Reportable

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ FAO (OS) Nos. 465-466 of 2006

% *Reserved on : August 13, 2008*
Pronounced on : August 29, 2008

American Express Bank Ltd. & Anr. . . . Appellants

through : Mr. Lalit Bhasin, Advocate

VERSUS

Ravinder Kumar Saini . . . Respondent

through : Mr. B.K. Pal, Advocate

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The respondent herein was employed as a Special Teller with the appellant bank. On certain allegations of misconduct, he was served with the charge sheet and departmental inquiry held. The respondent was proceeded *ex parte* in the said inquiry, in which charges were held as proved and as a consequence he was awarded the punishment of dismissal from service vide orders dated 7.11.1996. Appeal to the appellate authority also was rejected, which order was communicated to him vide letter dated 30.4.1997. He submitted representation thereagainst followed by legal notice and thereafter filed a suit on the original side of this Court being CS (OS) No.

772/1998 *inter alia* alleging that *ex-parte* inquiry held against him was in violation of principles of natural justice and in the inquiry proper procedure was not followed. On this basis, the respondent has sought a decree of declaration to the effect that dismissal from service on the basis of the said inquiry be treated as illegal and damages to the tune of Rs.30 lacs on account of said dismissal faced by him as well as defamatory nature of alleged charges, due to which he has been made to suffer. Exact prayer made by him in the suit is as under :-

> "I, therefore, most respectfully prayed that this Hon'ble High Court may be pleased to grant declaration to the effect of declaring the order of dismissal as made to against the plaintiff by the defendant as wrong and illegal and this Hon'ble Court may be further pleased to grant token damages of Rs.30.00 lakhs on account of the consequences of the dismissal being faced by the plaintiff as well as the defamatory nature of the alleged charges due to which the plaintiff has been made to suffer by the defendant … *(illegible).*"

2. The appellant herein, which is the defendant in the said suit, filed written statement refuting the various averments made in the plaint. Preliminary objection was also taken to the effect that civil court had no jurisdiction to try the suit as the complete machinery for redressal of the grievance of the respondent was available under the provisions of the Industrial Disputes Act, 1947 (for short, 'the Act'). On this objection, following preliminary issue was framed by the learned Single Judge – *"Whether this Court has no jurisdiction to try the present suit in view of objections raised by the defendant No.1 in its written statement?"* The learned Single Judge has decided the aforesaid issue against the appellant/defendant No.1 vide orders

dated 18.4.2006 holding that since the suit is for recovery of damages for his wrongful termination, the jurisdiction of the civil court is not ousted to try such a suit. In this appeal, the said order is impugned by the appellant bank.

3. It is not in dispute that the respondent, who was serving as Special Teller, fits into the definition of *'workman'* as contained in Section 2(s) of the Act. It is also not in dispute that the appellant is an *'industry'* under the provisions of Section 2(j) of the Act. Dispute with regard to dismissal will also fall within the definition of *'industrial dispute'* as contained in Section 2(k) read with Section 2-A of the said Act. However, though the respondent is seeking declaration to the effect that his dismissal is illegal and wrongful, he is not seeking relief of reinstatement in service. He is only praying for damages for wrongful termination of service on the basis of alleged charges which according to him are false and defamatory. It is a common case between the parties that had there been a relief of reinstatement, the same could be granted only by the Labour Court under the Act and civil suit is barred. Such a relief is not admissible in view of Section 14 read with Section 41(h) of the Specific Relief Act, 1963. Section 9 of the Code of Civil Procedure, 1908, which defines civil suits and the jurisdiction of the civil courts, reads as under :-

> **"9. Courts to try all civil suits unless barred.**
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> The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

> [Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
>
> [Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.].

4. It is clear from the reading of the aforesaid provision that normally civil court has the jurisdiction to decide all matters of civil nature unless jurisdiction is expressly or impliedly barred. There is no provision in the Act expressly excluding the jurisdiction of the civil court. However, the Supreme Court had occasion to consider the issue as to whether jurisdiction of civil court is impliedly barred having regard to the complete machinery for enforcement of the rights provided under the Act. The principles laid down in various judgments of the Supreme Court as well as some High Courts are not in dispute. The learned Single Judge has taken note of these principles in his judgment. We may reproduce the same :-

> "11. The learned counsel for the defendants have relied on (1976) 1 SCC 496, Premier Automobile Ltd. v. Kamlekar Shantaram Wadke where the principles applicable to the jurisdiction of the civil Court were summed up in relation to an industrial dispute. The Apex Court had held:
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> > "23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:
> >
> > (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.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available o 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 a 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."

12. In a suit for recovery of damages for wrongful dismissal where there was no prayer for reinstatement, a division bench of Calcutta High Court in Austin Distributors (P) Ltd. v. Nil Kumar Das, 1970 Lab I.C. 323 has held that the Civil Court's jurisdiction is not barred, inasmuch as the only ground upon which the dismissal was impugned was in violation of the contract of service governed by general law. In Syndicate Bank v. Vincent Robert Lobo, 1971 Lab.I.C. 1055 the Mysore High Court has also held to the same effect. Both these judgments were approved by the Apex Court in Premier Automobile (supra) holding as under:

> We approve what has been said by a Bench of the Calcutta High Court in the case of *Austin Distributors Pvt. Ltd.* v. *Nil Kumar Das* that a suit for recovery of damages for wrongful dismissal, on the grounds which are clearly entertainable in civil court, would lie in that court even though a special remedy is provided in the Act in respect of that matter. This would be so on the footing that the dismissal was in violation of the contract of service recognized under the general law. More or less to the same effect is the view taken by a learned Single Judge of the Mysore High Court in the case of *Syndicate Bank* v. *Vincent Robert Lobo.* It is not necessary to refer to some unreported decisions of the Bombay High Court taking one view or the other.

13. The learned counsel for the petitioner has relied on Rajasthan SRTC v. Krishna Kant, (1995) 5 SCC 75 where it was reiterated that a case for awarding compensation though the civil court cannot decree reinstatement was maintainable. The Supreme Court had approved the ratio in the case of Sitaram Kashiram Konda Vs Pigment Cakes and Chemicals Mfg. (1979) 4 SCC 12. It was held:

> We may also refer to a decision of this Court rendered by Untwalia, J., on behalf of a Bench comprising himself and A.P. Sen, J., in *Sitaram Kashiram Konda* v. *Pigment Cakes and Chemicals Mfg. Co.* That was a case arising from a suit instituted by the workman for a declaration that

termination of his service is illegal and for reinstatement. In the alternative, he claimed compensation for wrongful termination. The jurisdiction of the civil court was sustained by this Court on the ground that he has made out a case for awarding compensation though the civil court could not decree reinstatement. Though the report does not indicate the basis put forward by the workman-plaintiff therein, the court found on an examination of all the facts and circumstances of the case that "it is not quite correct to say that the suit filed by the appellant is not maintainable at all in a civil court". Obviously it was a case where the dispute related to enforcement of rights flowing from general law of contract and not from certified Standing Orders. This decision cannot also be read as laying down a different proposition from *Premier Automobiles*.

14. In Rajasthan SRTC v. Krishna Kant (supra) the Supreme Court had summarized the principles about the jurisdiction of the Civil Court which are as follows:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) of Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 – which can be called "sister enactments" to Industrial Disputes Act – and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly – i.e., without the requirement of a reference by the Government – in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount o "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated therein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

5. We may also refer to a recent Supreme Court judgment in the case of *Rajasthan State Road Transport Corporation & Ors.* v. *Mohar Singh,* (2008) 5 SCC 542, wherein the aforesaid principles are reiterated specifically observing that jurisdiction of civil court would be barred only when right is claimed under the Industrial Disputes Act or sister laws. The relevant observations can be found in paras 15 to 19 of the said judgment, which are to the following effect :-

> "15. Civil court may have a limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit. It may not be entitled to sit in appeal over the order passed in the disciplinary proceedings or on the quantum of punishment imposed. It may not in a given case direct reinstatement in service having regard to Section 14(1)(b) of the Specific Relief Act, 1963 but, it is a trite law that where the right is claimed by the plaintiff in terms of common law or under a statute other than the one which created a new right for the first time and when a forum has also been created for enforcing the said right, the civil court shall also have jurisdiction to entertain a suit where the plaintiff claims benefit of a fundamental right as adumbrated under Article 14 of the Constitution of India or mandatory provisions of statute or statutory rules governing the terms and conditions of service.
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> 16. Under the industrial law, and in particular the 1947 Act, the authorities specified therein including the appropriate Governments and Industrial Courts have various functions to perform. Terms and conditions can be laid down thereunder. Violation of the terms and conditions of service at the hands of the employer is also justiciable. Safeguards have been provided under the Act to see that services of workmen are not unjustly terminated. The 1947 Act provides for a wider definition of "termination of service". Conditions precedent for termination of service have been provided for thereunder.
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> 17. A decision taken by the disciplinary authority under the 1951 Act ordinarily would be a subject-matter of suit. The civil court, however, as noticed hereinbefore exercises a limited jurisdiction. If, however, the employee concerned is a "workman" within the meaning of the provisions of the 1947 Act, he apart from the common law remedies, may take recourse to the remedies available before an Industrial Court.
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> 18. When a right accrues under two statutes vis-à-vis the common law right, the employee concerned will have an option to choose his forum.

> 19. We must also notice the distinction between a right which is conferred upon an employer (*sic* employee) under a statute for the first time and also providing for a remedy and the one which is created to determine the cases under the common law right. Only in a case of the former, the civil court's jurisdiction may be held to be barred by necessary implication."

6. It is clear from the above that if the dispute arises from General Law of Contract and the reliefs are claimed on the basis of the General Law of Contract, a civil suit is maintainable even if such a dispute also constitutes an industrial dispute. It is equally important to note that even if the dispute is an industrial dispute arising out of a right or liability under the General Law or the Common law and not under the Act, both the remedies, i.e. that of a civil court as well as the labour court under the Act, are available to the workman and it is to be left to him to elect as to which remedy he would like to invoke. It is only when the workman is seeking enforcement of a right or an obligation created under the Act that his only remedy is to get an adjudication invoking the machinery provided under the said Act. This could be either by invoking the provisions of Section 33-C or raising an industrial dispute, as the case may be.

7. From the aforesaid principles, it is clear that the appellant can succeed in its submission only it is able to establish that the right claimed by the respondent in the suit is the one arising out of the Act or sister laws. In his endeavour to put the case within this principle, Mr. Bhasin, learned counsel for the appellant, submitted that the service conditions of the respondent are governed by the Bi-partite Settlement arrived at on 19.10.1966. His submission was that this Bi-

partite Settlement was under the provisions of the Industrial Disputes Act, which was arrived at between certain banking companies and their workmen. He submitted that since then all the *'workmen'* of these banks, which includes the appellant bank as well, are governed by the terms and conditions contained in the said Bi-partite Settlement. This Bi-partite Settlement also lays down the code of conduct and provisions for taking disciplinary action and penalties. Chapter XIX of the said settlement titled as *"Disciplinary Action and Procedure Therefor"* specifically deals with the misconducts, disciplinary action that may be taken for *'gross misconduct'* or minor misconduct, the procedure for conducting inquiry and the nature of punishments which can be imposed. His submission was that since this Bi-partite Settlement is under the provisions of the Industrial Disputes Act, and as the disciplinary action was taken against the respondent under this provision, the impugned dismissal challenged by the respondent has to be treated as the one which is under the provisions of the Act. Therefore, the only remedy for the respondent was to raise an industrial dispute under the Act. He further referred to Item 3 of Second Schedule attached to the Act under which even the mandatory compensation could be awarded by the labour court. This item reads as under :-

> " THE SECOND SCHEDULE
> **Matters within the Jurisdiction of Labour Courts**
>
> xx xx xx
>
> 3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed;
>
> xx xx xx "

He, thus, submitted that it is principle 3 of ***Premier Automobile*** (supra) which shall be applicable to the facts of this case and the jurisdiction of the civil court should be held to be completely barred.

8. The principles which were laid down in ***Premier Automobile*** (supra) have withstood the test of time. The Supreme Court has reiterated those principles time and again and even explained the implications of these principles in various subsequent judgments. In ***Krishna Kant*** (supra) these principles are re-formulated and explained in further detail, though essence thereof remains the same as laid down in ***Premier Automobile*** (supra). In fact, it is not these principles but the application thereof in particular cases which has given rise to controversy. The bone of contention has always remained the Principle No.2 of ***Premier Automobile*** (supra) which gives alternate jurisdiction to civil court as well as industrial court. That principle stipulates that even if the dispute is an industrial dispute, but it arises out of a right or liability under the General or Common Law and not under the Industrial Disputes Act, the jurisdiction of civil court is alternative and it is for the concerned employee to elect as to which remedy he would prefer to invoke – whether remedy under the Industrial Disputes Act or civil court remedy. Thus, the dispute which generally arises is as to whether, in a given case, the dispute arises out of a right or liability under the General or Common Law. This problem was highlighted by the Supreme Court in ***Krishna Kant*** (supra) as well, as is clear from para 25 of the said judgment, which reads as under :-

> "26. Before we proceed to consider the effect and impact of para 24 on Principle No.2 in para 23, it would be appropriate to refer briefly to the decisions referred to in para 26 of the said judgment. The Court approved the following decisions: *(i) Krishnan v. East India Distilleries and Sugar Factories Ltd.*, (1964) 1 LLJ 217 : AIR 1964 Mad 81 (Mad), a decision rendered by a Single Judge of the Madras High Court, it was held therein that "the jurisdiction of the civil court is ousted impliedly to try a case which could form subject-matter of an industrial dispute collectively between the workmen and their employer". *(ii) Madura Mills Co. Ltd. v. Guruvammal*, (1967) 2 LLJ 397 : (1967) 2 MLJ 287 (Mad) decided by Alagiriswami, J. (at that time a Judge of the Madras High Court). It was a case concerning the enforcement of a right created by Industrial Disputes Act. *(iii)* The decision of a learned Single Judge of Mysore High Court in *Nippani Electricity Co. (P) Ltd. v. Bhimarao Laxman Patil* (1969) 1 LLJ 268 : 1968 Lab IC 1571 (Mys), a decision of the Division Bench of the Bombay High Court in *Pigment Lakes and Chemical Manufacturing Co. (P) Ltd. v. Sitaram Kashiram Konde* 71 Bom LR 452 : 1970 Lab IC 415 (Bom) and the decision of a learned Single Judge of the Kerala High Court in *Nanoo Asan Madhavan v. State of Kerala* (1970) 1 LLJ 272 (Ker) where it was held that the jurisdiction of the civil court to deal with matters mentioned in Chapter V-A is impliedly barred. (iv) The decision of a Division Bench of the Calcutta High Court in *Austin Distributors (P) Ltd. v. Nil Kumar Das*, 1970 Lab IC 323 which arose from a suit for recovery of damages for wrongful dismissal. There was no prayer for reinstatement. The High Court held that Civil Court's jurisdiction is not barred, inasmuch as the only ground upon which the dismissal was impugned was in violation of the contract of service governed by general law. A decision of the Mysore High Court in *Syndicate Bank v. Vincent Robert Lobo*, (1971) 2 LLJ 46 to the same effect."

9. In para 26 of the judgment the Supreme Court noted certain decisions of various High Courts which were discussed in ***Premier Automobile*** (supra). Thereafter, implications of Principle No.2 were discussed in para 28 in the following manner :-

> "28. Now, coming back to Principle No.2 and its qualification in para 24, we must say that para 24 must be read harmoniously with the said principle and not in derogation of it – not so as to nullify it altogether. Indeed, Principle No.2 is a reiteration of the principle affirmed in several decisions on the subject including *Dhulabhai*. Principle No.2 is clear whereas para 24 is more in the nature of a statement of fact. It says that most of the industrial disputes will be disputes involving the rights and obligations created by the Act. It, therefore, says that there will hardly be any industrial dispute

> which will fall under Principle No.2 and that almost all of them will fall under Principle No.3. This statement cannot be understood as saying that no industrial dispute can ever be entertained by or adjudicated upon by the civil courts. Such an understanding would not only make the statement of law in Principle No.2 wholly meaningless but would also run counter to the well-established principles on the subject. It must accordingly be held that the effect of Principle No.2 is in no manner whittled down by para 24. At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State Legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them."

10. Thereafter, the Apex Court proceeded to apply the principles laid down in ***Premier Automobile*** (supra) on the facts of that case to determine as to whether Principle No.2, which gives alternate jurisdiction, or Principle No.3 which gives exclusive jurisdiction to the machinery under the Industrial Disputes Act, would be applicable. The exercise undertaken by the Supreme Court is contained in para

29, which will serve as guide for determining the controversy in the present case as well and, therefore, we deem it proper to reproduce the same :-

> "29. Now let us examine the facts of the appeals before us in the light of the principles adumbrated *Premier Automobiles.* The first thing to be noticed is the basis upon which the plaintiffs-respondents have claimed the several reliefs in the suit. The basis is the violation of the certified Standing Orders in force in the appellant-establishment. The basis is not the violation of any terms of contract of service entered into between the parties governed by the law of contract. At the same time, it must be said, no right or obligation created by the Industrial Disputes Act is sought to be enforced in the suit. Yet another circumstance is that the Standing Orders Act does not itself provide any forum for the enforcement of rights and liabilities created by the Standing Orders. The question that arises is whether such a suit falls under Principle No.3 of *Premier Automobiles* or under Principle No.2? We are of the opinion that it falls under Principle No.3. The words "under the Act" in Principle No.3 must, in our considered opinion, be understood as referring not only to Industrial Disputes Act but also to all sister enactments – (like Industrial Employment (Standing Orders) Act) which do not provide special forum of their own for enforcement of the rights and liabilities created by them. Thus a dispute involving the enforcement of the rights and liabilities created by the certified Standing Orders has necessarily got to be adjudicated only in the forums created by the Industrial Disputes Act provided, of course, that such a dispute amounts to an industrial dispute within the meaning of Sections 2(j) and 2-A of Industrial Disputes Act or such enactment says that such dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes Act. The civil courts have no jurisdiction to entertain such suits. In other words, a dispute arising between the employer and the workman/workmen under, or for the enforcement of the Industrial Employment Standing Orders is an industrial dispute, if it satisfies the requirements of Section 2(k) and/or Section 2-A of the Industrial Disputes Act and must be adjudicated in the forums created by the Industrial Disputes Act alone. This would be so, even if the dispute raised or relief claimed is based partly upon certified Standing Orders and partly on general law of contract."

11. It would also be useful to refer to para 33 which gave the reasons for distinguishing the judgment of two Judge Bench dated 18.10.1999 in another case explaining the reasons which persuaded the Court to

take a view that civil court will also have the jurisdiction in the facts of that case :-

> "33. Coming to the order dated 18.10.1989 in SLP (C) No. 9386 of 1988 made by a Bench of two learned Judges, the important fact to be noticed is that in that suit, no allegation of violation of the certified Standing Orders was made. The only basis of the suit was violation of principles of natural justice. It was, therefore, held that it was governed by Principle No.2 in *Premier Automobiles*. In this sense, this order cannot be said to lay down a proposition contrary to the one in *Jitendra Nath Biswas*. We may also refer to a decision of this Court rendered by Untwalia, J., on behalf of a Bench comprising himself and A.P. Sen, J. in *Sitaram Kashiram Konda v. Pigment Cakes and Chemicals Mfg. Co.* That was a case arising from a suit instituted by the workman for a declaration that termination of his service is illegal and for reinstatement. In the alternative, he claimed compensation for wrongful termination. The jurisdiction of the civil court was sustained by this Court on the ground that he has made out a case for awarding compensation though the civil court could not decree reinstatement. Though the report does not indicate the basis put forward by the workman-plaintiff therein, the court found on an examination of all the facts and circumstances of the case that "it is not quite correct to say that the suit filed by the appellant is not maintainable at all in a civil court". Obviously it was a case where the dispute related to enforcement of rights flowing from general law of contract and not from certified Standing Orders. This decision cannot also be read as laying down a different proposition from *Premier Automobiles.*"

12. A conjoint reading of paras 29 and 33 would demonstrate that following aspects are to be considered in determining the applicability of a particular principle of *Premier Automobile :*

(a) The basis on which the plaintiff claims the several reliefs in the suit – If the basis is the violation of certified standing orders in force in the establishment and not in terms of contract of service, Principle No.3 would be applied and the labour court shall have exclusive jurisdiction.

(b) Before holding that Principle No.2 applies, it is to be ensured that no right or obligation created by the Industrial Disputes Act is sought to be enforced in the suit.

(c) The enforcement of rights and liabilities is not to be limited to the Industrial Disputes Act alone but also of sister enactments like Industrial Employment (Standing Orders) Act, etc.

(d) Even when dispute raised or relief claimed is based partly upon certified Standing Orders Act or partly on General Law of Contract, civil court will not have jurisdiction to entertain the suit and such dispute must be adjudicated in the forums created by the Industrial Disputes Act alone.

13. Thus, when the concerned workman seeks enforcement of a right or an obligation created under the Act or sister laws, then the only remedy is under the said Act. On the other hand, if the dispute arises out of a right or liability under the General or Common Law, the workman has the choice to invoke the machinery under the Industrial Disputes Act or to file a civil suit, inasmuch as both the remedies are available to the said person.

14. What is the basis upon which the plaintiff/respondent has claimed relief in the suit? No doubt, departmental inquiry was conducted against the respondent under the provisions of Bi-partite Settlement. It is also not in dispute that this Settlement has statutory flavour which was arrived at under the provisions of the Industrial Disputes Act. The perusal of the plaint, however, would show that the

plaintiff is not seeking enforcement of any of the provisions of the Bi-partite Settlement. He has filed the suit for declaration and damages for an amount of Rs.30 lacs. It is based on the averments that on false allegations charge sheet dated 20.7.1990 was served upon him to which he had given his reply. The basic objection is to the conducting of the inquiry *ex-parte* against the respondent. It is pleaded that this was in violation of principles of natural justice. It is further alleged that on account of the acts of the defendants (appellants herein) he was put to undergo tremendous mental agony and harassment and his reputation also has been considerably damaged. In para 40, following averments are made :-

> "40. That in the aforesaid circumstances the contract of employment as made by the defendant with the plaintiff has been wrongly and illegally breached by dismissing the plaintiff from service, which is liable to be declared as wrong and illegal and further the plaintiff is legally entitled for damages worth Rs.30.00 lakhs which are only token in nature*.... Illegible...*"

There is not even a reference to the provisions of Bi-partite Settlement or enforcement of any right or obligation under the said Settlement. Merely because the inquiry is conducted under the Bi-partite Settlement and punishment also imposed in terms thereof, would not mean that the respondent is claiming his right under the Act. Bi-partite Settlement, at the most, can be treated as a document laying down various terms and conditions of employment with which the banks and their workmen are bound. In the suit filed by the respondent he has not sought enforcement of any of the terms of the said Bi-partite Settlement. He has founded his case on the principles of natural justice. Of course, he would remain bound

thereby and would not be entitled to base his rights under the Bi-partite Settlement.

15. In ***Mohar Singh*** (supra), which judgment was relied upon by Mr. Bhasin himself, the court spelled out a categorical distinction between a right which is conferred upon an employee under a Statute for the first time and also providing for a remedy, and the one which is created to determine the cases under the Common Law right. The claim for damages is admissible under the Common Law for wrongful termination. What is barred under the Common Law is that contract of personal service cannot be specifically enforced, which would only mean that the dismissed employee, even if the termination or dismissal is found to be illegal, cannot force himself back upon the employer against the employer's wishes. He can at the most claim damages if his services were terminated wrongly. The Industrial Disputes Act, for the first time, created a right in favour of the *'workmen'* whereby they have become entitled to seek reinstatement as well in case their termination from services is found to be illegal. It is this right which is conferred upon the workmen under the Statute for the first time. However, the respondent in the present case has not chosen to enforce this right. The relief he has sought remains under the realm of Common Law, namely, that of damages for alleged wrongful termination of the contract of employment. At this stage, we would again like to reproduce the following discussion contained in ***Mohar Singh*** (supra) :-

> "21. We may in this behalf profitably notice the following excerpts from *Principles of Statutory Interpretation* (11th Edn.) by Justice G.P. Singh :
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> > " 'It is a principle by no means to be whittled down' and has been referred to as a 'fundamental rule'. As a necessary corollary of this rule provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of jurisdiction of civil court is not to be readily inferred is based on the theory that civil courts are courts of general jurisdiction and the people have a right, unless expressly or impliedly debarred to insist for free access to the courts of general jurisdiction of the State. Indeed, the principle is not limited to civil courts alone, but applies to all courts of general jurisdiction including criminal courts. The rule as stated above relating to strict construction of provisions excluding jurisdiction of courts of general jurisdiction was recently expressly approved by the Supreme Court."
> >
> > 22. In *Krishna Kant* this Court opined that where a dispute involves recognition, observance and enforcement of rights and obligations created under the Industrial Disputes Act and/or its sister enactments such as Industrial Employment (Standing Orders) Act, the civil court will have no jurisdiction."

16. It will be significant to state that in the said case, the Supreme Court held that civil court had the jurisdiction to entertain the dispute which was filed by the respondent therein against his dismissal on the ground that it was in violation of the principles of natural justice. The Supreme Court specifically opined that violation of no right under the Industrial Disputes Act or the Industrial Employment (Standing Orders) Act was claimed. The Court pointed out, in para 29, as under :-

> "29. The decisions referred to hereinbefore clearly brings about a distinction which cannot be lost sight of. If a right is claimed under the Industrial Disputes Act or the sister laws, the jurisdiction of the civil court would be barred, but if no such right is claimed, civil court will have jurisdiction."

17. We are, therefore, of the opinion that the preliminary issue in question is rightly decided by the learned Single Judge holding that civil court had the jurisdiction to entertain the civil suit. We, therefore, do not find any merit in this appeal, which is dismissed with costs.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

August 29, 2008
nsk