

Ram Singer and ors. Vs. Union of India (Uoi) and ors.

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Court : Allahabad

Decided On : Jan-22-1979

Reported in : (1979)ILLJ401All

Judge : Yashoda Nandan, Ag. C.J. and R.M. Sahai, J.

Appellant : Ram Singer and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

Yashoda Nandan, Actg. C.J.

1. The petitioners in these four connected writ petitions have been working as Khalasis in the North-Eastern Railway and were posted at Signal and Tele-Communication at Gorakhpur, which is under the Varanasi Division. They claim that they had been appointed as casual Khalasis on permanent posts, had been continuously, without any break in service, working as such and had acquired the status of 'temporary employees'. They assert that by virtue of their continuous service for the requisite period, they had become entitled to all the rights, privileges and benefits admissible to temporary railway servants and to absorption in the service of the Railways in a substantive capacity. Each one of the petitioners received notices purporting to be under Rule 149(6) of the Indian Railway Establishment Code, Vol. I--hereinafter referred to as the Code--read with Section 25F(a) and (b) of the Industrial Disputes Act, 1947--hereinafter called the Act--

terminating their services with effect from a specified date. The notices further directed that retrenchment compensation was to be paid to the petitioners by the date mentioned therein. It is alleged that a large number of Khalasis who were junior to the petitioners are still working in the Divisional Signal and Tele-Communication Engineering Micro Wave, Gorakhpur, They further allege that similarly Khalasis who are junior to them are continuing to work under the D.S.T.E./C.T.C., Gorakhpur. It is averred in the petitions that in spite of the petitioners' request to the authorities concerned that their services could be terminated by way of retrenchment only if they were found to be junior most in the entire division, their request had not been acceded to by the Divisional Superintendent, Varanasi. In each of the petitions the petitioners have challenged the legality of the notices terminating their services. It had been asserted that the petitioners have got no other alternative remedy except to approach this Court under Article 226 of the Constitution. The impugned notices have been assailed on the grounds that they are in violation of the provisions of Section 25F of the Act and the Rules framed thereunder, firstly, because the notices do not contain reasons as required by the above-mentioned provision of the Act and secondly, because retrenchment compensation as provided for in Section 25F has not been paid.

2. During the hearing of the writ petitions, however, learned Counsel for the petitioners challenged the legality of the impugned notices only on the ground that reasons have not been assigned therein as required by Section 25F of the Act.

3. On behalf of the respondents, a preliminary objection has been taken to the maintainability of these petitions on the ground that the petitioners have an alternative remedy by way of raising an industrial dispute under Section 10(1) of the Act and consequently these petitions are not maintainable in view of Clause (3) of Article 226 of the Constitution as amended by the 42nd Constitution (Amendment) Act. In support of the contention, learned Counsel representing the respondents has placed reliance on a Division Bench decision of this Court in the Divisional Engineer, Headquarters, Northern Railway, Lucknow v. Durgesh Kumar (Special Appeal No. 29 of 1975 reported in 1976 All W.C. 617, connected with Special Appeal No. 58 of 1975, decided by Satish Chandra, J. (as he then was)

and Prem Prakash, J. on 27th April, 1976). In Writ Petition No. 683 of 1974 (giving rise to Special Appeal No. 29 of 1975), the writ-petitioner Durgesh Kumar, who had completed more than three years' service as an 'unskilled staff' in the Railway Workshop, challenged the order terminating his services, made in purported exercise of the power under RULE 149 of the Code read with Section 25F of the Act on the ground that, in substance, it being 'retrenchment' within the meaning of Section 2(oo) of the Act and the Railway Administration having not fulfilled the conditions postulated by Section 25F, he was entitled to continue in service and to the accrued salaries and allowances. The Railway Administration contested the claim taking, inter alia, the plea that the petitioner was not entitled to the relief under Article 226 of the Constitution which he could obtain by invoking the machinery under the Act. The learned single Judge, who decided the writ petition, upon a scrutiny of the affidavits exchanged between the parties, held that the petitioner being a 'workman' and the Railway Establishment an 'industry' within the meaning of the Act, since no retrenchment compensation had been paid to the petitioner, the order terminating his services was invalid. The plea of alternative remedy being available under the Act was repelled on the ground that 'on the mere possibility that some other remedy was available to the petitioner, the Court under Article 226 ought not to drive him out (of) Court'. In the result, the learned single Judge quashed the impugned order and the petitioner was declared to have continued in the service of the Railway Administration. The Divisional Engineer, Northern Railway, appealed against the decision of the learned single Judge and in the special appeal it was contended on behalf of the Railway Administration that since the dispute raised by the petitioner was an 'industrial dispute' it was to be settled by the machinery provided for by the Act and, therefore, the petitioner should be required to pursue that remedy and not allowed to invoke the special jurisdiction of the High Court under Article 226 of the Constitution to issue a high prerogative writ. Learned Counsel for the respondent in the special appeal, on the other hand, urged that there being infraction of a legal right by the employers' non-fulfilment of the conditions under Section 25F of the Act, and, at any rate, the remedy under the Act being not convenient and efficacious, and the High Court having admitted the petitions for hearing and issued the rule, recourse to exhaustion of the remedies under the Act should not be insisted upon in the case.

The Division Bench hearing the special appeal, after a review of certain decisions of the Supreme Court as well as the English Courts, held that since the right sought to be enforced by the petitioner was a right created under the Act, the remedy for its enforcement is by way of raising an Industrial Dispute which the appropriate Government had the power to refer under Section 10(1) of the Act to the Labour Court or the Tribunal, as the case might be. Since in the view of the Division Bench the petitioner had an equally efficacious alternative remedy available to him under the Act, its disagreeing with the learned single Judge allowed the Special Appeal and dismissed the writ petition giving rise to the appeal.

4. Another Division Bench of this Court in *Union of India v. Kali Charan* (Special Appeal No. 36 of 1972): (1978) 37 Fac L.R. 232 (All) followed with approval the view taken in the *Divisional Engineer Headquarters, Northern Railway, Lucknow v. Durgesh Kumar* (supra) and allowed the special appeal at the instance of the Union of India and the Railway Administration and dismissed the writ petition which had been allowed by a learned single Judge on the ground that the notice of retrenchment served on the respondent was in contravention of the requirements of Section 25F of the Act.

5. The aforesaid two Division Bench authorities are binding on us and we are in complete agreement with the opinions expressed therein.

6. The services of the petitioners in all these connected writ petitions have been terminated by notices, as already stated, purporting to be under Rule 149 of the Code read with Section 25F of the Act. Rule 149(6) of the Code is in the following terms:

149(6). Notwithstanding anything contained in Clauses (1), (2) and (4) of this Rule, if the Railway servant or Apprentice is one to whom the provisions of the Industrial Disputes Act, 1947, apply, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act.

The petitioners, challenge to the termination of their services is based on the ground that they cannot be retrenched from service without compliance with the

requirements of Section 25F of the Act. They are undisputably asserting rights made available to them by a provision of the Act and challenge the notices terminating their services basically on the ground that there has been non-compliance with the requirements of that provision.

7. In *Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke* : (1975) IILLJ445SC , the question that arose for consideration before the Court was as to whether civil Courts had jurisdiction to entertain a suit in relation to a dispute which was an industrial dispute, It was held that to sum up, the principles applicable to the jurisdiction of the civil Court in relation to an industrial dispute may be stated thus (at p. 1664 of Lab.IC):

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) 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.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

The Court went on to observe:

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an

industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above.

8. It has been contended before us, as it was before the Supreme Court, that the remedy provided under the Act is no remedy in the eye of law and is a misnomer. Reference to the Labour Court or an Industrial Tribunal for adjudication of an industrial dispute was dependent upon the exercise of the power of the Government under Section 10(1) and it did not confer any right on the suitor. The submission that the Government was free to refuse to make a reference of the industrial dispute for adjudication to the Labour Court or Industrial Tribunal, as the case might be, and consequently conferred no right on the workmen was repelled and it was held that,

If the refusal is not sustainable in law, appropriate directions can be issued by the High Court in exercise of its writ jurisdiction. But it does not follow from all this that the remedy provided under the Act is a misnomer. Reference of industrial disputes for adjudication in exercise of the power of the Government under Section 10(1) is so common that it is difficult to call the remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. The remedy suffers from some handicap but is well compensated on the making of the reference by the wide powers of the Labour Court or the Tribunal. It is alternative. But surely for the enforcement of a right or an obligation under the Act the remedy provided *uno flatu* in it is the exclusive remedy. The possibility that the Government may not ultimately refer an industrial dispute under Section 10 on the ground of expediency is not a relevant consideration in this regard.

9. We are not, in the instant case, concerned with the question as to whether civil Courts have jurisdiction to entertain claims of the nature asserted and are called upon only to decide as to whether the petitioners had an alternative remedy under the Act so as to oust the jurisdiction of this Court under Article 226 of the Constitution as provided for by Clause (3) thereof as it stands after the coming into force of the 42nd Constitution (Amendment) Act and have no hesitation in holding

that the petitioners have an alternative remedy by way of raising a dispute referable by the Government under Section 10(1) of the Act.

10. In *Bhagwati Prasad v. Regional Manager, Bank of Baroda, Lucknow* (Civil Misc. Writ Petn. No. 6582 of 1974, decided by a Division Bench of this Court on 8th February, 1977) a preliminary objection was raised to the effect that in view of the provisions of Section 58 of the Constitution 42nd Amendment Act, 1976, the petition had abated as the petitioner had, within the meaning of Clause (3) of the amended Article 226 of the Constitution, an alternative remedy for getting the dispute adjudicated through a reference made under Section 10 of the Act. The preliminary objection was com bated by the Learned Counsel for the petitioner, who contended that under Section 10 of the Act the appropriate Government had discretion either to make a reference or not to do so and conse quently it could not be said that the petitioner had an alternative remedy within the meaning of Clause (3) of the new Article 226 of the Constitution. Relying on the decision of the Supreme Court in *Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke* (1975) L.I.C 1651 (supra), the Bench held that the remedy provided under the Act was an alternative remedy for the petitioner, and in the result the writ petition was rendered to have abated under Section 58 of the Constitution 42nd Amendment Act, 1976 and was dismissed. It was observed that it was open to the petitioner to seek his remedy under the provisions of the Act, if so advised.

11. Learned Counsel for the petitioners has brought to our notice the decision of the Supreme Court in *Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana* : (1979)ILLJ1SC , for the purpose of submitting that the decisions of this Court in *Union of India v. Kali Charan* (1978) 37 F.L.R. 232 (All) and *Bhagwati Pd. v. Regional Manager, Bank of Baroda, Lucknow* (supra) are no longer good law. The decision does not deal with the question considered by the Supreme Court in the *Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke* (supra) on which reliance was placed in the above-mentioned decisions of this Court and conse quently has no relevance to the matter under discussion.

12. Learned Counsel for the petitioners has placed reliance on a Division Bench decision of this Court in *Nand Lal v. Union of India* (Writ Petition No. 1368 of 1976

decided on 28-4-1978): (reported in (1978) L.I.C. 1267 (All) and Union of India v. Bishwa Nath (1978) All Civ. J 81 and some single Judge decisions in which notices identical to those challenged in these writ petitions were quashed on the ground that they had been issued in disregard of the requirements of Section 58 of the Constitution 42nd Amendment Act, 1976 of the Act. In these cases the question as to whether the writ petitioners had an alternative remedy available under the Act or not and as to whether the writ petitions were maintainable in view of Article 226(3) of the Constitution as it stands was not raised or considered. In Hardayal v. Union of India (Civil Misc. Writ Petn. No. 7552 of 1974 decided on 8-3-1976): reported in (1976) L.I.C. 1426 (All) by a learned single Judge of this Court no doubt the contention raised on behalf of the Railway Administration that this Court should not interfere in exercise of powers under Article 226 of the Constitution as the petitioners had an alternative remedy available to them under the Act was repelled and the decision of the Supreme Court in Premier Automobile Ltd. v. Kamalakar Shankar Wadke (supra) distinguished on the ground that in the above-mentioned decision the Supreme Court was concerned not with the powers of this Court under Article 226 of the Constitution but with the jurisdiction of the civil Court and it was observed that it is well settled that the jurisdiction of this Court under Article 226 of the Constitution is much wider than that of the civil Court and even matters arising out of an industrial dispute are amenable to challenge in this Court, but the judgment in that case was delivered on the 8th March, 1976, i.e., before the coming into force of the 42nd Constitution (Amendment) Act. The learned single Judge in Hardayal v. Union of India (supra) did not hold that a reference under Section 10(1) of the Act is not an alternative remedy. After the amendment of Article 226 of the Constitution by the 42nd Constitution (Amendment) Act, since the petitioners have an alternative remedy under the Act itself for enforcement of the rights made available to them by that Act and the infraction of which they allege, this Court has ceased to have any jurisdiction to grant any relief to the petitioners under Article 226 of the Constitution, even though, the notices terminating their services may be in violation of the requirements of Section 58 of the Constitution 42nd Amendment Act, 1976 of the Act.

13. For the reasons given, these petitions abate and it is ordered accordingly, the petitioners, if so advised, are at liberty to pursue their remedies under the Act, In the circumstances of the case, parties shall bear their own costs.

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