

(2013) 02 MP CK 0057

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 546 of 2006 and 1688 of 2007

Anand Kumar Dubey

APPELLANT

Vs

Jabalpur Co-operative Milk Producers Union Limited

R.N. Pandey Vs Jabalpur Co-operative Milk Producers Union
Limited and Another

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (2013) 138 FLR 213 : (2013) ILR (MP) 538 : (2013) LabIC 1563 :
(2013) 3 MPHT 32 : (2013) 2 MPHT 124 : (2013) 2 MPLJ 442 : (2013) 3 SCT
800 : (2014) 1 SLJ 454

Hon'ble Judges : Sharad A. Bobde, C.J.;Sanjay Yadav, J;Alok Aradhe, J

Bench : Full Bench

Advocate : D.K. Dixit, for the Appellant; Anoop Nair, for the Respondent

Judgement

Sharad A. Bobde, CJ.

1. The matter has been referred to a Larger Bench for re-consideration of the decision rendered in Virendra Kumar Pandey Vs. State of Madhya Pradesh and others, where the Division Bench dismissed the writ petition as not maintainable by making the following observations:-

Learned Counsel for respondents further submitted that impugned action by virtue of which he has been sought to be retired at the age of 58 years does not amount to violation of fundamental rights, and therefore, he was not justified in approaching this Court under Articles 226/227 of the Constitution of India. We find merit and substance in the arguments so advanced, on this ground alone and are of the considered opinion that appellant's writ petition itself was not maintainable.

The reference has arisen in this manner.

2. The writ petition was filed before the learned Single Judge seeking the issue of

a writ in a service matter against the Jabalpur Co-operative Milk Producers Union Limited, Jabalpur and another. That relief was denied to the petitioner on the ground that he has not demonstrated violation of a fundamental right and, therefore, in accordance with the ratio of Virendra Kumar Pandey's case, it was held that the writ petition is not maintainable.

3. In a writ appeal against the judgment of the learned Single Judge, a Division Bench of this Court did not agree with the ratio in Virendra Kumar Pandey's case and observed that the situation has led to an anomaly that, though the federation, or in this case, the Jabalpur Co-operative Milk Producers Union Limited is treated as "State" under Article 12 of the Constitution yet a writ petition would only lie unless the fundamental right per se is violated. The Division Bench headed by Dipak Misra, J. (as He then was) considered the judgment of M.P. State Co-operative Dairy Federation and Others Vs. Madan Lal Chourasia, where the Special Bench had observed as follows:-

The consequence of our opinion that the Federation is "State" within the meaning of Article 12 of the Constitution of India is that a writ petition will be maintainable against the Federation for violation of fundamental rights. But, this is not to say that in every case, the Court will have to entertain a writ petition against the Federation irrespective of whether an alternative efficacious remedy is or is not available to the petitioner. The Court will or will not entertain a writ petition depending upon the facts of the each case and on the nature of right violated.

4. Having regard to the observation in that case, the Division Bench did not agree with the observation made in Virendra Kumar Pandey's case, in which relief has been denied to the petitioner since the question of the age of retirement does not amount to violation of fundamental right. Apparently, the Division Bench did not accept the anomalous situation that though the respondent is a "State", the writ petition would not be maintainable unless the petitioner demonstrated the violation of fundamental right. This is how the matter is before Larger Bench.

5. There is no dispute that the respondent-Jabalpur Co-operative Milk Producers Union Limited, Jabalpur and another is a "State" within the meaning of Article 12 of the Constitution. The only contention raised by Shri Anoop Nair, learned Counsel for the respondent is that the decision of the learned Single Judge in this case is correct because the petitioner has an alternative remedy to agitate his grievance u/s 55(2) of the M.P. Co-operative Societies Act, 1960. Shri D.K. Dixit, learned Counsel for the appellant denied the existence of said alternative remedy. He further submitted that whether there is an alternative remedy available to the petitioner is not relevant because learned Single Judge has held that the writ petition is not maintainable because there is no violation of any fundamental right at the hands of the respondent-Co-operative Society.

6. Now it is settled in law, a writ petition is tenable inter alia when there is a

violation of legal right by the "State" or bodies which are "State" within the meaning of Article 12 of the Constitution of India. This being so, we find the petitioner herein could not have been denied relief because his grievance mainly is that he is being wrongly retired at the age of 58 years which does not necessarily amount to violation of a fundamental right. Since, admittedly, the respondent is "State" within the meaning of Article 12 of the Constitution, we are of the view that the writ petition was maintainable even without the allegation of violation of fundamental right. In these circumstances, we approve the observation of Larger Bench in Madanlal Chourasiya's case that the Federation is "State" within the meaning of Article 12 of the Constitution of India and that a writ petition will be maintainable against the Federation for violation of fundamental rights. But, this is not to say that in every case, the Court will have to entertain a writ petition against the Federation irrespective of whether an alternative efficacious remedy is or is not available to the petitioner. The Court will or will not entertain a writ petition depending upon the facts of the each case and on the nature of right violated, and the relief sought.

7. In these circumstances, we are disposed to hold that a writ petition would be maintainable against a body which is "State" within the meaning of Article 12 of the Constitution, even if the alleged breach is of a legal right, whether conferred by statute or otherwise. Undoubtedly, the Court will consider whether the petition should not be entertained due to existence of an alternative remedy and depending upon the facts of each case and the nature of violation. In view of above, Virendra Kumar Pandey's case (supra), having been wrongly decided, we hold it to be not a good law. Both the writ appeals be now placed before the Division Bench for decision in accordance with law.