REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 328 OF 2005

RAJASTHAN STATE ROAD TRANSPORT CORPORATION & ANR. …. APPELLANTS

VERSUS

BAL MUKUND BAIRWA …. RESPONDENT

WITH

[C.A. No. 318/2005, C.A. Nos. 316-317/2005, C.A. No. 324/2005, C.A. No. 1875/2008, C.A. No. 3002/2008, C.A. No. 954 2009 (@ SLP (C) No. 22300/2007, C.A. No. 1687/2007 and C.A. No. 6892/2003]

J U D G M E N T

S.B. SINHA, J.

1. Leave granted in Special Leave Petition (Civil) No. 22300 of 2007.

2. Reference to this Bench has been made by a Division Bench of this Court by an order dated 22.11.2007 for resolution of a purported conflict in two three-Judge' Bench judgments of this Court in the cases of

Rajasthan State Road Transport corporation & Anr. vs. Krishna Kant & Ors. [1995 (5) SCC 75] and Rajasthan SRTC & Ors. vs. Khadarmal [2006 (1) SCC 59].

3. The purported conflict in the aforementioned two decisions centres round the jurisdiction of the civil court to entertain suits questioning orders of termination passed by the appellant – Corporation against the respondents herein. The suits were filed by the respondents, inter alia, on the premise that termination of their services was in violation of the principles of natural justice.

4. As this Court in this case at this juncture is only required to lay down a principle of law, it is not necessary to state the facts of the matter in detail.

5. Appellant – Corporation, indisputably, was constituted in terms of the provisions of Road Transport Corporations Act, 1950 (for short, "the 1950 Act"). By reason of the provision of Section 4 thereof, each Corporation is a body corporate having perpetual succession and a common seal and can in its own name sue and be sued.

Section 45 of the 1950 Act provides for the Regulation making power, stating:

"45. **Power to make regulations**.- (1) A Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the manner in which, and the purposes for which, persons may be associated with the Board under Section 10;

(b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser;

(d) the issue of passes to the employees of the Corporation and other persons under section 19;

(e) the grant of refund in respect of unused tickets and concessional passes under section 19."

6. Pursuant to or in furtherance of the said power, the Corporation made Regulations known as "Rajasthan State Road Transport Corporation Employees Service Regulations, 1965".

Chapter V of the said Regulations provides for suspension, termination, dismissal, removal and/or compulsory retirement, etc. Indisputably, the Corporation is also an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947

7. The Parliament enacted Industrial Employment (Standing Orders) Act, 1946 (for short, "the 1946 Act"). In the year 1965, the Corporation framed its Standing Orders known as Rajasthan State Road Transport Workers and Workshop Employees Standing Orders, 1965, which were certified under the 1946 Act. The said Certified Standing Orders deal with suspension, termination, dismissal, removal and/or compulsory retirement, etc.

8. Indisputably, appellant- Corporation is a State within the meaning of Article 12 of the Constitution of India that is for the purpose of Part III and Part IV thereof.

9. The jurisdiction of a civil court is governed by Section 9 of the Code of Civil Procedure, which reads as under:

> "9 - **Courts to try all civil suits unless barred:-**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."

The jurisdiction of the Civil Court in terms of the aforementioned provision is a plenary one. The provision relating to bar to entertain a suit must therefore be laid down by a statute either expressly or by necessary implication. An employee charged with grave acts of misconduct must be held to be entitled to a fair hearing in the departmental proceeding. The common law principles of natural justice must also be complied with. Rules laid down in the statutory rules indisputably should be followed.

In Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. [(2006) 4 SCC 713], , this Court held:

> "26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the

enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam and Anr. v. Mahendra Kumar Das and Ors. [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India and Ors. (1958 SCR 1080) and State of Uttar Pradesh v. Om Prakash Gupta (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi v. State of Bank of India and Ors. (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors. 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. v. Prakash Chand Jain (1969) 1 SCR 735, Kuldeep Singh v. Commissioner of Police and Ors. (1999) 2 SCC 10]."

{See also Roop Singh Negi vs. Punjab National Bank [2009 (1) SCALE 284]}

Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim *Ubi jus Ibi remedium.* A litigant, thus, having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless bared by statute, either expressly or by necessary implication.

10. The civil court, furthermore, being a court of plenary jurisdiction has the jurisdiction to determine its jurisdiction upon considering the averments made in the plaint but that would not mean that the plaintiff can circumvent the provisions of law in order to invest jurisdiction on the civil court although it otherwise may not possess. For the said purpose, the court in given cases would be entitled to decide the question of its own jurisdiction upon arriving at a finding in regard to the existence of the jurisdictional fact. It is also well settled that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its

jurisdiction in respect of some matters particularly when the statutory authority or Tribunal acts without jurisdiction.

11. In Dhulabai vs. State of M. P. [(1968) 3 S.C.R. 662], this Court held as under:

> "(*1*) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
>
> (*2*) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.
>
> (*3*) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(*4*) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(*5*) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(*6*) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(*7*) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

{See also Church of North India vs. Lavajibhai Ratanjibhai & ors. [(2005) 10 SCC 760], United India Insurance Co.Ltd. vs. Ajay Sinha & Anr. [2008 (8) SCALE 509]}

12. The word "industrial dispute" is defined in Section 2(k) of the 1947 Act to mean:

> "(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;"

The expression ‘workman’ has been defined in clause (s) of Section 2 to mean 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 in 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 one thousand six hundred rupees per mensem or exercise, 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.

Clause (g) of Section 2 defines ‘employer’ to mean:

"(g) "employer" means-

(i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

13. Indisputably, the 1947 Act provides for the forum for determination of an industrial disputes raised between workmen and workmen; workmen and employer; and employer and employer inter alia if any reference is made by an appropriate Government in exercise of its power conferred upon it under Section 10 thereof. Section 11 of the 1947 Act provides for procedure and power of conciliation officers, Boards, Courts and Tribunal while Section 11A confers extensive power on the labour court or the Industrial Tribunal to interfere with an order of punishment imposed upon a workman including a power to substitute the punishment awarded by the employer upon holding a domestic enquiry.

14. Section 3 of the 1946 Act obligates every industrial establishment to frame Standing Orders in respect of matters set out in the Schedule

appended thereto and submit the same to the certified officer who shall certify the same upon arriving at its satisfaction that they have been framed in accordance of the 1946 Act. Upon such certification, the Standing Orders become binding upon the employer and employees.

15. The question in regard to the jurisdiction of a Civil Court vis-à-vis adjudication of rights/obligations created by or under the 1947 Act came up for consideration in The Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay & ors. [(1976) 1 SCC 496], wherein following the dicta laid down in Wolverhampton New Waterworks Co. vs. Hawkesford [(1859) 6 CB (NS) 336: 28 LJ CP 242: 141 ER 486], law was laid down in the following terms:

> "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 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 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."

16. The question came up for consideration again before a three Judge Bench of this Court in Krishna Kant (supra) wherein, inter alia, it was held:

> "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 a 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(*k*) 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."
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> [emphasis supplied]

It was, however, noticed:

> "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*."

The principles flowing from the discussions in the said decisions were summarized thus:

> "35. We may now summarise the principles flowing from the above discussion:
>
> (*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*) or 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 to "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 herein.

> (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."

Applying the said principles to the fact of the cases wherein the plaintiffs alleged that the enquiries were conducted in violation of the Standing Orders whereas the stand taken by the Corporation was that the requirements contained in the Standing Orders were complied with, the Bench, however, noticed that no Regulation had been framed by the Corporation in terms of Section 45 of the Act insofar as the employees answering the description of 'workman' as defined in Section 2(s) of the 1947 Act are concerned.

It appears that therein no dispute was raised that the provisions of the Standing Orders were applicable. The question, therefore, which inter alia arose for consideration was as to whether in holding the departmental proceeding the provisions of the Certified Standing Orders were violated

or not. While holding that Civil Court's jurisdiction to entertain the suit was bared, it was held:

> "37**.** It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the trial court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the trial court shall be governed by the principles enunciated herein — as also the suits and proceedings to be instituted hereinafter."

With greatest of respect to the learned judges, if a statute while creating rights and obligations did not constitute a forum for enforcing the same, plenary jurisdiction of the civil court in view of Premier Automobiles Ltd.(supra) could not be held to have been taken away. There was also no occasion to extend the scope of the dicta laid down therein. Certified Standing Orders lay down the terms and conditions of service. It did not create any new right such as Section 25F, 25G or 25H of the Industrial Disputes Act, 1947. Any new right created under a statute would ordinarily be a right in favour of an employee over and above the general law.

Let us, however, proceed on the basis that the dicta laid down therein is correct.

17. A similar question, however, came up for consideration before a two-Judge Bench of this Court in Rajasthan State Road Transport Corporation & Ors. vs. Zakir Hussain [(2005) 7 SCC 447], wherein this Court following the seven-Judges Bench decision of this Court in A.R. Antulay vs. R.S. Nayak [(1988) 2 SCC 602] opined that if the court has no jurisdiction, it cannot be conferred by an order of the court. Therein the order of termination was a simpliciter one which was passed during the period of probation and, thus, did not entail any stigma or civil consequences visiting him. In the facts of the case, Krishna Kant (supra) was not followed, stating:

> "35. Learned counsel for the respondent placing strong reliance on the judgment in *Rajasthan SRTC* v. *Krishna Kant* submitted that since the decree has been passed by the trial court on 28-7-1989 and the appeal filed by the Corporation was dismissed on 27-9-1989 which was pending prior to the judgment reported in *Krishna Kant*, the respondent is right in approaching the civil court. This contention has no force. This Court has very explicitly summarised the principles flowing from the discussion in the judgment in para 35 and applying the above principles this Court has categorically held that the suits filed by the employees in those appeals were not maintainable in law. But, however, granted certain reliefs by reducing the back wages, etc. etc. in the peculiar facts and circumstances of the case. Therefore, in our opinion, the above judgment will not be of any assistance or aid to the claim of the respondent."

18. The question came up for consideration again before a three-Judge Bench of this Court again in Khadarmal (supra) wherein referring to Krishna Kant (supra) and Zakir Hussain (supra), it was held that the civil court has no jurisdiction to adjudicate. However, without noticing Para 37 in Krishna Kant (supra), this Court held:

> "4. It is submitted that all the suits in these matters were filed at a time when the position of law was not clear. It is submitted that therefore even in these cases the Court should not interfere with the decrees but may direct that there shall be no payment of back wages.
>
> 5. On behalf of the appellants reliance is placed on the second *Rajasthan SRTC case* and it is pointed out that the Court had, after considering the earlier judgment, concluded that the reinstatement cannot now be maintained and directed that the respondents shall not be allowed to continue in service any further. The Court has however held that the back wages which may have been paid are not to be recovered back but clarified that the respondents will not be entitled to any further emoluments or service benefits except the amount paid to them as back wages.
>
> 6. In our view, as the civil court had no jurisdiction, the decrees which were passed have no force of law. They are accordingly set aside. In our view, there can be no direction to reinstate or to continue reinstatement. However, on the facts of these cases we also direct that if any back wages have been paid, they shall not be recovered but clarify that the respondents will not be entitled to any further emoluments or service benefits."

Para 37 of Krishna Kant (supra), however, was noticed in Rajasthan SRTC & Anr. vs. Ugma Ram Choudhary [(2006) 1 SCC 61] to hold:

> "4. Paragraph 37 of *Krishna Kant case* has been considered by this Court in para 35 of *Zakir Hussain case*. It has been held that once it is held that the civil court has no jurisdiction, the consequences must follow. This view has been reiterated by this Court in the unreported [now reported in (2006) 1 SCC 59, infra] judgment in *Khadarmal case*. Therefore, it is not possible to accept this submission."

19. In view of somewhat different conclusions arrived at by this Court in different cases as noticed hereinbefore whereas the contention of Mr. Tapas Ray, learned Senior Counsel appearing on behalf of the appellant – Corporation is that despite the fact that the suits were instituted and decrees were passed prior to the date of pronouncement of judgment in Krishna Kant (supra), we should opine that the civil court had no jurisdiction and, thus, dismiss the suit; the contention of Ms. Aishwarya Bhati and other learned counsel appearing on behalf of the respondent is that as doctrine of prospective overruling was applied in Krishna Kant (supra) and furthermore as in this case the suit is based on the allegations of violation of principles of natural justice, this Court should not interfere with the decrees passed by the learned trial court.

20. Before us, however, the statutory Regulations framed by the appellant – Corporation under Section 45 of the Act had been placed. We do not find that any distinction has been made in regard to the matters relating to holding of the departmental proceedings against an employee

for commission of a misconduct vis-à-vis the industrial workers. The question as to whether in a case of this nature where violation is alleged as regards compliance of principles of natural justice either on common law principles or in terms of the statutory Regulations framed by the appellant – Corporation, which is a fundamental right in terms of Article 14 of the Constitution of India, a civil suit will be maintainable or not, thus, have not been taken into consideration in any of the aforementioned decisions.

The legal principles, namely, presumption in regard to the jurisdiction of the Civil Court and interpretation of a statute involving plenary jurisdiction of a civil court had also not been taken into consideration.

In Wolverhampton New Waterworks Co. (supra), it has categorically been laid down:

> "There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy; there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has

> given no special remedy for it; there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it.… With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute."

It was on the aforementioned principle, the question of applicability of principles 1, 2 and 3 laid down in Para 23 in Premier Automobiles Ltd. (supra) will have to be taken into consideration.

21. A dispute arising in between an employer and employee may or may not be an industrial dispute. The dispute may be in relation to or arising out of a fundamental right of the employee, or his right under a Parliamentary Act and the Regulations framed thereunder, and/or a right arising under the provisions of the Industrial Disputes Act or the sister laws and may relate to same or similar rights or different rights, or even may be based on common law right or contractual right. The question in regard to the jurisdiction of the civil court must, therefore, be addressed having regard to the fact as to which rights or obligations are sought to be enforced for the purpose of invoking or excluding the jurisdiction of a civil court.

22. Appellant, as noticed hereinbefore, is a State within the meaning of Article 12 of the Constitution of India. If an act on its part is found to be wholly unreasonable or arbitrary, the same would be violative of Article 14 of the Constitution of India. In certain situations, even gross violation of the principles of natural justice has been held to come within the ambit of Article 14.

{See also Satyavir Singh & ors. vs. Union of India & ors. [(1985) 4 SCC 252], Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & ors. [1991 Supp (1) SCC 600], Union of India & Anr. vs. Tulsiram Patel [(1985) 3 SCC 398], Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr. [(1986) 3 SCC 156]}

Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R. Antulay (supra), this Court held:

> "No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity."

23. If an employee intends to enforce his constitutional rights or a right under a statutory Regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and

corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Order certified under the 1946 Act ipso facto the Civil Court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in Rajasthan State Road Transport Corporation & ors. vs. Mohar Singh [(2008) 5 SCC 542]. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the fact of each case.

If the infringement of Standing Order or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the 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. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

Where the relationship between the parties as employer and employee is contractual, right to enforce the contract of service depending on personal volition of an employer, is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status, i.e., his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

Appellant – Corporation is bound to comply with the mandatory provisions of the statute or the regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act. It is also bound to follow the principles of natural justice. In the event it is found that the action on the part of State is violative of the constitutional provisions or the mandatory requirements of a statute or statutory rules,

the civil court would have the jurisdiction to direct reinstatement with full back wages.

In Praga Tools Corpn. Vs. C.A. Imanual [(1969) 1 SCC 585], it was held:-

> "6. … Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities."

[See also Rajasthan State Road Transport Corporation & ors. vs. Mohar Singh (supra)]

24. There is another aspect of the matter which cannot also be lost sight of, namely, where the conditions of service are governed by two statutes, the effect thereof on an order passed against an employee/workman in violation of a rule which would attract both the statutes. An attempt shall be made in a case of that nature to apply the principles of 'Harmonious Construction".

When there is a doubt as to whether civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction.

In Mahendra L. Jain & ors. vs. Indore Development Authority & ors. [(2005) 1 SCC 639], this Court held:

> "31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lex, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.

xxx xxx xxx

> 33. For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules."

In M.P. Housing Board & Anr. vs. Manoj Shrivastava [2006(2) SCC 702], this Court almost in a situation of this nature where the appellant was constituted under a statute and the conditions of service of its employees were governed thereunder as also Certified Standing Order, held:

> "8. A person with a view to obtain the status of a "permanent employee" must be appointed in terms of the statutory rules. It is not the case of the respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.
>
> 9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the respondent had worked for more than six months satisfactorily in terms of clause 2(*vi*) of

> the Standard Standing Orders, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the respondent.
>
> 10. It is one thing to say that a person was appointed on an ad hoc basis or as a daily-wager but it is another thing to say that he is appointed in a sanctioned post which was lying vacant upon following the due procedure prescribed therefor.
>
> 11. It has not been found by the Labour Court that the respondent was appointed by the appellant herein, which is "State" within the meaning of Article 12 of the Constitution, upon compliance with the constitutional requirements as also the provisions of the 1972 Act or the Rules and Regulations framed thereunder."

25. We may also notice that there is nothing to show that rights were created under the Certified Standing Orders. It has not been stated that the conditions of service in respect of an employee are different under 1950 Act and 1946 Act. The matter might have been different if a statute was brought into force later than the earlier statute which would attract the provisions of Article 254 of the Constitution of India one being in direct conflict with the other as was noticed in M.P. Vidyut Karamchari Sangh vs. M.P. Electricity Board [(2004) 9 SCC 755].

Thus, the rights and obligations of the employer having arisen under two Parliamentary Acts, the question of invoking the provisions of

Article 254 (1) of the Constitution of India would also not arise herein. Provisions of both the statutes must be given effect to

26. Mr. Ray, however, would submit that the application of principles of natural justice may be different keeping in view, (i) the common law principles; (ii) the statutory provisions; and (iii) the constitutional provisions. The principles of natural justice ensure fairness. It means that a result or process should be just. It is a harmless, though it may be a high-sounding expression; in so far as it attempts to reflect the old jus naturale, it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous, so said LORD SHAW of Dunfermline in Local Government Board v. Arlidge [1915] AC 120 at p. 138 (HL).

27. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action.

{See Sawai Singh vs. State of Rajasthan [(1986) 3 SCC 454], Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. [(2006) 4 SCC 713]}

28. In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. (supra) shall prevail._

29. An assumption on the part of this Court that all such cases would fall only under the Industrial Disputes Act or sister laws and, thus, the jurisdiction of the civil court would be barred, in our opinion, may not be the correct interpretation of Premier Automobiles Ltd. (supra) which being a three-Judge Bench judgment and having followed Dhulabhai (supra), which is a Constitution Bench judgment, is binding on us.

30. We may also observe that the application of doctrine of prospective overruling in Krishna Kant (supra) may not be correct because either a court has the requisite jurisdiction or it does not have. It is well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the parties confer jurisdiction upon a court by consent. If a court decides a matter without jurisdiction as has rightly been pointed out in Zakir Hussain (supra) in view of the seven-Judge Bench decision of this Court in A.R. Antulay (Supra), the same would be nullity and, thus, the doctrine of prospective overruling shall not apply in such cases. Even otherwise doctrine of prospective overruling has a limited application. It ordinarily applies where a statute is declared ultra vires and not in a case where the decree or order is passed by a court/tribunal in respect whereof it had no jurisdiction.

[See C. Golak Nath & ors. vs. State of Punjab & anr. (AIR 1967 SC 1643)]

In M.A. Murthy v. State of Karnataka and Ors. [(2003) 7 SCC 517], this Court held:

> "…It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be

> prospective in its application by application of the doctrine of prospective overruling. ….."

(See also Ashok Kumar Sonkar vs. Union of India & ors. [(2007) 4 SCC 54]

As has been pointed by Justice Cardozo, in his famous compilation of lectures – The Nature of the Judicial Process – that in the vast majority of cases, a judgment would be retrospective. It is only where the hardship is too great that retrospective operation is withheld. A declaration of law when made shall ordinarily apply to the facts of the case involved.

31. We, therefore, answer the question of law referred before us and the matters be placed before the Division Bench for consideration of the facts of each case.

…..……
…..J.
(S.B. SINHA)

…..……
…..J.
(DR. MUKUNDAKAM SHARMA)

…..……..J.

(ASOK KUMAR GANGULY)

New Delhi
JANUARY 12, 2009