
(1998) 02 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 992 of 1998

Akhtar Hussain

APPELLANT

Vs

Sant Kabir Sahkari Katai Mills Ltd., Basti and another

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1998) 2 AWC 955

Hon'ble Judges : Alope Chakrabarti, J

Bench : Single Bench

Advocate : Mahima Maurya, for the Appellant; Vinod Mishra, for the Respondent

Judgement

Alope Chakrabarti, J.—This writ petition was filed challenging the orders dated 7.11.1997 and 13.11.1997 at Annexure Nos. 1 and 2 respectively to the writ petition whereby the petitioner was transferred from Sant Kabir Sahkari Katai Mills, Maghar to Co-operative Textile Mills at Bulandshahr on temporary basis.

2. At the outset Mr. Vinod Mishra, learned counsel for the respondents raised an objection as regards maintainability of the writ petition and to that effect a short counter-affidavit had been filed. The objection has been raised on the ground that the writ petition is not maintainable being directed against an order passed in respect of its employee by Co-operative Society.

3. Mr. K. P. Agarwal, learned counsel for the petitioner contended that the present transfer order purporting to transfer the petitioner is illegal in view of the fact that it amounts to transfer of the petitioner from one employer to other which is not permissible under law. It is contended that the law in this respect has been settled as decided in the case of Manager, Pyarchand Kesarimal Ponwal Bidi Factory Vs. Omkar Laxman Thange and Others, , wherein it has been held that a contract of service being thus incapable of transfer unilaterally, such a transfer of service from one employer to another can only be effected by a tripartite agreement between the employer, the employee and the third party.

Learned counsel for the petitioner contended further that in similar circumstances in respect of Cooperative Society, the writ petition has been held maintainable by Division Bench of Calcutta High Court in the case of Arjed Ali Gazi v. State of West Bengal 1991 Lab IC 987. Similar decision was taken in the case of Gouranga Dhar v. State of West Bengal 1996 Lab IC 371.

4. With regard to Full Bench decision in the case of Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, , and the case of Radha Charan Sharma v. U. P. Co-operative Federation and others, 1982 ALR 342 it has been stated that the said law no further applies. It has further been said that the alternative remedy becomes an effective alternative remedy rendering the writ petition as not maintainable in view of the law as decided in the case of Chandrama Singh v. Managing Director U. P. Co-operative Union (1991) 2 UPLBEC 898. But in the present case the impugned order being a transfer order and there being no possibility of passing any interim order before any alternative forum, the alternative remedy does not amount to an efficacious remedy. Therefore the writ petition is to be entertained.

5. Learned counsel for the respondents contended that the law decided in the case of Manager, P. K. P. Bidi Factory (supra) does not help the petitioner as irrespective of the irregularity if any. the writ petition being not maintainable, the merit of the present case cannot be urged by the petitioner in a writ proceeding. It is further stated that the law decided in the case of Arjed Ali Gazi and Gowanga Dhar (supra) decided by Calcutta High Court does not apply in the present case as Full Bench of this Court has conclusively held that such writ petitions are not maintainable against Co-operative Society particularly when no statutory Regulation has been allegedly violated. Reliance, was placed on the judgment in the case of Radha Charan Sharma (supra) and Aley Ahmad (supra) for the purpose of contention that the writ petition is not maintainable.

6. After considering the aforesaid respective contentions of the parties, I find that the case of Gouranga Dhar (supra) decided by learned single Judge of Calcutta High Court was following the Division Bench decision in the case of Arjed Ali Gozi (supra). The Division Bench in the said case considered the law in this respect and entertained the writ petition on the sole ground that the Rule 108 of the relevant Rules applicable in the State of West Bengal was violated by the order complained of therein and therefore the writ petition was found maintainable. In the said Judgment, it has been categorically reiterated that in view of special facts involved in that case, the decisions relied on by the respondents were not applicable. The finding of the Division Bench therein was as follows :

"It , however, must be made clear that Co-operative Society in West Bengal is not a "State" within the meaning of Article 12 and is also not a public undertaking. It is essentially a private body formed at the initiation of private individuals. Hence if the conditions of service of an employee of the Co-operative Society are not left to be controlled by the said statutory rules but are controlled

by the terms of contract of service or bye-laws of the society which is not a statutory rule, no writ will lie for enforcing any breach of the terms of employment of the employee of the Co-operative Society."

7. Therefore, the said judgment of the Division Bench of Calcutta High Court does not help the petitioner when admittedly no statutory rule has been violated herein. The law decided by the Full Bench of this Court in the case of Radha Charan Sharma (supra) is clear that no writ petition is maintainable unless the Co-operative Society satisfies the tests laid down for treating it as State under Article 12 of the Constitution of India or there is violation of any statutory rules.

8. In view of the aforesaid findings, the writ petition directed against an order passed by the Co-operative Society is not maintainable when no allegation has been made of violation of any statutory rules or regulation or of satisfaction of test relating to the Society. The same view was taken in various other cases referred to by the learned counsel for the respondents.

9. In view of the above findings, the present writ petition is not maintainable. The other contention of the learned counsel for the respondents as regards non maintainability of the writ petition by reason of existence of alternative remedy of appeal need not be considered and the same remedy, if otherwise available, will remain open to the petitioner. The contention of the petitioner on merit applying the law decided in the case of P. K. P. Bidi Factory (supra) cannot be considered also, as the writ petition is not maintainable against the order passed by the Co-operative Society. Therefore, the writ petition fails and the same is hereby dismissed on the aforesaid grounds.