
(2001) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 76 of 2001

Gwalior Development Authority

APPELLANT

Vs

Harishankar Sharma

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Government of India Act, 1915 — Section 107

Citation : AIR 2002 MP 20 : (2001) 4 MPHT 177 : (2001) 2 MPJR 484 : (2001) 3 MPLJ 610

Hon'ble Judges : R.B. Dixit, J;Mr. S.P. Srivastava, J

Bench : Division Bench

Advocate : Shri N.K. Mody, for the Appellant; Shri R.D. Jain and Shri S.K. Sangam Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the respondent-applicant in support of this application and the learned counsel for the appellant in opposition thereto.

Perused the record.

During the pendency of the proceedings before the Labour Court, an interim order had been granted in favour of the contesting respondent-workman requiring the employer - appellant to ensure that till the decision of the dispute, the workman will be allowed to continue to work and if the employer - management wants to retrench any workman it had to follow the provisions of the law for retrenchment.

The aforesaid interim order granted by the Labour Court was challenged by the employer, the present appellant in revision before the Industrial Court without any success.

Thereafter, the writ petition giving rise to the present Letters Patent Appeal was filed by the Gwalior Development Authority (hereinafter referred to as the "employer" for short) challenging the interim order referred to hereinabove.

A learned Single Judge of this Court by means of the impugned order dismissed the writ petition.

Thereafter, the employer, feeling aggrieved challenged the order passed by the learned Single Judge in the Letters Patent Appeal which is pending.

During the pendency of the Letters Patent Appeal, an interim order had been granted by this Court on 10-4-2001 staying the operation of the impugned orders providing that the interim order granted by this Court in the appeal will not prevent the Labour Court to proceed with the case and decide the same on merits. The Labour Court was further required to take the requisite steps to decide the case expeditiously.

The present application has been filed by the workman praying for the dismissal of the Letters Patent Appeal asserting that since the writ petition had been filed invoking the jurisdiction as envisaged under Article 227 of the Constitution of India, taking into consideration the provisions contained in Clause X of the Letters Patent of Nagpur, the appeal is clearly not maintainable.

The learned counsel for the employer/appellant has however urged that in view of the nature of the controversy raised, it has to be taken that the employer had invoked the jurisdiction of this Court not only under Article 226 but also as envisaged under Article 227 of the Constitution of India, and therefore, in such a situation, the appeal cannot be dismissed holding the same to be not maintainable.

In the present case, what is apparent is that the writ petition giving rise to the present appeal had been specifically indicated to be one under Article 227 of the Constitution of India meaning thereby that the jurisdiction of this Court as contemplated under the said Article alone was being invoked.

In the aforesaid connection, it may further be noticed that the Rules of the Court prescribe different procedure for the presentation of the writ petition under Articles 226 and 227 of the Constitution of India. Even the Court Fee required to be paid is different. The rules for proceedings under Article 226 of the Constitution are contained in Chapter II Section III of the Madhya Pradesh High Court Manual (Rules and Orders). The rules for application under Article 227 of the Constitution of India are contained in Chapter III of the said Rules. Even the format prescribed for the petition under Articles 226 and 227 of the Constitution are different.

The learned Single Judge while disposing of the writ petition had clearly observed that the writ petition was filed under Article 227 of the Constitution of India and further that the petition which was directed against an interlocutory order passed by the Labour Court did not warrant any interference as the grant of the interim

order in the circumstances of the case was in due exercise of the powers vested in it.

From a perusal of the impugned order passed by the learned Single Judge, it is apparent that he had examined the case in the light and scope of the jurisdiction envisaged under Article 227 of the Constitution of India,

The Apex Court in its decision in the case of *Employer in Relation to Management of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another*, , after analysing the implications arising under Clause X of the Letters Patent as is involved in the present case had indicated the various categories of judgments which were excluded from the appealable judgments under Clause X of the Letters Patent. So far as a sentence or order passed or made in exercise of power under the provisions of Section 107 of the Government of India Act which are now reflected under Article 227 of the Constitution of India or in the exercise of criminal jurisdiction, it was clearly pointed out that such an order passed by the learned Single Judge of the High Court was not appealable.

This Court in its decision in the case of *State of M.P. and another Vs. Shiv Shankar and another*, rendered by a Division Bench reported in 2000 (1) MPLJ 156, had observed that the provision indicated by the petitioner, under which the petition had been filed, was not quite relevant and that did not debar the Court from exercising its jurisdiction which otherwise it possesses to secure the ends of justice correcting the grave and palpable errors depending upon the facts and circumstances of each case, unless there is a special procedure prescribed, prohibiting such an action, which procedure is mandatory.

As has already been noticed hereinabove, the petitioner in the circumstances had himself come up with a petition indicating that it was invoking the jurisdiction of this Court as envisaged under Article 227 of the Constitution of India with the payment of Court Fee of Rs. 10/- only on the said application. However, in case the petition was intended to be a petition under Article 226 of the Constitution of India also the Court Fee of Rs. 100/- ought to have been paid on the memo of petition which was not done. Not only this, the format which stands prescribed in the Rules of the High Court for the presentation of a petition under Article 226 of the Constitution of India was also not adhered to. All this only indicates that the petitioner himself never intended to invoke the jurisdiction of this Court as envisaged under Article 226 of the Constitution of India.

In the aforesaid view of the matter, it is apparent that the learned Single Judge had considered the case within the ambit of the provisions contained under Article 227 of the Constitution of India and gave an indication to that effect in the impugned order.

We are bound to follow the decision of the Apex Court referred to hereinabove.

Taking into consideration the pleadings contained in the writ petition and the

nature of the impugned orders sought to be challenged and the conduct of the petitioner/appellant itself, we are clearly of the opinion that the petition clearly falls within the ambit of a petition under Article 227 of the Constitution of India and was also pursued as such by the appellant. The jurisdiction which was invoked was only that as envisaged under Article 227 of the Constitution of India.

In view of what has been indicated hereinabove and taking into account the ratio of the aforesaid decision of the Apex Court, it is obvious that this appeal cannot be held to be entertainable/maintainable.

In the aforesaid view of the matter, this application succeeds and the Letters Patent Appeal is dismissed.

Before parting with the judgment, it may be observed that while granting the interim order by this Court on 10-4-2001, the Labour Court had been directed to ensure that the case is decided expeditiously.

Shri Jain, learned Senior Advocate appearing for the workman has pointed out that in spite of the communication of the aforesaid order, nothing was done by the Labour Court and the case stands at the stage it was.

Shri Mody, learned counsel appearing for the employer, however states that there has been no default on the part of the employer.

Considering the circumstances, the Labour Court is directed to ensure that the case which is pending for more than a year is finally disposed of within a period not later than 3 months from the date of production of a certified copy of this order before it.