

(2007) 04 DEL CK 0010
In the Delhi High Court
Case No : LPA No. 2261 of 2006

Sanjeev Kumar

APPELLANT

Vs

Container Corporation of India Ltd.

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2007) 04 DEL CK 0010

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Brijesh Kumar Tamber, for the Appellant; Rajender Dhawan, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is filed by the appellant, who was the writ petitioner before the learned Single Judge. He is aggrieved by the judgment and order passed on 2nd November, 2006 whereby the learned Single Judge dismissed the writ petition on the ground that he has efficacious remedy under the Industrial Disputes Act for raising a similar grievance as raised in the writ petition and, Therefore, the writ petition was dismissed on the ground that the same was not maintainable. The aforesaid writ petition was filed by the appellant seeking relief by way of issuance of Writ of Mandamus directing the respondent to treat the appellant as continuing in service and also for a direction to pay him all arrears of emoluments from the month of August 1998 till payment on the ground that he was a workman concerned in ID No. 160/1999 pending before the learned Central Government Industrial Tribunal and, Therefore, during the pendency of the said proceedings, his services could not have been terminated without seeking an approval under the provisions of Section 33(2)(b) of the Industrial Disputes Act.

2. The respondent in the said writ petition took up a plea that since the appellant

has sought to invoke and establish his right under the Industrial Disputes Act in the writ petition instead of seeking the remedy available under the Industrial Disputes Act, Therefore, the writ petition was not maintainable. It was also submitted that the appellant was not a workman concerned in ID No. 160/1999 inasmuch as the appellant was employed in the District of Ludhiana whereas the Industrial Dispute was raised by the workmen in Delhi and also as to whether or not the appellant was a workman is a question of fact, which could not have been adjudicated upon in the writ petition.

3. The aforesaid contentions raised on behalf of the parties were considered by the learned Single Judge. With regard to the preliminary objection raised regarding the maintainability of the writ petition, the learned Single Judge held that in view of efficacious remedy being available to the appellant under the Industrial Disputes Act, the appellant cannot invoke the writ jurisdiction of this Court.

4. While rendering the aforesaid findings, the learned Single Judge relied upon the decisions of the Supreme Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, ; *U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh*, and *Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union*, . The learned Single Judge particularly referred to paragraph 8 of the decision in *Hindustan Steel Works Construction Ltd. and Anr. v. Hindustan Steel Works Construction Ltd. Employees Union* (supra), which reads as under:

8. In *U.P.State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh* 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 Shantaram Wadke*, *Rajasthan SRTC v. Krishna Kant*, *Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad* and in *Scooters India v. Vijai E.V. Eldred*.

5. With regard to the second issue as to whether or not the appellant is entitled to claim the benefit as provided for u/s 33(2)(b) of the Industrial Disputes Act on the ground of pendency of an ID case being 160/1999, the learned Single Judge held that in the said ID case a "no dispute award" was passed on 4th January, 2006 inasmuch as the President of the workers union made a statement to the effect that the scheme with regard to the incentive for small family norm was already in existence and was being implemented and the workmen were satisfied with the scheme. It, however, transpires from the records that an application for restoration of the said ID No. 160/1999 is pending consideration. Therefore, on that issue also, the learned Single Judge held that there is a question of fact to

be determined as to whether the appellant was already getting the benefits and, Therefore, he was not concerned with the industrial dispute and also the question to be determined is whether the appellant was concerned with the industrial dispute as he was expecting to be benefited by an award in favor of the workmen. After rendering the aforesaid findings, it was held that such disputed questions of facts cannot be determined in a writ petition.

6. The aforesaid findings are under challenge in this appeal on which we have heard the learned Counsel appearing for the parties. We have carefully scrutinised the judgments rendered by the Supreme Court which are mentioned and a passage of which is extracted herein before. It is clearly established and a settled law 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.

7. In the present case, we do not find any reason to take a different view to hold that a strong case is made out by the appellant to entertain a writ petition, which enables us to make a departure from the settled position of law. The appellant has an efficacious remedy provided for under the Industrial Dispute Act as his entire endeavor is to get his right under the Industrial Disputes Act enforced. Therefore, there is no reason why he should be granted the relief in this writ petition without directing him that he should avail of his statutory remedy provided for under the Industrial Disputes Act. The issues raised are purely within the purview of the Industrial Disputes Act and are matters involving disputed questions of facts, which are required to be considered by leading evidence. Whether or not the appellant is concerned with the ID case, which at present stands disposed of with the verdict of "no dispute award", is a matter to be properly considered in the light of the evidence that could be adduced in an appropriate case, if instituted under the provisions of the Industrial Disputes Act. We are, Therefore, clearly of the opinion that no case for interference is made out by the appellant. The appeal has no merit and is dismissed.