Court has got no jurisdiction to try the suit. According to the defendant, the dispute is an Industrial

Dispute and it has to be adjudicated only by the Tribunals created under the Industrial Disputes Act and not before the Civil Court. Hence the Civil

Court has got no jurisdiction to try the case.

5. The complaint against the revision petitioner was that he induced and misguided 25 employees for filing an application for provident fund for

drawing permanent withdrawal. This was the act which was said to be against the standing orders of the Company. Even in the written statement,

the respondent herein had clearly stated that the Civil Court has got no jurisdiction.

6. It is the contention of the defendant/respondent that as per the Industrial Disputes Act, it is a dispute relating to the matter coming into the

second schedule of the Industrial Disputes Act, 1947. Therefore, I.A. No.829 of 1999 was filed to try the question of jurisdiction and

maintainability of the suit before the Sub-Court as a preliminary issue before going in for the trial.

7. The said application was resisted by the plaintiff contending that though admittedly, he is a worker with the defendant Company, the suit is filed

based on common law. Therefore, it is not in dispute as contemplated under the Industrial Disputes Act. According to the plaintiff, the charges

framed against him will not come within the purview of the Industrial Disputes. Hence, claimed that only the suit is maintainable before the Sub-

Court and it will not go before the Industrial Tribunals.

8. The application was tried by the learned District Munsif, Tiruchirapalli, who after elaborately considering the various decisions on this aspect

held that the suit is not maintainable before the civil Court or Labour Tribunal for his remedy. Aggrieved by the same, the above revision has been

filed.

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

10. The only question that has to be decided is whether the order of the Principal District Munsif, Tiruchirapalli, rejecting the plaint to be presented

before the proper forum is correct.

11. According to the petitioner, the Principal District Munsif, Tiruchirapalli failed to consider the basic principle that the Industrial Disputes

enumerated in Section 2 A or 2 k of the Industrial Disputes Act only can be dealt with by the Labour Court. His further contention was that the

case in dispute is not falling within the purview of the above sections.

12. It is useful to extract Section 2 A and 2 (k) of the Industrial Disputes Act.

2 A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute - Where any employer discharges, dismisses, retrenches

or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with,

or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other

workman nor any union of workmen is a party to the dispute.

2 (k). "Industrial Dispute" means any dispute or difference between employers and employees, 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;

13. It was contended by the plaintiff that the dispute raised now is not common within the purview of the above two sections and therefore, only

the Civil Court has got jurisdiction.

14. Per contra, the learned counsel for the respondent pointed out that as per Section 7 of the Industrial Disputes Act, 1947, any matter specified

in The Second Schedule is triable only before the labour Court. The Second Schedule to the Industrial Disputes Act, 1947 deals with the matters

within the jurisdiction of the Labour Courts. First clause is the propriety or the legality of an order passed by an Employer under the standing

orders.

15. Admittedly, the challenge before the Civil Court is only regarding the order passed by the Employer. In the standing orders of the defendant

Company, Chapter VII deals with "Discipline and Appeal Rules". Clause 60 is about "Acts and omissions constituting misconduct". Sub-clause 17

of Clause 60 deals with "carrying on money lending or any other private business when the written permission of the Management and entering into

speculation" is deemed to be misconduct which falls within the purview of schedule II of the Industrial Disputes Act r/w. Section 7. In the given

case, the penalty advice was challenged by the plaintiff. The charge sheet issued by the defendant was for the following misconducts.

(i). Dishonestly in connection with the companies business or property.

(ii). Abetment or attempt to commit any of the misconducts

(iii). offence involving moral turpitude and cheating the company.

16. Based on the above allegations, the explanation given by the plaintiff was not satisfactory. Hence an enquiry committee was constituted to

enquire the above allegations against the plaintiff. Based upon the proceedings and upon the enquiry committee, the defendant had issued a penalty

advice on 9/6/1984 reverting the plaintiff from Machinist Grade III to Grade IV with effect from 15/6/1984 for a period of three years.

Admittedly, the plaintiff had not preferred any appeal and allowed the penalty advice to become final. The punishment period is also over by efflux

of time and punishment was undergone by the plaintiff.

17. It is also reported that the plaintiff had attained superannuation. The petitioner had contended that permanent withdrawal of provident fund by

the employees will not amount to misconduct. He had also pleaded that the employees who ever had applied for permanent withdrawal was also

not known to him. However, these questions can be decided only having the competent jurisdiction.

18. Reliance was placed on Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, . In paragraph 31, of the

said judgment, it has been held that the standing orders of institution is part of the Industrial Disputes Act.

The view taken by us finds support in the decision of this Court in Jitendra Nath Biswas. That was also a case where the conditions of service of

the workmen were governed by the certified Standing Orders. The Court held that the civil Court has no jurisdiction to entertain such a suit.

Indeed this is also the opinion expressed by the Bench which referred these appeals to a larger Bench. The Bench observed:

The case of the respondents is that the said action has been taken in contravention of the Standing Orders framed by the Corporation under the

Industrial Employment (Standing Orders) Act. The instant cases are, therefore, 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.

19. In so far as regarding the question of jurisdiction of the labour Courts, it was discussed in paragraph 20. In the above paragraph, it is observed

that there were many disputes which would not fall within Section 2 (k) or Section 2 A That is why the Standing Orders of the Company is

deemed to form part of the Industrial Disputes Act wherein the misconducts are enumerated by the Company.

20. This decision is followed in V. Vijayakumar Vs. M. Murugadoss Deputy General Manager, The Management of TVS and Sons Ltd. And The

Branch Manager, Villupuram, , wherein in paragraph 12, it has been held as follows:-

12. When we refer to Section 25 (k) of the Industrial Disputes Act, it defines the term "dispute" as any dispute or difference between Employees

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." Even the definition to Section 25 (k) of the Industrial

Dispute Act, in relation to the term "dispute" indicates that a dispute is the one between the Employer and Employee for the purpose of the Act. It

is also indicated therein that the dispute must be such which might have arisen during the course of the employment and for resolution of such

dispute, the Labour Courts have been constituted. In the present case, the petitioner was transferred during the course of his employment and if he

is aggrieved that he is unceremoniously transferred by the second respondent, he ought to have resorted to raise an industrial dispute before the

Labour Court, instead of filing the suit.

21. In view of the above decisions and considering the nature of the charge sheet framed against the plaintiff, the plaintiff ought to have raised the

Industrial Disputes and resorted to the labour Court and ought not to have invoked the jurisdiction of the Civil Court which has got no jurisdiction.

22. In view of the above findings, the Civil Revision Petition is dismissed and the order passed in I.A. No.829 of 1999 in O.S. No.106 of 1997

dated 24/7/2002 on the file of the Principal District Munsif, Trichy is confirmed. No costs.