
Chandigarh will assign this suit for disposal to some competent court having jurisdiction into the matter. Learned trial Court at Ludhiana will send the file of the suit complete in all respects well before the date fixed to the learned District Judge, Chandigarh.

R.N.R

Before S.S. Sudhalkar & Mehtab S. Gill, JJ

IQBAL SINGH,—Petitioner/Workman

versus

THE P.O.L.C. GURDASPUR & OTHERS,—Respondents

C.W.P. No. 13278 of 2000

18th October, 2000

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—S. 11—Doctrine of election—Dismissal from service—Challenge thereto—Workman electing remedy of Civil Court & failing upto the High Court—Workman thereafter cannot turn around to seek remedy under the Industrial Disputes Act after having failed in the Civil Courts—Civil Court had jurisdiction to entertain the suit and, therefore, its decision would be res judicata.

Held, that if the dispute is such which can give rise to remedies to go to Civil Court and under the Industrial Disputes Act and if the workman elects one remedy and fails in the same, then he will not be entitled to take resort to the other remedy. It cannot be said that Civil Court had no jurisdiction to entertain the suit. Moreover, it is not shown that Civil Court had dismissed the suit on the ground of jurisdiction. The principle of *res-judicata* would, therefore, come into play and the petitioner cannot have any right to raise an industrial dispute after getting the decision from the Civil Court on merits.

(Paras 6, 7 & 8)

Sumeet Malhotra, Advocate, *for the Petitioner.*

JUDGMENT

S.S. Sudhalkar, J.

(1) After being unsuccessful in seeking remedy from the civil court, petitioner has now taken re-course to the provisions of the Industrial Disputes Act (hereinafter referred to as "the Act"). The petitioner was working as a conductor in the Punjab Roadways. He was charge-sheeted and after the enquiry he was found guilty and

was dismissed from service. He was dismissed on 2nd January, 1984. He filed departmental appeal which was dismissed on 19th July, 1985. He filed a Civil suit for declaration challenging order of dismissal. The suit was dismissed on 30th May, 1986. He filed an appeal before the District Judge which was dismissed on 1st April, 1987. Against that order, Regular Second Appeal No. 2304 of 1987 was filed in this Court. The R.S. A. was also dismissed on 15th September, 1987. Thereafter he raised an industrial dispute. The dispute was referred to the Labour Court by notification dated 17th September, 1996. The reference was made to the Labour Court who held that the petitioner was debarred from agitating the dispute after he had failed in the civil courts.

(2) Being aggrieved by the award of the Labour Court, the petitioner has filed this writ petition.

(3) Learned counsel for the petitioner argued that the Civil court had no jurisdiction to grant a relief of reinstatement-and therefore, the denial of the relief by the Civil court will not come in the way of entertaining the industrial dispute, because the decision of the Civil Court cannot be said to be decision of the competent court.

(4) In the case of *Sukhi Ram vs. State of Haryana* (1), it has been held by Full Bench of this Court that in connection with an industrial dispute arising out of the right or liability under the general or the common law, the worker has got two alternative remedies available to him, (i) to go to civil court and (ii), under the Industrial Dispute Act. It is further held in that case that worker must distinctly elect one of his remedies and he cannot avail of both of them. It is further held that the Civil Court has the jurisdiction to entertain a suit, falling under the second category. The Full Bench has also referred to the case of *Premier Automobiles vs. K.S. Wadke* (2) wherein it has been held as under :—

“(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 suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(1) 1982 (I) SLR 663

(2) AIR 1975 SC 2238

(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."

(5) It has also been held in the said case that 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 an alternative remedy, 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 case.

(6) Therefore, considering the above principles, if the dispute is such which can give rise to remedies under both the provisions and if the workman elects one remedy and fails in the same, then he will not be entitled to take resort to the other remedy. This position gives rise to the question as to whether civil court was having jurisdiction to entertain the suit for the relief which the petitioner had asked for ?

(7) Learned counsel for the petitioner has relied on the case of *Jitendra Nath vs. M/s Empire of India and Ceylone Tea Co.* (3). In that case, the Supreme Court held that the suit was filed by the appellant who was an employee of the Company with a prayer for relief of declaration that the dismissal is null and void in view of the provisions of the Standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 and that he was not guilty of any mis-conduct as no enquiry was conducted, the dismissal was bad. He also sought the relief of back wages and injunction and not giving effect to the order of dismissal. The Supreme Court in that case held that so far as that suit filed by the employee was concerned, there appeared to be no doubt that civil court had no jurisdiction and the High Court was right in coming to the conclusion. The Supreme Court in that case was dealing with an employee of the company. Present is the case of the employee of the Punjab Roadways. The employees in the Punjab Roadways, as admitted by the counsel for the petitioner, are governed by the provisions of Civil Service Rules of the State and the disciplinary appeal rules of the State. In the case of Sukhi Ram (supra), the appellant was employed in the Roadways department of State of Haryana. So the principle laid-down in the case of Sukhi Ram

(3) AIR 1990 SC 255

will be directly applicable to the facts of the present case. It is not shown as to how the Civil Court had no jurisdiction to entertain the suit of the nature as filed by the petitioner. This being the position, it cannot be said that Civil court had no jurisdiction to entertain the suit. Moreover, it is not shown that Civil court had dismissed the suit on the ground of jurisdiction.

(8) The principle of res-judicata would therefore, come into play and the petitioner cannot have any right to raise an industrial dispute after getting the decision from the civil court on merits.

(9) In view of the above discussion, we do not find any merit in this writ petition and is therefore, dismissed.

R.N.R.

Before A.S. Garg, J

HARI SINGH NALWA,—*Petitioner*

versus

KARTAR SINGH BHADANA & OTHERS,—*Respondents*

E.P. No. 9 of 2000

10th November, 2000

Representation of the People Act, 1951—S. 9-A—Constitution of India, 1950—Art. 191—Mines and Minerals (Development and Regulation) Act, 1957—Ss. 2, 14, 15 & 18—Punjab Minor Mineral Concessions Rules, 1964—Rl. 2—General elections to the Haryana Assembly—Respondent No. 1 declared elected having secured the highest votes—Contracts for extraction of minor & major minerals undertaken by the Haryana State with a partnership firm—Respondent a partner to that firm—Contracts subsisting at the time the nomination papers filed—Whether such type of contracts constitute disqualification from being a candidate to contest the election—Held, yes—Such contracts fall within the ambit of S. 9-A of the 1951 Act—Election of respondent set aside being illegal & unconstitutional & the petitioner declared as elected to the Haryana Vidhan Sabha.

Held, that once a lease for extraction of major or minor minerals is granted to a person under a contract, this means a contract for execution of works undertaken by the Government and it clearly falls within the ambit of Section 9-A of the 1951 Act. The contractor is the agent of the Government and is executing the contract on behalf of the Government. In view of such terms and conditions of the contract, it will certainly fall within the ambit of section 9-A of the Act and during