

Amco Batteries Vs. S. Rammohan

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Court : Karnataka

Decided On : Mar-23-1995

Judge : V.P. Mohan Kumar, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 2A, 33C and 36(3)

Appeal No. : M.F.A. No. 149/1994

Appellant : Amco Batteries

Respondent : S. Rammohan

Advocate for Pet/Ap. : Shri. Kasturi

Judgement :

1. The defendant has filed this appeal challenging the interlocutory order of injunction granted by the civil court restraining the defendant from proceeding with a domestic enquiry. Shorn of details the bare facts are as follows :-

2. The respondent herein is an employee working under the appellant. On April 19, 1993, he was charge-sheeted for wrongly certifying sodium chloride as sodium sulphate, as a result of which the employer claims to have sustained heavy loss. The General Manager of one of the units of the defendant company was appointed as enquiry officer. On May 4, 1993, notice of enquiry was issued to the plaintiff-respondent. In response, on May 19, 1993, the plaintiff appeared and sought permission to be represented by a lawyer to defend him in the enquiry. The

permission was declined. Thereupon, the present suit was filed with the following prayer.

3.(a) Declaring that the enquiry instituted, vide letter dated May 4, 1993, and the proceedings of the enquiry dated May 19, 1993, and further proceedings of the enquiry as null and void.

or

Direct the defendant company to permit the plaintiff to engage an advocate to assist him in the enquiry as requested by him, vide letter dated May 19, 1993.

(b) Direct the defendants to hold an enquiry in respect of the charges alleged against the plaintiff by appointing independent enquiry officer and proper management representative and in accordance with law.

4. Along with the plaint an application for temporary injunction was also moved. The court below has by the order under challenge stayed the enquiry. By the same order the court below has granted permission to the defendant to move the court for the variation of the order of the event, it is prepared to permit the plaintiff to engage an advocate to defend him. The defendant has filed the appeal challenging the order.

5. I have heard the respective counsel at length. At the end of the argument it was felt that the view that might be taken by this court may prejudice the plaintiff, at the suggestion of the court, the defendant offered to tender the witnesses again so as to cross examine the witnesses already examined in the presence of the plaintiff, again provided the plaintiff withdrew the suit. But, the plaintiff was not willing to accept the offer. Hence, the appeal is being disposed of on merits.

6. Shri Kasturi, learned counsel for the appellant, submitted at the outset that a suit as the one initiated itself is not competent and in such a suit, the granting of the order in the nature of one under challenge is totally illegal. Shri Kiran Kumar strenuously opposed the contention. Since the parties Joined the issue on this question, I will examine the said contention at the outset.

7. To begin with, I will examine first the Industrial Disputes Act. A perusal of various provisions of the Industrial Disputes Act, 1948, shows that very extensive machinery has been provided for settlement and adjudication of industrial disputes. So far as the Karnataka State is concerned by virtue of section 10(4-A) of the Act any aggrieved individual has recourse to the Labour Court or to the Industrial Tribunal for the adjudication of an industrial dispute which involves the termination of his services. Further, with the intervention of the Government the dispute which comes within the meaning of sections 2(k) and 2-A can be referred to the adjudication of the Tribunal or the Labour Court, as the case may be. If the enforcement of the right that the worker is seeking is one that is conferred on him under the common law then, he can have recourse to the civil court, for the enforcement of the said right, but if on the contrary it is a right created in him under the industrial law then he will have to seek redressal of the grievance before the forum created under the said law because obviously he is not enforcing a common law right but a right that is created in him under a special enactment. But for the enacting of a special law, as in the nature of Industrial Disputes Act conferring right on the worker to continue in the employment of the employer (the right to enforce a personal contract) he would have no right to resist the action of the employer to terminate his services. As such, it being not a common law right, the civil court will have no jurisdiction to entertain a suit and to grant any injunctive relief. The person who claims the rights created under any special enactment should look upon the said enactment itself to enforce the said right. This is in essence the principle laid down by Lord Tenterden in *Doe v. Bridges*, [1831] 1 B & A.D. 847 :

'Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.

The rights under the Industrial Disputes Act those that are not common law right and which did not exist before; if so, the special and particular remedy provided under the Act alone should be invoked. These aspects were considered by the Supreme Court in extenso in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, (1975-II-LLJ-445) referred to by the court below. Their Lordships, after

adverting to the general feature of the Industrial Disputes Act, stated thus (at p. 451) :

'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 the 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 recognised by and enforceable under the Act alone,' Then, their Lordships considered in extenso various decisions cited by the learned counsel appearing for the contesting parties. After reviewing the same, their Lordship formulated four principles applicable to the invoking of the Jurisdiction of the civil courts in relation to an industrial dispute (at p. 459)

'(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 to general or common law and not under the Act, the Jurisdiction of the civil court is alternative, leaving it to the election of the suitor 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 V-A then the remedy for its enforcement is either section 33-C or the raising of an industrial dispute, as the case may be.'

Therefore, unless a suit comes within the ambit is of clauses (1) and (2) above, it has to be held that the civil court will have no Jurisdiction to entertain the suit.

8. Here, we may notice that it is settled law that the civil court has no jurisdiction to enforce a personal contract. The right to continue in service is a right conferred on the industrial worker by the [Industrial Disputes Act, 1947](#). De hors the statute a

termination of the services may give rise to a cause of action to claim damages and not reinstatement granting of the latter relief will amount to enforcement of a personal contract which is not in the province of civil court.

9. The employer is entitled to put an end to the relationship of master and servant unilaterally, but in such an event, he will be laid open to compensate the worker by way of damages for the illegal termination. This is a right that the worker has under common law. But, the industrial law steps in and affords to the worker a relief of reinstatement, in the event, the action of termination is arbitrary. In order to Justify, the termination, the employer complies with the requirement of natural Justice and he conducts an enquiry into the allegation against the worker to justify the proposed punishment and afford an opportunity to the worker to defend himself. Failure to do so may amount to an unfair labour practice (vide item 5 (f), Fifth Schedule, to the [Industrial Disputes Act, 1947](#)). The domestic enquiry and the report precedes the order of punishment. Hence, the domestic enquiry, and the proceedings taken thereat are all part of the right conferred on the worker under the industrial law and is not part of common law right. If so, the dispute touching the domestic enquiry, will clearly fall under categories (3) and (4) enumerated by the Supreme Court in Premier Automobiles' case, (Supra). In such an event the civil court has no jurisdiction to entertain the said suit.

10. The argument of learned counsel for the plaintiff/respondent is that what he is seeking is in effect a fair chance to represent his case at the domestic enquiry. Such representation and agitation of his right is required only if he wants to contend that the punishment that may be imposed at the end of the proceeding is illegal and that his personal contract of service with the employer should not in any, way be annulled or altered. That is clearly, not a common law right but a right acquired by, the worker under the industrial law. In other words, what he really intends is to safeguard his interest to further the rights conferred on him under the industrial law. In the words of the Supreme Court in J. N. Biswas v. Empire of India and Ceylone Tea Company, (1989-II-LLJ-572) at P. 577.

'It is, therefore, clear that the scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies

which are available under this Act and for which a complete procedure and machinery, has been provided in this Act.'

It can thus be seen that the suit in which the above interlocutory order was passed was itself apparently incompetent and not maintainable.

11. We will now examine whether the plaintiff has a right to be represented by an advocate at the domestic enquiry. As far as proceedings under the Industrial Disputes Act are concerned, section 36(3) of the statute makes it clear that no party to the proceedings has any right to be represented by an advocate at the conciliation proceedings or in any proceedings before the court. The question whether a worker has a right to be represented by a legal practitioner at a domestic enquiry was considered by this court in *K. G. Shenoy v. Union Bank of India*, (1994-II-LLJ-1120). There in, advertng to the decision of the Supreme Court, it was stated as hereunder (at P. 1124) :

'This question again came up for consideration by a larger Bench of the Supreme Court in *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi*, (1993-I-LLJ-907). In para 10, their Lordships stated as follows (at P. 912)

'A delinquent appearing before a Tribunal may feel that the right to representation is implied in the larger entitlement of a fair hearing based on the rule of natural justice. He may therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily, it is considered desirable not to restrict this right of representation by counsel or an agent of one's choice, but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry ...

Later, in the same paragraph, after analysing various English authorities, their Lordships stated as hereunder (at P. 914) :

'From the above decisions of the English courts, it seems clear to us that the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law rules and regulations. However, if the charge is of a serious and complex nature, the delinquent's

request to be represented through counsel or an agent could be conceded.'

As regards the law in India, after a detailed survey of leading decisions, their Lordships concluded as hereunder (at p. 915) :

'It is, therefore, clear from the above case-law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent ...

Thus, it is clear that the right to be represented by a counsel cannot be claimed as a matter of right.'

12. Thus, it is now settled that a delinquent employee has no right to demand that he be permitted to be represented by an advocate at the domestic enquiry.

But, I should hasten to add that this is not an absolute rule. This aspect was also referred to in the above noted decision i.e., *Shenoy (K. G.) v. Union Bank of India*, (Supra). It was stated as hereunder (at P. 1124)

'Nevertheless, as observed by several learned authors, in a case where the delinquent is not in a position to express himself or his livelihood is at stake, or that his social or financial status are likely to be ruined, or where several complicated questions are raised which the delinquent is unable to comprehend, etc., the question of such delinquent employee being afforded the assistance of a counsel can be considered.'

13. In the instant case, there is no allegation or averment, which discloses that the request of the worker is made because at the domestic enquiry there are several complicated questions to be decided which the worker is unable to comprehend or which he himself cannot defend. He does not state that he is unable to defend himself because of the intricate questions involved. In the instant case, the charges framed are simple enough that the worker himself can defend himself The

request of the worker is apparently made as a matter of course. One may infer it to be wanting in good faith as well. Thus, it has, therefore, to be held that there is no right for the worker in this case to claim that he be permitted to engage an advocate in the domestic enquiry.

14. This takes me to the further question whether the court below was justified in passing the order impugned herein. It may be noted that even if an enquiry is held without the assistance of an advocate, the worker may not suffer any irreparable damage which cannot be compensated with money. It is settled principle that the courts may grant injunction which if not granted will cause irremediable mischief, serious hardship and injustice. Scanning through pleadings in this case, one is unable to discover that the plaintiff herein has shown that he will suffer any of these hardships referred to above if the injunction sought for is not granted. That apart when the suit itself was not competent before the civil court, an interim relief of injunction could not have been granted at all.

15. In this behalf the following observations of the Bombay High Court in *Hindustan Antibiotics Ltd. v. Ramdas Trimbak Deshmukh*, [1977] 51 FJR 300, in this context is apposite (at page 304) :

'Now, it appears to me that the learned judge of the trial court has fallen in a grave error in issuing the injunction of the nature which it has done. He seems to have overlooked wholly the scope of a challenge which is normally open to an order passed by an employer against an employee which ultimately might result in the termination of his employment. It is well-known that even in a suit seeking a declaration that the termination of service of an employee is bad, a civil court has no jurisdiction to grant reinstatement which is a right exclusively created by the industrial legislation. Even in a case of a patently illegal termination by a private employer or for the matter of that by an employer whose relations with his employees are governed by the industrial law, a civil court cannot make an order reinstating the employee. It is, therefore, difficult to see how it can be said to be a proper exercise of judicial discretion by the trial court to have issued an injunction prohibiting the employer from proceeding with the disciplinary proceedings against an employee. The trial court seems to have failed to see that what was done by

the employer was that lie had only issued a charge-sheet. Burden was on the employer to prove those charges satisfactorily, and the further course of the disciplinary proceedings would depend on whether the charges framed against the employee have been proved or not. However. If the charges are conclusively proved in a given case, the motive for initiating the disciplinary proceedings will not be very material. When the civil court took upon itself the heavy responsibility by passing an order that it had jurisdiction to entertain the suit, it failed to see that it would necessarily be required to go into the question whether there is substance in the charges framed by the employer. It cannot be disputed that the civil court is not the forum to establish charges in a disciplinary matter against an employee. It is also well established that where in a disciplinary matter a finding has been reached by an enquiry officer or by the employer, the correctness of that finding on the ground that it is not supported by evidence or that it is based on inadequate evidence or that it is based on a misreading of evidence is not open to challenge in a civil court because it is well established that so far as the jurisdiction of the civil court is concerned, in the case of an employer and an employee, if there is a wrongful or illegal termination, the employee has merely a right to claim damages if he does not prefer to take recourse to the other remedies provided by special enactments in the industrial law if they are applicable to him. It is, therefore, difficult to see how the trial court could take upon itself the function of going into the question of mala fides of the employer in framing the charge against the employees and further into the question whether the mala fides alleged affected the enquiry proceedings against the employees.'

It can, therefore, be said that the exercise of the discretion in granting the injunction was not properly exercised by the court below. The order of the court below, therefore, has to be vacated.

16. Learned counsel for the plaintiff invited my attention to the following passages in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni, (1983-I-LLJ-1), at P. 4

'When the matter reached the Court of Appeal, Lord Denning observed as under :-

'I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.

17. The trend, therefore, is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner. But we want to be very clear that we do not want to go that far in this case because it is not necessary for us to do so. The all important question : where as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner, is kept open.

18. These observations, can be invoked in favour of the plaintiff. But that was a case where the delinquent officer was pitted against two legally trained officers representing the employer. The observations made by the Supreme Court should be understood in that context. Further, after pronouncement of the judgment by a larger Bench of the Supreme Court in Crescent Dyes' case, (supra), on the same aspect, the observations in Board of Trustees' case, (supra); will not govern the matter now in issue.

19. No other questions arise for consideration. The appeal is allowed. The order passed by the court below is set aside. No costs.