

**Man Mohan Sharma Vs. U.P. State Textile Corpn. Ltd. and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/464290](http://sooperkanoon.com/464290)

**Court :** Allahabad

**Decided On :** Jan-28-1992

**Reported in :** (1993)IILLJ83All

**Judge :** N.L. Ganguli, J.

**Acts :** [Constitution of India](#) - Articles 226; [Industrial Disputes Act, 1947](#) - Sections 10

**Appeal No. :** C.M. Writ Petition No. 2645/1992

**Appellant :** Man Mohan Sharma

**Respondent :** U.P. State Textile Corpn. Ltd. and anr.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** B.N. Singh, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**N.L. Ganguli, J.**

1. This petition is for issuing a writ of mandamus directing the respondents to produce resignation letter dated October 7, 1991 and quash the same, besides the

relief that the respondents be directed not to deny duty and wages of the post to the petitioner without complying the provisions of law and to pay entire salary to the petitioner w.e.f. December 1, 1991. According to the petitioner's allegations itself, the petitioner was initially appointed as a labourer in the U.P. State Textile Corporation Ltd. (hereinafter referred to as the Corporation). In December, 1986, he was promoted to the post of Helper, after 8 months of his initial appointment. No letter of appointment was issued to him. He continued to work as 'Karigar' (operative) with the respondents. A copy of the attendance card issued by respondent No. 2 in the month of October, 1991, has been filed as annexure. It is stated that the petitioner was elected Vice-President of the Union of the workmen of the Corporation in the year 1991. Though there was no strike or industrial unrest, the respondents became annoyed on the legitimate action of the petitioner. On October 7, 1991, Sri Suresh Sharma, Senior Mill Engineer and Sri. B.N. Chaturvedi, Security Officer, forced the petitioner to write resignation letter. The petitioner under coercion had written the resignation letter. Of course, on October 8, 1991, he submitted a complaint to the Dy. Labour Commissioner, Haldwani, Nainital, against the aforesaid persons for getting resignation letter written under coercion and threat. The petitioner, after the resignation, is not being permitted to enter the premises of the mill in question. He made various representations to the S.D.M., Minister concerned, Chairman of the Corporation etc. for redress, but without success, hence the present petition under Article 226 of the [Constitution of India](#), for the reliefs already mentioned.

2. Admittedly, the petitioner had been working in an industrial organisation and he has challenged the illegal termination/removal by obtaining resignation letter from him under coercion. The question posed by the Court was about the maintainability of the petition under Article 226 of the Constitution in respect of a matter directly covered and cognisable under the provisions of the Industrial Disputes Act (hereinafter referred to as the Act) before the Labour Court as held in the Full Bench case of Chandrama Singh, (1991 Lab IC 2413). The learned counsel for the petitioner pointed out paragraph 18 of the writ petition, which is being quoted as under:-

'That the petitioner through Union has remedy of raising an Industrial Dispute which is much dilatory and reference of dispute to the Labour Court cannot be claimed as matter of right by the petitioner because the same is within the sole discretion of the State Government hence the remedy of raising the industrial dispute could not be said to be efficacious remedy. Since the respondents have violated the fundamental right of petitioner, guaranteed under the [Constitution of India](#), hence the present writ petition is being filed under Article 226 of the [Constitution of India](#) being more efficacious remedy.'

The petitioner admitted that he has remedy of raising industrial dispute under the Act, but the relief is a dilatory one. He also stated that the reference to the dispute to the Labour Court cannot be claimed as a matter of right by the petitioner because the same is within the sole discretion of the State Government, hence the relief cannot be said to be an efficacious remedy. After hearing the petitioner, the Court was not satisfied about the statement that the dispute cannot be referred at the instance of the workmen as it was the sole discretion of the State Government. The petitioner is not correct in saying that the discretion of the State Government is without a remedy. It is always expected that the State Government would exercise the discretion vested in it by law in a legal manner. Further, factual aspects stated by the petitioner in the writ petition are such which would require evidence and appreciation of evidence, which cannot possibly be done in proceeding under Article 226 of the Constitution. The petitioner had not been able to satisfy the Court that the remedy under the Act was not adequate alternative remedy available to the petitioner, hence this court indicated that it was not inclined to interfere in the alleged illegal termination of the petitioner's employment in the Corporation. The Court was of the view that the petitioner has not been able to establish that the bar of alternative remedy has been shown to be removed by the petitioner by showing such facts and circumstances in the petition.

3. The court was proceeding to dismiss the writ petition on the ground of alternative remedy but the learned counsel for the petitioner requested that he shall submit written argument and place certain case laws to overcome the legal hurdle posed before him by the recent Full Bench judgment in Chandrama Singh's case (supra). He submitted a written argument reiterating the facts already stated

in the writ petition. It was pointed out that:

(1) A workman has no right to raise an industrial dispute in service matter. Except when his service is terminated or dismissed, then he can move application to reconciliation under Rule 2 of the U.P. Conciliation Order of 1948 and in other matter, he is dependent on the mercy of the Union and if the Union refuses to entertain his case, then he has no remedy available;

(2) The workman cannot approach the Labour Court directly for settlement of or adjudication of grievances, unless he moves for conciliation to the Conciliation Officer under the Act which is a time consuming process;

(3) It is the Conciliation Officer who may send the report under Rule 4 of the U.P. Industrial Disputes Rules, 1957, to the State Government under Section 4-K of the Act. He further pointed out that it is the discretion of the State Government to make a reference under Section 4-K;

(4) The Labour Court has no power to pronounce its award. The award has to be sent to the State Government for publication;

(5) The Government has power to publish the award or withhold the publication and no time limit has been fixed under Section 63 of the U.P. Act; and

(6) The Government is empowered under Section 6-A(1) of the U.P. Act not to enforce the award under Section 6-A(2), (3) of the Act. Thus, the State Government is empowered to annul the award. The award after publication is enforceable after 30 days of the award.

Thus the argument of the learned counsel is that the provisions of the U.P. Industrial Disputes Act cannot be said to be quick and efficacious remedy.

4. The learned counsel for the petitioner cited (AIR 1990 SC 2139), *U.P. Bijli Karmachari Sangh v. U.P. Electricity Board*, by which the Hon'ble Supreme Court directed the respondent-employer to give benefit of re-employment who have accepted the same. The petition of the workmen had been dismissed by the Supreme Court on the ground of the alternative remedy under the Industrial

Disputes Act. The Supreme Court observed that at the time when the petition was dismissed by the High Court, the alternative remedy was a bar for entertaining the writ petition. However, the restrictions introduced by way of amendment in the provisions of Article 15 have been withdrawn subsequently. The Supreme Court was pleased to direct that it was not in dispute that: 'the workmen had completed 240 days of continuous work and could be treated as retrenched workmen. We dispose these appeals with directions that the U.P. Electricity Board, respondent No. 1, shall maintain a list of workmen who offered to accept the 5 re-employment and proceed to give them the benefit of re-employment without any claim for backwages or seniority if they approach the Board within 3 months from now.'

5. The learned counsel for the petitioner referred a case reported in 1992-I-LLJ-397 State Transport Accts. Corporation v. Orissa State Road Transport; 1991 Lab IC 1449: Umesh Chandra Pandey v. State of U.P. to emphasise that the alternative remedy would be no bar in entertaining the writ petition under Article 226 of the [Constitution of India](#). These two cases and the earlier case of the Supreme Court referred to by the petitioner are of no help to the petitioner. In the Supreme Court case (supra) there was no factual controversy and the Hon'ble Supreme Court had not entered into the question of maintainability of the writ petition or correctness of the order rejecting the writ petition on the ground of alternative remedy. It had simply disposed of the case in its extraordinary jurisdiction for giving an opportunity of employment to the workmen who offered to join the employment without any benefit of backwages etc. The State Transport Accts. Corporation's case (supra) and Umesh Chandra Pandey's case (supra) are also not on the point as it does not hold contrary to what has been held in the Full Bench case of this Court reported in (1991) 1 UPLBEC 878. The petitioner further referred to AIR 1971 SC 870 Coffee Board, Bangalore v. Joint Commercial Tax Officer. A perusal of the said judgment clearly shows that it arose out of a petition under Article 32 of the [Constitution of India](#) for enforcement of a fundamental right and the Hon'ble Supreme Court had observed that errors of law or fact committed in exercise of jurisdiction founded on a valid law do not entitle a person to have them corrected by way of writ petition under Article 32 of the Constitution. The proper way to correct them is to proceed under the provisions of appeal etc. or by way of proceeding under Article 226 before the High Court. It appears that the petitioner

was encouraged by the observation made by the Hon'ble Supreme Court at paragraph 9 of the said judgment. The petitioner had not appreciated that the Supreme Court had also observed in the said paragraph that proper way to correct them is to proceed under the provisions for appeal etc. which means the provisions of other law than the Article 226.

6. The other case cited in AIR 1979 SC 1889: Assistant Collector of Central Excise v. Jain Son Hosiery Industrial Ltd. This authority also says that it is correct to say that the High Court must have regard to the well established principles for the exercise of its writ jurisdiction and unless it is satisfied that the normal statutory remedy is likely to be too dilatory or difficult to give reasonably quick relief, it would be loath to act under Article 226. The next case cited by the learned counsel is (AIR 1982 SC 82), Vellaswamy v. Inspector General of Police, Tamil Nadu, where the Supreme Court was pleased to observe that the provisions of Article 226 of the Constitution since amended cannot be said to have the same absolute bar for entertaining a writ petition. Alternative remedy is not an absolute bar for entertaining a writ petition under Article 226 of the Constitution . This case also does not show that the alternative remedy is to be bypassed merely because it is likely to consume some time. The Supreme Court in 1975 II LLJ 445 The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke, has observed that if the industrial dispute relates to the enforcement of a right or obligation created under an Act, then the only remedy available to the suitor is to get adjudication under the Act. Hon'ble Untwallia, J. of the Supreme Court, speaking for a unanimous court, observed at page 450:

'The object of the Act as its preamble indicates is to make provision for investigation and settlement of industrial disputes which means adjudication of such disputes also. The Government envisages collective bargaining contracts between the unions representing the workmen and the management, a matter which is outside the realm of Common Law or Indian Law of Contract.'

7. The Hon'ble Supreme Court, in 1976-I-LLJ-274. Rohtas Industries Ltd. v. Rohtas Industries Staff Union, has observed (at pp. 285-286) that:

'In Doe v. Bridges, 1831-1 B & Ad 847 at p. 859 are the famous and oft-quoted words of Lord Tenterden, C.J. saying:

'where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other.'

Barraclough v. Brown 1897 AC 615, decided by the House of Lords is telling, particularly Lord Watson's statement of the law at p. 622:

'The right and the remedy are given *uno flatu* and one cannot be dissociated from the other.'

In short, the enforcement of a right or obligation under the Act, must be by a remedy provided *uno flatu* in the statute. To sum up, in the language of the Premier Automobiles Ltd.:

'If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.'

The Supreme Court in AIR 1987 SC 1875: Bihar Rajya Vidyut Parishad Field Kamgar Union v. State of Bihar, dismissed the petition on the ground of alternative remedy as the questions relating to the terms and conditions about the workmen could only be adjudicated on evidence and the High Court or the Supreme Court would not enter into the questions of fact. The Rohtas Industries Ltd. case (*supra*) was relied in Full Bench decision of this Court in (1991 Lab IC 1277), U.P. Chal Chitra Nigam Ltd. Karmachari Union v. State of U.P., in which the Lucknow Bench of our Court in paragraph 51 quoted Hon. Krishna Iyer, J. as under (at page 1287).

'But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a China shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and the High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered.'

The decision of the case of the Rohtas Industries Ltd. (supra) was followed by the Patna High Court in 1985 I LLJ 343 Dinesh Pd. v. State of Bihar.

8. The aforesaid case law clearly shows that the consistent view of the Supreme Court and the High Courts is that the availability of alternative remedy is a complete bar to entertaining writ petition under Article 226 of the Constitution generally, and only in cases where the alternative remedy is too dilatory and the adequate relief is not possible to the litigant, this bar would not operate.

9. After hearing the learned counsel for the petitioner and examining the case laws cited above, though it was not necessary for discussing all the case laws as above, I am of the view that the present writ petition is not liable to be entertained. It is more so because the facts involved are such that cannot be decided by the High Court under Article 226 of the [Constitution of India](#) as it is likely that evidence and appreciation of evidence would be required for adjudicating the controversy. In view of the aforesaid, I am of the opinion that the petition may be dismissed summarily on the ground of alternative remedy.

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