
(2012) 09 MAD CK 0137
In the Madras High Court
Case No : Writ Petition No. 35016 of 2002

S. Babu and Others

APPELLANT

Vs

Managing Director, Hindustan Teleprinters Ltd. and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 226(1A)

Citation : (2013) 1 LLJ 538 : (2013) 2 MLJ 3

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; Sanjay Mohan for S. Ramasubramaniam and Associates and M. Gopikrishnan, CGC, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioners herein, who were employed with the first respondent/ HTL, Guindy, while it was a Public Sector Organization, have come up with the present writ petition seeking for issuance of a writ of mandamus, directing the Managing Director of R-1 Company to pay them the difference in the VRS amount based on the revised scale of basic pay and D.A. as per the Circular dated 12.7.2000 together with 9% per annum from the date of the Circular. Learned counsel for the petitioner, at the first instance, highlighted the case of the petitioners thus,

The first respondent herein/HTL, Guindy, was originally a public sector organisation under the control of the 2nd respondent and by Circulars dated 23.12.1996, 23.5.1997, 5.11.1997 and 19.2.1998, R1 announced VRS (Voluntary Retirement Scheme), requiring the willing employees to apply in the prescribed format by making it clear that once the application for VRS was submitted, the same would be irrevocable. The petitioners herein/employees of R1, who desired to avail the VR Scheme, responded to the same. Consequently, they were relieved on 31.3.1998 and their benefits were calculated on the basis

of the then prevailing basic and Dearness Allowance. While wage revision negotiations were going on, the last wage revision expired on 31.12.1996 and the next revision was due from 1.1.1997. The petitioners being officers, by virtue of the Circular dated 12.7.2000, revision of pay scales, D.A. etc. was announced with effect from 1.1.1997.

2. So pointing out the above facts, learned counsel for the petitioners submits that it is the grievance of the petitioners that though they were paid the difference in basic pay and D.A. as well as the difference in gratuity, P.F., privilege leave, notice pay, etc., unfortunately, difference on the VRS amount which became due consequent upon the pay revision was not paid to them. Handful of letters sent did not evoke any response and only after lawyer's notice dated 26.12.2001 followed by a reminder notice dated 25.5.2002, the first respondent replied that the petitioners would be apprised of the position immediately after receiving clarification from the Department of Public Enterprises (DPE). Ultimately, by reply dated 10.6.2002, emanated from the first respondent, it was informed that the petitioners are not entitled for the difference because there was no specific clause at the time of retirement for extending it in case of subsequent wage revision.

3. Learned counsel for the petitioners states that the first respondent failed to see that basic pay and D.A. were revised from 1.1.1997 and made applicable to persons like petitioners, therefore, denial of the difference on the VRS amount based on the revised scale of basic pay and D.A. is arbitrary and violation of Article 14 of the Constitution of India; that when, by Memorandum dated 8.12.2000 on the subject of VRS, R4 clarified that ex gratia will be recalculated on the basis of revised pay scale and difference paid, the action of the 1st respondent in denying the legitimate claim is superfluous and unjustifiable; that, in respect of employees who offered to go on VRS along with the petitioners as per the Circular dated 29.12.1998, the first respondent vide Circular dated 24.12.1999 stated that their VRS will be recalculated on the basis of revised pay, but, different treatment was given to the same category of employees merely because some were relieved earlier and others at later point of time; and that, at the time of disinvestment dated 16.10.2001, the Government of India under the Memorandum of Understanding had given the first respondent the difference of amount on account of recalculation of VRS as a liability and as the said amount being negligible from the point of view of the first respondent, he should not be heard to say that the Government of India has disinvested its share holding in the first respondent to the extent of 74% and retained only 26% of the share capital, therefore, no writ will lie against the present "private management".

4. In support of his submission, learned counsel has relied on a judgment of the Apex Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, to highlight the position that the law relating to mandamus has made the most spectacular advance and added that, therefore, it is not legally tenable for the

respondents to say that prerogative writ of mandamus is confined only to public authority to compel performance of public duty. The public authority for them mean every body which is created by statute and whose powers and duties are defined by statute. According to the learned counsel, having regard to Article 226 conferring wide powers on the High Courts to issue writs in the nature of prerogative writs, there is no restraint for this Court to accede to the prayer of the petitioners despite the fact that the present petition lies against purely a private entity.

5. Learned Standing counsel appearing for Respondents-2 to 4, by referring to the counter affidavit, mainly raised a question on the maintainability of the writ petition seeking mandamus against a Private Concern. He stated that when VRS was introduced by the first respondent-company which was then a Government of India Undertaking engaged in the business of manufacturing Telecommunication Equipments, the employees including the petitioners responded to the same and consequently, the benefits promised to them under the scheme were duly disbursed and they were also relieved from the services of the company with effect from 31.3.1998 as per the relieving order of R1 dated 30.12.1997. After about 4 years, the Government of India has disinvested its share holding in the first respondent company on 16.10.2001 to the extent of 74% of its share to Himachal Futuristic Communications Limited and retained only the balance share capital and, by virtue of such disinvestment, the first respondent/company ceased to be a Government of India Undertaking on and from 16.10.2001. Therefore, in view of the change in share holding pattern, the company as on the date of filing of the writ petition during 2002 was neither a Government of India Company nor functioning under the Government of India. In other words, it was no longer a State or an Establishment carried on by or under the authority of Central Government. Therefore, a writ against such private body is not maintainable in law.

6. Learned counsel appearing for R-1, by referring to the detailed counter affidavit filed by the Company, pointed out that the Government of India framed a VR Scheme on 5.10.1988 to reduce the manpower cost and improve the productivity in all public sector undertakings. The first respondent implemented the Scheme from 1994 and from the inception of the scheme, 504 employees were relieved from the services of the company. The first respondent had implemented a revision in wage structure during the year 1995 with retrospective effect from 1.1.1992 and another revision had also come into effect during 2000-2001 with retrospective effect from 1.1.1997. Consequent to such wage revision, employees who left the services under VR Scheme, were given additional emoluments towards difference in wages, gratuity, PF, Privilege Leave encashment etc. In fact, the respondent had implemented the wage revision in terms of the Circular dated 12.7.2000 and paid the difference in the Basic Pay, Gratuity, PF. PL to the petitioners with effect from 1.1.1997, however, VRS amount, an ex gratia payable at the time of retirement, is a fixed sum calculated as per the terms of the Special Scheme dated 5.10.1988 which was the Scheme

in force at the time when the petitioners opted for VR and as such, recalculation of the ex gratia because of the revision in wage structure does not arise at all. Even otherwise, clearly, the present writ petition not being maintainable against a private concern deserves dismissal at the hands of this Court.

7. In support of their contentions, both the learned counsels appearing for the respondents placed heavy reliance upon an order, dated 17.2.2010, passed by a learned single Judge of this Court in W.P. No. 6325 of 2004. By stating that it was a similar case between the HTL Retired Employees Welfare Association and the first respondent and 2 others, learned counsels pressed much into service the observation in para No. 6, which runs thus:

6. In similar circumstances, in respect of the very same first respondent-company, a Division Bench of this Court in Writ Appeal No. 416 of 1998 in the Judgment dated 14.3.2007 relying upon the earlier judgment P. Subban Vs. H.T.L. Limited , particularly with reference to para 12 of the said judgment, which is as follows:

12. Having regard to all these aspects, I think it is a fit case where a writ can no longer be issued in view of the changed circumstances, namely, privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No. 14425 of 1995 dated 19.7.2002 (the entire order in this case is given in para 8 supra) and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to workout his remedy before the appropriate forum.

has held that the writ petition as well as subsequent writ appeal filed by the Employees' Union of H.D.L. as "not maintainable". That was also the consistent stand taken by this Court in another writ petition filed against H.D.L., in W.P. No. 16588 of 1998 batch dated 19.7.2007, of which I am a party. The said decision was also followed in a batch of cases by K. Chandru, J in W.P. No. 29186 of 2003 by order dated 22.11.2007, wherein liberty was given to the petitioners therein to workout their remedy in the manner known to law.

According to the learned counsels, when the identical writ petition was decided against the employees not only by the aforesaid order of this Court but also by such similar orders in other matters as referred to therein, any endeavor by this Court to consider the claim of the petitioners would only be a futile exercise and so submitting, they prayed for dismissal of the writ petition on the sole ground of maintainability itself.

8. I have carefully considered the rival submissions advanced on either side. Though the learned counsel for the petitioners at the first instance advanced his arguments on the merits of the matter, while making submissions on the central point of maintainability, and the applicability of the earlier order of this Court in W.P. No. 6325 of 2004 as well as the other earlier orders including the one passed by the Division Bench following P. Subban v. H.T.L. Ltd. (supra) case as

referred to therein, he stated that *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) was not brought to the notice of the Benches which dealt with W.P. No. 6325 of 2004, *P. Subban v. H. T.L. Ltd.* (supra) and W.A. No. 416 of 1998. According to him, the petitioners herein cannot be penalised for the mistake committed by this Court in not taking note of *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) case decided by the Apex Court and had the said decision been considered, the petitioners therein would have definitely won their claim.

9. In that perspective, it is just and necessary for this Court to first delve into the issue of maintainability having regard to the above submission of the learned counsel for the petitioner.

It is true that the order passed by a learned single Judge of this Court in W.P. No. 6325 of 2004, judgment rendered by a Division Bench in W.A. No. 416 of 1998 and the decision rendered in *P. Subban v. H.T.L. Ltd.* (supra) case do not mention about *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra). But, essentially it must be pointed out here that exactly what the ratio laid down in *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) was already outlined by the Hon'ble Apex Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, and that what was now argued by the learned counsel for the petitioners by referring to *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) for issuance of a writ even against a private person in the given set of circumstances was also the same limb of argument before this Court in *P. Subban v. H. T.L. Ltd.* (supra) case by referring to the Apex Court's decision *Rohtas Industries Limited and Another v. Rohtas Industries Staff Union and Others* (supra). In fact, this Court in *P. Subban v. H.T.L. Ltd.* (supra) case recorded the said submission thus,

6. Learned counsel appearing for the petitioner has relied upon a decision of the Supreme Court *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, in support of his contention that a writ would be maintainable even against a person depending upon the facts and circumstances of a particular case. The observation in the aforesaid Supreme Court decision is to the following effect:

10. The expensive and extraordinary power of the High Courts under Article 226 is wide as wide as the amplitude of the language used indicates and so can affect any person-even a private individual and be available for any (other purpose) even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to "the residence of such person.

and answered clearly in the following terms,

11. In the present case, the acceptance (even assuming that it was illegal acceptance) for voluntary retirement of a particular employee cannot be

characterized as leading to such a monstrosity so as to exercise power under Article 226 against a private organisation, which is clearly beyond the ordinary purview of Article 226. Even though in many cases it has been held that writ of Mandamus would be maintainable even against a private person, such cases relate to question of enforcement of public duty.

12. Having regard to all these aspects, I think it is a fit case where a writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No. 14425 of 1995 dated 19.7.2002 and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to workout his remedy before the appropriate forum.

The analysis made by this Court as highlighted above would succinctly clarify the ambiguity of the learned counsel for the petitioner, for, the ratio laid down in *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) was also the same ratio in *Rohtas Industries Limited and Another v. Rohtas Industries Staff Union and Others* (supra) case and such ratio was well discussed by this Court and by stating that it cannot be fitted to the identical cases as the one on hand, similar contention was straightaway rejected and hence, I am of the view that the petitioners cannot now canvass that the order passed in W.P. No. 6325 of 2004 following *P. Subban v. H.T.L. Ltd.* (supra) case, decision in W.A. No. 416 of 1998 and orders passed in a batch of cases in W.P. Nos. 29186 of 2003 etc., have no relevance to be followed.

10. At any rate, the petitioner is not justified in saying that this Court, in its earlier orders, committed a mistake as the ratio laid down in *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) was not taken note of. As I pointed out already, though *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) was neither referred to nor brought to the notice of this Court, very same ratio laid down earlier was very well taken note of by this Court and it was clearly held that these type of cases are not the ones to be categorized as those involving monstrous situation so as to largely and freely distend the scope of writs to a private body. Therefore, I hardly find any reason or logic to act on the submission made by the learned counsel for the petitioner citing *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) case.

11. Even otherwise, the decision in *Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) itself clearly spells out two exceptions to be borne in mind while writ Courts dealing with the cases relating to private bodies. It would be of much relevance to quote below the exact wordings from para No. 16 of the decision,

16. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy,

mandamus cannot be denied.

Testing the present case even in the light of the aforesaid criterion, it could be seen that the two traits/exceptions viz., (i) the rights are purely of a private character and (ii) the company is purely a private body, are apparently present here. Thus, even if the decision cited by the learned counsel for the petitioners is applied, his case will have to be dismissed in threshold on the ground that no writ would lie against the first respondent, a private entity. To visualize the consequences arising from readily issuance of mandamus in such cases, it is very apt here to quote below the following observation of the Apex Court made in *Rohtas Industries Limited and Another v. Rohtas Industries Staff Union and Others* (supra) case,

10.....But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a China shop. This Court has spelt out wise and clear restraint son the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has by and large been the people"s sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

Since it is now made clear that in the earlier decisions of this Court similar ratio as laid down in *Andi Mukta S.M. V.S.S.J.M.S. Trust v. V.R. Rudani* (supra) was clearly spelt out and exhaustively dealt with, thereby, there being no room to find fault with those decisions and that the present case is also the one deserves to be treated in the same line as the one in *W.P. No. 6325 of 2004*, by rejecting the submission of the learned counsel as wholly untenable, I hold that the writ petition is liable to be rejected on the ground of maintainability. It follows that there would be no useful purpose in answering the other submissions of the learned counsel made on merits.

In the result, the writ petition is dismissed on the ground of maintainability. However, there will be no order as to costs. It is made clear that this order will not stand in the way of the petitioners pursuing any other remedy available to them before appropriate forum.