
(2003) 10 AHC CK 0195
In the Allahabad High Court
Case No : C.M.W.P. No. 46120 of 2003

R.P.N. Tewari

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 6 AWC 5078

Hon'ble Judges : V.N. Singh, J;A.K. Yog, J

Bench : Division Bench

Advocate : M.D. Singh "Shekhar", for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Yog and V.N. Singh, JJ.—Petitioner, being aggrieved against the order of suspension dated 23.8.2003 (Annexure-3 to the petition), had filed Writ Petition No. 39331 of 2003 which was dismissed on the ground of alternative remedy available to the Petitioner against this very suspension order before U.P. Public Service Tribunal, copy of the said judgment and order dated 4.9.2003, in Writ Petition No. 39331 of 2003 R. P. N. Tewari v. State of U.P. and others, is annexed as Annexure-5 to the petition.

2. After dismissal of the said writ petition, Petitioner filed Claim Petition No. 797 of 2003 before State Public Service Tribunal, Lucknow. It appears that he also filed application for interim relief which has been rejected by the Tribunal vide judgment and order dated 22.9.2003 on the ground that it has no power to grant interim relief in suspension matter and hence rejected application for interim order (Annexure-6 to the petition).

3. Interim relief application having been rejected by the Tribunal, as mentioned above, the Petitioner has now come up before this Court by filing Writ Petition No. 46120 of 2003 and prays for issuing a writ of certiorari to quash the initial order of suspension dated 23.8.2003, Annexure-3 to the petition passed by

Respondent No. 2, Secretary, Small Industries, Government of U.P., Lucknow (Anubhag-1) as well as the order passed by the Tribunal dated 22.9.2003, Annexure-6 to the petition.

4. Learned standing counsel, however, submitted that this petition should be dismissed on the ground of alternative remedy being sought before the Tribunal and referred to the decision of the Apex Court in the case of Public Services Tribunal Bar Association Vs. State of U.P. and Another, .

5. In reply, learned Counsel for the Petitioner, however, referred to para 26 wherein the Supreme Court has observed thus:

... In an extreme and rare case where the order is passed mala fide or without following the procedure under the law then the employee can certainly approach the High Court under Article 226 of the Constitution for the interim relief. The High Court in such an extreme and rare cases may in its wisdom stay the operation of the said order. In the case of suspension, reduction in rank or reversion the relationship of employer and employee remains. Normally, the suspension is made during a contemplated or a pending enquiry. During the suspension period the employee is entitled for the suspension allowance. If the suspension continues for indefinite period or order of suspension is passed mala fide then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution of India...

6. Plain reading of the aforesaid decision of the Apex Court clearly shows that jurisdiction of this Court, conferred under Article 226, Constitution of India, has not been eclipsed by passing of U.P. Public Service Tribunal Act, 1976, but it is subject to certain well-settled norms and criterion and one of it is that if Statute provides alternative forum which is equally efficacious, then this Court shall not normally permit aggrieved persons to invoke its extraordinary discretionary constitutional remedy under Article 226, Constitution of India. The Apex Court itself held that in the matter of suspension and alike matters in the given circumstances of a case including where suspension is unduly delayed, may justify invoking extraordinary jurisdiction of this Court under Article 226, Constitution of India but that will depend upon facts of each case.

7. In the instant case, Petitioner has already filed claim petition and pursuing his remedy. Apart from it suspension in the instant case dated 23.8.2003 cannot be said to be unduly delayed.

8. Petitioner should, therefore, pursue his remedy before Tribunal. However, taking into consideration the observations made by the Apex Court in the aforesaid decision, cited above, Public Service Tribunal may endeavour to decide the matter as expeditiously as possible, subject to its limitation, particularly when Tribunal has no power of granting interim relief and undue delay may cause irreparable loss and injury to the Petitioner. We can only hope that it shall, if possible, decide claim petition itself on merit within six months of receipt of certified copy of this judgment.

9. Writ petition dismissed in limine, no order as to costs.