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Court : Allahabad

Decided On : Jul-04-2008

Reported in : 2008(4)AWC3999

Judge : Poonam Srivastav, J.

Appellant : Sheikh Rahim and ors.

Respondent : Cantonment Board and anr.

Advocate for Def. : Sri. Mohd. Isa Khan

Advocate for Pet/Ap. : Sri. R. K. Nigam

Disposition : Appeal dismissed

Judgement :

Poonam Srivastav, J.

1. Heard Sri S. M. Ali, Advocate, holding brief of Sri R. K. Nigam, learned Counsel for the appellants and Sri Mohd. Isa Khan, Counsel for the respondents.

The instant second appeal s out of the judgment dated 3.8.1989 and decree dated 17.8.1989, passed by the IInd Additional District Judge, Jhansi, allowing the appeal and setting aside the judgment and order of injunction granted by IVth Additional Munsif, Jhansi, in Original Suit No. 656 of 1985.

2. The instant appeal was filed by 7 plaintiffs/appellants. The plaintiff/appellant Nos. 1 and 4 Sheikh Rahim and Murari Lal are dead. The appeal stands abated against the plaintiff/appellant Nos. 1 and 4. The appeal is being heard in respect of the appellant Nos. 2, 3, 5, 6 and 7.

Learned Counsel for the appellants has stated in memo of the appeal that ground Nos. 4, 5, 7 and 8 are substantial questions of law, which arise for consideration in the instant appeal.

3. The substantial question of law Nos. 4, 5, 7 and 8 are quoted hereinbelow:

1. Whether the mere fact that the authority concerned had forbidden the engagement of daily wages cannot deprive the plaintiff appellants of the benefit of their continuous service of over 240 days in each year?

2. Whether the fact that the benefit of 240 days of service is prescribed under the industrial law does not oust the Jurisdiction of ordinary civil courts and make the industrial law applicable to the dispute in hand?

3. Whether under the circumstances the provisions of Section 41 of the Specific Relief Act do not bar the maintainability of the present suit?

4. Whether the compliance of mandatory provision of law envisaged by Sections 25A, 25(f) and 25(6) of the Industrial Disputes Act having not been made the present suit for injunction restraining removal of the plaintiffs/appellants from their service had been rightly decreed by the trial court?

4. Facts giving rise to the dispute are that Ashok Kumar and 12 others including the appellants filed a suit in the Court of Munsif, Jhansi, against Cantonment Board claiming relief of permanent injunction restraining the respondents to retrench the plaintiffs from Cantonment Board where they were discharging duties as labourers and peons since the last two years. The plaintiffs allegation according to the plaint is that their appointment was made for performing duties relating to realization of toll tax and octroi at the barrier of the Cantonment Board. The plaintiffs claimed that they had all along discharged their duties diligently and honestly and to the satisfaction of the employer.

5. Their work such as sanitation, carrying the job of scavenger etc. was also taken from them though it was not within the scope of their specific duties.

The plaintiffs/appellants raised verbal objection which resulted in their retrenchment without following procedure laid down under Sections 24F and 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It was also contended that provisions of Article 311 of the Constitution of India are grossly violated and, therefore, relief of injunction was an instance of urgency. Consequently, the suit was instituted without notice as required under Section 273 of the Cantonment Board Act. The plaintiffs/appellants prayed for restraining the defendants from passing any order of retrenchment in violation of law.

6. The suit was contested by the Cantonment Board, Jhansi and claim of the plaintiffs/appellants was disputed. The defendants/respondents claimed that the plaintiffs were appointed on daily wages basis, no work of scavenger was taken from them. The plaintiffs are not regular employees of the Cantonment Board. Thus, there is no question of following procedure under Sections 24F and 25G of the Act. It is only that their work was stopped w.e.f. 16.10.1985 but there is no question of any retrenchment whatsoever. Besides, employment of the labourer and daily wages was held to be illegal by the Administrative Authorities and Ministry of Defence, Central Command, Lucknow, vide order dated 17.9.1985 and a complete prohibition was imposed on the employment of labourer and daily wages. The suit was not maintainable. A number of issues were framed. However, the trial court decreed the suit in favour of the plaintiffs vide judgment and decree dated 11.12.1987. which was challenged in appeal. The appeal was allowed by the lower appellate court setting aside the judgment and decree passed in the original suit.

7. Learned Counsel for the appellants has placed reliance on a decision of the Apex Court in Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and Ors. : (1975)IILLJ445SC , paragraph No. 9 of which is quoted below:

9. It would thus be seen that through the intervention of the appropriate Government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual

aggrieved cannot approach the Tribunal or the labour court directly for the redress of his grievance without the intervention of the Government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the civil court for trial of industrial disputes. If the dispute is- not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the civil court. It is .plain that he cannot have both.

8. He has to choose the one or the other. But we shall presently show that the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone.

9. Sri Mohd. Isa Khan, learned Counsel appearing for the respondents has supported the judgment of the lower appellate court. Section 2A of the Act, defining proper Government has been placed before me to substantiate his contention that the Cantonment Board is also covered under definition of the proper Government and, therefore, if at all there was any violation of the said Act, the civil suit was not maintainable as there was an alternative procedure provided under the Act.

10. Learned Counsel for the defendants/respondents has placed reliance on a number of decisions of the Apex Court in Ganga Kisan Sahkart Chini Mills Ltd. v. Jaivir Singh : 2007(11)SCALE409 ; Rajasthan State Road Transport Corporation and Ors. v. Zakir Hussain : (2005)IIILLJ786SC ; Batala Co-op. Sugar Mills Ltd. v. Sowaran Singh JT 2005 (10) SC 79; Range Forest Officer v. S.T. Hadimani : (2002)ILLJ 1053 SC ; Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana

Ltd. and Anr. : AIR 1997 SC2698 ; Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant and Ors. : (1995)IILLJ728SC and Dhulabhai etc. v. State of Madhya Pradesh and Anr. : [1968]3SCR662 .

11. The Apex Court, in the case of Jitendra Nath Biswas v. Empire of India and Ceylone Tea Co. and Anr. : (1989)IILLJ572SC , interpreting Section 9 of the C.P.C. that the civil court shall have no jurisdiction where its jurisdiction is expressly or impliedly barred. The Apex Court ruled:

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.

12. The Apex Court in the case of Bahrein Petroleum Co. Ltd. v. P.J. Pappu : (1966)IILLJ144SC , has also held:

that neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit and 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 of execution or in collateral proceedings. A decree passed by a Court without jurisdiction is a coram non-Judice.

13. The Apex Court in the case of Chief Engineer, Hydel Project and Ors. v. Ravinder Nath and Ors. : (2008)IILLJ294SC , has further held that:

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.

14. I have given a careful consideration to the arguments advanced on behalf of the respective parties and citations placed before me. Case of the plaintiffs themselves is that they have been working since last two years. Neither there is any order of appointment nor any order of retrenchment. I do not find any reason to interfere in the findings of the lower appellate court that the appellants were working as daily wages. Their services were dispensed with as it was not required any further. Besides, there being an administrative order restraining the Cantonment Board from appointing any daily wages, there is no evidence in support of the contention mised on behalf of the appellants.

15. Substantial questions of law raised in the instant second appeal are devoid of merits. I am in agreement with the submission made by the Counsel for the Cantonment Board that the suit itself was not maintainable. However, the suit and appeal were decided on merits.

The Apex Court deprecated the liberal construction and generous application of provisions of Section 100, C.P.C. Hon'ble Supreme Court was of the view that only because there is another view possible on appreciation of evidence that cannot be sufficient for interference under Section 100, C.P.C.

16. For ready reference, extract of paragraph No. 7 of the case of Veerayee Ammal v. Seeni Ammal : AIR 2001 SC2920 , is quoted below:

7. ...We have noticed with distress that despite amendment, the provisions of Section 100 of the Code have been liberally construed and generously applied by some Judges of the High Courts with the result that objective intended to be achieved by the amendment of Section 100 appears to have been frustrated. Even before the amendment of Section 100 of the Code, the concurrent finding of facts could not be disturbed in the secontl appeal. This Court in Paras Nath Thakur v. Mohani Dasi held: (AIR p. 1205 para. 3).

It is well-settled by a long series of decisions of the Judicial Committee of the Privy Council and of this Court, that a High Court, on second appeal, cannot go into questions of fact, however, erroneous the findings of fact recorded by the Courts of fact may be. It is not necessary to cite those decisions. Indeed, the learned Counsel for the plaintiff-respondents did not and could not contend that the High Court was competent to go behind the findings of fact concurrently recorded by' the two Courts of fact.

17. Similar view has been expressed in a number of other decisions by the Apex Court in the cases of Thiagarajan and Ors. v. Sri Venugopalaswamay B. Koil and Ors. : AIR 2004 SC1913 ; Rajeshwari v. Puran Indoria : (2005)7SCC60 ; Gurdev Kaur and Ors. v. Kaki and Ors. 2006 All CJ 1481 : 2006 (3) AWC 2373 and Kondiba Dagadu Kadam v. Sauitribai Sopan Gujar and Ors. : [1999]2SCR728 .

18. The Apex Court in the recent case of Santosh Hazari v. Purshottam Tiwari : [2001]251ITR84(SC) , ruled that a point of law which admits of no two opinions may be proposition of law but cannot be a substantial question of law. To be substantial a question of law must be debatable, .not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned.

19. It will, therefore, depend on the facts and circumstances of the each case whether a question of law is substantial one and involved in the case or not? The same view has been expressed by the Apex Court in the case of Covinda Raju v. Mariamman : AIR 2005 SC1008 .

The judgments under challenge cannot be interfered in this appeal in exercise of jurisdiction under Section 100, C.P.C. The two judgments do not suffer from any error and no substantial question of law arises. The instant second appeal lacks merit and is, accordingly, dismissed.

Cost on parties.

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