

(2008) 02 AHC CK 0134
In the Allahabad High Court

Mannu Lal and Kamal Uddin and Others	APPELLANT
Vs	
Deputy Labour Commissioner and Another	RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Industrial Disputes Act, 1947 — Section 10, 12, 2, 250, 2A

Citation : (2008) 02 AHC CK 0134

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioners have filed present writ petition, requesting therein for issuance of a writ in the nature of certiorari by calling record of the case and get the notice dated 01.05.2000 quashed and further commanding the respondents not to give effect to the closure of Industrial Establishment with effect from 3rd May, 2001.

2. Brief facts, as mentioned in writ petitions, are that petitioners had been performing and discharging duties with Sherani Industrial Syndicate Ltd. South Road, Allahabad. 471 workmen, including petitioners, had been issued identical notice, which is subject matter of challenge in both the above writ petitions, mentioning therein that consequent to the closure of Battery Unit with effect from 3rd May, 2001, services of all the employees, including the incumbents whose names have been mentioned, have been terminated with effect from 3rd May, 2001, by giving one months salary in lieu of notice and towards closure compensation, 15 days' salary for per completed year of service, which were paid by cheque. At this juncture present writ petitions have been filed, contending therein that said closure is in violation of Section 250 of the Industrial Disputes Act, 1947 and its non-compliance results in declaration of notice as illegal and closure itself as illegal.

3. Counter affidavit has been filed, and therein, it has been contended that

Section 6-W of the U.P. Industrial Disputes Act was enacted by the State of U.P. vide Act No. 26 of 1983, which was enforced with effect from 3rd August, 1983, whereas Section 25O of the Central Act was made effective with effect from 21.08.1994, and the incorporation of Section 6-W of the U.P. Industrial Disputes Act had received Presidential assent. Section 6-W was struck down by this Court on 28.03.1990 in the case of Jay Shree Tea case 1990 F.L.R. 603. Appeal was filed against the same with no interim order and said appeal had been allowed by Hon"ble Apex Court in the case of Orissa Textiles Ltd. v. State of Orissa, on 17.01.2002, and thus between 28.03.1990 and 17.01.2002, the provision itself was not there, as per which company could have made application for closure and therefore, there was no need for seeking permission for closure, as in the present case factory was closed on 3rd May, 2001. It has been further mentioned that petitioners have alternative remedy to raise industrial dispute, and further the respondent-establishment has already floated Voluntary Retirement Scheme before closure and various workmen have taken V.R.S. under the same scheme and further it has been stated that even after closure various workmen approached for more compensation and their request was acceded to and all those workmen were given compensation equivalent to 45 days" salary for each completed year of service, which was much more higher than the closure compensation. Details of settlement by most of the petitioners have been given and it has been stated that except for petitioner Nos. 7, 13, 25 and 27, rest of the petitioners have accepted closure compensation and reason for this has also been disclosed as the closure compensation was more than the V.R.S. amount. Similar statement of facts has been mentioned in respect of petitioner Nos. 8 and 10 of writ petition No. 34732 of 2001.

4. After pleadings inter se parties have been exchanged, present writ petitions have been taken up for final hearing and disposal with the consent of the parties.

5. Sri K.P. Agrawal, Senior Advocate, appearing for petitioners, contended with vehemence that in the present case, there has been gross violation of statutory provisions by Shervani Industrial Syndicate Ltd. while effectuating the closure of unit in question and as closure itself is illegal, the consequential action of dispensation of service is also illegal, as such writ petition deserves to be allowed.

6. Sri P.K. Mukherjee, learned Counsel representing the Industrial Establishment, on the other hand, contended that at the point of time when closure was made, Section 6-W of the U.P. Industrial Disputes Act itself had been rendered redundant and otiose on account of the same having been struck down by this Court as being infructuous, as such there was no obligation on the part of the company to take any permission, and further and the compensation amount has been accepted by workmen, and since disputed questions of fact are being raised and various similar matters have been relegated to the Industrial Court, as such it would be appropriate to refer this matter also to the Labour Court.

7. The question with regard to preliminary objection as to the availability of alternative remedy before Industrial Court is being dealt with. This is undisputed

position that petitioners are workmen and the Company in question is an industry and the dispute which is sought to be raised is industrial dispute. Where all ingredients of industrial dispute are fulfilled can a writ petition be entertained directly, is a question to be looked into on the touchstone of various pronouncement of the Hon''ble Apex Court. The judgment of Hon''ble Apex Court in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, is to be looked into wherein scope of industrial dispute qua forum has been dealt with at length and thereafter principles applicable have been summed up. Relevant paragraphs 18 to 23 are being quoted below:

18. The expression "Industrial Dispute" is defined in Section 2(k) to mean any dispute or difference (i) between employers and employers; (ii) between employers and workmen; and (iii) between workmen and workmen, provided such dispute is connected with the employment, non-employment, terms of employment or conditions of labour of any person. It is well settled by several decisions of this Court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen [See The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that Section 2A was inserted by Amendment Act 35 of 1965. It says, "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute". By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2(k) but also Section 2A. Section 2A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which means that to give an example if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2A. (However, if the union or body of workmen espouses his cause, it does become an industrial dispute.) We have given only one instance; there may be many disputes which would not fall within Section 2(k) or Section 2A. It is obvious that in all such cases, the remedy is only in a Civil Court or by way of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes (in short, Section 10 or 12) does not apply to such a dispute.

19. Secondly, where a right or obligation is created by the Industrial Disputes Act, it is agreed by all sides that disputes relating to such right or obligation can only be adjudicated by the forums created by the Act. This is Principle No. 3 in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and

Others,

The core question:

20. We may now indicate the area of dispute. It is this: where a dispute between the employer and the employee does not involve the recognition or enforcement of a right or obligation created by the Industrial Disputes Act and where such dispute also amounts to an industrial dispute within the meaning of Industrial Disputes Act, whether the Civil Court's jurisdiction to entertain a suit with respect to such dispute is barred? To put it nearer to the facts of these appeals, the question can be posed thus. Where the dispute between the employer and the workman involves the recognition, application or enforcement of certified Standing Orders is the jurisdiction of the Civil Court to entertain a suit with respect to such dispute is barred? This question involves the perennial problem concerning the jurisdiction of the Civil Court vis-a-vis Special Tribunals, a subject upon which the decisions of this Court, let alone other courts is legion. We do not, however, propose to burden this judgment with all of them. We shall refer only to those which have dealt with the question in the context of Industrial Disputes Act. By way of introduction though, we may refer to the summary of principles enunciated in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, They are the following (at pp. 89-90 of AIR):

(1) Where the statute gives a finality to the orders of the special Tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provisions, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality

of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authority and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

21. *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, it must be remembered, concerned a dispute arising under a sales tax enactment. Most of the decisions referred to therein concerned taxing enactments. Having regard to the facts of that case, therefore, it would fall under Principle No. 2 enunciated therein.

22. *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, was decided by a Bench comprising A. Alagiriswami, P. K. Goswami and N. L. Untwalia, JJ. The Court found that the dispute concerned therein involved adjudication of rights/obligations created by the Industrial Disputes Act which means that it fell under Principle No. 2 in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, Even so, the Court considered several decisions, English and Indian, on the subject and enunciated the following principles in Paras 23 and 24:

23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suiter concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to act an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

8. The Hon'ble Apex Court in the case of Scooters India and Others Vs. Vijai E.V. Eldred, has taken the view that there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving termination of disputed question of fact for which remedy under the industrial laws was available. Paragraphs 1 ,2 and 3 of the said judgment being relevant are being quoted below:

1. The respondent was employed as a workman by the appellants. The respondent remained absent from duty with effect from 25-8-1982 without any leave or intimation so the absence from that date was unauthorised. In terms of Clause 9.3.12 of the Standing order, the appellant treated this absence for more than 10 days as termination of contract of service as he was deemed to have left the service of the appellant on his own accord and his name was accordingly struck off. A letter to this effect dated 4-9-1982 was issued by the appellants addressed to the respondent. the respondent continued to remain absent and it was by a letter dated 19-11-1982, the respondent sent a reply to that letter saying that he had been ill. However, the respondent even after this remained absent and took no action to assail the order dated 4-9-1982 issued by the appellants. Several years later in 1989, the respondent filed a writ petition under Article 226 of the Constitution directly in the Allahabad High Court, Lucknow Bench for quashing the appellant's letter dated 4-9-1982. The writ petition has been allowed and the respondent has been granted relief of reinstatement with three years back wages in addition to holding that Clause 9.3.12 of the standing orders as invalid. Hence, this appeal by special leave.

2. The above facts alone are sufficient to indicate that there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving termination of disputed question of fact for which remedy under the industrial laws was available to the workman. That apart, the writ petition was filed more than 6 years after the date on which the cause of action is said to have arisen and there being no cogent explanation for the delay, the writ petition should have been dismissed on the ground of leaches alone. It is also extraordinary for the High Court to have held that Clause 9.3.12 of the standing orders as invalid. Learned Counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail.

3. Consequently, the appeal is allowed, the impugned judgment of the High Court is set aside resulting in the dismissal of writ petition filed by respondent in the High Court.

9. Apart from this in the case of Hindustan Steel Works Construction Ltd. and Anr. v. Hindustan Steel Works Construction Ltd. Employees Union 2005 (106) FLR 998 it has been held that writ petition should not be entertained where alternative remedy is available under the Act unless exceptional circumstances are made out. Paragraphs 7 to 12 being relevant are being quoted below:

7. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution of India, 1950 (in short "the Constitution") should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

In *U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karmchari Sangh* 2004 (100) FLR 1020 it was held that when the dispute relates to enforcement of a right or obligation under the Statute and specific remedy is, therefore, provided under the statute, the High court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, *Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another*, and in *Scooters India and Others Vs. Vijai E.V. Eldred*,

In *Premier Automobiles Ltd.* case (supra) it was observed as follows:

A speedy, inexpensive and effective Forum for resolution of disputes arising between workmen and their employees. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workman can ill afford. The procedure followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These Forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. The awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the Forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intent should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them.

Section 9A of the Act reads as follows:

9-A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

- (a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

- (a) where the change is effected in pursuance of any (settlement or award; or
- (b) where the workman likely to be affected by such change are persons to whom the Fundamental and Supplementary Rules, civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Service) rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other Rules or Regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

8. In Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, it was observed, inter alia as follows:

It is hardly necessary to refer to the various decisions which were cited before us as to what would constitute conditions of service the change of which would require notice u/s 9A of the Act. In Dharangadhara Chemical Works Ltd. v. Kanju Kale and Ors. (1955) I LLJ 316 the Labour Appellate Tribunal of India held that the increase in the weight of bags to be carried from 1 cwt. to 11/2 cwt. was a change in the workload and the company was bound to pay wages as the workmen were willing to work but did not work on account of the unreasonable attitude adopted by the management. In The Management of Chandramalai Estate, Ernakulam Vs. Its Workmen and Another, the payment of Cumbly allowance was held to have become a condition of service. In The Graham Trading Co. (India) Ltd. Vs. Its Workmen, it was held that workmen were not entitled to Puja bonus as an implied term of employment. In Workmen of Hindustan Shipyard (Private), Ltd. [By their President Sankara Rao (M.V.)] Vs. Industrial Tribunal and Others, in the matter of withdrawal of concession of coming late by half an hour (than the usual hour), it was held that the finding of the Industrial Tribunal that Section 9A did not apply to the case did not call for interference. But the decision proceeded on the basis that Court will not interfere in its jurisdiction unless there was any manifest injustice. In Mcleod and Company Ltd. Vs. Workmen, the provision for tiffin was held to be an amenity to which the employees were entitled, and the provision of cash allowance in lieu of free tiffin directed to be made by the Industrial Tribunal could not be considered to be erroneous in law. In Management of the Indian Overseas Bank Ltd. Vs. Their Workmen, key allowance was treated as term and condition of service. In Indian Oxygen Ltd. v. Uday Nath Singh 1970 (2) FLR 350 withdrawal by management of the supply of one empty drum at a time at reasonable intervals was held not to contravene Sections 9A and 33. In Oil and Natural Gas Commission v. Their Workmen 1972 (25) FLR 344 where there was nothing to show that it was a condition of service that a workman should work for 6-1/2

hours only, no notice of change was held to be required u/s 9A for fixing the hours of work at eight. In *Tata Iron and Steel Co. v. Workmen* 1972 (24) FLR 399 change in weekly days of rest from Sunday to some other day was held to require notice. A close scrutiny of the various decisions would show that whether any particular practice or allowance or concession had become a condition of service would always depend upon the facts and circumstances of each case and no rule applicable to all cases could be culled out from these decisions.

9. In *Basant Kumar Sarkar and Ors. v. Eagle Rolling Mills Ltd. and Ors.* 1964 (8) FLR the Constitution Bench of this Court observed as follows:

It is true that power conferred on the High Court under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Sections 74 and 75 of the Act.

10. We find that the learned Single Judge observed that he was not entering into the factual controversy, over-looking the fact that the question relating to applicability of Section 9A is essentially question of fact. The Division Bench did not discuss the basic issues about the applicability of Section 9A and whether on the facts of the case Section 9A has really any application. It was disposed of with the following observations:

The employees concerned are workmen within the meaning of that term as defined u/s 2(s) of the Act and withdrawal of construction allowance from them tantamount to a change in the conditions of service. In that view of the matter, the management of the appellant-company ought not to have withdrawn the construction allowance presently paid to the employees without issuing notice envisaged u/s 9A of the Act.

11. The inevitable conclusion, therefore, is that both learned single Judge and the Division Bench have failed to consider the basic issues. In the normal course we would have left it to the respondent to avail appropriate remedy under the Act.

12. However, because of the long passage of time (the writ petition was filed in 1997), the attendant circumstances of the case in the background noted above and in view of the agreement that this is a matter which requires to be referred to the Tribunal, we direct that the appropriate Government shall refer the following question for adjudication by the appropriate Tribunal:

(1) Whether there was violation of Section 9A of the Industrial Disputes Act, 1947 as claimed by the employees?

(2) Whether the withdrawal of the construction allowance amounted to the

change in the conditions of service.

10. These judgments clearly spell out that where there is industrial dispute unless exceptional circumstances are made out, the parties should be relegated to the industrial dispute forum, as the jurisdiction of industrial dispute forum is much more wide, as industrial court has been vested with the authority to grant such relief as they think just and appropriate.

11. In the present case, on the touchstone of the judgments quoted above, no exceptional circumstance has been pointed out for entertaining the writ petitions by this Court and not relegating the writ petitioners to the Industrial Court, rather to the contrary, this fact has been admitted that majority of workmen in both the writ petitions, after termination of service as an effect of closure, approached the Management for more compensation equivalent to V.R.S. and this request was accepted by Management, and more compensation was paid. Qua petitioner Nos. 7, 13, 25 and 27 of writ petition No. 4158 of 2002 and petitioner Nos. 8 and 10 of writ petition No. 34732 of 2001, it has been stated that these petitioners did not give any application for compensation, since their closure compensation was more than equivalent to V.R.S. amount. Qua this specific statement of fact, it has been mentioned that same would not violate the illegal closure. Apart from this, series of judgments of this Court, wherein employees of this very company had approached this Court and this Court in order to maintain uniformity in its decisions had relegated the incumbent to the Industrial Court. The judgment in writ petition No. 24520 of 1995, Arvind Mehrotra v. the Labour Commissioner decided on 22.08.2001 has been affirmed in Special Appeal No. 1051 of 2001 decided on 11.09.2006. Once similarly situated incumbents have been relegated to the forum of alternative remedy, then in this background, and in the facts of the present case, as during the period when closure had been effected, provisions of Section 6-W of the U.P. Industrial Disputes Act stood struck down by this Court, the unit in question had been closed and compensation had been awarded and same has been accepted, then what more appropriate relief can be accorded, all these questions can be well adjudicated by Industrial Court.

12. Consequently, writ petitions are dismissed on the ground of alternative remedy. It would be open to petitioners to approach the Industrial Court for relief if any. Dismissal of writ petition will not come in their way.

13. No order as to costs.