(2012) 07 AHC CK 0007

In the Allahabad High Court

Case No : Special Appeal No. 179 of 2011

Naresh Chand and Others — APPELLANT

Vs

Deputy Labour Commissioner, U.P. and Another — RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2013) 2 AWC 1914 : (2012) 135 FLR 523

Hon'ble Judges : Satya Poot Mehrotra, J;Pankaj Mithal, J

Bench : Division Bench

Advocate : K.P. Agarwal and Pooja Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Pankaj Mithal, JJ.—Challenge in this Special Appeal is to the order of the learned Single Judge dated 13.1.2011 dismissing the writ petition of the petitioners. A sugar company previously owned and managed by the U.P. Sugar Corporation Ltd., later came under possession, control and management of a Private Company namely M/s Wave Industries Pvt. Ltd. It has two units one at Bidwi, District Saharanpur, (U.P.) and other at Dasuya, District Hoshiarpur (Punjab).

2. Petitioners, who are eight in number were appointed as Cane Clerks in the aforesaid Company when it was owned and managed by the U.P. Sugar Corporation. After its privatization, the Chief General Manager vide orders dated 28.12.10 transferred the petitioners from the unit at Bidwi, District Saharanpur, (U.P.) to the unit situate at Dasuya, District Hoshiarpur (Punjab). This order passed by the Chief General Manager was challenged by the petitioners by means of a writ petition, which has been dismissed on the ground that it is not maintainable and the petitioners may raise their grievances by way of an industrial dispute.

3. We have heard Sri K.P. Agarwal, Senior Advocate, assisted by Miss Pooja

Srivastava, learned Counsel for the petitioners.

4. The submission of Sri Agarwal, is that petitioners have joined the above Company at the time when it was owned and managed by the U.P. Sugar Corporation Ltd. and was governed by the provisions of the U.P. Sugar Undertaking Acquisition Act, 1971. There was no provision for transfer of employees of the companies of the Corporation. The petitioners were not liable to be transferred in view of the decision of the Apex Court in Kundan Sugar Mills Vs. Ziyauddin and Others, .

5. It is well settled that no writ lies against a private person including a private company. The order of transfer admittedly is that of the Chief General Manager of a private company and as such cannot be assailed by invoking the writ jurisdiction under Article 226 of the Constitution of India.

6. Therefore, we need not go into the correctness or the validity of the , transfer orders passed by the Chief General Manager unless the petitioners-appellants are able to show that a writ petition against an order passed by a private person or on behalf of a Private Company is maintainable.

7. Regarding maintainability of the writ petition, the submission of learned Counsel for the petitioners-appellants is that where a private person/company fails in discharging statutory duty or acts contrary to statutes, an extraordinary remedy of writ can always be invoked.

8. The argument that the impugned order has been passed in violation of a statutory provision is misconceived. No statutory provision has been placed before us which actually prohibits transfer of the petitioners-appellants from one unit to another unit of the same Company. In fact the services of the employees of the aforesaid company are not governed by any Act or Rules.

9. It is only on account of the decision of the Apex Court in the case of M/s Kundan Sugar Mills (supra) that it is being contended that the orders of transfer are in violation of the law of the land. A careful reading of the decision of the Supreme Court in the case of M/s Kundan Sugar Mills (supra) reveals that in the said case the workers were employed in Kundan Sugar Mills at Amroha. The partners of the said mill purchased another Sugar Mill in district Nainital. They closed the Mill of Nainital and started a new Mill at Bulandshahar. The workers from Amroha were transferred to the Mill at Bulandshahar. The workers declined to follow the transfer orders. Their explanation was called and ultimately they were dismissed from service by the General Manager on the ground of disobedience of the transfer orders. The labour union then raised an industrial dispute and the same was referred to the State Industrial Tribunal. The Tribunal upheld the dismissal order but the Labour Appellate Tribunal held that the management had no right to transfer the workers and therefore their dismissal from service was illegal. On appeal being preferred to the Supreme Court an argument was raised that transfer is implicit in the contract of service. The Apex Court considering the same under the facts and circumstances of the case as

there was nothing on record to indicate that the owners of the Mill at Amroha while inducting the workers had any intention to extend their activities at different places held that the workers took the employment to serve in the Mill at Amroha only and not at any other place and as such the transfer was not a condition of service either expressed or implied.

10. The ratio in M/s Kundan Sugar Mills (supra) that the employees/workers of one unit of a Sugar Mill cannot be transferred to another unit of the Sugar Mill is not of universal application but is confined to the peculiar facts of the said case. The facts of the present case may be some what identical to that of M/s Kundan Sugar Mills (supra) and may vitiate the impugned order but it cannot directly be assailed in writ jurisdiction. The terms and conditions of appointment of the petitioners are to be examined before concluding as to whether their services were transferable or not. In M/s Kundan Sugar Mills (supra) the workers have first approached the Labour Court and thereafter the matter had travelled up to the Supreme Court.

11. In this view of the matter, we do not find any substance in the argument of Sri K.P. Agarwal, that the transfer orders have been passed in violation of any statute or the law of the land having universal application.

12. Normally, High Court does not exercise constitutional jurisdiction for deciding disputes for which remedies under the general law, civil or criminal, or any special enactment are available as the writ jurisdiction is special and extraordinary and is not to be exercised casually or lightly. It is exercisable against a person performing public duty.

13. The Apex Court in Federal Bank Ltd. Vs. Sagar Thomas and Others, , after considering the entire gamut of the law on the subject held that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform a statutory function and further held as under:

A private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. Such conditions are not fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution.

14. In the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others, , the Supreme Court while dealing with the maintainability of a writ petition challenging the termination order of workers of a Sugar Mill run by a cooperative society concluded that a writ petition was not maintainable even though the State Government had a minor control over the Mill. It is only when the authorities and the person performs a public function or discharge public duty that Article 226 of the Constitution can be invoked. The mill engaged in manufacturing and sale of sugar would not involve any public function and otherwise would not be State/authority within the meaning of Article 12 of the Constitution.

15. The orders of transfer passed by the Chief General Manager are within the private domain against which the petitioners-appellants have a statutory remedy of raising an industrial dispute under the provisions of the U.P. Industrial Dispute Act. There is no denial to the availability of the above statutory remedy. The contention however is that the said remedy is not at all efficacious rather it is meaningless as there is no power with the Tribunal to grant interim stay and as such there is no bar for the petitioners-appellants to invoke the extraordinary jurisdiction of the Court. The argument may sound attractive but cannot be accepted for the reason that petitioners-appellants are not remedy-less. They have a statutory option to raise an industrial dispute in connection with their grievance. The mere fact that they would not be able to get an interim order is not sufficient enough to entitle them to bye-pass such a statutory remedy and to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

16. It may be important to note that the remedy under Article 226 of the Constitution is discretionary in nature and the High Court always has the discretion to refuse to grant writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

17. In view of the aforesaid facts and circumstances, we are of the opinion that the learned Single Judge committed no mistake in holding that the writ petition is not maintainable as the orders impugned have been passed by the Chief General Manager of a private company which is not involved in discharge of any public or statutory duty. The judgment and order of the learned Single Judge dated 13.1.2011 passed in Writ Petition No. 1757 of 2011 as such suffers from no illegality or error of law which may warrant any interference. The Special Appeal is held to be devoid of merits and is dismissed with no order as to costs.