

(2003) 07 AHC CK 0038
In the Allahabad High Court

Case No : C.M.W.P. No. 35574 of 1994 connected with 6 writ petitions

Ram Das

APPELLANT

Vs

U.P.Financial Corporation and Others

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226, 6
Uttar Pradesh Financial Corporation Act, 1951 — Section 226, 25F, 68

Citation : (2003) 5 AWC 4514

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : G.S. Dwivedi, R.S. Parihar and I.P. Singh, for the Appellant;
V.B.Singh and P.S. Baghel, Pradeep Gupta, s.c., for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—Pleadings have been exchanged between the parties and they agree that the writ petition may be finally disposed of under the rules of the Court.

2. Heard learned Counsel for the parties.

3. These group of writ petitions, substantially raise identical issues with some difference on facts, which is immaterial for their decision, therefore, all of them can be disposed of together. For the sake of convenience facts of Writ Petition No. 35574 of 1994 are being noted and the said writ petition shall be the leading case.

4. The Petitioner was appointed as a mali/chaukidar with effect from 1st of August, 1980 and worked intermittently through various appointment letters till 30th September, 1994. After 30th September, 1994, he was not allowed to work, allegedly on the ground that his appointment was contractual. Through the present writ petition he has sought the relief of absorption in the U.P. Financial Corporation (hereinafter referred to as the corporation). Normally, this Court

does not interfere in such matters, but presently we shall deal with this issue and see whether this Court should exercise its discretion or not.

5. The U.P. Financial Corporation is a corporate body established under the State Financial Corporation Act, 1951. It is completely controlled by the State Government and is an "authority" within the meaning of Article 12 of the Constitution of India.

6. A preliminary objection has been raised on behalf of the corporation that the relief for which the Petitioner has approached this Court can conveniently be granted by the labour court under the U.P. Industrial Disputes Act, therefore, this writ petition is not maintainable in view of availability of alternative remedy. In support of his aforesaid contention, the counsel for the corporation has relied upon the decision of the Apex Court rendered in VST Industries Ltd. Vs. VST Industries Workers' Union and Another, ; Scooters India and Others Vs. Vijai E.V. Eldred, and in the case of Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, . Further reliance has been placed on a Full Bench decision of this Court in Chandrama Singh v. Managing Director, U.P. Co-operative Union, Lucknow and Ors. 1991 (2) AWC 1005: (1991) 2 UPLBEC 898. Counsel for the Petitioner, however, has urged that the writ petition was entertained and heard on merits by this Court and it has been pending in this Court for the last about nine years where pleadings have already been exchanged, therefore, at this stage the writ petition may not be thrown on the ground of alternative remedy. Further, it is stated that the action of the corporation is in violation of the principles of Articles 14 and 21 of the Constitution of India, therefore, the writ petition is maintainable before this Court. In support of his contention, learned Counsel for the Petitioner, has relied upon the decision of the Apex Court rendered in Dr. Balkrishna Agarwal v. State of U.P. and Ors. 1995 (1) AWC 509 (SC): (1996) 2 UPLBEC 1055 ; L. Hirday Narain Vs. Income Tax Officer, Bareilly, and also a Division Bench decision of this Court rendered in Pradeep Kumar Singh Vs. Uttar Pradesh State Sugar Corporation and Another,

7. In the case of V.S.T. Industries (supra), the Supreme Court was primarily confronted with a situation as to whether a company incorporated under the Companies Act, 1956, was amenable to writ jurisdiction u/s 226 of the Constitution of India. It was in those circumstances that it held that where conditions of service of a workman are violated, the proper remedy was to approach the Industrial court.

8. In Scooters India case (supra) the Apex Court was considering as to whether the High Court was justified in entertaining a writ petition filed after about six years from the date of termination and it was in those circumstances that it came to hold that as disputed questions of fact were involved the proper forum was under the Industrial laws.

9. In Himanshu Kumar (supra), the Supreme Court was considering as to whether the termination of daily wagers was "retrenchment" within the meaning

of Industrial Disputes Act and whether the said retrenchment was in violation of Section 25F. It was in these circumstances that it came to hold that as the appointments were regulated by statutory rules the concept of industries to that extent stands excluded.

10. The Full Bench of this Court in Chandrama Singh's case no doubt was considering as to when this Court under Article 226 of the Constitution should refuse interference where a efficacious alternative remedy was available but the Court was not confronted with the fact that pleadings had been exchanged between the parties, writ petition has been pending before the Court for about nine years and as such in my view, the ratio would not apply to the present case.

11. As already noted above, in none of the cases the Courts were confronted with the facts which are available in the present case.

12. In the case of Bal Krishna Agarwal (supra) though an efficacious alternative remedy of approaching the Chancellor u/s 68 of the U.P. State Universities Act was available, the Apex Court held that as the writ petition was pending for about five years before the High Court, therefore, it did not think prudent to relegate the Petitioner to the alternative forum at such a belated stage.

13. In L. Hirday Narain (supra) again the Supreme Court came to hold that though an alternative remedy was available but since the writ petition had been heard on merits and it remained pending before the High Court for sufficiently long period, it would be unjust to relegate the Petitioner to the alternative forum. In the case of Pradeep Kumar Singh (supra) a Division Bench of this Court after considering a large number of decisions of the Apex Court, laid down the following criteria:

(a) while exercising its writ jurisdiction under Article 226 of the Constitution of India, the High Court may decline to grant relief until such statutory remedy is exhausted. However, this rule is a rule of policy, convenience and discretion and not a rule of law nor it bars the jurisdiction of the High Court under Article 226 of the Constitution in granting relief in appropriate case and exceptional circumstances;

(b) Alternative remedy is not a bar where a writ petition has been filed for enforcement of any fundamental rights; or where there is violation of principles of natural justice; or where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

14. In the present case, the Petitioner has complained that the corporation which is a State within the meaning of Article 12 of the Constitution has violated the spirit of Articles 14 and 16 of the Constitution. It has also acted in a arbitrary manner by discharging his services on the alleged ground that it was contractual and that too in violation of the principles of natural justice. In the counter-affidavit, engagement chart has been annexed as Annexure-C.A. 5, which would be useful to quote here as under:

"Engagement chart of Sri Ram Das, Ex-Mali, on daily wages (on contractual basis).

Sl. No. Engagement order and date Date of Engagement Date of expiry of contract Rate (in Rs. Per day)

1. 1.8.90 1.8.90 to 31.5.91 18 per day
2. 1.6.91 1.6.91 to 25.8.91 25 ,, ,,
3. 26.8.91 26.8.91 to 22.11.91 25 ,, ,,
4. 23.11.91 23.11.91 to 19.2.92 25 ,, ,,
5. 22.2.92 22.2.92 to 20.5.92 25 ,, ,,
6. 23.5.92 23.5.92 to 20.8.92 25 ,, ,,
7. 23.8.92 23.8.92 to 20.11.92 25 ,, ,,
8. 7.11.93 24.11.92 to 21.2.93 750 per month
9. 15.2.93 25.2.93 to 25.5.93 25 per day
10. 20.5.93 26.5.93 to 15.7.93 25 ,, ,,
11. 16.7.93 17.7.93 to 14.9.93 25 ,, ,,
12. 17.9.93 18.9.93 to 16.12.93 25 ,, ,,
13. 20.12.93 20.12.93 to 19.3.94 25 ,, ,,
14. 19.3.94 23.3.94 to 20.6.94 35 ,, ,,
15. 23.6.94 24.6.94 to 21.9.94 35 ,, ,,

15. From a bare perusal of the said chart, it is apparent that the services of the Petitioner have been continuous since Ist of August, 1990 till 23rd June, 1994, except for breaks for couple of days in between. The case of the corporation is that since there was a complete ban on appointment by the State Government, the appointment of the Petitioner was against the Government order. The further case of the corporation is also that it had sought the State Government's approval for sanction of 41 additional posts in the cadre in which the Petitioner was appointed. The reason for giving such intermittent appointment with artificial breaks of couple of days appears to be the Government order banning fresh recruitments. It is not the case of the corporation that the work for which the Petitioner had been appointed was not of a perennial nature or that work has ceased to exist. The specific allegation that juniors to the Petitioner have been retained has also not been denied. The argument that the employment was contractual is only a camouflage to deny benefit to the Petitioner. The Corporation which is a State within the meaning of Article 12 of the Constitution is supposed to be a model employer and it cannot adopt a policy of hire and fire without any plausible reason. The allegations of the Petitioner that his work was

appreciated by none other than the Managing Director of the Corporation has not been denied. It was also not being denied that the Petitioner was assigned the additional duty of a chaukidar. All these facts point only to one direction and that is the Respondent corporation has acted in violation of the principles of Articles 14 and 16 of the Constitution of India.

16. The Corporation has persisted on the question of financial liability. It has filed a supplementary affidavit to show that it is suffering losses. The Corporation is primarily engaged in money lending, profit and loss are but pitfalls of its business, failure to recover loans can be one of the main reasons. There is no averment in the affidavit that because of these handful of employees it is suffering loss.

17. Main emphasis has been laid by the Petitioners on the case of Neelam Sharma. Neelam Sharma, a similarly placed employee of the corporation had approached the labour court when her services were discontinued. The award of the labour court was affirmed by this Court and also the Apex Court. This Court in a reasoned judgment debunked the theory of contractual employee, as also raised in the present case, and went on to hold that cessation of employment was in fact retrenchment. It went on to hold that disengagement was not bona fide as the employment had continued for sufficient period of time. It also held the action of the corporation amounted to unfair labour practice.

18. No effort has been made by the corporation to distinguish the case of Neelam Sharma, rightly so because all the cases are identical. In this situation, should be the Court relegate the Petitioner to undergo the exercise of approaching the labour court? The powers of this Court are not curtailed by any hard and fast rules. No doubt this Court has imposed certain self-imposed inhibitions, but cases are not wanting where Courts under Article 226 of the Constitution have exercised its discretion when injustice stares in its face. If injustice and discrimination is apparent, Courts ought not shy away under the cloak of self-imposed restraint. The Courts ought to reach out to remedy the wrong, but such action should always pass the test of Article 14. In this case apart from the legal obstructions of alternative remedy, contractual appointment, financial dismay, nothing has been shown to justify the action.

19. The counsel for the Respondent has urged that termination order has not been challenged, thus no relief can be granted. It appears that the services of the Petitioner were terminated, but the relief clause does challenge the termination. The relief is not very happily worded but this Court can mould the relief especially when residuary relief has been sought. The Petitioners who are semi-literate, should not be penalized for the drafting laxity of the counsel. Therefore, this argument of the Respondent should not desist the Court from passing an order which otherwise appears to be worthy of the facts of the case.

20. In view of the discussions hereinabove, the writ petition succeeds and is allowed that it is hereby directed that the Petitioner shall be reinstated in service

on the same terms and conditions as were existing at the time of his discharge. However, he will be entitled to continuity of service with only 50% back-wages. The 50% back-wages are awarded on the ground that it has been pleaded in the counter-affidavit that the corporation was suffering loss, though the loss was not attributed to the services of the Petitioner. No order as to cost.