
(1994) 02 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5562 of 1994

Raju Porwal

APPELLANT

Vs

Syndicate Bank and Another

RESPONDENT

Date of Decision : 16-02-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(3)
Industrial Disputes Act, 1947 — Section 10, 25, 25F, 6A

Citation : (1994) 1 AWC 541

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Bhoopendra Nath Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner was appointed as an agent by Syndicate Bank for its Branch for collection of pigmy deposits. Terms and conditions of the appointment are contained in the appointment order, according to which, Petitioner will be paid a commission of 3% on the total collection made by him and he will not be a member of the staff of the Bank and the rules relating to the conditions of "service of the staff will not apply to him. It is also mentioned therein that Petitioner can renounce the agency after giving a month's written notice to the Branch and the Bank can also terminate the agency at any time without giving him any notice or assigning any reason. By its order dated 22-10-1993, the petitioner's agency was terminated by the Bank. It is against this order that this writ petition has been filed by the Petitioner.

2. Contention of the learned counsel for the Petitioner is that the Petitioner is workman and by the impugned order" he has been retrenched from service without complying with the conditions of Section 25F of Central Industrial Disputes Act and Section 6-A of U.P. Industrial Disputes Act. In order to prove that Petitioner is a workman, learned counsel for the Petitioner has invited the attention of the Court to paragraph No. 9 of the writ petition in which it has been

stated that Central Government Industrial Tribunal, Hyderabad has held that the agents of the Bank like Petitioner are workmen within the meaning of the Industrial Disputes Act. Shri P. K. Singhal, learned counsel for the Respondents has, apart from disputing the above submission, raised a preliminary objection to the effect that if the Petitioner is treated as a workman then his remedy is before the Industrial Tribunal under the Industrial Disputes Act and this writ petition should not be entertained and for this proposition he has placed reliance on a decision of full bench of this Court in Chandrama Singh v. Managing Director, Cooperative Union, Lucknow (1991) 2 UP LB EC 898 : 1991 (2) AWC 1005. Learned counsel for the Petitioner has however, submitted that the full bench decision of this Court does not lay down correct law and in his support he has placed reliance on the following decisions :

(1) Assistant Collector of Central Excise Vs. Jainson Hosiery Industries, , (2) Ram and Shyam Company Vs. State of Haryana and Others, . (3) People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , (4) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , (5) Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation and Anr., (6) Management of Indian Bank v. Presiding Officer Industrial Tribunal 1990 LLR 164 and (7) Narender Pal Gahlot v. State of U.P. 1994 LLR 21.

3. This writ petition was dismissed by me on 20-1-1994 by dictating in the open Court. But before the above order could be signed, learned counsel for the Petitioner on the next day requested for further hearing of this case. Learned counsel for the Petitioner was heard again when he contended that the aforesaid decision of full bench of this Court does not lay down correct law and in this connection placed reliance on the decision which have been mentioned hereinbefore. After hearing the learned counsel the judgment was reserved. Consequently the judgment dictated in the open Court on 20-1-1994 was not signed.

4. Before going into merit of the case, it- is necessary to decide the preliminary point regarding the maintainability of the writ petition on the ground of alternative remedy before the Labour Court/Industrial Tribunal.

5. Full Bench of this Court in Chandrama Singh v. Managing Director (Supra) was called upon to decide the question as to whether this Court should or should not entertain a writ petition under Article 226 of the Constitution of India, filed against the order of termination/retrenchment of a workman passed in violation of the provision of Section 25F of the Industrial Disputes Act/6-N of the U.P. Act, in view of the availability of alternative remedy before the Industrial Tribunal/Labour Court. This Court held that retrenchment, of a workman in violation of Section 25F/6-N is an "Industrial Dispute" within the meaning of Industrial Disputes Act and the forum for resolving such a dispute is Industrial Tribunal/Labour Court constituted under Industrial Disputes Act, it was further held that ordinarily the remedy before the Industrial Tribunal/Labour Court under the

Industrial Disputes Act against illegal retrenchment is an adequate and efficacious remedy which has to be availed of by the workman and it is not open to him to challenge such an order by means of writ petition under Article 226 of the Constitution of India unless he pleads and proves that the remedy before the Industrial Tribunal/Labour Court is not an adequate and efficacious remedy. Relevant extract from the judgment of this Court is reproduced below:

Ordinarily, remedy of reference, envisaged under the Industrial Disputes Act, is an adequate and efficacious remedy available to a person aggrieved by an illegal retrenchment. Of course, the aggrieved person can always prove that, on the facts and circumstances of his case, the remedy is neither adequate nor efficacious. But, unless he discharges the onus of proving that the remedy of reference is either inadequate or inefficacious he should pursue the remedy of reference under the Industrial Disputes Act. At this juncture, it would be pertinent to emphasise that it would not be enough for the person pleading inadequacy or inefficacy of the relief of reference under the Industrial Disputes Acts to make merely a bald statement that remedy of reference is either inadequate or inefficacious. It is imperative for him to clearly plead, demonstrate and prove as to how and in what manner the remedy of reference is inadequate or inefficacious, and in the absence of requisite pleading and material in support thereof it would not be permissible for him to raise the plea of inadequacy or inefficacy of the remedy of reference under the Industrial Disputes, Acts.

6. After the aforesaid decision of full bench of this Court it was expected that the controversy regarding the maintainability of the writ petition on the ground of alternative remedy before the Labour Court/Industrial Tribunal stands concluded till such time this decision is overruled or a contrary view is taken by the Supreme Court or Larger Bench of this Court. But, writ petitions against the order of retrenchment are being filed in this Court regularly, although, the law declared by the full bench still stands. A full bench decision is binding and it is not permissible to ignore the law laid down by it unless a contrary view has been taken by a larger bench by the Supreme Court.

7. In the instant case only vague averments have been made in paragraph No. 19 of the writ petition, which is reproduced below, to the effect that Petitioner has no other efficacious remedy;

That the Petitioner has no equally efficacious remedy except to approach this Hon'ble Court for enforcement of the fundamental right.

8. But, how and why the remedy of reference before the Industrial Tribunal is not efficacious remedy, has neither been demonstrated nor proved by the Petitioner. Under the circumstances, this writ petition cannot be entertained and Petitioner has to raise his grievance before the Industrial Tribunal. But, as the learned counsel for the Petitioner has referred to certain decisions, mentioned hereinbefore, in order to demonstrate that law laid down by the full bench of this Court in the case of Chandrama Singh v. Managing Director (supra) is not a

correct law, it is necessary to consider this contention also.

9. Supreme Court in *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, , has laid down that although the powers under Article 226 of the Constitution are very wide but, those powers cannot take in within their sweep Industrial disputes for which the proper remedy is recourse to the section 10 of the Industrial Disputes Act. In this case the controversy before the Supreme Court was about correctness of the judgment of High Court which dismissed the writ petition, filed against the order of Chief Executive Officer of the Company giving effect to the notification issued u/s 1(3) of the Employees State Insurance Act and intimating the workmen that the medical benefits given to them in the past could be received by them, under the relevant provisions of the Employees State Insurance Act, on the ground of alternative remedy of reference u/s 10 of the Industrial Disputes Act. Supreme Court upheld the judgment of the High Court by holding as under:

It is true that the powers conferred on the High Courts under Article 226 of the Constitution 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. This decision of the Supreme Court is one of the decisions on which reliance was placed by the full bench in the case of *Chandrama Singh v. Managing Director* (supra). None of the decisions cited by the learned counsel for the Petitioner lays down anything to the contrary.

11. In the case of *Assistant Collector of Central Excise Vs. Jainson Hosiery Industries*, , the Supreme Court has held that unless the High Court is satisfied that normal, statutory remedy is not adequate and efficacious remedy, it should not entertain the writ petition. This decision instead of helping the Petitioner goes against him In the case of *Ram and Shyam Company Vs. State of Haryana and Others*, , the alternative remedy of Appeal was held to be inadequate and inefficacious on the ground that it is futile to file an Appeal before the State Government against an order which was passed at the instance of the Chief Minister. This is clear from the passage of the judgment which is extracted below:

An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but, effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister. The cliché of

appeal from Caesar to Caesar's wife can only be bettered by Appeal from one's own order to one self. Therefore,; this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the Appellants had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the Appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more" would be sufficient to set aside the judgment of the High Court.

12. In People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , the question involved was, whether a writ petition could be maintained by a social organisation against non observance and infringement of the Labour laws by the contractor appointed by the Government and its agency. Supreme Court answered in affirmative by holding that it is the duty of the Government and its instrumentalities to see that the Labour laws are enforced and the workmen are given their due benefits provided therein It was further held that when fundamental rights like those conferred under Article 17, 23 and 24 the Constitution of India are violated, it is constitutional duty of the State to ensure the observance of those rights by the individuals who are transgressing the same. That is not the controversy in the instant case. In Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , the Vice Chancellor reviewed the order passed by him earlier in exercise of quasi judicial authority without there being any provision conferring a power of review. The Supreme Court held that the writ petition is maintainable as the Vice Chancellor had acted wholly without jurisdiction because he has no power of review. That is not the position in the instant case. Even if the Petitioner is treated as the workman, the Bank has right to terminate his services/agency and its cannot be said to be wholly without jurisdiction. This case cannot be of any assistance to the Petitioner. In Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation and Anr., , an appeal was filed against the order of the High Court dismissing the writ petition, which was filed against the order of termination of service of a workman, on the ground of alternative remedy before the Labour Court. Supreme Court reversed the decision of the High Court on account of the admitted facts without deciding the question about the maintainability of the writ petition on the ground of alternative remedy before the Labour Court. A division bench of this Court in Zakir Hussain Vs. Engineer-in-Chief, Irrigation Dept. and Others, . relevant extract from which is reproduced below, has repelled the similar contention based on the decision of Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation and another (Supra);

Learned counsel for the Petitioner has, relying upon the decision of Supreme Court in Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation 1989 (8) FLR 100, submitted that the aforesaid Full Bench does not lay down the correct law and requires re-consideration. It is not possible to agree

with the learned counsel. From the perusal of the judgment of the Supreme Court it is apparent that the Appellants therein was appointed as temporary employee and worked for more than three years. The facts, that he has worked for more than 240 days in a year and his services were terminated without complying with the provision of Section 25F, were not disputed. Under these circumstances the Supreme Court quashed the order of termination of service without deciding the question as to whether the High Court was justified in dismissing the writ petition on the ground of availability of alternative remedy before Labour Court. This is clear from the following extract from the judgment of the Supreme Court:

The High Court took the view that the Appellants had an efficacious alternative remedy before the Industrial Tribunal and, accordingly, dismissed the writ petition. It is not necessary for us to consider whether the High Court was justified in dismissing the writ petition on that ground or not, but the fact remains that the Appellants had worked continuously for more than 240 days and so, his services could not be terminated without complying with the provisions of section 25 of the Industrial Disputes Act.

Neither the Supreme Court has laid down in the above case that in every case whenever an order of retrenchment is challenged on the ground of violation of section 25F this Court must interfere nor the Full Bench of this Court in the case of Chandrama Singh (supra) has held that in no case this Court can interfere under Article 226 of the Constitution of India against such an order. As mentioned in para-5 of the aforesaid judgment of Full Bench remedy of reference before the Labour Court under Industrial Disputes Act is "Ordinarily" efficacious remedy. As the word "Ordinarily" itself suggests, such a remedy cannot necessarily be said to be an efficacious remedy in all the cases. What the Full Bench laid down is the ordinary rule of alternative remedy which this Court follows while entertaining the writ petition. It is settled law that if an alternative remedy is available to a person his writ petition cannot be entertained unless he pleads and proves that remedy is not efficacious or adequate. When the relevant material is on record, from which it is apparent that services of the [employee have been terminated in violation of section 25F, relegating him to the Labour Court may not be justified. But when there is lack of material or the plea is being disputed by the opposite parties, the writ petition cannot be entertained unless it is pleaded and proved by the Petitioner that the remedy before the Labour Court is not efficacious. In the instant case, as mentioned herein before, there is lack of relevant material on record and the petitioners have failed to plead and prove that the remedy before the Labour Court is not efficacious. Under the circumstances the question as to whether the services of the Petitioner were terminated in violation of section 25F of the Industrial Disputes Act, cannot be decided by this Court. For resolving such a controversy the Petitioner should approach the Labour Court by getting a reference made by the Government to it.

13. The decision of the Madras High Court in *Management of India Bank v.*

Presiding Officer, Industrial Tribunal (C), Madras 1990 LLR 164, does not deal with the question raised herein. The last case relied upon by the learned counsel for the Petitioner in Narendra Pal Gahlot v. State of U.P. 1994 LLR 21, is a decision of learned single Judge of this Court. In this case the Clause-19 of certified standing order of the Company and the order of termination of service of the workman passed thereunder were challenged. The plea of alternative remedy raised on behalf of the Respondents therein was rejected on the ground that the validity of Clause-19 of certified standing order is seriously in dispute and it was appropriate to decide the same. It was further laid down that as the impugned order of termination of service has been passed under Clause-19 of the certified standing order, which has statutory force, in violation of principles of natural justice, it was fit case to entertain the writ petition. This case is confined to its own facts. That apart, the decision of Full bench of this Court in the case of Chandrama Singh v. Managing Director (Supra) does not appear to have been placed before the Court.

14. Law laid down by full bench of this Court in Chandrama Singh v. Managing Director (Supra) is a good law and is binding. After the decision of full bench it will not be justified to entertain the writ petition against the order against which relief can be obtained from the Labour Court/Industrial Tribunal under the Industrial Disputes Act unless it is pleaded and proved that such a remedy is not efficacious remedy. In this connection it is appropriate to quote herein below the extract from the decision of the the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ;

In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , A.P. Sen, E.S. Venkataramiah and R. B. Misra, JJ held that where the statute itself provided the Petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the . Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us repeat this admonition is indeed a matter of tragic concern to us! Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the (sic) of public, justice require it that recourse may be had to Article 226 of the Constitution. "But then the Court must have good and sufficient reason to by-pass the the alternative remedy provided "by statute.

(Emphasis supplied).

15. For the reasons given above, this writ petition is dismissed on the ground of alternative remedy. It is open to the Petitioner to approach the appropriate authority for making reference under the Industrial Disputes Act and if such a

request is made by the Petitioner, the concerned authority will pass appropriate, order as far as possible within a period of two months from the date of presentation of a certified copy of this order before it.