

(2010) 07 AHC CK 0076
In the Allahabad High Court
Case No : Special Appeal No. 824 of 2010

Ram Baran Singh and others

APPELLANT

Vs

U.P. State Sugar Corporation Ltd. and others

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 127 FLR 616

Hon'ble Judges : Virendra Singh, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : B.N. Singh, for the Appellant; R.K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan and Virendra Singh, JJ.—Heard Sri B.N. Singh, learned Counsel for the appellant-petitioners and Sri R.K. Srivastava for the respondents.

This special appeal has been filed against the judgment and order dated 3rd May, 2010 passed by a learned Single Judge of this Court dismissing the writ petition.

2. The case of the appellant-petitioners was that they were seasonal employees of the Ghatampur Sugar Company Ltd., which is a subsidiary company of U.P. State Sugar Corporation Limited. The petitioners' case is that the Government decided to close down several sugar undertakings/sugar mills owned and controlled by respondents No.1 and 2, hence a voluntary retirement scheme for permanent and seasonal employees was enforced. The petitioners made an application, under the said scheme, which was accepted. A letter dated 15th November, 2009 was issued to the petitioners informing that their applications under the voluntary retirement scheme have been accepted and they be treated to be relieved from 15th November, 2009. The petitioners' case further is that although they were required to be paid all dues but the retaining allowance with effect from 13th January, 2009 to 15th November, 2009 has not been paid. They filed the writ petition relying on Clause "K" of the. Sugar Standing Order as

quoted in paragraph 15 of the writ petition. The learned Single Judge dismissed the writ petition taking the view that the claim of the petitioners requires consideration of facts, which can be appropriately adjudicated before the Labour Court.

3. Sri B.N. Singh, learned Counsel for the appellants, challenging the order of learned Single Judge, contended that there was no disputed question of fact on the basis of which the appellants could have been relegated to Labour Court. He submits that even though the remedy of the Labour Court is available to the appellants but this Court in facts of the present case was fully entitled to exercise its jurisdiction under Article 226 of the Constitution of India. He further submits that in cases of breach of fundamental rights the recourse to the writ petition under Article 226 of the Constitution of India is fully justified. He has placed reliance on the judgments of the Apex Court in the cases of *State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others* 2010 (87) AIC 1 (SC), and *Secretary, State of Karnataka and others v. Umadevi* (3) and others 2006 (109) FLR 826 (SC) : 2006 (42) AIC 935 (SC). He has also placed reliance on a judgment of this Court in the case of *Sompal Singh v. Artificial Limbs Mfg. Corpn* 1994 (69) FLR 109 (All.) : (1994) 1 UPLBEC 29.

4. Sri R.K. Srivastava, learned Counsel for the respondents submits that, for determining as to whether the petitioners were entitled for retaining allowance, several facts have to be established as is apparent from Clause "K" of the Standing Order. It is stated that the entitlement of retaining allowance is subject to several conditions including that the workman has joined the current season and has worked for at least one month. He further submits that for determining such issues there is alternate remedy of approaching the Labour Court, hence the learned Single Judge has rightly dismissed the writ petition on the ground of alternative remedy.

5. We have considered the submissions of learned Counsel for the parties and have perused the record. The submission, which has been pressed by Sri B.N. Singh, is that there being breach of fundamental right, the petitioners can take recourse of writ jurisdiction of this Court under Article 226 of the Constitution of India. He has further submitted that for payment of retaining allowance no facts were to be adjudicated and the petitioners having retired voluntarily with effect from 15th November, 2009, they were entitled for payment of retaining allowance up to that date.

6. For appreciating the submissions of the learned Counsel for the parties, it is necessary to look into the relevant Clause "K" of the Standing Order, which was relied by the writ petitioners. The Clause "K" of the Standing Order is quoted below:--

"K. Special Conditions Governing Employment of Seasonal Workmen:--

1. A seasonal workmen who has worked or, but for illness or any other unavoidable cause, would have worked under a factory during the whole of the

second half of the last preceding season shall be employed by the factory in the current season and shall be entitled to get retaining allowance provided he join the current season and works for at least one month. The payment of retaining allowance shall be made within two months of the date of commencement of the season."

7. The workmen have come up in the writ petition praying for a direction to pay retaining allowance for a particular period. The claim of retaining allowance on the strength of Standing Orders is an industrial dispute, which could have been raised in accordance with the U.P. Industrial Disputes Act, 1947.

8. The Apex Court had occasion to consider a claim of payment of bonus in the case of *A.P. Foods v. S. Samuel and others* 2006 (110) FLR 543 (SC). In the said case the writ petition was filed, by the employees for payment of bonus, which was allowed by the learned Single Judge. Appeal was filed before the Apex Court in which the Apex Court took the view that writ petition should not have been entertained when remedy under the industrial law was available. Following was laid down in paragraphs 6 and 7 of the said judgment:--

"6. 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.

7. In *U.P. State Bridge Corporation Ltd. and others v. U.P. Rajya Setu Nigam S. Karamchiar Sangh* 2004 (100) FLR 1020 (SC) : 2004 (16) AIC 692 (SC)., 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 *Premier Automobiles Ltd. v. Kamlekar Shantarum Wadke* 1975 (31) FLR 195 (SC)., *Rajasthan SRTC v. Krishna Kan* 1995 (71) FLR 211 (SC). , *Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another*, and *Scooters India and others v. Vijai V. Eldred* 1999 (81) FLR 87 (SC). "

9. The judgment of the Apex Court, which has been relied by the learned Counsel for the appellants in the case of *State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others* (supra), was a case where the Apex Court laid down that the fundamental rights guaranteed under Part III of the Constitution cannot be extinguished by any constitutional or statutory provision. The Apex Court in the said case was considering an issue as to whether the High Court in exercise of jurisdiction under Article 226 of the Constitution of India can direct the Central Bureau of Investigation established under the Delhi Special Police Establishment Act, 1946, to investigate a cognizable offence. There cannot be any dispute to the proposition that the rights

enshrined under Part III of the Constitution cannot be extinguished by any constitutional or statutory provision. There also cannot be any dispute to the proposition that the right of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional Courts with regard to enforcement of fundamental rights. However, the above case is clearly distinguishable. The present is not a case where any of the fundamental rights of the writ petitioners has been curtailed. The question is as to whether the petitioners have been rightly relegated by the learned Single Judge to avail their remedy before the Labour Court.

10. The next judgment relied by the learned Counsel for the petitioner-appellants in *Secretary, State of Karnataka and others v. Umadevi (3) and others* (supra) (Paragraph 52) also does not help the appellants in the present case. In the said case the Apex Court was examining as to whether a mandamus can be issued in favour of an employee directing the Government to make him permanent. The Apex Court took the view that since the employee cannot show that he has any enforceable legal right to be permanently absorbed, hence the State has no legal duty to make him permanent.

11. The third case relied by the learned Counsel for the appellants is *Sompal Singh's* case (supra). In the said case the petitioner, who was working as Senior Assistant with the respondent-Corporation, was transferred. In the Standing Order there was no provision of transfer. A writ petition was filed challenging the said transfer order. While considering the said case, learned Single Judge of this Court laid down following in paragraph 10 of the said judgment:-

"10. Learned Counsel for the respondent also submitted that petitioner could raise Industrial Dispute under the U.P. Industrial Disputes Act, 1947 and as he has an alternative remedy, he should not be allowed to approach this Court directly. I have considered this submission also of the learned Counsel for respondent. Normally this Court does not interfere in those cases where petitioner has an alternative remedy. However, in the present case, there being no controversy with regard to the factual aspect of the case, I feel inclined to interfere. For resolving the controversy between the parties only legal question, as stated above, required determination. It is well known that dispute before the Industrial Tribunal or Labour Court could be raised on the basis of reference made by the Government or the appropriate authority which takes much time and in view of the order of transfer which contains a direction to join at the transferred place on a definite date, in my opinion, the remedy cannot be said to be efficacious and appropriate."

12. The learned Single Judge of this Court in the aforesaid case did not relegate the petitioner to avail the alternative remedy on the basis that there was no controversy with regard to factual aspect of the case. The said judgment was on its own facts and does not help the appellants in any manner.

13. In view of the aforesaid, we are of the view that the judgment of learned Single Judge impugned in this appeal relegating the appellant-petitioners to avail the remedy before the Labour Court cannot be said to be suffered from any error warranting interference by the appellate Court. The claim of retaining allowance as raised by the appellant-petitioners requires adjudication of facts and establishment of various factual foundation as per the Standing Order, which can be appropriately gone into by the competent authority.

The appeal is dismissed.