

(1999) 07 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.P. No. 2456 of 1993 (J)

Shri Ravindranath Shrivastava	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 2 MPJR 484

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Rajendra Tiwari, with Rajendra Mishra, for the Appellant; P.S. Nair with Rajendra Menon, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

Originally, in the writ petition filed under Article 226/227 of the Constitution of India, petitioner has inter alia prayed for the following reliefs-

- i) This Hon'ble Court be pleased to direct respondent No.1 to probe into the complaints by referring the matter to an independent body like the C.B.I.
- ii) That this Hon'ble Court be pleased to issue a writ in the nature of certiorari quashing the departmental enquiry proceedings pending against the petitioner;
- iii) To issue a writ in the nature of certiorari quashing the charge-sheet dt. 27.03.1991.
- iv) To issue a writ in the nature of mandamus to direct the respondent to produce the entire records relating to the departmental enquiry of the petitioner before this Court.

The matter came up for consideration before this Court on 17.06.1993 and this Court directed for issuance of notice on the main petition as well as the stay

application. Respondents No.3 & 4 appeared and filed their return on 23.3.1994. In paragraph 14 of the return, respondents 3 & 4 have stated as follows:-

The petitioner has suppressed material facts and come with an unclean hand. He has filed Misc. Petition Nos. 1527/91, 1972/91, 2386/91, 3118/91 challenging the charge sheet in question. The petitioner has not referred dismissal of the above petitions in his petition, except the one petition.

Thereafter, petitioner filed application for amendment of the writ petition on 10.04.1994. Amendment prayed for was allowed by order dated 27.06.1994 and in view of the amendment allowed, relief No.1 has been substituted as follows:-

1 (a) That the dismissal order dated 16.06.1993 (Annexure-G of the petition) may kindly be set aside/quashed being devoid of merit and against the provisions of law.

1 (b) That the respondents be directed to reinstate the petitioner in service w.e.f., the date of the order of dismissal i.e. 16.6.1993 with all consequential benefits including the payment of arrears of salary and other monetary benefits due to the petitioners w.e.f., 16.6.1993 in the interest of justice.

Mr. P.S. Nair and Mr. Rajendra Menon appeared on behalf of the respondents and have raised preliminary objections as regards to the maintainability of the writ petition. First objection is that the petitioner has approached this Court with unclean hands having suppressed the material fact of dismissal of earlier writ petitions namely M.P. No. 1527/91, 1972/91 2386/91 and 3118/91.

M.P. No. 1527/91 was filed challenging the charge-sheet dated 27.03.1991 inter alia on the ground that the allegations made in charge-sheet do not constitute misconduct. In the said case, the stand of the petitioner was that he is governed by the Standard Standing Order. This Court by order dated 06.05.1991 found that the petitioner's conduct of making unfounded aspersions against the officers of the Company with malicious attempt to slander their reputation and malign the Image of the Company, amount to misconduct as defined in the Standard Standing Order. Accordingly, this Court dismissed the writ petition in limine. Undaunted by dismissal of the aforesaid writ petition, petitioner again filed M.P. No. 1972/91 praying various reliefs including the relief for quashing of the charge-sheet dated 27.03.1991. In the writ petition, he suppressed the fact that earlier he has filed M.P. No. 1527/91 which was dismissed in limine, by order dated 06.05.1991. When this writ petition (M.P. No. 1972/91) came up for consideration before this Court on 26.6.91, rule nisi was issued to the respondents. When the matter came up before this Court on 02.08.1991, it was pointed out that similar petition filed by the petitioner i.e., M.P. No. 1527/91 has been dismissed by this Court by order dtd. 6.05.1991. This Court, then passed the following order on 02.08.1991 in M.P. No. 1972/91:

Shri Naoleker contends that this writ petition is directed upon a foundation which was not the basis of challenge made in the Misc. Petition aforementioned. Be that

as It may, non-averment of such a fact in the writ petition makes the petitioner punitive for acts *Suggestio falsi et suppressio veri*. That by itself is sufficient for the dismissal of the petition. Such practice should not be encouraged by any Court.

Again the petitioner filed M.P. No. 2386/91 interalia making a prayer that the act of management in proceeding with the enquiry is illegal and the charge sheet issued to the petitioner be declared ultra-vires. In the said petition various grievances were made including the grievance that he is not being furnished with the documents. By order dated 02.08.1991, this Court dismissed the writ petition as withdrawn holding objection taken in the writ petition may very well can be taken by him, in the departmental proceedings wherein the disciplinary authority or the enquiry authority shall be in a position to say as to whether the objection is well founded or not. This Court further observed that after the final order is passed against the petitioner, he shall have liberty to approach this Court when this Court shall be able to apply its mind in the matter.

These dismissals did not deter the petitioner and he again filed M.P. No. 3118/91 for quashing of the charge-sheet dated 27.03.1991. By order dated 24.09.91, writ petition was dismissed holding as such:-

From the reading of the charge-sheet it does not appear to us that the disciplinary authorities have pre-judged the matter merely because the petitioner has also been asked to show cause against the proposed punishment of dismissal or any lesser punishment. There is nothing before us, even prima facie to give rise to an apprehension that the disciplinary authorities would not act fairly and justly in the matter. Since disciplinary enquiry is pending and final orders are yet to be passed, we decline to interfere in our extraordinary jurisdiction at this stage.

The petitioner will have chance to urge all the grounds against the final order in case it goes against him.

From what has been stated above, it is evident that the petitioner made several attempts to assail the charge-sheet dated 27.03.1991, but did not succeed. In the present writ petition, he has concealed the fact of filing writ petitions earlier.

Mr. Rajendra Tiwari appearing on behalf of the petitioner contends that as this writ petition has been filed against the order of removal dt. 16.06.1993, non-mentioning of the fact of filing writ petitions earlier is of no consequence, and therefore it cannot be said that the petitioner has suppressed the material fact so as to disentitle him the discretionary relief under Article 226 of the Constitution of India. Explanation put forth by Shri Tiwari prima facie seems attractive, but on deeper scrutiny, I find no substance in the same. Prayer made by the petitioner originally in the writ petition has been quoted in preceding paragraph of this judgment. Prayer made by the petitioner originally was not to quash the order of removal, but was to quash the charge-sheet dated 27.03.1991. In the earlier petition filed by him, he has made the same prayer and therefore purposely and

with oblique motive he did not state the fact of filing of earlier writ petitions and its result. The omission to state filing of earlier writ petitions and its result is not innocuous, but a calculated act to deflect the course of justice. Petitioner is a person who is master in this art. His earlier petition i.e., M.P. No. 1972/91 was dismissed on this ground, but he did not receive any lesson. From the facts stated above, it is evident that the petitioner has not come to this Court with clean hands. He is accustomed to suppressing the material fact with dishonest intention and motive, which cannot be overlooked. I am of the opinion that he does not deserve the exercise of discretionary power under Article 226 of the Constitution of India.

Mr. Nair as also Mr. Manon appearing on behalf of the respondents pray for dismissal of the writ petition on yet another ground i.e., existence of an alternative remedy of raising an industrial dispute under the provisions of Industrial Disputes Act 1947. They submit that in view of the availability of alternative remedy, this is not a fit case in which, discretion under Article 226 of the Constitution is fit to be exercised. Mr. Tiwari, however, appearing on behalf of the petitioner submits that as the writ petition has been admitted for final hearing, it may not be thrown out only on the ground of existence of alternative remedy. His submission is that existence of alternative remedy does not bar the jurisdiction of this Court.

Having appreciated rival submission, there is no difficulty in accepting the broad submission of Shri Tiwari that existence of an alternative remedy is not a bar to the jurisdiction of this Court, it is a rule of discretion and not of jurisdiction. However in the present case, I find that the petitioner nowhere averred that he has an alternative remedy of raising industrial dispute and obtained the rule from this Court. Order of removal is sought to be challenged on the ground that the enquiry was not properly conducted and he has not been furnished with the documents, as also opportunity to cross-examine the witnesses. As pointed out by Shri Menon, in case of reference under the Industrial Disputes Act, respondents shall have the opportunity to contend that order of dismissal has been proceeded by an appropriate and valid domestic enquiry and in case of failure, it would be open to them to justify on evidence that the order of dismissal was proper. In such circumstances according to the learned counsel, exercise of discretion under Article 226 of the Constitution of India is inappropriate. I find substance in the submission Shri Menon.

In view of the fact that the petitioner had remedy of raising an industrial dispute, I am not inclined to exercise my discretionary power under Article 226 of the Constitution, particularly because this will defeat the right of the respondents. The view which I have taken finds support from the judgment of this Court in M.P. No. 195/1984 (Shivaji v. Deputy Chief Mining Engineer & another), dated 07.08.1986.

In the case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , it has been observed that if no enquiry has

been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to employee to adduce evidence in rebuttal. It has also been observed that there is no provision either in the statute or in the Act which states that an order of dismissal or discharge is illegal, if it is not proceeded by an appropriate and valid domestic enquiry because if no enquiry was held as required by the standing order, the entire case would be open before the Tribunal and the employer would have to justify on evidence that the order of dismissal was proper. In the circumstances stated above, I find that it is not a fit case for exercise of discretionary powers under Article 226 of the Constitution as an effective, efficacious and alternative remedy is available to the petitioner under the provisions of I.R. Act.

Having sustained both the preliminary objections, I do not find it a fit case for interference under Article 226 of the Constitution of India, writ petition stands dismissed accordingly with costs to be paid by the petitioner to the respondents. Hearing fee Rs. 1100/-.