

SITARAM KASHIRAM KONDA

v.

PIGMENT CAKES &amp; CHEMICALS MFG. CO.

July 27, 1979

[N. L. UNTWALIA AND A. P. SEN, JJ.]

*Termination of Service—Declaratory suit to set aside the termination and for awarding compensation—Dispute whether of a civil nature cognizable by a civil court.*

The appellant filed a suit against his employer, the respondent, for a declaration that he had been removed from service illegally and without any reason and that he should be reinstated in his former job with due benefits and advantages. He also claimed compensation. The trial court held that the dispute raised by the appellant was in the nature of an industrial dispute and that the civil court had no jurisdiction to try the same. The First Appellate Court allowed the appeal and held that the dispute raised was of a civil nature and the case was cognizable by a civil court. In the respondent's second appeal, the High Court agreed with the view of the trial court and held that the appellant had not claimed damages by pleading wrongful dismissal and breach of the contract of his service, and that the facts pleaded in the plaint showed that the dispute was an industrial dispute cognizable only by an industrial court and not by a civil court.

In the further appeal to this Court the point for consideration was whether on the facts pleaded by the appellant the dispute was an industrial dispute cognizable only by an industrial court and not by a civil court.

Allowing the appeal,

HELD : (1) It is not quite correct to say that the suit as filed by the appellant is not maintainable at all in a civil court. The main reliefs asked for by the appellant which when granted will amount to specific performance of the contract of service and, therefore, they cannot be granted. But the appellant in the alternative has also claimed for awarding compensation to him. [127A-C]

(2) Reading the plaint as a whole, it can legitimately be culled out that the appellant had made out a case that he was wrongfully dismissed from service. This relief could be granted by the civil court if it found that the plaintiff's case was true. The High Court was not right in saying that no such case had at all been made in the plaint. To this limited extent the matter could be examined by the civil court. [127D-E]

*Dr. S. B. Dutt v. University of Delhi*, [1959] SCR 1236; *S. R. Tewari v. Distt. Board Agra & Anr.*, [1964] 3 SCR 55; *Indian Airlines Corp. v. Sukhdeo Rai*, [1971] Suppl. SCR 510, *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors.*, [1976] 1 SCR 427; referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5 of 1969.

**A** From the Judgment and Order dated 20th June, 1968 of the Bombay High Court in Appeal No. 48/66.

*K. Jayaram*, Amicus Curiae for the Appellant.

*Y. S. Chitale*, *M. V. Goswami* and *Ambrish Kumar* for the Respondent.

**B** The Judgment of the Court was delivered by

UNTWALIA, J. The plaintiff-appellant filed a suit in the Trial Court in the year 1963 alleging certain unjustifiable and illegal actions on the part of his employer, the respondent in this appeal. The reliefs claimed in the suit were the following :—

**C** “(a) That it may be declared that the defendant has removed the plaintiff from service illegally and without any reason.

(b) That it may be declared that the defendant failed and neglected to re-employ the plaintiff although the defendant restarted the factory.

**D** (c) That the defendant be ordered to reinstate the plaintiff to his former job with due benefits and advantages.

**E** (d) In the alternative the defendant may be ordered to pay to the plaintiff such compensation as to the Hon'ble Court may deem fit.

(e) For costs of the suit.

(f) For such further and other reliefs as this Hon'ble Court may deem fit.”

**F** On contest by the respondent, the Trial Court held that the dispute raised by the appellant was in the nature of an industrial dispute and hence the Civil Court had to jurisdiction to try it. The appellant took the matter in appeal before the First Appellate Court. It allowed the appeal and held that the dispute raised was of a civil nature and the case was cognizable by a Civil Court. The respondent filed the second appeal in the High Court and the High Court has agreed with the view of the Trial Court. It has said that the appellant had not claimed damages by pleading wrongful dismissal and breach of the contract of his service. The facts pleaded by him all converged to show that the dispute was an industrial dispute cognizable only by an industrial court and not by a Civil Court. The appellant has presented his appeal in this Court by a certificate granted by the High Court.

The Court is obliged to Mr. K. Jayaram for assisting it as Amicus Curiae in this case. After having appreciated the entire facts and the circumstances of the case, we are of the opinion that it is not quite correct to say that the suit filed by the appellant is not maintainable at all in a Civil Court. The correct position of law is that the main reliefs asked for by him which when granted will amount to specific performance of the contract of service and therefore they cannot be granted. There are a number of decisions of this Court to that effect; to wit—*Dr. S. B. Dutt v. University of Delhi*<sup>(1)</sup>, *S. R. Tiwari v. District Board Agra & Anr.*<sup>(2)</sup> and *Indian Airlines Corporation v. Suhhdeo Rai.*<sup>(3)</sup> Reference was also be made in this connection to the decision of this Court in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and Ors.*<sup>(4)</sup>

But then in the alternative, the appellant had also prayed for awarding compensation to him. And reading the plaint as a whole, it can legitimately be culled out that he had made out a case, whether it was right on fact or not, that is a different question, that he was wrongfully dismissed from service. This relief could be granted by the Civil Court if it found that the plaintiff's case was true. The High Court, in our opinion, is not right in saying that no such case had at all been made out in the plaint. In our opinion, as we have earlier said, reading the plaint as a whole, such case can be spelt out. That being so to this limited extent, the matter could be examined by the Civil Court.

We accordingly allow the appeal set aside the judgments of the courts below and send back the case to the Trial Court for disposing it of in accordance with law in the light of this judgment. There will be no order as to costs. Since the suit has become very old, the Trial Court is directed to dispose it of as expeditiously as possible.

N.V.K.

*Appeal allowed.*

(1) [1959] S.C.R. 1236

(2) [1964] 3 S.C.R. 55

(3) [1971] Suppl. S.C.R. 510

(4) [1976] 1 S.C.R. 427