
(1998) 06 MP CK 0004
In the Madhya Pradesh High Court
Case No : L.P.A. No. 44 of 1994

Abdul Rahim Khan

APPELLANT

Vs

M.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 JLJ 173

Hon'ble Judges : A.K. Mathur, C.J.; Dharmadhikari, J

Bench : Division Bench

Advocate : J.P. Gupta, S.B. Mishra, P.L. Dubey, H.N. Upadhyaya and M.L. Hirway, for the Appellant; R.D. Jain, S.K. Jain and A.K. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.—All the aforesaid Letters Patent Appeals arise out of the order passed by the learned Single Judge whereby the learned Single Judge has followed the Full Bench decision of this Court given in the case of M.P. State Road Transport Corporation v. Narain Singh Rathore 1994 JLJ 648.

2. The controversy arose that certain Conductors who were working in the establishment of M.P. State Road Transport Corporation hereinafter referred to as "Corporation in short" were promoted to the post of Booking Agent. Thereafter, they were further promoted to the post of Ticket Examiner and then to the post of Traffic Supervisor Grade II and finally to the post of Traffic Supervisor Grade I, they claimed grant of permanent status therefore, the matter was taken up before the Labour Court under the provisions of M.P. Industrial Employment (Standing Order) Act, 1961. In the said Act of 1961, there is a provision that incumbent who has completed six months service satisfactory in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee be granted permanent status. The matter was contested by the

Corporation in Labour Court and it was contended that the post of Traffic Supervisor grade II is a promotional post. It was also contended that the promotion channel according to the Corporation, was at first to the post of Ticket Examiner and thereafter to the post of Traffic Supervisor Grade II and then Grade I. It was contended that if the classification is allowed then that would amount to induction by back door entry contrary to the Rules of the Corporation. However learned member of the Industrial Court and the Labour Court allowed the claims of the employees. This was challenged by Corporation by way of writ petition in the High Court. There was a conflict of opinion; therefore, the matter was referred to Full Bench. The Full Bench in Narain Singh Rathore's case (supra), after examining the provisions of various Rules and Regulations of the (Corporation Order) Act, 1961, concluded in the following manner:

For the reasons indicated above, we agree with the view taken in K.K. Krishna's case 1992 MPLJ 570 and hold that the decisions which take a contrary view do riot lay down good law.

We, therefore, dispose of the writ petition in the following manner:

(1) The impugned orders directing classification of the first Respondent herein as permanent Traffic Supervisor Grade II or permanent Incharge, Bus Station, are set aside.

(ii) However, for the period during which first Respondent discharged the duties attached to the higher post, he shall be paid emoluments attached to the higher post.

3. After the decision of the Full Bench in Narian Singh Rathore's case (supra), various writ petitions were filed before the High Court of Judicature at Gwalior Bench as well as before the Main Seat, Jabalpur. Some of the persons after decision of Full Bench, could not get relief from the Tribunal, therefore, they came up by filing the writ petitions. Batch of petitions came up before the learned Single Judge of Gwalior Bench, filed by the Corporation as well as by the individual Petitioners. All those Batch of petitions were disposed of by the learned Single Judge of Gwalior Bench, by a common order dated 31st October, 1994, passed in WP No. 827/91 Narayan Prasad Pathak v. M.P. State Road Transport Corporation and Ors. The learned Single Judge observed in M.P. No. 827/91, as under:

As such, writ petition No. 827 of 1991 preferred by the workman is dismissed whereas writ petitions No. 856 of 1993; 858 of 1993; 978 of 1993; 1022 of 1993; 1024 of 1993 and 1398 of 1993 preferred by the M.P.S.R.T.C. are allowed in the manner indicated above. There would be no order as to the costs.

The learned Single Judge followed the decision given by the Full Bench of this Court in Narain Singh Rathore's case (supra).

4. Similar batch of writ petitions also came up before the High Court of Judicature at Jabalpur on behalf of the employees and common order was passed

by the learned Single Judge in Misc Petition No. 3973/93 Rajendra Singh v. Member Judge, Industrial Court and Anr., decided on 8.9.1994. The learned Single Judge while following the decision given by the Full Bench in Narain Singh Rathore's case (supra), desposed of the writ petitions pending at Main Seat, Jabalpur.

5. Aggrieved against the order given by the learned Single Judge of the High Court of Judicature at Jabalpur, the Corporation filed Letters Patent appeals before the Division Bench at Jabalpur and the Division Bench dismissed all the LPAs on the ground that since the learned Single Judge exercised his power conferred under Article 227 of the Constitution of India; therefore, the LPAs are not maintainable and accordingly, all these LPAs were dismissed by a common order dated 14th February, 1996, passed in LPA No. 169/95 M.P. State Road Transport Corporation v. Laxman Prasad and Ors.

6. Aggrieved against the aforesaid order dated 14.2.1996, SLP was filed before the Hon. Supreme Court by the Corporation, vide SLP No. 20317/96 M.P. State Road Transport Corporation v. Prannath Mishra and Ors. Their Lordships of Hon. Supreme Court dismissed the SLP of the Corporation.

7. Number of petitions were filed by the Corporation against various orders passed by the Industrial Court on the basis of the decision given by the Full Bench at Gwalior in Narain Singh Rathore's case (supra) and all the petitions came up before the learned Single Judge and the learned Single Judge allowed those writ petitions filed by the Corporation following the Full Bench decision (supra).

8. Aggrieved against the order of the learned Single Judge, all these Letters Patent Appeals have been filed before this Court. An objection was taken on behalf of the Corporation that since the learned Single Judge has exercised his power under Article 227 of the Constitution of India; therefore, the present LPAs filed by the employees of the Corporation are not maintainable. It was pointed out that similar view has been taken in this very matter by the Division Bench at Jabalpur and the same has been affirmed by their Lordships of Hon Supreme Court in SLP No. 20317/96 [M.P.S.R.T.C. v. Pran Nath Mishra] decided on 25.10.1996, therefore, these LPAs are not maintainable and the same should be dismissed, for the reasons mentioned in the common order passed by the Division Bench in L.P.A. No. 169/95 [M.P.S.R.T.C. v. Laxman Prasad Soni] on 14th February, 1996.

9. The learned Counsel for the Appellants have referred to us number of decisions of this Court in which conflicting views with regard to maintainability of the LPA against the order passed by the learned Single Judge in exercise of his power conferred under Article 227 of the Constitution of India have been expressed. In some cases, objection has been upheld following the decision given in the case of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, ; and subsequent decisions Sushilabai Laxminarayan Mudliyar and

others Vs. Nihalchand Waghajibhai Shah and others, and Mangalbai v. Radheyshyam AIR 1992 SC 806. The aforesaid decisions of Hon. Supreme Court came up for consideration in various Division Benches of this Court and the Division Bench in some cases, has upheld the objection and in some cases, overruled the objection. In the case of Vijay Kanti Patel v. Smt. Pratima Devi 1995(2) VIBHA 8, similar objection was taken before the learned Division Bench against the order of the learned Single Judge in exercise of his power under Article 227 of the Constitution of India and the same was upheld in the LPA. Thereafter, the matter was taken up before the Hon. Supreme Court and the Hon. Supreme Court dismissed the SLP No. 7903-3-A/95 Smt. Vijay Kanti Patel v. Smt. Pratima Devi and Ors.

Similar objection came up for consideration before the Division Bench of this Court in the case of Prakash Singh v. Factory Manager and Ors. LPA No. 130/96 and the Division Bench by order dated 11.5.1996, upheld the objection and held that the LPA is not maintainable as the order passed by the learned Single Judge was in exercise of power conferred under Article 227 of the Constitution of India

In the case of Tulsibai and Ors. v. Ramesh and Ors. 1996 RN 331, the Division Bench at Indore also upheld the objection and held that the order passed by the learned Single Judge was in exercise of power conferred under Article 227 of the Constitution of India; therefore, the LPA is not maintainable. In Ramswaroop v. Labour Court and Ors. 1997(1) MPJR SN 4, similar objection was upheld by the Division Bench at Gwalior and Division Bench has dismissed the LPA as not maintainable. Our attention was drawn to the decision given by the Division Bench at Indore in Indore Dugdh Sangh and Another Vs. K.P. Singh and Another, and the Division Bench held that the LPA is not maintainable as the learned Single Judge has exercised his power under Article 227 of the Constitution of India.

10. As against this, our attention was also invited to the decision of this Court in Shafiullah v. M.P.S.R.T.C. 1990 MPLJ 515 in which similar objection was overruled by the Division Bench and held that the power of superintendence conferred upon the High Court by Article 227 is in addition to that conferred upon the High Court by Article 226. It was observed that "though at the first blush it may be seen that a writ of certiorari or a writ of prohibition partake of the nature of superintendence inasmuch as at times the end result is the same, the nature of power to issue these writs is different from the supervisory or superintending power under Article 227. The preliminary objection about maintainability of Letters Patent Appeal was negated." In that case, Umaji's case (supra) was followed but subsequent two decisions of Hon. Supreme Court given in the case of Sushilabai L. Mudliyar (supra) and Mangalbai (supra) were not before the Division Bench while deciding the case in 1990 MPLJ 515 [Shafiullah v. M.P.S.R.T.C.) Our attention was invited to the case of J.N.K.V.V. v. Satyveer 1996 JIJ 29 on the question whether the LPA is maintainable or not. It was only observed that the power of superintendence conferred on the High Court under

Article 227 can be exercised against the order of the Civil Court. Our attention was also invited to the decision given in the case of Om Prakash Vs. Noor Jahan and Others, and in this case, the Lordships after examining the case, came to the conclusion that this was a petition under Article 226 of the Constitution of India; therefore, the LPA was maintainable. It was held:

Taking into consideration the facts and circumstances brought on the record, and the pleading of the parties as well as the nature of relief claimed by the Petitioner, there was no doubt that the Petitioner had invoked the jurisdiction of the High Court as envisaged under Article 226 of the Constitution. The facts and circumstances brought on the record justified the filing of application either under Article 226 or under Article 227 of the Constitution, and it would not be justifiable to deprive the Petitioner of the valuable right of appeal. The application of the Petitioner, therefore, ought to be treated as an application under Article 226 of the Constitution. Objection about tenability of appeal rejected.

Therefore, in this case, finding was given that it is a petition under Article 226 of the Constitution and the LPA was entertained.

11. It may be relevant to mention here that it has already been observed in Umaji's case (supra), Sushilabai L. Mudliyar (supra) and Mangalbhai (supra) that it will depend upon the facts of each case what is the nature of the relief sought by the Petitioner and the jurisdiction exercised by the learned Single Judge. From the survey of the aforesaid decisions, it will appear that ratio is what jurisdiction the learned Single Judge has exercised whether under Article 227 of the Constitution of India or under Article 226 of the Constitution of India. The maintainability of LPA will depend on that. Our attention was drawn to the decision of Hon Supreme Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, wherein it was held that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution of India. That superintendence is both judicial and administrative. A reference was made in this connection to the decision in Waryam Singh and Another Vs. Amarnath and Another, and it was observed that while exercising the jurisdiction under Article 226 of the Constitution, the High Court can only annul the decision of the Tribunal, it can, under Article 227. do that, and also issue further directions in the matter. Their Lordships then dealt with the scope of certiorari and after referring to various decisions of the Hon. Supreme Court and the High Courts, observed:

(1) Certiorari will be issued for correcting errors of jurisdiction, as and when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as and when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction.

It was also observed in para 23:

It may, therefore, be taken as settled that a writ of certiorari could be issued to correct an error of law. But, it is essential that it should be something more than a mere error; it may be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record ?

Their Lordships further observed that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. Therefore, the ratio is that the writ of certiorari could be invoked for correcting the error of law and what is the error of law, it cannot be defined exhaustively and it has to be left to the judicial scrutiny of the Court. This decision was followed in Umaji's case (supra) and their Lordships observed that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal. Therefore, again the question is that what is the nature of relief sought and what relief has been actually granted by the Court while exercising the jurisdiction under Article 226 or 227 of the Constitution of India. The said judgment was further referred to in Sushilabai Mudliyar's case (supra) and Mangalbai's case (supra), where also their Lordships examined the case on merits and found that the petition was filed under Article 226 and 227 of the Constitution of India and the Learned Single Judge exercised his power under Article 226 of the Constitution, therefore, in both the decisions, their Lordships have held that the LPA is maintainable.

12. In the present case, the writ petitions were filed by the Corporation invoking the power under Article 226/227 of the Constitution of India. The learned Single Judge while following the decisions of the Full Bench set aside the order of the Industrial Court as also the Labour Court; therefore, the learned Single Judge has exercised his: power under Article 227 of the Constitution of India, correcting the error apparent in the order of the Tribunal.

13. The present appeals arose against the order passed by the learned Single Judge in writ petitions filed by the Corporation, the relief sought by the Corporation in the petition was for setting aside the order passed by the Tribunal,

i.e. Industrial Court and Labour Court. Therefore, this was a petition invoking supervisory jurisdiction of this Court because both the Tribunals, i.e. Industrial Court and Labour Court, are subjected to supervisory control under Article 227 of the Constitution of India. It is true that under Article 226 of the Constitution of India, the High Court can issue writs, directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, certiorari, quo-warranto. It further says that any writ, order or direction can be issued under Article 227 of the Constitution of India, the High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It may be mentioned that both the Articles 226 and 227 are separate and independent. The power of judicial superintendence conferred by Article 227 is not limited by the technical rules which govern the exercise of the power to issue writ of certiorari under Article 226 (See- Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . Therefore, while exercising the power of certiorari under Article 226, there are certain limitations whereas those limitations will not operate while exercising power of superintendence under Article 227 of Constitution. The power under Article 227 can be exercised by the High Court suo motu. While expressing the power under Article 227, the Court can further issue a directions which may not be available in a proceeding under Article 226 of the Constitution (See State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.,). It can further direct enquires after taking evidence (See Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, .

It may be relevant to mention here that power of Articles 226 and 227 was sought to be curbed by the 44th Amendment Act, 1978, which was challenged and in a recent decision of the Hon. Supreme Court in L. Chandra Kumar Vs. Union of India and others, , their Lordships have struck it down being ultra vires the Constitution and it was observed that judicial scrutiny is a basic feature of the Constitution, therefore, it cannot be circumscribed by any other enactment except by amendment of Constitution.

14. So far as the nature of petitions, whether it is filed under Article 226 and 227 is concerned, it will depend upon the frame of the petition and the relief sought. Normally, whenever any writ is filed for setting aside the order of the Tribunal then this is done in exercise of power under Article 227 of the Constitution of India because all the Tribunals in territorial jurisdiction of the High Court are subject to superintendence of the High Court. Therefore, whenever a writ petition is filed against the order passed by the Labour Court or Industrial Court or Board of Revenue or any other Trinunals, then such kind of petitions are under Article 227 of the Constitution only because the High Court exercise the power of superintendence over those Tribunals. Simply because in some cases, additional relief is sought and it is styled under Article 226 of the Constitution, that will not be decisive of the matter, but looking to the nature of petition if it is against the order passed by the Tribunal then such petition shall be treated to be as petition against Article 227 and the Court shall exercise its superintendence power under Article 227 except where vires of any enactment is challenged. But, in the frame

of the petition, if it is only to challenge the order of the Tribunal then irrespective of fact that it is referred to Article 226 this will be a petition under Article 227 and the learned Single Judge will only exercise the power under Article 227 of the Constitution of India.

15. In the present batch of writ petitions, the corporation had challenged the order of the Labour Court and Industrial Court and which is essentially petitions under Article 227 of the Constitution of India, simply because it has been mentioned in the body of petition under Article 226 that will not be a decisive of the matter and the power which has been exercised by the learned Single Judge is under Article 227 as he has set aside the order of the Industrial Court as well as Labour Court following the decision of Full Bench given in the case of *M.P.S.R.T.C. v. Narain Singh Rathore* (supra).

16. The learned Counsel for the Appellants submitted that in some of the cases, the consequential orders of giving the benefit to the parties were passed prior to the decision of Full Bench *Narain Singh Rathore* (supra) or even thereafter and these writ petitions have been filed belatedly, therefore, the learned Single Judge should not have interfered in matter as it is going to cause hardship and inequality. It may be possible that after some decision of this Court, some relief might have been given to the parties, but once the Full Bench has decided the matter and law has been laid down finally and thereafter, the administration has decided to file a petition falling in the line with the decision of Full Bench then in that case it cannot be said that simply because some orders were passed in pursuance of the earlier decisions should enure to the benefit of parties and corporation should be barred to seek its remedy. There is no hard and fast rule with regard to the delay in filing the petition. It depends upon case to case, in some cases, the delay might prove fatal and in others it may not. In the present case, soon after the decision of Full Bench given in *Narain Singh Rathore's* case (supra), the Administration reviewed the order and filed writ petitions challenging the order of the Tribunal. Earlier, a decision was taken because of the decision of this Court which held the field that no further action is required in the matter. When once the Full Bench set down the said controversy at rest then the batch of writ petitions were filed by the Corporation challenging the order of the Tribunal, i.e. Industrial Court as also the Labour Court. Therefore, neither the delay nor any inequality is involved in the matter. The learned Single Judge and the Full Bench have already held that whatever monetary benefit which has been legitimately drawn shall not be recovered. However, in view of the Full Bench decision of this Court, the learned Single Judge has rightly set aside the order of the Tribunal following the decision of Full Bench *Narain Singh Rathore's* case (supra).

17. As a result of above discussion, we uphold the objection of the Corporation that the LPAs filed against the order passed by the learned Single Judge in exercise of power conferred under Article 227 of the Constitution of India, are not entertainable and the same are dismissed. No order as to costs.

Dharmadhikari, J.

18. I respectfully agree with the reasoning and conclusion of Hon. A.K. Mathur, C.J. that the power exercised by the learned Single Judge in the cases under consideration was substantially under Article 227 of the Constitution of India and, therefore, LPAs under Clause 10 of the Letters Patent of this Court are not maintainable.

19. I, however, find inability to agree with the part of the judgment of Hon. Mathur, C.J. in paragraph 16 of his judgment by which the impugned orders of the learned Single Judge have also been upheld on merits. I had occasion to decide similar controversies, sitting singly, with regard to the claim of status and classification of certain employees who were appointed to lower posts but were working on higher posts and in those batch of petitions I have considered the matter in full details (M.P. No. 3973/93 Rajendra Singh v. Member, Industrial Court & M.P.S.R.C., decided on 8.9.1994) and expressed a somewhat different opinion. Against the above judgment rendered by me in those batch of petitions, LPAs were dismissed as not maintainable by the Division Bench. Thereafter, the SLP preferred to Supreme Court was also dismissed.

20. In the circumstances, therefore, I agree with Hon. A.K. Mathur, C.J. only to the extent of his decision that LPA against the order of learned Single Judge are not maintainable and deserve to be dismissed.