
(2003) 04 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 1883 of 2003

Sidheshwar Prasad

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0016

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Petitioner happened to be a Conductor in the Bihar State Road Transport Corporation and in this writ application filed under Article 226 of the Constitution of India, his prayer is to quash the order dated 17.7.2002/18.7.2002 whereby the Petitioner has been visited with the penalty of dismissal from service.

2. Mr. P.K. Verma appearing on behalf of the Respondents raises a preliminary objection in regard to the maintainability of the writ application. He submits that the Petitioner is a workman within the meaning of Section 2(s) of the Industrial Disputes Act (hereinafter referred to as the Act) in an industry defined u/s 3(j) of the Act and the dispute between the Petitioner and his employer Bihar State Road Transport Corporation (for short the Corporation) being industrial dispute, remedy u/s 10 of the Act is available to the Petitioner and this is not a fit case in which jurisdiction under Article 226 of the Constitution is fit to be exercised.

3. Mr. R.N. Mukhopadhyaya has taken an extreme stand that the Petitioner is not a workman nor employed in an industry and, therefore, remedy u/s 10 of the Act is not available to the Petitioner. In deference to the submission of the learned Counsel, I proceed to examine as to whether Conductor is a workman or not within the meaning of the Act. Section 2(s) of the Act reads thus:

2(s). "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be

express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not Include any such person.

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4. From a plain reading of the aforesaid provision it is evident that to come within the definition of workman the person is required to be employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Petitioner was engaged on payment of wages to do the work of the Conductor. Thereafter the question which requires for determination is as to whether Petitioner was employed in an industry. Industry has been defined u/s 2(j) of the Act to mean any systematic activity carried on by co-operation between an employer and his workmen for services, with a view to satisfy human wants or wishes. The Corporation is engaged in plying buses from one place to other to carry passengers and therefore renders services with a view to satisfy human wants. Hence the Corporation is certainly an industry.

5. After satisfied the aforesaid tests, now the question is as to whether any industrial dispute exists between the Petitioner and his employer. Section 2(k) of the Act defines industrial dispute, same reads as follows:

2(k). "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

6. Stand of the Petitioner is that his dismissal is bad and the same has been assailed in the present application. Thus there is difference between the employer and the workman in regard to the dismissal and hence an industrial dispute exists between the Petitioner and the Corporation. Reference in this connection can be made to a Division Bench judgment of this Court in the case of Jute Mills Staff Association and Anr. v. State of Bihar and Ors. (1990 Bihar Revenue and Labour Journal 199) wherein it has been held that whether the workman was wrongly dismissed or not is an industrial dispute. Relevant passage of the judgment reads as follows:

Facts aforementioned leave no doubt that the question as to whether Petitioner No. 2 was wrongfully dismissed by the Respondent No. 3 or not, is an industrial dispute.

7. In view of my answer Petitioner has remedy u/s 10 of the Act.

8. Mr. Mukhopadhyaya then submits that even if the Petitioner has remedy under the Act, that does not bar the jurisdiction of this Court. His anguish is that in some of the cases Respondent-Corporation does not raise this plea and had

referred to certain decisions of this Court to prove this point. Reliance has been placed on a decision of the learned single Judge of this Court in the case of *Manoj Kumar Sah v. Bihar State Road Transport Corporation and Ors.* (1995 (1) PLJR 607) and my attention has been drawn to paragraph 12 of the judgment, which reads as follows:

It is well settled that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion of the Court and is not a rule of law. In the celebrated decision of the Supreme Court in the case of the State of Uttar Pradesh v. Mohammad Nooh reported in 1958 S.C.R. pag 595, it has been held at page 606 that "this rule requiring the exhaustion of statutory remedies before the writ is granted is a rule of policy, convenience and discretion rather than a rule of law".

9. Mr. Verma however contends that in the face of the remedy available under the Act, jurisdiction under Article 226 of the Constitution is not fit to be exercised. He points out that what plea the Corporation would take depend on its wisdom and if in some of the cases this plea was not raised, that will not preclude the Corporation to raise such plea in the present case.

10. Having appreciated the rival submission, I do not have the slightest hesitation in accepting the broad submission of Mr. Mukhopadhyaya that existence of an alternative remedy does not bar the jurisdiction of this Court. This is a rule of discretion and not of jurisdiction. In fact no fetter has been placed by the Constitution on this Court for exercise of power under Article 226 of the Constitution but this Court has imposed upon itself certain restrictions for exercise of the power and one of the well known limitations put by this Court upon itself is that in the face of alternative efficacious remedy, jurisdiction under Article 226 of the Constitution is not fit to be exercised, except in grave and exceptional cases. In the present case, the allegation against the Petitioner is of misconduct in relation to carrying passengers without ticket. He has been found guilty of said misconduct and dismissed from service. I am of the opinion that the matter of dismissal of a workman employed by the Corporation can appropriately be adjudicated in accordance with the mechanism provided under the Act. The view which I have taken is in conformity with the decision of this Court in the case of *Abdul Khalique v. H.E.C. Ltd. and Ors.* (1985 BBCJ 114) in which it has been held as follows:

Where a right or liability is created by statute, if that statute provides a remedy, the remedy provided by that statute alone must be followed. The rights and liabilities have been created by the certified Standing Orders. Whether the Standing Orders Act provides any remedy. The only relevant section of that Act is Section 13A which provides that if any question arises as to the application or interpretation of a Standing Order certified under that Act, any employer or workman may refer the question to any of the Labour Courts constituted under the I.D. Act and specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazette and the Labour Court to which

the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

11. Further in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, the Supreme Court in paragraph 32 (4) (6) of judgment, held as follows:

32(4)(6). We may now summarise the principles following from the above discussion:

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(Underlining mine)

12. On my finding that the Petitioner has alternative efficacious remedy under the Industrial Disputes Act, jurisdiction under Article 226 of the Constitution is not fit to be exercised and on that account alone I am not inclined to enter into the merits of the case. Further in my opinion, in case Respondent-Corporation in some of the cases had not taken this plea, same shall not preclude it from taking this plea in the present case. Petitioner, if so advised, may take recourse to the remedy available to him under the Act.

13. Application stands dismissed with the aforesaid observation.