

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

MA no.88/2016

Reserved on: 25.07.2024

Pronounced on: 13.12.2024

J&K Bank Limited through its Chairman and CEO Corporate Headquarters,
M.A. Road and others

.....Petitioner(s)

Through: Mr Robinder Singh, Advocate

Versus

Abdul Majid Bhat S/o Ghulam Mohammad Bhat R/o Awaneera Shopian,
Pulwama at present Khanyar, Srinagar

.....Respondent(s)

Through: Mr Z.A.Qureshi, Senior Advocate
with Ms Monisa Manzoor, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. This Appeal is directed against judgement dated 23rd June 2015, passed by Additional District Judge, Srinagar (for short "*1st Appellate Court*") in an Appeal filed by Abdul Majid Bhat – respondent herein, bearing File no.39/A titled as *Abdul Majid Bhat v. J&K Bank Limited and others*, against judgement and decree dated 26th September 2013, passed by 3rd Civil Subordinate Judge, Forest Magistrate, Srinagar (for brevity "*Trial Court*").
2. I have heard learned counsel for parties and considered the matter.

3. Respondent, working as Cashier-cum-Clerk in J&K Bank Limited since 1st October 1986, was vide no.Disp/88-674 dated 1st December 1988 dismissed from Bank services. A civil suit titled *Abdul Majid Bhat v. J&K Bank Limited and others*, had been preferred by him before the Trial Court. He sought following reliefs therein:

- (a) A declaratory decree declaring the order bearing no.Disp/88-674 dated 1st December 1988 dismissing services of plaintiff by defendant no.1 as null, void, illegal, inoperative, ineffective and bad;
- (b) Declaratory decree declaring the order bearing no.JKB/CMS/89 dated 6th May 1989 passed by defendant no.2 as null, void, illegal, inoperative, ineffective and bad;
- (c) A declaratory decree declaring so-called enquiry allegedly conducted by defendant no.5 against plaintiff as sham proceedings for the same having been ordered to be conducted with *mala fide* design of giving false shield to pre-planned design of the defendants depriving plaintiff of his services with defendant no.1;
- (d) Declaratory decree declaring plaintiff still continues to be in services of defendant no.1;
- (e) Decree commanding defendants to pay to plaintiff accruing and accrued salary with 18% interest on accrued salary;
- (f) Decree declaring that plaintiff is entitled to be admitted and commanding defendants to admit plaintiff to *pendente lite* and future benefits attached, allied and due to the services of plaintiff.

4. The Trial Court by order dated 6th May 1989 stayed dismissal order dated 1st December 1988 till disposal of main suit and plaintiff/respondent was allowed to discharge his duties and render his services as such with a direction to defendants/appellants to pay salary and other allowances to plaintiff for services which he rendered subject to certain conditions as were contained in interim order.

5. Defendants/appellants herein contested the suit as they filed their written statement as well as filed their objections to the ad-interim relief application of plaintiff/respondent herein.

6. The Trial Court, on the edifice of rival contentions of parties, framed following issues:

- i. Whether the order of termination passed by defendants against plaintiff is illegal, inoperative and non-est in the eyes of law for having been passed against the rules and without conducting the fair enquiry against plaintiff? OPP
- ii. Whether plaintiff has not been afforded adequate opportunity to establish this defence before the enquiry officer? OPP
- iii. Whether punishment as passed against plaintiff does not commensurate with charges levelled against them and as such liable to be set-aside? OPP
- iv. Whether the suit is not maintainable in the present form? OPD
- v. Whether the Civil Court has no jurisdiction to try the case under law? OPD
- vi. Relief.

7. The Trial Court in terms of judgement dated 26th September 2013 has dismissed the respondent's suit on the ground that it has no jurisdiction to try the suit under Section 9 read with Section 2-A of Industrial Disputes Act.

8. Against Trial Court judgement, respondent preferred an appeal before the 1st Appellate Court. Appeal came to be allowed in terms of impugned judgement. The Appellate Court has found that Trial Court has fallen into error and committed illegality by holding that jurisdiction of Civil Court is impliedly ousted by Industrial Disputes Act, 1947 inasmuch as Trial Court has not given any reason for such a conclusion and that judgements relied upon by Trial Court are not appreciated and applied in its right perspective.

9. Aggrieved of 1st Appellate Court judgement and decree, the instant appeal came to be filed. The instant memo, when filed by appellant-Bank, was titled by them as "*Civil Second Appeal*" owing to the fact that 1st Appellate Court while remanding the matter to Trial Court has inadvertently directed preparing of decree sheet as well. A Bench of

this Court while going through the memo found that there was no requirement to prepare a decree sheet as the matter was remanded by 1st Appellate Court to Trial Court and, as such, the Civil Second Appeal came to be treated as Civil Miscellaneous Appeal in terms of Order XLIII Rule 1 Clause (u) of the Code of Civil Procedure against judgement impugned.

10. The grounds of challenge taken by appellant-bank are that whether dismissal of respondent pursuant to an enquiry on grounds of misconduct constitutes industrial dispute and the civil court has no jurisdiction to try industrial dispute under Section 8 CPC; that respondent has been dismissed from service on account of misconduct and Rules and Regulations of appellant-Bank provide for dismissal of service on the ground of misconduct; that case of appellant-bank is that dismissal of a workman by employer constitutes industrial dispute and can only be tried under the provisions of Industrial Disputes Act; that there was no right vested in respondent under common law which was sought to be enforced by him through a civil court; that J&K Bank is an industry within the meaning of Industrial Disputes Act; that respondent qualifies as a workman within the definition of Industrial Disputes Act; that in the suit respondent has claimed that his order of dismissal be declared as illegal as also enquiry conducted against him and he has also further claimed the relief that he is in the services of defendants and entitled to salary as also interest; that 1st Appellate Court has observed that relief of reinstatement consequent of declaration invalidating order of dismissal cannot be granted by the Civil Court but only by a Labour Court; that relief of reinstatement is barred under

Section 42 of Specific Relief Act; that the judgement relied upon by the 1st Appellate Court to the facts of the case is improper and application of said judgement is misconceived.

11. Although appellant-bank strives hard in saying that case of respondent falls under Industrial Disputes Act, yet it appears that one important facet of the matter that has not been taken note of and looked into, is whether all the bank employees can be or are called as “*workman*” under the Industrial Disputes Act. Let me refer to provisions of Section 2(s) of the Act hereunder:

“(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

12. Section 2(s) of the Act, thus, says that “workman” means any person, including an apprentice, employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been

dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. However, it in clear terms provides that the person who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) is not a workman; a person who is employed in the police service or as an officer or other employee of a prison is not a workman; a person who is employed mainly in a managerial or administrative capacity, is not a workman; and a person who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

13. Section 2(s) (iv) envisages that a person who draws wages more than Rs.10,000/- cannot be included to be a “workman”. Insofar as the wages of Rs.10,000/- as provided under Section 2(s) of the Act, is concerned, it has been substituted in the Act in the year 2010, by virtue of the Act 24 of 2010, “one thousand six hundred rupees” (w.e.f. 15.09.2010). Therefore, earlier thereto, Section 2 (s) (iv) was providing that a person who drew more than Rs.1,600/- per mensem or exercise, either by nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature was not to be called as “workman”.

14. Recently, the Supreme Court in *Lenin Kumar Ray v. Express Publications (Madurai) Ltd*, 2024 SCC Online SC 2986, has clarified status of ‘workman’ under and in terms of provisions of Industrial Disputes Act, 1947. In the said case, the employee had claimed that he

is a workman in terms of Section 2(s) of ID Act. However, the Supreme Court held that appellant in the said case was not a 'workman' under Section 2(s) of ID Act as he was drawing salary more than Rs.1600/- as per pre-amended provision of Section 2(s) of ID Act. The Supreme Court said that determinative factor for 'workman' covered under Section 2(s) of ID Act is principal duties and functions performed in the establishment and not merely the designation of his post. Further the onus of proving the nature of employment rests on the person claiming to be a 'workman' within the definition of Section 2(s) of ID Act.

15. Although a reference has been made to the Supreme Court judgement dated 5th May 2010, passed in Civil Appeal no.3027 of 2007 titled as RSRTC and others v. Deen Dayal Sharma, yet the Supreme Court while making reference to earlier decisions, has said that if infringement of standing orders is alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. The nature of right sought to be enforced is decisive in determining whether the jurisdiction of civil court is excluded or not.

16. That apart, the Appellate Court has rightly made reference to *Premier Automobiles Ltd Automatic Private Limited v. Kamlekar Shantaram Wadke of Bombay and others, AIR 1975 SC 2238 : 1976 (1) SCC 496*. In the said case, the Supreme Court has observed and said that 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 ID Act, it is obvious that there is no provision for adjudication of such disputes under the Act. The 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. He has to choose the one or the other. Then, the Supreme Court has stated the following principles applicable to the jurisdiction of the Civil Court in connection with an industrial dispute:

“(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 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 VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.”

17.As is inferable from abovementioned principles laid down by the Supreme Court if a dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in civil court and if the dispute is an industrial dispute arising out of right

or liability under the general or common law and not under ID Act, the jurisdiction of civil court is alternative leaving it to the election of the suitor concerned to choose his/her remedy for the relief which is competent to be granted in particular remedy. In such circumstances, the Appellate Court has rightly said and observed that Trial Court had fallen into error and committed illegality by holding that jurisdiction of civil court is ousted by ID Act, more particularly when Trial Court had not given any reason for such a conclusion and as a consequence of which the Appellate Court set-aside Trial Court judgement and decree and remanded the matter to the Trial Court to try all issues and determine the suit on the basis of evidence. Therefore, impugned judgement does not call for any interference.

18. For the reasons discussed above, the instant appeal is **dismissed** and impugned judgement is upheld.

19. Copy be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar

13.12.2024

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.