

(1959) 08 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 30 of 1959

Union of India (UOI)

APPELLANT

Vs

Ramdayal Chunilal Yadav

RESPONDENT

Date of Decision : 29-08-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : AIR 1960 HP 16

Hon'ble Judges : T. Ramabhadran, J.C.

Bench : Single Bench

Advocate : Kedar Iswar, for the Appellant;

Final Decision : Dismissed

Judgement

T. Ramabhadran, J.C.

1. In this petition, purporting to be under Articles 226 and 227 of the Constitution, I am requested to issue a writ of certiorari, or any other appropriate writ or order, quashing the judgment and decree passed by the learned District Judge of Sirmur on 28-10-1957 in Civil Appeal No. 17-S/13 of 1956 and further to restrain the respondent (decree-holder) from taking any action under the aforesaid decree.

2. The facts, leading to this petition, as stated thereunder, are, briefly, as follows: The respondent Shri R.C. Yadav was employed by the former State of Bilaspur, as an engineer. When Bilaspur State merged in the Union of India, Shri Yadav's services were continued in a temporary capacity. In March, 1950, the P. W. D. establishment of Bilaspur was brought under the control of the Himachal Pradesh P. W. D. The respondent was posted as S. D. O. Paonta, District Sirmur. It was, eventually, decided that the respondent should not be absorbed in permanent service and his services were terminated on 17-10-1950 by an order of the Chief Commissioner, Himachal Pradesh, in consultation with the Chief Commissioner Bilaspur.

3. Aggrieved by the termination of his services, the respondent, R.C. Yadav, filed a suit in the Court of the Senior Subordinate Judge at Nahan (Civil Suit No. 6/1 of 1955), praying for a declaration that the termination of his services was illegal and ultra vires and he be restored to service. The suit was resisted by the then State of Himachal Pradesh and the Union of India on various grounds. On 6-10-1956, that learned Judge non-suited the plaintiff on the ground that, in the absence of a prayer for consequential relief, the suit for mere declaration was not competent. The unsuccessful plaintiff went up in appeal and the learned District Judge of Sirmur, vide his judgment and decree dated 28-10-1957 in Civil Appeal No. 17-S/13 of 1956, set aside the decision of the trial Court and passed a decree in favour of the plaintiff to the effect that:

"The orders of terminating his services as S. D. O. Paonta are wrongful, illegal and void and the same are set aside and the plaintiff is restored to his service as a Sub-Divisional Officer."

4. It is the above judgment and decree of the District Judge against which I am requested to issue a writ of certiorari.

5. When this petition came up for admission on the 13th instant, I called upon the learned Government Advocate to satisfy me, prima facie, that this petition was competent in view of the fact that his client (the Union of India) had failed to appeal against the above decree, although it was entitled to do so. Learned counsel took time and was heard on the 22nd instant. Certain authorities were cited by him, to which reference will be made presently.

6. In my opinion, for reasons to be stated below, this petition cannot be admitted.

7. (A) In the first place, the decree sought to be quashed was passed by the learned District Judge of Sirmur--as already stated--on 28-10-57. The present petition, purporting to be under Articles 226 and 227, was presented to this Court on 30-7-1959, i. e., after the lapse of 1 year and 9 months. In para 8 of this petition, it has been stated that the respondent has sent various communications to the petitioner pressing for posting orders and also threatened to take out execution proceedings. In answer to this Court's question, the learned Government Advocate submitted that this petition became necessary only when the respondent threatened to take out execution proceedings. I am, however, not satisfied. With this explanation, It is debatable if the decree passed by the District Judge is an executable one. In the cross writ petition filed by the respondent (Ramdayal Chunilal Yadav v. Union of India, Civil Writ Petn. No. 28 of 1959, which is being disposed of to-day Ram Dayal Chunilal Yadav Vs. The Union of India (UOI) and Others, the learned counsel for the respondent (Mr. Man Mohan Nath Advocate) conceded that the above decree was not executable. Further, from the perusal of the correspondence between the respondent, Shri R.C. Yadav, and the Chief Engineer, Himachal Pradesh P. W. D., filed therewith, it is clear that on 10-4-1958 the respondent wrote to the above Chief Engineer, praying for early reinstatement, in the light of the District Judge's decision. That

letter was acknowledged by the Chief Engineer on 23-4-1958. Further communications were sent by the respondent to the Chief Engineer from time to time claiming reinstatement to all of which an uniform reply was sent, i. e., that the matter was under consideration. It is obvious, therefore, that by April, 1958, the Chief Engineer, Himachal Pradesh P. W. D. was-made aware that the respondent would press for such relief as he could claim under the decree-of the District Judge. The present petition, as already stated, was filed in this Court on 30-7-1959, i. e., about 1 year and 3 months after the first communication sent by the respondent to the Chief Engineer. I am constrained to remark that the delay in making this petition, has not been satisfactorily accounted for.

8. There is no doubt that a High Court will consider the question of laches in deciding whether a writ petition should be entertained or not. I may refer to the following case law: (i) O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, There, a Division Bench of that High Court has remarked that:

"Though there is no period of limitation as such prescribed for application for the issue of prerogative writs, long delay can be one of the grounds for refusing to grant an application for the issue of such writs. There may, however, be circumstances which should make the High Court take a more lenient view and entertain the application even after delay."

(ii) Rajputana Mine Owners and Mineral Merchants Associations v. State of Ajmer AIR 1953 RAJ 2 There, following O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, the learned Judicial Commissioner of Ajmer refused to condone a delay of about seven months in filing a writ petition. For reasons stated above and to be stated presently, I can see no ground for condoning the inordinate delay that has occurred to making this petition.

9. (B) Learned counsel for the petitioner was then called upon to explain why no appeal was brought to this Court against the decree of the District Judge, now sought to be quashed. Mr. Kedar Ishwar submitted that the suit had been valued for jurisdictional purposes for Rs. 110/- and, therefore, no second appeal was competent having regard to the provisions of para 32 of the Himachal Pradesh (Courts) Order, 1948. He was then asked to state whether any second appeal was actually filed, but held by this Court to be incompetent. His answer was that no appeal was filed. In my opinion, however, it cannot be said that no second appeal lay against the above decree of the District Judge. I may point out that under para 32(I)(a)(i), Himachal Pradesh (Courts) Order, a second appeal would lie in an unclassified suit (as in the present case) if the value of the suit is Rs. 1,000/- or upwards, or if the appellate decree of the District Court involves some claim to, or question respecting, property of like value.

10. Learned counsel's attention was drawn to Second Appeal No. 7 of 1958: Union of India (UOI) Vs. Kedareshwar, Union of India v. Pt. Kedareshwar. There, the facts were that Pandit Kedar Ishwar, who held the post of officiating Accountant-General of Mandi State, was compulsorily retired by an order of the

Deputy Chief Commissioner, Himachal Pradesh. Pt. Kedar Ishwar had filed a suit seeking a declaration that the order passed by the Deputy Chief Commissioner (compulsorily retiring him) was null and void and he (Pandit Kedar Ishwar) continued in service despite that order. That suit was decreed by the Additional Subordinate Judge of Mandi. An appeal from that decree was dismissed by the learned District Judge of Mandi. From the appellate decree of the District Judge, a second appeal was brought to this Court by the Union of India (UOI) Vs. Kedareshwar, The right of second appeal was claimed by the Union of India on the ground that the decree of the District Judge, Mandi, involved directly a claim to a sum exceeding Rs. 2,500/-, representing arrears of salary due to Pt. Kedar Ishwar.

An affidavit to that effect was furnished by the Collector of Mandi. It was on the basis of that affidavit (which was not Contested by the other side) that the second appeal was entertained, despite the fact that the suit giving rise to that second appeal had been valued at Rs. 225/- only. I fail to understand why a second appeal was not filed in the present case, which is very similar. It is strange that no attempt whatsoever was made to file a second appeal with a prayer--as is often done--that in the alternative, the memorandum of second appeal may be treated as a revision petition, if, for any reason, the second appeal was held to be incompetent. It is all the more difficult to understand this omission because I find that the suit in the Court of the Senior Subordinate Judge, Nahan, as well as the appeal in the Court of the District Judge, Sirmur, were duly contested by the Union of India.

11. (C) I may refer, now, to the authorities cited by the learned counsel for the petitioner :

(a) Bibi Nazma Khatoon and Another Vs. R.P. Sinha, Custodian, Evacuee Properties and Another, There, in a case arising out of the Administration of Evacuee Property Act, 1950, a Division Bench of that High Court observed that:

"As a general rule, the writ of certiorari or prohibition will not lie when there is an alternative procedure by way of appeal or revision provided in the Statute. A case where the want of jurisdiction complained of is based upon the violation of some fundamental principle of justice is an exceptional case where the existence of a remedy by way of appeal or revision is no answer to an application asking for a writ of certiorari or prohibition."

(b) Sasamusa Sugar Works Ltd. v. State of Bihar, (S) AIR 1955 Pat 49 There, in a case arising under the Industrial Disputes Act, 1947, a Division Bench of that High Court remarked that:

"It is true that as a general rule a writ of certiorari or prohibition will not lie in a case where the petitioner has another adequate remedy open to him but there is an exception in a case where the want of jurisdiction complained of is based upon the violation of some fundamental principle of justice. In such an exceptional case, the existence of a remedy by way of appeal or revision is no

answer to an application asking for a writ of certiorari or prohibition."

In my opinion, however, neither of these rulings will help the petitioner. It has to be borne in mind that the decision against which I am requested to issue a writ of certiorari is not that of a Tribunal or a quasi judicial body, functioning under any special or local Act. The respondent filed a regular suit in a civil Court of competent jurisdiction. He was unsuccessful in the trial Court, but on appeal obtained a decree from the Court of the District Judge. As pointed out earlier, it was open to the Union of India to file a second appeal from the appellate decision of the District Judge, but this course, for some reason, was not adopted. Even this writ petition has been made 1 year and 9 months after the decree of the District Judge. I may refer to *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, where their Lordships held as follows:

"Such writs, as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases, where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made."

12. The contents of para 7 of this writ petition--wherein the decision of the District Judge has been assailed on various grounds--suggest that having omitted to come up in appeal against the appellate decree of the District Judge, this Court is now being moved to examine the correctness of the District Judge's decision, as though it were sitting as a court of appeal. Obviously, such a course is not possible in view of their Lordships' above observations.

13. In *Narayana Panicker v. Kumaran Nair*, AIR 1952 Trav-Co 101, a learned Judge of that High Court indicated that:

"Where a distinct remedy is open to a party aggrieved by an order of an inferior Court, it is an abuse of the process of the Court to approach the High Court for issue of a writ of certiorari."

"This is not, however, an inflexible rule and in exceptional cases the High Court may interfere if it is shown that before resort was made to such other remedy the mischief sought to be avoided would be committed."

In the present case, I can see no reason for departing from the ordinary rule.

14. (D) It may not be out of place to point out that on a former occasion the present respondent, *Sliri R.C. Yadav*, had filed a writ petition in this Court, which was numbered as C. W. P. 11 of 1953 instituted on 31-7-1953. There, the prayer made was that a writ be issued to the then State of Himachal Pradesh and the

Union of India, directing them to continue him (Yadav) in service on the footing that the order terminating his service was inoperative, and ultra vires. That writ petition was contested by the State of Himachal Pradesh and the Union of India, inter alia, on the ground that the facts were disputed and the proper course for Yadav was to seek redress by way of regular suit.

That writ petition was dismissed by this Court on 20-9-1954, without expressing any opinion on the merits of the case and leaving Yadav to seek his remedy, if so advised, by way of suit. It was subsequent to that order that Yadav filed the suit which, as already stated, was dismissed by the trial Court, but decreed on appeal by the District Judge. I am constrained to remark that it is highly incongruous that after having contended that Yadav should seek his remedy by way of regular suit (and not by means of a writ petition), the present petitioner should now seek a writ of certiorari against the decree of the District Judge passed in appeal in such a suit filed by Yadav--especially, after having omitted to file an appeal against the decree of the District Judge.

15. For reasons stated above, I have come to the conclusion that this writ petition cannot be entertained. The petition is, accordingly, rejected.