
(19) This application for ejectment is not barred under Section 14 of the Act. It is not barred by the principle of *res judicata*. He had raised only the plea of non payment of arrears of rent and subletting in the previous ejectment application which was dismissed on the ground that Banarsi Dass Advocate was not tenant inducted by him and Krishan Mohan Madhok was not sub tenant inducted by Banarsi Dass Advocate. Krishan Mohan Madhok had rather been inducted by Smt. Goma Mittal *alias* Orna Mittal, who was managing this property. So, Surinder Mohan Aggarwal could maintain this ejectment application in his capacity as owner/landlord on the ground that he requires this property *bona fide* for his own use and occupation and for the use and occupation of his family, Surinder Mohan Aggarwal is entitled to the ejectment of Krishan Mohan Madhok from the premises shown in site plan Ex. A1 notwithstanding that he had not shown the entire premises in the earlier ejectment application because it was not he who had inducted Krishan Mohan Madhok to this premises but he had been inducted by Smt. Goma Mittal and it was known to her the extent of premises to which he had been inducted by her.

(20) For the reasons given above, this revision succeeds and is accepted. Respondent is ordered to be ejected from the premises described in this ejectment petition and shown in site plan Ex. A1 attached thereto. Order of Rent Controller declining this ejectment application is set aside. Respondent is allowed three months time to vacate this premises and put Surinder Mohan Aggarwal owner/landlord in vacant possession thereof. Parties shall bear their own costs throughout.

S.C.K.

Before M.L. Singhal, J

PUNJAB NATIONAL BANK & ANOTHER—*Petitioners*

versus

GURWANT SINGH—*Respondent*

C.R. NO. 3039 OF 1994

14th August, 2000

Code of Civil Procedure, 1908—Punjab National Bank Officers Employees Discipline and Appeal Regulations, 1977—Dismissal from service of a Bank employee—Employee challenging his dismissal in Civil Court—Whether Civil Court has jurisdiction—Held, yes.

Held, that no exception can be taken to the impugned order passed by Sub Judge IInd Class, Ludhiana holding that Civil Court has jurisdiction to go into the legality of dismissal of the plaintiff from service. The plaintiff could approach the Labuor Court under the Industrial Disputes Act and challenge his dismissal from service and claim back wages. He could equally challenge his dismissal from service and claim back wages through action in the Civil Court. He could thus elect either of these two remedies and if he elected to file suit in the Civil Court for challenging his dismissal from service and claiming back wages, that action was lawful falling within the ambit of Civil Court for cognizance.

(Paras 3 & 5)

None for the *petitioner*

M.K. Garg, Advocate, for the *respondent*.

JUDGMENT

M.L. Singhal, J (Oral)

(1) Respondent Gurwant Singh was working as Assistant Cashier in Punjab National Bank at its Khanna Branch on 3rd February, 1990, when he received Rs. 2,000 from one Ram Dayal but entered Rs. 200 instead of Rs. 2,000 in his long book. He thus pocketed Rs. 1,800. At the close of the business hours of the bank, he handed over the amount of cash received treating the said deposit of Rs. 2,000 as Rs. 200 to the Head Cashier and left the bank premises. He was placed under suspension on 7th February, 1990 for the alleged fraudulent act on his part. He was served with charge-sheet on 16th March, 1990. He submitted his reply to the charge-sheet on 19th April, 1990, which was found unsatisfactory by the Disciplinary Authority. Departmental inquiry was initiated against him under the orders of Regional Manager (Disciplinary Authority). As a result of the departmental inquiry, he was dismissed from service,—*vide* order dated 25th November, 1991 under para 19.6(a) of the Bipartite Settlement. He filed suit for declaration challenging his dismissal from service saying that his dismissal from service was against the rules and regulations by which his service was governed and that he is entitled to be treated in service of the Bank with full back wages, seniority increments etc. as if he was never dismissed from service.

(2) On 8th September, 1993 on the application filed by Punjab National Bank defendant, trial Court framed the following preliminary issue :—

Whether this Court has no jurisdiction to try the suit ? OPD

(3) *Vide* order dated 5th November, 1993, sub Judge IInd Class, Ludhiana found this issue against the defendant and held that civil Court had jurisdiction to go into the legality of dismissal of the plaintiff from service. It was held that plaintiff could approach the Labour Court under the Industrial Disputes Act and challenge his dismissal from service and claim back wages. He could equally challenge his dismissal from service and claim back wages through action in the civil Court. He could thus elect either of these two remedies and if he elected to file suit in the Civil Court for challenging his dismissal from service and claiming back wages, that action was lawful falling within the ambit of Civil Court for cognizance.

(4) Not satisfied with the order dated 5th September, 1993 passed by SJIIC Ludhiana, Punjab National Bank has come up in revision to this Court.

(5) In my opinion, no exception can be taken to the impugned order passed by Sub Judge IInd Class Ludhiana. Plaintiff could approach the civil Court as well as Labour Court under the Industrial Disputes Act for the relief which he has claimed. If he approached the civil court for the relief, which he has claimed, there is nothing wrong about it. It was held in *Bombay Telephone Canteen Employees Association, Prabhadevi Telephone Exchange vs. Union of India and another*, (1) that “there have been two streams of thinking simultaneously in the process of development to give protection to the employees of the Corporation. Its actions are controlled as an instrumentality of the State and the rules are made amendable to judicial review. Where there exists no statutory or analogous rules/instructions, the provisions of the Act get attracted. The employees are entitled to avail constitutional remedy under Article 226 or 32 or 136, as the case may be. The remedy of judicial review to every citizen or every person has expressly been provided in the Constitution. It is a fundamental right of every citizen. In the absence of statutory/administrative instruction in operation, the remedy of reference under section 10 of the Act is available. Therefore, two streams, namely remedy

(1) AIR 1997 SC 2817

under the Act by way of reference and remedy of judicial redressal by way of proceedings under Article 226 or a petition filed before the Administrative Tribunal to the aggrieved persons, are co-existing. If the doctrine laid in Bangalore Water Supply Board case. AIR 1978 SC 548, is strictly applied, the consequence is catastrophic and would give a carte blanche power with laissez faire legitimacy which was buried fathom deep under the lethal blow of Article 14 of the Constitution which assures to every person just, fair and reasonable procedure before terminating the services of an employee. Instead, it gives the management/employer the power to dismiss the employee/workman with one month's notice or pay in lieu thereof, and/or payment of retrenchment compensation under the Act. The security of tenure would be in great jeopardy. The employee would be at the beck and call of the employer, always keeping his order of employment in a grave uncertainty and in a fluid state like Damocles' sword hangs over the neck. On the other hand, if the interpretation of providing efficacious remedy under Article 226 gives protection to the workmen/employee the speedy remedy under Article 226/Section 19 of the Administrative Tribunals Act would protect the employee/workman from arbitrary action of the employer subserving the constitutional scheme and philosophy. The Court would, therefore, strike a balance between the competing rights of the individual and the State/agency or instrumentality and decide the validity of action taken by the Management. Necessarily, if the service conditions stand attracted, all the conditions laid therein would become applicable to the employees with a fixity of tenure and guarantee of service subject to disciplinary action. His removal should be in accordance with the just and fair procedure envisaged under the Rules or application of the principles of natural justice, as the case may be, in which event the security of the tenure of the employee is assured and the whim and fancy and vagary of the employer would be deterred if unfair and unjust action is found established it would be declared as an arbitrary, unjust or unfair procedure. On the other hand, if the finding is that there exist no statutory rules or certified Standing orders exist or they are not either made or are inapplicable. The remedy of reference under Section 10 of the Act would always be available and availed of as it is an industry and indicia laid in Bangalore Water Supply Board case, AIR 1978 SC 548 gets attracted."

(6) Learned counsel for the respondent submits that respondent was Assistant Cashier with the Punjab National Bank. Khanna Branch at the relevant time and he is protected against

unlawful disciplinary action by the Disciplinary Authority by the provisions of Punjab National Bank Officers Employees Discipline and Appeal Regulations 1977 and if that be so, he could impugn the action of the disciplinary authority in the civil court. He submits that assuming he had the remedy of a reference to the labour court under the Industrial Disputes Act, there is nothing wrong if he sought to have this remedy through the instrumentality of the suit in the civil court. Civil court would thus have jurisdiction to try the suit.

(7) For the reasons given above, this revision is dismissed.

S.C.K.

Before S.S. Sudhalkar, J

SHANKAR LAL—Appellant

versus

OM PARKASH & OTHERS—Respondents

F.A.O. 3090 OF 1999

28th August, 2000

Punjab State Election Commission Act, 1994—Ss. 35 & 67—During counting large number of ballot papers found missing—Election Commission ordering repoll—Respondent participating in repoll without any objection—Respondent later challenging order of repoll—Respondent alleging denial of opportunity of hearing before ordering repoll—Effect of.

(Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi, AIR 1978 SC 851, followed)

Held, that the argument regarding opportunity of being heard not given before repoll was ordered tilts the scale in favour of respondent No. 1. As no opportunity of hearing was given, the counsel for the respondent has rightly made out the point that had the opportunity been given to him, he could have shown that repoll was not necessary. Even, the giving of the opportunity of hearing would have eliminated the production of 139 votes if they were not in possession of respondent No. 1.

(Paras 27)