

:: LABOUR LAW VIS-A-VIS CIVIL COURT JURISDICTION ::

**Address delivered by Hon'ble Mr. Justice F.M.Ibrahim Kalifulla,
Judge, Supreme Court of India on 29.12.2012 at
Tamil Nadu State Judicial Academy for
the Newly Recruited Civil Judges**

Having entered the Judicial family, I Welcome you all and I wish you an unstinted career in the discharge of your judicial functions and also wish you higher promotions in fulfilment of your ambitions and aspirations in life.

2. Before touching upon the topic viz., Labour Laws vis-a-vis Civil Court Jurisdiction, I would also like to give you a glimpse about certain facets of judicial career which are much more important for a Judge to follow in this sphere.

3. In the first place, I wish to draw your attention to the Address made by our then Honourable Chief Justice of India at the Inaugural Function of the Orientation programme for the Civil Judges (Junior Division) made on 23.11.1999. The full text of it has been published in the journal section of Law Weekly (Criminal) 1999 in the December Part. I think a repeated reading of the said Article would throw much light on this aspect as to how a Judge should adopt himself in his judicial career.

4. The Speech of My Lord The Chief Justice of India can be broadly categorized into the following heads namely "Patient Hearing", "Courteous Behaviour", "Wise Consideration" and "Impartial Decision". For a Judge, it goes without saying that "patience" is a very vital component in the

judicial career. If you observe patience, it will solve quiet a lot of problems also. It will enable you to avoid several controversies. Similarly, "courteous behaviour" in the Court as well as outside will earn a high amount of reputation and fame which are equally important when you play the role of a Judge. Yet another important aspect being "wise consideration" of various aspects of a case. A wise Judge while dealing with a problem in a case will always make to his advantage by acquiring the maximum knowledge out of the said litigation. In other words, one should make it a point to learn more and more of the subject in the process or in the course of the discharge of ones duty as a Judge.

5. Your judicial behaviour can be broadly categorized under the following headings:-

- (i) Court Decorum
- ii) Integrity and Honesty
- (iii) Periodical reference to recent legal developments.
- (iv) Adherence to legal provisions strictly.
- (v) Behaviour in the Court hall and outside.
- (vi) Time management.

6. As far as Court Decorum is concerned, for all these years you were one among the public. You were on the other side of the table. As My Lord The Chief Justice of India said all these years you have been talking, now you have to listen. While carrying out that exercise you will have to evolve certain principles in the Court hall which will enable you to discharge your duties by gaining the utmost respect from the Bar as well as from the public at large. In the Court hall one should avoid wasting of

Court timings. Always adhere to the Court timings and if you organize your pattern of working in the Courts the advocates will also cooperate and they will toe in your line. There is no codified rule or regulation as to how a Judge should behave in the Court hall. As far as I could think, the more you concentrate on your work, rather than involving in unnecessary discussion in the workplace or elsewhere that itself will keep several things at bay. In other words, so long as you are serious in your work, others will necessarily be bound to maintain the decorum and decency in your Court hall.

7. Then comes the most important factor in your judicial career viz., The "Integrity and Honesty". This is a very vulnerable aspect in ones judicial career. But having chosen your career to be a Judge, you have no other choice except to observe **cent per cent integrity and honesty** in the course of discharge of your duties. You are placed in a pedestal that is next to God, by the litigant public. You should always have that feeling in your mind in the course of discharge of your duties as a Judge. On that aspect, my sincere advice is so long as you **avoid mingling yourself with the public** to some extent, you will be able to achieve this goal. It may be difficult for you as all these years you were independent and you were free to move around. But having chosen this career, you have to sacrifice certain of your free movements, so that your stature as a Judge is maintained with out giving room for any suspicion or scope for anyone to doubt your honesty and integrity.

8. Besides the above general aspects to develop your skill as a Judge, I would suggest that periodical reference to recent legal developments will enable you to discharge your functions as a Judge to

the utmost satisfaction of the society at large as well as your superiors. You should devote specific hours in the midst of your judicial work to read the journals and decisions reported in the news papers so that you can equip yourself with the latest developments of law on any subject. As a Civil Judge you will have to keep abreast of the procedural laws such as Civil Procedure Code, Criminal Procedure Code, Evidence Act, Transfer of Property Act, Specific Relief Act and such other major enactments. Whenever any litigation touching upon a particular provision of law, is placed before you, make it a point to read the provisions as many times as you can. I can tell you with authority that every time you read a provision, you will develop a new idea as to the application of the said provision. It will also enable you to avoid rendering a wrong decision.

9. As far as your decisions are concerned, your Judgment should be rendered by maintaining application of legal provisions with a human touch. Decisions must be justice oriented. Further in the Court hall make it a point not to enter into unnecessary conflict with the Bar or the Public. In that aspect silence is the best Medicine. The same does not mean that you should always keep mum. Whenever a clarification is required, never hesitate to ask questions especially when the senior members of the Bar with sufficient legal experience appear before you. Make full use of their knowledge and get yourself appraised of the legal aspects.

10. With this, let me put an end to the advisory jurisdiction and coming to the topic to be dealt with viz., Labour laws vis-a-vis Civil Court Jurisdiction, one may wonder whether it requires a separate lecture on this topic. You all know law is a developing subject. As a practising lawyer you would have known unlike the olden days, one cannot be a master of all

subjects in the present days. In those days, a lawyer used to handle all types of cases on all subjects. But as days passed on, specialization has come up in every branch of law. The needs of the litigant public has also undergone a drastic change. In the present day set up, specialization has spread to various spheres such as Civil, Criminal, Taxation, Labour, Central Excise, Company Laws, Customs Law, Shipping etc. Whatever may be the fortune of an Advocate in Choosing any particular subject for specialization, as far as a Judge is concerned, you will continue to be one associated in the legal circle who will come across cases on all subjects in the Course of the discharge of your duty as a Judge. In that way, I would say that you are more fortunate than any other person in the legal profession.

11. Since you are entering the field of Judiciary and since I had little bit of experience on this subject viz., Labour Laws, I thought I share with you some of the aspects on this subject which will be of some use to us. This being an orientation programme I would request you not to make any notes of my speech. Please try to get some of the features registered in your mind, so that when need arises you can make use of it. As a Civil Judge you will come across cases touching upon labour aspects. We have several labour legislations such as Industrial disputes, Trade Unions Act, Employees Provident Funds and Miscellaneous Provisions Act, Employees State Insurance Act and so on. The cases relating to workers which are likely to enter the arena of Civil Jurisdiction can be broadly categorized as Injunction Suits, Declaratory Suits, Employees' State Insurance cases and others.

12. Let me first give a broad idea as to what is meant by Labour Law. As you all know, in the Subordinate Judiciary, we have Labour Courts and

Industrial Tribunals preceded over by the District Judges. Apart from such Labour Courts and Tribunals, there are certain other authorities functioning under various other legislations such as Tamil Nadu Shops and Establishment Act, Payment of Wages Act, Employees Compensation Act (formerly known as Workmen Compensation Act), Minimum Wages Act, Payment of Gratuity Act, Tamil Nadu Payment of Substance allowances Act, Industrial Employment Standing Orders Act, etc. As far as Labour Courts and Tribunals are concerned, they are governed by the provisions of the Industrial Disputes Act. The various other authorities under different enactments are mostly government servants working under the control of the State Secretariat who are all mostly quasi judicial authorities. In some enactments appeals are provided from those authorities to the concerned Principal District Judges and in some cases to the High Court either by way of revision or as an appeal. You being the Civil Judges (Junior Division) may not come across such cases dealt with by the authorities constituted under those different enactments for the present. Therefore I do not propose to concentrate on those enactments. Nevertheless it is better to know the existence of those Authorities so that you would be able to handle litigations arising under those enactments appropriately.

13. I will broadly deal with those enactments and the functions of those authorities. Under the Tamil Nadu Shops and Establishments Act, there is an Appellate Authority who deals with appeals filed under the shops set in respect of cases where a 'person employed' in a shop or commercial shop is terminated from service. In such cases, if the termination is not for a reasonable cause or if the termination is for a misconduct and if the said misconduct is not proved as held by the employer, then that authority has been vested with the power to set aside

such orders of termination. Under the Employees Compensation Act, a Commissioner for workmen compensation has been constituted who deals with the applications preferred before him for payment of compensation for injuries sustained by an employee in an accident arising out of and in the course of his employment, apart from cases where the legal heirs make an application for compensation over the death of an employee in an accident arising out of and in the course of his employment. The Commissioner for workmen compensation adjudicates such claims and pass orders granting or not granting the compensation in the manner provided by the Act.

14. Under the Payment of Wages Act where any workman or group of workmen are aggrieved by nonpayment of wages by their employer, under Section 15(2) of the Act, they are entitled to move the authority constituted under the said Act for direction to the employer to pay the unpaid wages and the authorities have been provided with power to order such payment with interest and also penalty.

15. Under the Minimum Wages Act, authorities have been constituted to deal with the complaints from the employees about the failure of their employer in not complying with the prescribed minimum wages payable as per the notifications under the Act. For instance, if in an Engineering Industry, any notification had been issued under the Minimum Wages Act prescribing any minimum wages payable and when such prescribed minimum wages are not paid, the employees are entitled to move the authorities concerned under the said Act seeking for necessary direction to the employer to comply with the notifications under the Act.

16. Under the Employees State Insurance Act, the State has set-

up a machinery to cater to the needs of the employees who are employed in the establishments covered under the Act. A vast network in the form of hospitals and dispensaries have been set up throughout the country to provide the required medical and health benefits. Under the Employees State Insurance Act, contributions are recovered from the employer and the employees to maintain these hospitals and dispensaries. The Act also provides for payment of compensation and other medical benefits whenever and wherever an employee sustains any injury and needs medical treatment in respect of such cases. In respect of cases where the employer disputes the very applicability of the Act, to deal with such cases, special Courts have been constituted under the Employees State Insurance Act. Those Courts are called as Employees State Insurance Courts. Invariably the concerned Principal District Judges of the respective Districts are notified as Employee State Insurance Courts. There is a separate set of rules called Madras Employees State Insurance Courts Rules framed under the Act which govern the procedure to be followed by the Employees State Insurance Courts in dealing with the matters filed before it. Such cases are treated as original petitions by the Employees State Insurance Courts and are disposed of in the manner, in which the regular suits are disposed of in the normal course. Against the orders of the Employees State Insurance Courts, an appeal can be preferred wherever a substantial question of law arises, to the High Court and further appeal from the order of Single Judge of the Hon'ble High Court is provided for by way of Letters Patent appeal to a Division Bench of the High Court.

17. Likewise, under the Employees Provident Fund and Miscellaneous Provisions Act, the authorities constituted under the Act such as Regional Provident Fund Commissioners are provided with quasi

judicial powers to deal with the question as to in what cases, the Act is applicable to various establishments, what are the contributions payable by establishments, the settlement of claims of the employees who are members of the Provident Fund etc. In the year 1998, an Appellate Tribunal called Employees Provident Funds Appellate Tribunal has been constituted which is having its permanent office at New Delhi who holds its Camp Sittings in the various states periodically.

18. Apart from these authorities constituted under the various enactments, the Principal Act which deals with the rights of the workmen is governed by the provisions of the Industrial Disputes Act, 1947, the preamble of the Act reads as under:-

" Whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing"

19. I do not want to trouble you with all the provisions of the Industrial Disputes Act. For our purpose it will be sufficient to refer to few important Sections of the Act. Section 2(k) defines an industrial dispute to mean any dispute or difference between the employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the conditions of labour, of any person. The definition of "workman" also has got some significance here which has been defined under Section 2(s), to mean that 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 persons like persons employed in the defence services, police services or in the managerial or administrative capacity or supervisory capacity drawing wages exceeding Rs.10,000/- per month.

20. One other provision which may be of relevance is Section 2(A) of the Industrial Disputes Act. This amendment was introduced by Act 35 of 1965 under which dismissal of an individual workman also is to be deemed to be an industrial dispute.

Section 2(A) reads as under:

Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. --Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute".

21. The Labour Courts and Tribunals are constituted under Sections 7, 7(A) to 7(C) of the Act. The procedure, powers and duties of the authorities constituted under the Act are dealt with by Section 11 and 11(A) of the Act. The duties of Labour Courts and Tribunals are prescribed under Section 15 of the Act. We are not concerned with the manner in which the Courts function under the provisions of the Industrial Disputes Act. For our purpose, it will be sufficient if you gain some idea as to what is an "industrial dispute" and how such disputes related to the workmen under the Act are dealt with.

22. As per Section 2(k) of the Act, an industrial dispute has been defined to mean the difference broadly between workmen and management. The dispute may be concerned with an individual workman or the workmen as a body. It is common knowledge that you will find trade unions representing the workmen in various managements. In large industrial establishments, even individual grievances are taken up by the unions for negotiations with the management for settlements. Apart from the unions dealing with the individual grievances in respect of certain personal grievances of the individual workmen provisions have been made to enable the individual workmen themselves to approach the management for the redressal of their grievances and on failure of such attempts, they have been provided with remedies to approach the Courts constituted under the Act. For instance if the management terminate the service of a workman for certain acts of misconduct, the individual workman can raise an industrial dispute before the conciliation machinery individually or through the trade unions available in that establishment. If the dispute is not settled at the conciliation level, the dispute can be taken up before the Labour Court constituted under the Act and then the

Labour Court will adjudicate the dispute following the prescribed procedure. Prior to the introduction of Section 2(A) in the year 1965 even such individual non-employment cases could be raised only through a trade union by way of collective bargaining agent. By virtue of the introduction of Section 2(A), the individual workman himself has now been enabled to raise his dispute about his own non-employment.

23. When such issues regarding the conditions of employment of workmen are dealt with by the management, then it provides scope for moving the machinery provided under the Industrial Disputes Act for investigation and settlement of such industrial disputes. In such cases, we are not in any way concerned because the concerned machineries will deal with those cases according to law. **But when those issues are also sought to be investigated by approaching the Civil Courts, as a Civil Judge, you should be able to find out whether such issues would fall within the scope of adjudication by a Civil Court.** It was on this question, I want to apprise you as to what are all the various issues that may crop up in a Civil Court which depending upon the related issue either the Civil Court acquire jurisdiction or lack jurisdiction.

24. The earlier case on this issue is ***Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*** reported in ***(1969) 2 SCC 838 : AIR 1970 SC 1244 : (1970) 1 LLJ 32 SC***, wherein the principle has been stated by the Hon'ble Supreme Court in paragraph 25 as under:

"25. From the two decisions of this Court, referred to above, the position in law is that no

declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are: To grant such a declaration in appropriate cases regarding (1) A public servant, who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals. (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by Statute."

25. In this context, let us first refer to Section 9 of C.P.C. which says that courts to try all civil suits unless their cognizance is either expressly or impliedly barred. There is one broad aspect as to whether Civil Court has got jurisdiction at all in Industrial matters. The landmark judgment in this aspect is that of the Apex Court reported in **"1976 (I) LLN page 1 = AIR 1975 S.C.2238 (PREMIER AUTOMOBILES LIMITED -versus- KAMALAKAR SHANTHARAM WADKE)."** In the said judgment, the Hon'ble Supreme Court has set out the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute. This is one of the numerous issues that used to invariably crop up in a Civil Court. The issue is about an industrial dispute. To put it in simple terms, an industrial dispute as defined under the Industrial Disputes Act, 1947 is a dispute or difference of opinion between an employer and employee in respect of their conditions of working. Therefore, in respect of such an industrial dispute, when a conflict arises, how far a Civil Court can interfere in such matters is the question. There you will get guidance from the above judgment. The Hon'ble Supreme Court has set out

four broad principles.

"(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 Chap.V.A then the remedy for its enforcement is either S.33C or the raising of an industrial dispute, as the case may be."

26. For instance if the heir of a deceased employee or some other person makes a rival claim in respect of the terminal benefits payable to a deceased employee, then though the issue concerns the concerned employee as against the employer, still, the core issue of the dispute is not the one arising under the Industrial Disputes Act. In such cases, the remedy will be by way of a Civil suit and the Civil Court will have ample jurisdiction to deal with that issue.

27. Similarly there may be cases, where the issue may fall within the category of an Industrial Dispute, arising out of the right or liability under the general law or common law and under the Industrial Disputes Act. For instance, one may dispute the amount payable by the L.I.C. covered by the provisions of the general law or any other common law, yet, the issue may still relate to an employee, the Insurance Company and the employer by virtue of some tripartite agreement. In such a situation, the jurisdiction of the Civil Court may be the alternative. Because, the employee can validly raise an Industrial Dispute under the provisions of the Industrial Disputes Act to get his grievances redressed or he can resort to the Civil Court remedy.

28. On the other hand, if the issue squarely falls within the ambit of the provisions of the Industrial Disputes Act, enforceable under that Act, then the remedy will be only under the said Act and Civil Court jurisdiction will be completely ousted. For example, under the Industrial Disputes Act, the justification of a strike or lockout or lay off can be worked out only through the machinery provided under the Industrial Disputes Act. In view of the said set-up, the Jurisdiction of the Civil Court is completely taken away. This Judgment of the Supreme Court in Premier

Automobiles case as been subsequently dealt with still more elaborately in the Rajasthan Road Transport Corporation Case reported in "**1995 (II) LLJ 728 : (1995) 5 SCC 75 (THE RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND ANOTHER, ETC., versus KRISHNAKANTH, ETC.)**". Reference can be had to paragraphs 22,23,25 and 26. A reading of the above paragraphs will give you a clear picture as to what extend and in what cases the Civil Court can exercise its jurisdiction in respect of Industrial Matters. Refer paragraph 25

"25.....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 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".

29. Ultimately their lordships summarised the principles in paragraph 32. In this judgment, now 7 principles have been evolved. In

paragraph 34, their lordships have also stated that the principles enunciated therein shall apply to all pending matters and also the suits and proceedings to be instituted hereafter. The 7 principles evolved 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) or Section 2A 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 2A 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 mis-

givings 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."

30. Subsequently, two Judge Bench of the Hon'ble Supreme Court in

Rajasthan SRTC Vs. Zakir Hussain reported in **(2005) 7 SCC 447** relied upon **Premier Automobiles Judgment** (cited supra) and **Rajasthan SRTC Judgment** reported in **(1995) 5 SCC 75**. The four principles laid down in the **Premier Automobiles case** and the seven principles subsequently expanded in **Rajasthan SRTC case** was referred to in detail and the Hon'ble Supreme Court highlighted the well known principle that whereby an act creates an obligation and enforces the purpose in a specified manner, the purpose cannot be enforced in any other manner. In the said judgment, the Hon'ble Supreme Court was dealing with the case of a Conductor who was on daily wages on probation for a period of two years and whose service came to be terminated on the ground of unsatisfactory performance. The challenge to the order of termination was by way of a suit for declaration that the termination order was illegal, against the principles of Natural Justice and was therefore liable to be set aside. It was also claimed that the employee was entitled to continuity in service without any break. The Hon'ble Supreme Court ultimately held that the employee ought to have worked out his remedies under the Industrial Disputes Act and the Civil Court jurisdiction could not have been invoked.

31. Subsequently, two Judge Bench of the Hon'ble Supreme Court in the decision reported in **Rajasthan SRTC Vs. Mohar Singh** reported in **(2008) 5 SCC 542** dealt with a case of dismissal. The employee approached the Civil Court for setting aside the order of dismissal. The Trial Court decreed the suit. The first appeal was also dismissed by the learned Additional District and Sessions Judge. The High Court also dismissed the second appeal holding that there was no substantial question of law involved.

32. In the present case, even after referring to the **Premier**

Automobiles Judgment and the two earlier decisions in **Rajasthan SRTC** reported in **(1995) 5 SCC 75** as well as in **(2005) 7 SCC 447**, the Hon'ble Supreme Court declined to interfere with the judgment impugned before it. This time the Hon'ble Supreme Court leaned in favour of exercising the right of an employee through the Civil Court for working out his remedies by stating as under in paragraphs 15, 19 and 29:

"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 claim 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.

19. We must also notice the distinction between a right which is conferred upon an employer 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.

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."

33. The issue was further dealt with in an elaborate manner by three Judge Bench of the Hon'ble Supreme Court in ***Rajasthan SRTC Vs. Bal Mukund Bairwa*** reported in ***(2009) 4 SCC 299***. The earlier decisions of the Rajasthan SRTC judgments reported in ***(1995) 5 SCC 75, (2005) 7 SCC 447*** and ***(2008) 5 SCC 548***, were all examined in detail by keeping the principles laid down in ***Premium Automobiles judgment*** in the forefront.

34. In fact before entering into the issue concerned in that case, the Hon'ble Supreme Court noted a reference made to it by the Division Bench in the order dated 22.11.2007 for resolution of a purported conflict in 2 three Judges Bench judgment of the Hon'ble Supreme Court in ***Rajasthan SRTC*** case viz., ***(1995) 5 SCC 75*** and ***(2006) 1 SCC 59***. The purported conflict as noted in the said judgment centres around the jurisdiction of the Civil Court to entertain the suits questioning the order of termination passed by the SRTC against its employees.

35. The Hon'ble Supreme Court in the **(2009) 4 SCC 299** judgment by referring to Section 9 of the Code of Civil Procedure which confirms the jurisdiction of the Civil Court to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The Hon'ble Supreme Court also took note of the scheme of the Industrial Disputes Act, 1947 in regard to the procedure prescribed for resolution of disputes relating to employees on the one side and the employers on the other side. The view taken by the Hon'ble Supreme Court is as under in paragraph 20:

"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-`-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 inter-

pretation of a statute involving plenary jurisdiction of a civil court had also not been taken into consideration."

36. Further it proceeded to hold as to under what circumstances the Civil Court jurisdiction can be invoked. A reference to paragraphs 21, 23 and part of para 24 can be usefully referred, which are as follows:

"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.

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.

24.....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.”

37. Going by the recent pronouncement of the Hon’ble Supreme Court which can be noticed that where the service conditions are governed by the statutory regulations like in the case of Rajasthan SRTC, which had set of regulations framed under Section 45 of the Road Transport Corporations Act, 1950 and in a case where an alleged violation is hit by Article 14 of the Constitution which protect the fundamental rights, the maintainability of a Civil suit was held to be justified. The Hon’ble Supreme Court however made it clear in paragraph 23 as to the specific prohibition contained in Section 14(1)(b) of the Specific Relief Act, 1963 which prohibits infringement of contract of personal service except in four exceptional circumstances viz.,

“(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."

38. The reference was ultimately answered by the Hon'ble Supreme Court as under in paragraphs 28 and 29:

"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."

39. A very recent decision of the Hon'ble Supreme Court consisting of two Hon'ble Judges in ***R.S.R.T.C. and Ors Vs. Deen Dayal Sharma*** reported in ***(2010) 6 SCC 697*** can also be kept in mind which again arose in the same Rajasthan SRTC wherein all the earlier judgments mentioned in this speech were taken note of and it was held as under in paragraph 14:

"14. In the instant case, the respondent who hardly served for three months, has asserted his right that the departmental enquiry as contemplated under the Standing Orders, ought to have been held before issuing the order of dismissal and in absence thereof such order was liable to be quashed. Such right, if available, could have been enforced by the respondent only by raising an industrial dispute and not in the civil suit. In the circumstances, it has to be held that civil court had no jurisdiction to entertain

and try the suit filed by the respondent.”

40. In injunction suits you will come across cases like the employer seeking court's intervention to maintain law and order. you will come across cases where you will find that when any strike or lockout in a large organization takes place, there is bound to be conflict between the employer and workmen. In such a situation the employer on the one hand will try to maintain his status quo in carrying on his business activities while the workmen as a force will always try to stultify that goal of the employer. In that process a situation may arise where the workmen as a group may try to prevent the employer from carrying on his regular activities. In that situation several development may take place and Judicial precedents are available which will give you some guidance as to how you should go about. Courts have repeatedly held that in such type of cases where the employers approach the Court to restrain the workmen, as a body, from interfering with their rights to carry on with their regular activities, in the course of analyzing the situation prevailing, you should see to it that the order of the Court is not used as a lever by anyone party to gain an undue advantage over the other. Simultaneously it is well settled, where the prevention of another person's lawful and rightful activity is likely to give scope for interference with the public tranquillity, Courts should not hesitate to exercise its power and set things right. In that view the Court should approach the problem and resolve the situation. Broadly I can cite some of the decisions of our High Court on this aspect which you can refer to, when you come across such cases, refer

(1) 1994 II Law Weekly page 476 Enfield India Limited Versus

Its Workmen.

(2) 1997 I LLJ page 1 Delhi Security Printers Versus Hindustan Engineering and General Mazdoor Union(Regd.) and another;

(3) 1993 I LLJ 987 Ramsingh and others Versus M/s.Ashoka Iron Foindustry and others;

(4) 1991 II LLJ 438 Association of Engineering Workers Versus M/s Sardar Iron and Steel Mill;

(5) 1995 I LLJ 408 Ranutrol Limited Versus All India Engineering and General Mazdoor Union and other;

(6) 1989 II LLJ 200 M/s.Audco India Limited Versus The Audco India Employees Union and others.

41. On going through the above pronouncements you will find that in a situation of that kind where an employer approaches the Court seeking Court's intervention, then the employer is bound to justify whether the prevention of employees' activities will have a bearing or affect the rights of the public at large. The Court should exercise its power and authority to enable the employer to carry on its lawful duties so that the public are not put to any difficulties. Similarly in certain types of cases there may be some infringements of ones right to carry on their lawful activities, such as, for instance if someone under the guise of carrying on certain agitations attempt to interfere with the free movement of men and material, then that may call for interference. Therefore, depending upon the factual situation if the Court finds that the activities of the agitators

go to the extent of exceeding their constitutional and statutory limit and infringe upon the lawful right of others, then Civil Court's power can be extended. On this aspect also you will be guided by some of the decisions of our High Court as well as the Supreme Court which will be of some use to you. Here again, the Honourable Supreme Court in the Judgment reported in AIR 1969 SC (Page 966) has categorically held that freedom of carrying on ones Trade Union activities should not go to the extent of affecting another man's fundamental right to free movement. In that context Honourable Supreme Court was of the view that a body of workmen may not be lawfully entitled to carry on agitations inside the premises of public undertaking. On an analysis of the above stated legal principles, the power of the Civil Court to interfere in such cases can be broadly stated thus:

a) where by not granting an order of injunction if the public will be put to inconvenience, then certainly there will be justification in granting the reliefs;

b) where the prevention of the workmen will go to the extent of affecting the Nation as a whole, then the Court can exercise its power and grant the relief. For instance where foreign exchange will be affected;

c) Likewise where such prevention will result in affecting the security of the Nation. For instance if certain supplies to defence or other public sector undertakings will be affected. Then again Court's interference is called for;

42. In these type of cases, though the jurisdiction of the Civil Court is not seriously disputed, **the question will be in what context and to what extent**, the court can extend its helping hand to a party who comes to Court seeking prevention of alleged unlawful activities of the otherside. In such circumstances, the Court should weigh the relative hardships of the parties as also the public interest, National Interest and National Security as against the private monetary concern of the employer alone or the interest of the workmen. In other words, by the grant of relief, if it is going to merely work to the advantage of one side alone, then it is not at all advisable to grant the discretionary relief and thereby put the other side in any disadvantage position. To put it differently, care should be taken to see that the Court's order is not used as a lever by a party to augment its personal bargaining power over the other side.

43. Another type of injunction suits that are resorted to by the parties are, in cases of transfer or initiation of any disciplinary action as against an order of punishment In such types of cases the provisions of the Specific Relief Act will also come into play vis-a-vis Section 9 of C.P.C. You will find under Section 14(i)(b) of the Specific Relief Act, read with Section 21, certain orders of injunction cannot be granted. In such type of cases the principle that is to be applied is whether contract of personal service can be specifically enforced. The law on the subject as I could gather originates in the decision in ***Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*** reported in ***(AIR 1970 SC 1244 : (1969) 2 SCC 838)*** where the Honourable Supreme court held that except under three circumstances the court cannot interfere with the power of the Master in dealing with the servant in the

course of the discharge of its functions. The three situations are-

(a) where a public servant seeks for the redressal of his grievances by virtue of Article 311 of the Constitution,

(b) relief claimed against statutory organizations when orders are issued in violation of mandatory statutory provisions,

and,

(c) adjudication of rights of the parties by various forums created under the provisions of Industrial Law.

44. The first category of cases are matters where a public servant invoking any constitutional remedy viz., the writ jurisdiction of the High Court or Supreme Court in furtherance of redressal of his grievance against the employers viz., the State was always permissible. Likewise statutory corporations such as electricity board, municipal corporations, Public Sector under takings like State Bank of India, Reserve Bank of India, Scheduled Banks etc., When they violate mandatory statutory provisions which result in the infringement of the rights of any of the employees, there again they can approach the Judicial Forum either Constitutional or Civil Court for the redressal of their grievances subject of course within the statutory provisions which govern such proceedings. The third category of case are matters which are regulated through adjudicatory

forums such as Labour Courts, Industrial Tribunals and various other Authorities constituted under different enactments such as Appellate Authority under the Tamil Nadu Shops and Establishment Act, Minimum Wages Act, Workmen's Compensation Act etc., In such category of cases the employees affected are provided with the particular mode of seeking remedies before a particular forum. To that extent a legal step can be taken by the affected parties by resorting to such proceedings provided under those enactments.

45. Barring the above three categories in respect of other types of cases, courts have held that the Civil Court jurisdiction cannot go beyond a particular limit. For instance, if a dismissed employee of a private sector approaches a Civil Court for preventing the employer from passing an order of dismissal or for setting aside the order of dismissal, courts have held neither of it could be resorted to by the concerned employees. In other words by virtue of the application of the terms of the contract, enforceability through civil Court is restricted. The case law on this subject can be referred to-

(i) AIR 1991 S.C.1525 page 10.

"A contract of employment cannot ordinarily be enforced by or against an employer the remedy is to sue for damages....."

In the absence of any statutory requirement, Courts do not ordinarily force an employer to recruit or retrain in service an employee

not required by the employer".

(ii) 1998(2) LLN 987 paras 21 and 22 (Ashok Kumar Srivastav Versus National Insurance Company Ltd., and others);

(iii) 1999(4) LLN page 850 (Chander Shekhar Malhotra Versus Nirlon Ltd., and others);

(iv) 1998(2) LLN 63 (State of Madhya Pradesh Versus Mangilal Sharma);

(v) 1990 (1) LLN page 115 (Indian Oxygen Ltd., Versus Ganga Prasad);

(vi) 1995 Supp.(2) SCC 495 (Integrated Rural Development Agency Versus Ram Pyare Pondey);

(vii) 1999(1) LLJ 1186 (P.Selvaraj Vs. M.D.Kattabomman Transport Corporation Ltd);

(viii) 2001(1) LLN 972 (Chemplant Samman Ltd. Versus S.K.R.Balakrishnan);

46. In fact, His Lordship Mr.Justice M.Srinivasan, as he then was in his judgment reported in 1992 (I) LLN 627, has held in para 12, thus-

"..... The law that prevailed before the advent of the Industrial Disputes Act, which is described as the common law by learned counsel for the

respondent, did not recognize any right in an employee to question an order of the employer falling strictly within the terms of the contract on the ground that it was a malafide act of victimization. It is only under the provisions of the Act, such a right is created, if I may say so, by the Legislature enabling the workers to challenge the orders of the transfers made by the management"

47. Other decisions on this aspect are reported in

- (i) 1997(3) LLN 317;
- (ii) 1970(1) LLJ 32 & 43 : AIR 1970 SC 1244
- (iii) 1985 (1) LLJ 164;
- (iv) 1989 (2) LLN 93;
- (v) 1977 (2) LLJ 199;
- (vi) 1993(1) LLN 237;
- (vii) 1989 (1) LLN 676;
- (viii) 1991 (1) LLJ 533;
- (ix) 1997 (2) LLJ 166.

48. Certain other types of cases may also arise such as suit for injunction **to interfere with the order of transfer or alteration of date of birth, prevention of a person from getting superannuated.** In cases where alteration of date of birth is sought for though it cannot be strictly said civil court jurisdiction is totally ousted, when a question arises as to what extent the exercise of such power can be applied in respect of thrusting the services of such an employee with an employer, the

application of doctrine of enforceability of the contract of personal services will come into play. Therefore, though it may be within the jurisdictional power of a civil court to declare the correct date of birth of a person, yet when it comes to the question of enforcing that declared date against an employer whose contract with the employee was based on a different date of birth then could it be said that the Civil Court could go beyond the act of declaration and also attempt to enforce it? In such a situation, I am of the opinion that extreme care should be taken to see that the Civil Court does not overstep its limits by granting such reliefs.

49. Useful reference can be had to the judgment reported in 1982 LIC 297, wherein it is held that-

"There is distinction between the right to declare the correct date of birth of an employee to which the courts have undoubted jurisdiction and the right to direct the employer to continue an employee in service on that basis to which the courts can get jurisdiction only under a provision of law or under the terms of a fresh contract. Courts cannot force any employer to enter into a contract with any employee on the basis of a new date of birth".

50. On this issue reference can also be made to recent Judgment of the Honourable Supreme Court reported in 2000(8) SCC page 696 (G.M.,BHARAT COKING COAL LTD., W.B., versus SHIB KUMAR DUSHAD & OTHERS), where in para 17, the Supreme Court has cautioned how an interim order granted in such claims based on different date of birth would cause injustice to others who wait in the queue. Para 17 reads as under:

"17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth

entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior."

51. Yet another category of cases where the Legal representatives of deceased employee may approach the Courts by making rival claims for the disbursement of terminal/death benefits. Here again there are settled cases and reported judgments which would be of great guidance. Courts have held that merely because certain nominations have been made by the deceased employee for the purpose of settlement of some of his benefits such as Provident Fund dues, Gratuity etc., it does not mean that the nominee is entitled to appropriate the whole sum to the exclusion of the other legal heirs who are also entitled to their lawful share. The Principle is that whenever nomination is made, it only means that the concerned nominee is entitled to receive the payment or dues, what ever it is, as an agent on behalf of all the heirs who are legally entitled to share the profits of the estate. But, as far as Civil Court is concerned in such cases there is no legal bar in the very entertainment of such litigation unlike the other type of cases where exercise of very jurisdiction itself is doubted.

52. In cases of non-employment or proposed terminations, the power of the Civil court to award damages for wrongful terminations is not taken away. Therefore, subject to such limitation the exercises of Civil Court Jurisdiction in the field of labour orientated cases are still

maintainable.

53. There are cases like two rival trade unions fighting for their existence. In such cases, the civil Court can exercise jurisdiction and grant necessary relief.

54. There are also cases, like interference with suspension pending disciplinary actions. Even in those cases, principles applicable to termination will equally apply.

55. There is one other area where Civil Court jurisdiction may be invoked i.e. related to cases for enforcement of negative covenant. In large industrial establishments especially both in the private and public sectors, recruitments are made at the campus level i.e. the management now-a-days identify the best among the lot available at the educational institutions itself and offer employment with competitive salary. Invariably on such occasions attracted by fabulous salaries offered by the employers, persons used to accept such employments and are also prepared to sign any document for that purpose. In such cases, you may be aware that the employer used to obtain service bonds from the employees which would inter alia contain terms binding the employees to serve the organization for a specific period. Apart from such clauses binding the employees to serve employer for specific period, such bonds also used to contain clauses which would restrain the employees from accepting employment of similar nature even after leaving the services of that employer. Such clauses are known as "negative covenant". It is called as negative covenant since by virtue of the said covenant even after one goes out of the clutches of the other would still be expected or bound to maintain certain conditions under the contract. The question is

whether such stipulations which are negative in character could still be enforced in the Court of law. In those cases, the employees who are initially attracted by the fabulous salary offered by the employer would later on realize their folly and would like to better their prospects by switching over to some other employment. In such circumstances, the employer used to keep a threat over such persons and force them to continue in employment. In those cases irrespective of the bond executed by the employees when they abruptly leave their services in order to better their prospects and join some other employer, the erstwhile employer used to resort to filing of suits for injunction and also for damages. The prayer in those cases used to be for an order of injunction to restrain the employees from taking up employment elsewhere in breach of the agreement and also for damages for having violated terms of contract and as provided under the contract itself. It is well settled that such negative covenants are unenforceable, void and against the public policy as the same would be in violation of Section 27 of the Contract Act. In such cases, therefore great care should be taken that unreasonable restraints are not placed against the aggrieved parties. Nevertheless, in appropriate cases based on substantial evidence proving the loss suffered, damages can be awarded. Under no circumstances, the freedom of an employee for improving his future prospects and service conditions by changing his employment can be restrained by way of injunction. In this context you can refer to a recent Judgment of Delhi High Court reported in **1999(2) LLJ page 1140 (Pepsi Foods Ltd. & Others Versus Bharat Coca-Cola Holdings Pvt.Ltd., & Others)**, wherein you will find reference to all the cases on that subject right from **1843 to 1988**.

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