
(1998) 04 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30351 of 1993

Dharam Veer and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1998) 3 UPLBEC 2301

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : S.V. Mishra, for the Appellant; Ravi Kant, V.B. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—This writ petition was heard alongwith Civil Misc. Writ Petition No. 30354 of 1993, Raj Kumar and Ors. v. State of U.P. and Ors..

2. Challenging the provisions of the Standing Orders issued by Modipon Fibres Company (hereinafter referred to as "Company") and the orders of dismissal of the petitioners, all dated 2.5.1993 at Annexure Nos. 2 to 11 the writ petition, ten petitioners came to this Court.

3. On an application the names of the petitioner Nos. 2, 6, 9 and 10 had been deleted from the array of the parties by order dated 29.8.1997.

4. Heard the learned Counsel for other petitioner who continued to proceed with the writ petition and Mr. V.B. Singh learned Counsel for the respondents.

5. The respondents filed counter affidavit and the petitioners filed rejoinder affidavit.

6. At the outset the respondents raised a preliminary objection as regards maintainability of the writ petition on the ground of existence of alternative

remedy before the authority under the Industrial Disputes Act as also the employer being a private company is not amenable to writ jurisdiction.

7. Learned Counsel for the petitioner contended that the existence of alternative remedy is not an absolute bar and the writ petition is maintainable. The provision of paragraphs 19 (a), 19 (b) and 19 (bbb) of the Standing Order of the Company are in violation of the principle of natural justice and therefore they are liable to be quashed. It is also contended by the petitioners that the Impugned dismissal order being in violation of the provisions of natural Justice and having been passed without issuing charge-sheet, whom cause notice or any opportunity of hearing is liable to be quashed. In support of each of the aforesaid contentions the learned Counsel for the petitioners referred to several case laws.

8. The respondents contended that the provisions of Standing Orders can not be challenged as the question has already been decided and the alternative remedy in the present case, if not treated as a bar in respect of the present writ petition, the company will be deprived of the opportunity of proving Its case in support of the dismissal order by producing evidence before the Industrial Tribunal as permissible in law and the same will cause irreparable prejudice and the Company cannot get set opportunity in the present writ petition. Learned Counsel for the respondent also relied on various case laws in support of such contention.

9. After considering the contentions of the respective parties and perusing the material available on record it appears that the learned Counsel for the petitioners mainly relied on the judgment in the case of Narendra Pal Gahlot v. State of U.P. and Anr., writ petition No. 18116 of 1993 heard alongwith several other writ petitions and decided on 1.11.1993 wherein other employees of the Company challenged their respective termination orders, inter alia, raising a contention that paragraph 19 of the said Standing Order are liable to be quashed as they are in violatiion of the principle of natural justice. The provisions of the said paragraph 19 of the said Standing Orders of the Company are also under challenge in the present writ petition and it is stated by the learned Counsel for the petitioners that the aforesaid judgment in the case of Narendra Pal Gahlot (supra), is binding. A perusal of the said judgment in respect of the said contention shows that the learned Judge while delivering the said judgment did not quash the said provision of paragraph 19 of the Standing Orders nor held the same to be liable to be quashed for violation of the principle of natural justice and on the contrary the principles natural Justice were found to be required to be read in. The relevant portion of the said judgment is as follows :-

"If the relevant Standing Orders paragraphs 19 (a) and 19 (bb) are read in the light of the law laid down by the Hon"ble Supreme Court in the aforesaid judgment, it can not be said that the principles of natural justice have to be complied with for passing order of termination, though it has not been specifically required therein. If the Standing Orders are interpreted in the way that no opportunity of hearing is required to be given, it shall become arbitrary,

unjust and unfair and violative of Article 14 of the Constitution, to avoid it, in my opinion in the present case also the provisions of Certified Standing Orders paragraphs 19 (a) should be so read so as to required the observance of the principles of natural justice necessary before passing order of termination."

10. In view of the aforesaid finding and there being no reason to hold contrary the said provision of certified Standing Order of the Company is to be read so as to require the observance of the principles of natural justice necessary and the said provisions are found valid and proper as already held and therefore, no interference is required on the aforesaid ground.

11. With regard to the certified Standing Orders the contention of the petitioners was that they have statutory force and therefore, the writ petition is maintainable and neither a suit nor a reference under the Industrial Disputes Act is necessary. In support of such contention reliance was made to the finding in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., . Learned Counsel for the respondent disputed the said contention and relied on the finding in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,

12. A perusal of the said judgment in the case of Rqjasthan State Road Transport Corporation (supra), it appears that the aforesaid aspect has been considered in detail taking note of the legal position as decided in various earlier cases including the case of The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, , Workmen of Dewan Tea Estate and Others Vs. The Management, Workmen of Buckingham & Cannatic Mills, Madras, reported in 1969 (19) FLR 353 and the case of D.K, Yadav (supra). Upon such consideration the finding of the Apex Court as recorded in the case of Rajasthan State Road Transport Corporation (supra), is as follows ;-

"The consensus of these decisions is the certified Standing Order constitute statutory terms and condition of service. Though we have some reservations as to the basis of the above dicta as pointed out (supra) we respectively accept it both on the ground of stare decisis as well as judicial discipline. Even so, we are unable to say that they constitute "statutory provisions" within the meaning of the dicta in Sukhdev Singh it was held; "The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions." Indeed, If it is held that certified Standing Orders constitutes Statutory provisions of have statutory force, a writ petition would also lie for their enforcement Just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary not reference under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves."

13. In view of the aforesaid legal position which stands settled, the present writ petition for enforcement of Standing orders leaving therein the provision of natural justice, can not be maintainable.

14. With regard to the contention of the petitioner that the impugned orders are in violation of Section 6-N of the U.P. Industrial Disputes Act, the respondents have contended that in case of violation of such provision the consequent right accruing under the special statute, can be only urged before the forum provided by the same Act. In support of such contention reference was made by the petitioner to various case laws to contend that the existence of alternative remedy is not an absolute bar for entertaining a writ petition and in support of such contention various case laws have been cited. On behalf of the respondents contention has been made that in case the parties are relegated to the forum provided under the U.P. industrial Disputes Act, the employers get opportunity of supporting their orders by producing evidence and this opportunity will be totally not available if the matter is considered by the writ Court. Moreover, it is contended that In such cases of right provided under a particular statute the unit Court should not entertain a writ petition and in support of such contention reliance was placed on various case laws, including the case of Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, and the case of the The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, .

13. After considering the aforesaid contentions and perusing the law decided in various cases referred to by the respective parties, I find that although existence of alternative remedy is not an absolute bar for maintaining writ petition but when a right accrues under a composite statute providing for a forum for redress, ordinarily, the writ petition is not to be entertained. Moreover, in the present case the respondents will be deprived of the right to prove their case in support of the impugned order by producing evidence unless the parties are relegated to forum provided under the U.P. Industrial Disputes Act. In such facts I do not feel that the present writ petition can be entertained.

16. With regard to the aforesaid two objections, I find at those were not considered in the case of Narendra Pal Gahlot (supra) and therefore, the petitioner is not entitled to rely on the said judgment as precedent of said proposition of law.

17. In view of the aforesaid finding the writ petition is not being entertained. But, I make it clear that this order will not prejudice the rights of the parties on merit if an appropriate proceeding is taken before any appropriate forum. This writ petition is thus dismissed. There will be no order as to costs.