

A APOLLO TYRES LTD.
V.
C.P. SABASTIAN
Civil Appeal No. 7007 of 2003

B APRIL 30, 2009
(MARKANDEY KATJÜ AND H.L. DATTU, JJ.)

Industrial Disputes Act, 1947 :

C *Power of Labour Court or Industrial Tribunal vis-à-vis Civil Court – Contract for personal service includes all matters relating to service of the employee like confirmation, suspension, transfer, termination etc. – Civil Court has no jurisdiction in such matters – Civil Court – Jurisdiction.*

D *Pearlite Lioners (P) Ltd. vs. Manorama Sirsi* 2004 (3) SCC 172 – relied on.

Case Law Reference

2004(3) SCC 172 relied on para 13

E **CIVIL APPELLATE JURISDICTION : Civil Appeal No(s). 7007 of 2003**

From the Judgement and Order dated 06.09.2002 of the Hon'ble High Court of Kerala at Ernakulam in CMA No. 114 of 2001

F **WITH**

Civil Appeal No. 7008 of 2003

G **P. S. Patwalia, Romy Chacko, Saji Varghese, Ramesh Singh, Ankur Saigal, Bina Gupta, Gaurav Singh, with him for the Appellant(s).**

E.M.S. Anam, for the Respondent(s).

The following order of the Court was delivered

1. This Appeal has been filed against the impugned judgment of the High Court of Kerala at Ernakulam dated 06th September, 2002 passed in CMA No.14 of 2001 whereby the High Court while confirming the judgment and decree of the court below has held that the civil Court has jurisdiction to entertain the matter. A

2. The respondent-plaintiff, hereinafter referred to as the 'plaintiff' was an employee of the appellant-defendant, hereinafter referred to as the 'defendant' which is a private company and not State under Article 12 of the Constitution. B

3. Facts giving rise to this appeal are: C

The plaintiff filed a suit being OS No. 2098 of 1999 before the Munsiff's Court, Irinjalakuda, District Thrissur, Kerala seeking the following reliefs:

"A. Declaring that plaintiff is still a workman (Radial Tyre Builder) and continues to be a workman under the defendant entitled for wages and all other consequential benefits of service from the defendant. D

B. Declaring that the order of transfer (Ref.WKS/PSL dated 08-10-1999) issued by the defendant transferring plaintiff to West Bengal is intended to victimize, made with malafie intentions, irregular and illegal. E

C. Restraining defendant and its officers from compelling plaintiff by any modes to accept any promoted post which he is not willing to hold. F

D. Restraining the defendant, its officers and men from any way interfering with plaintiff's right to perform legitimate trade union activities as the General Secretary of the union Apollo Tyres Workers Movement. G

E. Granting the cost of suit from the defendant and allowing plaintiff to realize the same from the defendant and its assets." H

A 4. Defendant filed a written statement in the suit as well as I.A. No. 1707 of 2000 stating that the Civil Court has no jurisdiction in the matter.

B 5. The trial Court by its order dated 05th day of October, 2000 allowed the said application and dismissed the suit filed by the plaintiff.

6. Aggrieved against the aforesaid order of the trial Court, plaintiff filed an appeal before the first appellate authority.

C 7. The first appellate authority by its order dated 25th January, 2001 reversed the judgment and decree of the trial Court and held that the Civil Court has jurisdiction to entertain the dispute. Accordingly, the matter was remanded to the trial Court for a fresh disposal.

D 8. Aggrieved against the order of the first appellate authority, the defendant filed a Civil Miscellaneous Appeal No. 14 of 2001 in the High Court of Kerala at Ernakulam.

E 9. The High Court, by the impugned order, has confirmed the order of the first appellate authority and held that the civil Court has jurisdiction to entertain the matter. It was also directed that the suit shall be disposed of within three months.

10. Aggrieved against the impugned order, the defendant is before us.

F 11. Heard learned counsel for the parties and perused the record.

G 12. On the facts of the case, we are clearly of the view that the suit filed by the plaintiff was barred by Section 14(b) of the Specific Relief Act, 1963 which states that a contract of personal service cannot be enforced in a civil suit. In our opinion, if the plaintiff had any grievance and if he is a workman as defined in the Industrial Disputes Act, 1947, he should have raised an industrial dispute and sought relief under the Industrial Disputes Act, 1947 before the labour Court or industrial Tribunal. There are many powers which the Labour Court or Industrial Tribunal

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enjoy which the Civil Court does not enjoy e.g. the power to enforce contracts of personal service, to create contracts, to change contracts etc. These things can only be done by the Labour Court or Industrial Tribunal but cannot be done by a civil Court. A contract for personal service includes all matters relating to the service of the employee e.g. confirmation, suspension, transfer, termination etc.

13. In our opinion, the reliefs claimed by the plaintiff were clearly seeking enforcement of a contract of personal service and the civil Court has no jurisdiction to grant such reliefs as held by this Court in the case of *Pearlite Lioners (P) Ltd. vs. Manorama Sirsi* (2004) 3 SCC 172. The High Court and the first appellate Court were clearly in error in holding that the civil court had jurisdiction in the matter and the trial Court was right in holding that the civil court had no jurisdiction and rightly dismissed the suit filed by the plaintiff.

14. Accordingly, this appeal is allowed, the impugned judgment of the High Court and the first appellate Court are set aside and that of the trial Court is restored. No order as to costs.

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15. Following the judgment in *Apollo Tyres Ltd. vs. Sebastian* which is the subject matter of Civil Appeal No.7007 of 2003, the High Court has allowed the revision filed by the plaintiff holding that the suit is maintainable.

16. Since, we have accepted the appeal filed against the relied on judgment, this appeal is also allowed and the impugned judgment of the High Court is set aside and that of the lower Court is restored. No order as to costs.

G.N.

Appeal allowed.