
(2019) 07 CAL CK 0088

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 11857 (W) Of 2019

Tarakeswar Rewani

APPELLANT

Vs

UCO Bank & Ors

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2K, 2S, 10A
Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2019) 07 CAL CK 0088

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Malay Dhar, Biswajit Sarkar, Rahul Karmakar, Priyanka Chetlangia

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner claims to have been engaged on 14th October, 2001 as a casual sweeper/safai karmachari of the Bank on daily wage basis. No formal

letter of appointment/engagement was issued in his favour. Payment was made to him against cash vouchers.

The petitioner alleges that the Bank discontinued his service on and from December, 2014 without any prior intimation. No letter of termination was

served upon him. It was on oral instructions that the petitioner was directed not to report to work.

The petitioner contends that the management of the Bank took a policy decision to regularise the service of all contractual sweepers appointed on

casual basis and a list was prepared for regularisation of their services. The casual employees who were junior to him and working in the same branch

were made permanent whereas his service has been terminated.

An industrial dispute was raised by the trade union of which the petitioner was a member. The Assistant Labour Commissioner (Central) Kolkata

recorded the failure of the conciliation proceeding on 4th March, 2019. The union representative was agreeable for Voluntary Arbitration under

Section 10A of the Industrial Dispute Act, 1947 while the management representative was not in favour.

The petitioner submits that the action of the respondents is arbitrary, discriminatory and contrary to the provisions of Articles 14 and 16 of the

Constitution of India. The petitioner further submits that in the conciliation proceeding the Bank raised the point that there was no employer -

employee relationship between the parties and accordingly the ratio of the judgment in the case of the Secretary, State of Karnataka & Ors. vs. Uma

Devi & Ors. will not be applicable in his case.

The petitioner has accordingly filed the instant writ petition for redressal of his grievances.

The respondents have raised a preliminary objection with regard to the maintainability of the writ petition before this Court. It has been specifically

contended that the petitioner was a "workman" as per Section 2S of the Industrial Disputes Act, 1947 (hereinafter referred to as "the

Act"). The dispute in question is an "industrial dispute" as per Section 2K of the Act and the issue in question can be decided in accordance

with the industrial law.

It has been argued that the Act is a complete code and the petitioner ought to take recourse of the statutory remedy that is available to him. The

recording of failure of the conciliation proceeding on 4th March, 2019 is not under challenge. As the petitioner has already availed the remedy under

the Act to challenge the action of the respondents accordingly filing a writ petition challenging the self-same action will be hit by the principle of res

judicata. A party cannot initiate two separate proceedings before two separate forums on the self-same cause of action. The respondents pray for

dismissal of the writ petition.

In response to the preliminary objection raised by the respondent the petitioner submits that the respondents on one hand before the Assistant Labour

Commissioner took a specific plea that the employer - employee relationship between the parties do not exist, whereas in the present proceeding the

respondents submit that the industrial dispute was maintainable. The respondents cannot approbate and reprobate at the same time.

It has been submitted that the alternative remedy that is available to the petitioner is not an effective and efficacious one. The petitioner was dismissed

from service in the year 2014 and the failure of the conciliation proceeding was recorded in the year 2019. The petitioner further submits that his life

and livelihood is at stake as he is passing through acute financial crisis. He placed reliance on the judgment delivered by the Honâ??ble Supreme

Court in the matter of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. reported in (1998)8 SCC 1 wherein the Court held that

the alternative remedy would not operate as a bar where the writ petition has been filed for the enforcement of any of the fundamental rights or

where there has been violation of the principles of natural justice or where the order or proceeding are wholly without jurisdiction or the vires of an

Act is challenged.

On the self-same proposition the petitioner relies upon another decision delivered by this Court in the matter of Agricultural Finance Co. Ltd. vs. Micro

Small & Medium Enterprises Facilitation Council reported in (2013)5 CHN (Cal) 375 (para 12).

He further relies upon an unreported order dated 21st January, 2011 passed by a Honâ??ble Single Judge of this Court in WP No. 25952 (W) of

2010 on the issue that the writ petition was maintainable as there has been fundamental breach of the procedure, and principles of natural justice have

not been complied with.

As a preliminary objection has been raised with regard to the maintainability of the writ petition I intend to deal with the same at the very first

instance.

Though the petitioner claims that he was appointed by the respondent on daily wage basis neither any appointment/engagement letter nor any

termination letter has been annexed to the writ petition. Certain communications have been annexed with the writ petition which gives a faint

indication that the petitioner may have been associated with the Bank in the year 2008, but the same does not give any conclusive proof about the

engagement of the petitioner by the Bank on regular basis.

The petitioner alleges that he was terminated from service in the year 2014. No

representation and/or objection appear to have been filed/raised by the petitioner at the relevant point of time or soon thereafter. Long thereafter in November, 2017 the union of the Bank employees raised an industrial dispute before the Regional Labour Commissioner. On the basis of the same, an industrial dispute conciliation proceeding was initiated in the year 2017 which ended in failure as recorded in the conciliation failure report issued by the Assistant Labour Commissioner (Central) Kolkata on 4th March, 2019.

The petitioner waited from 2014 to raise the labour dispute in the year 2017. No reason whatsoever has been put forward by the petitioner for sitting tight for three long years to raise the industrial dispute. On the failure of the conciliation proceeding the petitioner immediately rushed to the High Court by filing the instant writ application.

As the petitioner has already availed the statutory remedy that was available to him, accordingly, filing a separate writ petition challenging the said termination will not be maintainable. The appropriate remedy would be to continue with the proceeding in accordance with the industrial law.

Moreover, there are several disputed questions of facts which will not be possible for the writ court to decide. The petitioner does not have any document in support of his engagement in the Bank. Neither is there a letter of termination. A couple of vouchers allegedly showing payment of wages and a few communications of the bank allotting sundry jobs does not prove that the petitioner was engaged by the Bank on regular basis. The petitioner is required to prove the same by leading evidence.

The Honâ??ble Supreme Court of India in *S cooters India & Ors. â?"vs- Vijai E.V. Eldred* reported in (1998) 6 SCC 549 held that the High Court is not the forum to entertain writ petition directly for adjudication of an industrial dispute relating to termination involving disputed questions of fact for which, remedy under the industrial laws was available to the workman. That apart, the writ petition filed more than six years after the date on which the cause of action is said to have arisen and there being no cogent explanation for the delay, the writ petition should have been dismissed on the ground of laches alone.

In the instant case the petitioner was terminated in 2014. The industrial dispute was raised in 2017. Entertaining the instant writ petition challenging the

alleged order of termination in the year 2019 is not justified. Delay and latches looms large in the instant case.

In *Webel Video Devices Ltd. vs. Prasanta Kumar Das & Ors.* reported in 2007(3) CHN 8 the Honâ??ble Division Bench of this Court categorically

held that when the writ petitioner is a workman and the dispute is an industrial dispute the Industrial Court/Tribunal is the proper forum. In the said

case the Honâ??ble Court took into consideration various decisions and arrived at the said conclusion.

Availability of an alternative remedy does not oust the High Courtâ??s jurisdiction to entertain a writ petition is settled law. The jurisdiction exercised

by the High Court under Article 226 of the Constitution is plenary. The relief under Article 226 being discretionary, it is for the Court to decide,

whether or not to entertain an application, depending upon the facts and circumstances of each case. Upon appreciation of the facts of the instant

case I am not inclined to exercise my discretion in favour of the petitioner.

The writ petition fails and is accordingly dismissed.

The dismissal of the writ petition however, will not stand in the way of the petitioner from approaching the appropriate forum for redressal of his

grievances in accordance with law, if so advised.

W.P No. 11857 (W) of 2019 is dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.