
(1970) 02 OHC CK 0036
In the Orissa High Court

Pitambar Mohapatra

APPELLANT

Vs

Nilambar Sahu and Others

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227, 32
Industrial Disputes Act, 1947 — Section 25F

Citation : (1970) 36 CLT 866 : (1970) 2 LLJ 473

Hon'ble Judges : B.K. Patra, J;A. Misra, J

Bench : Division Bench

Judgement

B.K. Patra, J.—This is an application under Articles 226 and 227 of the Constitution praying for the issue of a writ of certiorari to cancel the

order dated 19.5.1966 passed by opposite party No. 1, and for the issue of a writ of mandamus directing opposite parties 1 and 2 to take back

the petitioner into service and order payment of all back wages from 20.5.1966 till his readmission into service.

2. The petitioner was previously employed as a Foreman in the Production-cum-Training Centre, Soro, in the district of Balasore which was under

the administrative control of the Director of Industries. That centre was abolished with effect from the 30th September, 1964. On the very same

day, the petitioner was appointed on a purely temporary basis as a Foreman under the the Soro Carpentry Industry Co-operative Society Limited.

Annexure "A" dated 30.9.1964 which is the order of appointment states that the appointment of the petitioner was purely temporary and was

liable to be terminated at any time without any notice. On 19.5.1966, the petitioner was relieved from the institution in accordance with the order

Annexure "B" which may be quoted:

Office of the Panchayat Industries Officer.

Soro.

Order No. 570 dated 19.5.1966

As desired by the General Manager, the Orissa Small Industries Corporation, Sri Pitambar Mohapatra, Foreman of the Soro Carpentry Unit is

relieved from the duties with effect from 19.5.1966 afternoon. He is directed to report to the Regional Manager (West) at Jeypore for duties at

Tiruvelly in Koraput district.

Sd/- Illegible

19.5.1966

Panchayat Industries Officer,

Soro (Balasore)

3. After his relief, the petitioner submitted an application to the General Manager, Orissa Small Industries Corporation, stating therein that the latter

had no authority or jurisdiction to order his transfer to Tiruvelly and requesting him to withdraw any order or direction he might have issued to the

Soro Carpentry Industry Co-operative Society, Limited. Annexure "C" is his petition. In reply to this, the General Manager of the Orissa Small

Industries Corporation Limited informed the petitioner by his letter Annexure "D" dated 18th June, 1966 that the petitioner's was not a case of

transfer from Soro to Tiruvelly, but that, as the post which the petitioner was holding at Soro had been retrenched, it was to help him and

rehabilitate him that a post was offered to him at Tiruvelly and that if he did not wish to join that post within 10 days, the order would be

withdrawn. Enclosing a copy of the letter Annexure "D", the petitioner submitted an application Annexure "E" to the President of the Soro

Carpentry Industry Co-operative Society Limited requesting him to reinstate him in his old post. That having not been complied with, he has tiled

the present writ application alleging inter alia that his removal from the post which he was holding at Soro was not bona fide and was actuated by

malice on the part of the then Managing Director of the Unit.

4. In the counter filed by the Managing Director of the Soro Carpentry Industry Co-operative Society, Limited, he stated that some time after the

petitioner was employed as a foreman in that institution, it was considered that

such a post was unnecessary. Coming to know about it, the petitioner requested the Managing Director to find out some alternative appointment for him. The Managing Director went out of his way and arranged a job for the petitioner in the Carpentry Unit at Tiruvelly, a concern which is under the management of the Orissa Snail Scale Industries Corporation. It was in these circumstances that the order Annexure "B" was issued. It is not an order of transfer as interpreted by the petitioner. In terms of the contract of service, the petitioner's services under the Soro Unit were dispensed with and as a job had already been arranged for him, he was asked to report himself to the General Manager of the Orissa Small Scale Industries Corporation for being employed at Tiruvelly. But as the petitioner did not avail himself of the offer, that post is no more available to him. In the circumstances it is prayed, that the application should be dismissed.

5. At the time of hearing, an objection was taken on behalf of the opposite parties to the effect that an application either for mandamus or for certiorari is not maintainable against the opposite parties 1 and 2 who represent the Co operative Society. Article 226 of the Constitution provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well-settled that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has sufficient legal interest. The condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought Although unlike Article 32, Article 226 of the Constitution is not restricted to the enforcement of fundamental rights alone, and in theory enables the issue of writs and directions on any person or authority including any Government for "any other" purpose as well, and interpreted literally, it may even come to mean that a High Court can issue a writ or direction in regard to any dispute of whatever nature, between any persons whomsoever, the practice, however, has been to treat the writ as an extraordinary remedy available against either the Government or other authority of public importance. In

addition to the departments of the Governments and local authorities, there are a number of corporations created by statute, often owned by Government, and almost invariably subject to considerable control of Government. These may be commercial or trading corporations or noncommercial ones like universities. Broadly speaking, they partake of the nature of State as defined in Article 12 and they have been treated as amenable to the writs and similar directions. There are, on the other hand, a number of banks or banking or commercial corporations not created by statute, but incorporated or registered under it, and subject to it, and such rules and regulations as might be made under it. They are not departments of Government, or statutory corporations, but are private juristic persons, and might enter into various contracts for employment or for commercial activities that are obviously subject to the general and special laws. These banks or commercial corporations may be subject to the controlling authority of the State or some of the functionaries of the State, and if these controlling authorities abuse their powers or violate any provision of law, the aggrieved corporation can seek a remedy by way of a writ. But the employee or a third party contracting with the corporation cannot seek the remedy of a writ against it, because the bank or commercial corporation is not a State as defined in Article 12 and exercises no public functions vis-a-vis the employees. A co-operative society stands exactly in the position of such commercial corporation.

6. So far as the writ of certiorari is concerned, its nature and the conditions under which it is governed have been stated in a classical passage in

The King v. Electricity Commissioners [1924] 1 K.B. 171, in these terms:

Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially,

act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

By no stretch of imagination can the Soro Carpentry Industry Cooperative Society Limited be considered to be a quasi-judicial body in the

dealings with its own employees nor can its decisions regarding its own employees be considered to be quasi-judicial decisions so as to be

amenable to the jurisdiction of this Court.

7. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , an

agreement was entered into between the corporation, a company incorporated under the Indian Companies Act, and its workmen, the effect of which was to carry out retrenchment of 92 workmen. Some of the workmen thereafter filed a writ petition under Article 226 of the Constitution challenging the validity of the said agreement and claiming a writ of mandamus restraining the corporation from implementing the said agreement. Their Lordships held that the company being a non-statutory body and one incorporated under the Companies Act, there is neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus nor is there in its workmen any corresponding legal right for enforcement of any such statutory or public duty, and rejected the application. In *Re: V.S. Hariharan*, the services of a workman in the Hindustan Shipyard, Ltd. were terminated and an application being filed by him under Article 226 of the Constitution for the issue of a writ of certiorari to quash the order of termination of services passed by the Managing Director, Hindustan Shipyard, Ltd., it was held that no such writ can be issued to the Director, Hindustan Shipyard, Ltd. which was held to be a private body or tribunal having no judicial or quasi-judicial authority. A more direct decision on the point is *C. Lakshmiah Reddiar Vs. The Sri Perumbadur Taluk Co-operative Marketing Society Ltd.*, in which the Madras High Court held that the Board of Directors of a co-operative society is not a statutory tribunal with authority to determine the rights of parties and that no writ of mandamus can be issued against it. It is unnecessary to multiply authorities. On a consideration of the same, we are clearly of the view that the petitioner is not entitled to claim a writ of mandamus or of certiorari against opposite parties 1 and 2.

8. It is next contended that the Soro Carpentry Co-operative Society, Ltd. is an industry and the petitioner a workman and that therefore his retrenchment from such industry without complying with the requirements of Section 25F of the Industrial Disputes Act is invalid. No such averments have been made in the petition and no relief on this score has been sought. If his claim is well-founded, it is open to him to claim such remedy as is available to him under the Industrial Disputes Act by reason of an industrial dispute thereunder.

9. Apart from the question relating to the maintainability of the application, we also find that on merits, the petitioner has no case. Annexure "A"

clearly indicates that the appointment of the petitioner as foreman in the Carpentry Industry at Soro was purely on a temporary basis and was liable

to be terminated at any time without notice. It is not disputed that the General Manager, Orissa Small Scale Industries Corporation has no control

over the Soro Carpentry Industry Co-operative Society and as such he was not in a position, as contended by the petitioner himself, to order the

petitioner's transfer from Soro to Tiruvelly. If reasonable construction is put on the order Annexure "B" it would come to this: That the petitioner is

relieved from his duties at Soro with effect from 19.5.1966, and as desired by the General Manager, Orissa Small Scale Industries Corporation,

he is to report himself to the General Manager for duties at Tiruvelly. Why such order was issued has been explained in the counter-affidavit filed

by the Panchayat Industries Officer who issued the order Annexure "B" and this is also apparent from Annexure "D", the reply which the General

Manager had given to the petitioner. We, therefore, construe the order Annexure "B" to mean that the petitioner's services at Soro were

terminated in accordance with the terms contained in his order of appointment, and. therefore, even if his petition is other wise maintainable, we

find no merit in the application.

10. In the result, the application fails and is dismissed with costs. Hearing fee Rs. 100 (Rupees one hundred).

A, Misra, J.

I agree.