

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**

**Arvind Mehrotra Vs. Labour Commissioner, Kanpur and ors.**

**Arvind Mehrotra Vs. Labour Commissioner, Kanpur and ors.**

**SooperKanoon Citation : [sooperkanoon.com/480010](http://sooperkanoon.com/480010)**

**Court : Allahabad**

**Decided On : Aug-22-2001**

**Reported in : 2001(4)AWC2613; [2001(91)FLR1094]; (2001)3UPLBEC2342**

**Judge : Ashok Bhushan, J.**

**Acts : [Constitution of India](#) - Articles 12, 14, 226, 367 and 372; Industrial Employment (Standing Orders) Act, 1946 - Sections 10, 10(2) and 10(3); [Industrial Disputes Act, 1947](#) - Sections 2A, 2K, 4K, 6N and 25F; [Companies Act, 1956](#); [General Clauses Act, 1897](#) - Sections 2(42)**

**Appeal No. : C.M.W.P. No. 24520 of 1995**

**Appellant : Arvind Mehrotra**

**Respondent : Labour Commissioner, Kanpur and ors.**

**Advocate for Def. : S.C., ;Bharti Sapru, ;Sudhir Chandra and ;A.K. Agarwal, Adv.**

**Advocate for Pet/Ap. : Shesh Kumar, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**Ashok Bhushan, J.**

1. Heard Shri Shesh Kumar, counsel for the petitioner, Ms. Bharti Sapru appearing for the respondent Nos. 3 and 4 and the learned standing counsel appearing for respondent No. 1.

2. This writ petition has been filed by the petitioner praying for a writ, order or direction in the nature of mandamus declaring the provisions of Standing Order 25 as ultra vires. A further prayer has been made praying for a writ of certiorari quashing the impugned order dated 12.5.1995 Annexure-7 to the writ petition terminating the services of the petitioner.

3. Petitioner's case in the writ petition is that respondent No. 3 Geep Industrial Syndicate Ltd. is a registered company under the provisions of Companies Act, 1956. Petitioner claims that he was appointed as Sales representative vide order dated 24.8.1972. Petitioner states that looking to his meritorious service, he was given promotion to Officer Grade-III vide letter dated October, 1989. Petitioner states that respondent No. 3 is a company and is governed by the certified Standing Orders certified under the provisions of Industrial Employment (Standing Orders) Act, 1946. Copy of the certified standing orders has been annexed as Annexure-6 to the writ petition.

4. Standing Order 25 provides for termination of service of workman. Petitioner in the writ petition has challenged Standing Order 25 as violative of Article 14 of the [Constitution of India](#). It has further been stated in the writ petition that Certifying Officer has acted illegally in certifying the Standing Order 25. It has been stated that the company issued an order dated 12.5.1995 terminating the petitioner's service. It is claimed that the termination order amounts to retrenchment as the Management has retained several junior persons. It has been claimed that provisions of Standing Order is in violation of provisions of Section 6N of the Industrial Disputes Act, 1947. The petitioner has prayed in the writ petition for quashing of the termination order and also prayed for declaring Standing Order 25 as ultra vires.

5. A counter-affidavit has been filed by respondent Nos. 3 and 4. In the counter-affidavit in paragraph 4. It has been stated at the very outset that writ petition is not maintainable against a private company. It has been stated in para 4 that Geep

industrial Syndicate Limited is not a statutory corporation or is a State within the meaning of Article 12 of the [Constitution of India](#). It has been further stated that petitioner has efficacious alternative remedy under Section 4K of the Industrial Disputes Act. It has been further stated that petitioner can apply to Certifying Officer under Section 10 of Industrial Employment (Standing Order) Act, 1946 if he is aggrieved in any manner by any terms of the Standing Order. In the counter-affidavit it has been stated that petitioner has himself tendered his voluntarily resignation vide letter dated 12.5.1995 which fact has been concealed in the writ petition. It has been further stated that despite petitioner's resignation the company has given the petitioner 9 months salary in lump sum in order that the petitioner may tide over the period taken in finding out the alternative employment. A rejoinder-affidavit has been filed reiterating the contents of the writ petition. It has been stated that since the writ petition challenges the Standing Order, hence the writ petition is maintainable. It has been stated that no voluntarily resignation was given by the petitioner and after serving the termination order the contesting respondents forced the petitioner to submit his resignation.

6. Counsel for the respondents at the very outset raised preliminary objection regarding the maintainability of the writ petition. The counsel for the respondent Nos. 3 and 4 raised the following preliminary objections :

(1) That respondent Nos. 3 and 4 is a private company and no writ can be issued against a private company by this Hon'ble Court exercising its jurisdiction under Article 226 of the Constitution.

(2) The petitioner has alternative remedy by raising Industrial Dispute under the provisions of [Industrial Disputes Act, 1947](#).

(3) With regard to the terms of the Standing Orders, respondents have power of invoking the jurisdiction of Section 10 of Industrial Employment (Standing Orders) Act, 1946.

(4) Counsel for the respondents has further placed reliance of a judgment of this Court dated 6.3.1997 passed in Writ Petition No. 20336 of 1995 and other connected writ petition Ikhlaq Hussain and Ors. v. Labour Commissioner, U.P.

Kanpur, which was filed by challenging the similar termination order issued by the respondent company with regard to other workmen. The writ petition was dismissed by this Court vide its judgment dated 6.3.1997 leaving open to the petitioner to pursue alternative remedy under the provisions of U. P. Industrial Disputes Act, 1947.

In view of the aforesaid judgment counsel for the respondents has stated that similar termination order issued by respondent company with regard to other workmen has already been considered and the writ petition has been dismissed. The present writ petition should follow the same fate.

7. Counsel for the petitioner refuted the preliminary objections raised by the counsel for the respondents and contended that the writ petition is fully maintainable and the petitioner is entitled for relief as claimed in the writ petition.

8. Shri Shesh Kumar, learned counsel for the petitioner made following submissions in support of the writ petition :

(1) Writ petition under Article 226 of the Constitution is fully maintainable even against a private company.

(2) Under the provisions of U. P. [Industrial Disputes Act, 1947](#) and under the Certified Standing Orders, the respondent company has statutory obligation to follow the provisions of U. P. [Industrial Disputes Act, 1947](#) and the Standing Order and any action of respondent in violation of the aforesaid provisions can be corrected by this Court under Article 226 of the Constitution.

(3) In the writ petition, the petitioner has challenged the Certified Standing Orders which are statutory in character, hence the writ petition is fully maintainable.

9. From the submissions raised by the counsel for both the parties, following issues arise for consideration in the present writ petition :

(1) Whether the High Court in exercise of its jurisdiction under Article 226 can issue a writ to a private company like respondent No. 3 against the order of termination issued by the company to its workmen.

(2) Whether in the facts of the present case, petitioner has to avail remedy provided under the [Industrial Disputes Act, 1947](#) and other sister enactment.

10. Counsel for the petitioner elaborating his submissions on question of the maintainability of the writ petition submitted that writ under Article 226 can be issued to any 'person' whether it is a private individual, registered company or any other private body.

11. Counsel for the petitioner has stated that the High Court has ample power to issue a writ even against a private body and writ petition filed by the petitioner is fully maintainable. Counsel for the petitioner in support of his submissions placed reliance on the following decisions :

(i) T. Gattatah and Ors. v. Commissioner of Labour Court and Ors. 1981 Lab 1C 942.

(ii) U. P. State Co-operative Land Development Bank Ltd. v. Chandra Brian Dubey and Ors. 1999 Vol. 1 SCC 741.

12. The scope of Article 226 of the Constitution has come up for consideration before the Apex Court and different High Courts in several cases. Ambit and scope of jurisdiction exercised by High Court under Article 226 of the Constitution has been explained in several decisions timeand again. Counsel for the petitioner relied on a decision reported in 1981 Lab IC 952, wherein Andhra Pradesh High Court referring to various earlier judgments of different High Courts took the view that word 'person' used under Article 226 has to be given meaning as contained in General Clauses Act. 1897 which is made applicable by Article 367 of the [Constitution of India](#).

13. Learned single Judge in his judgment took the view that limitation of issuing writs by English Court are not attracted while considering the scope of Article 226. The traditional view of English Court has not been followed by different High Courts and the Apex Court. It was held in para 29 of the aforesaid judgment.

'29. It is, therefore, clear that a writ of mandamus would lie against the respondent-company to compel it to carry out directions of the Parliamentary enactment

contained in Chapter V-B, Industrial Disputes Act. But because mandamus is a public law remedy, its use is governed by considerations which are peculiar and appropriate for the exercise of such public law remedy. In this case, there is no doubt that Chapter V-B, Industrial Disputes Act, imposes a public duty on the respondent company not to retrench the petitioners except in accordance with the conditions laid down by the Parliament. Those limitations are conceived not merely in the interests of individual workmen, but in the general interest of industrial peace. In an unreported judgment in Writ Petition No. 3097 of 1989 this Court has held that Chapter V-B, Industrial Disputes Act, imposes public duties on the manufacturing concerns. Following that I hold that the respondent company is under a public duty to observe those conditions mentioned in Chapter V-B, Industrial Disputes Act, if so, for the reasons which are mentioned above. I hold that a writ of mandamus should issue against the respondent-company not to retrench the petitioners except in accordance with the conditions laid down by the Parliament. According to the Praga Tools case, it is not the body that matters, but it is the nature of the duty that is important. A statutory duty cast on a private body so long it is public duty can be mandamised according to that decision. The body must be functionally assessed to find out whether it is performing public duty or not. For the purpose of this assessment, the question whether a body is private body or a public body is immaterial. As I hold that the respondent company is under a public duty to observe the conditions mentioned in Chapter V-B, Industrial Disputes Act. I hold that a writ of mandamus is competent to issue to the respondent company.'

14. Counsel for the petitioner next relied on the recent Apex Court judgment in U. P. State Co-operative Land Development case (supra). Apex Court after considering the earlier judgment of the Supreme Court held in paragraph 27 which is as under :

27. In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide

between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the Article. It is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo uiarranro and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under Clause (1) of Article 367, unless the context otherwise requires, the [General Clauses Act, 1897](#), shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applied for the interpretation of an Act of the Legislature of the Dominion of India. 'Person' under Section 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an Instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not. or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but these guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High

Court does not act like a proverbial 'bull in a china shop' in the exercise of its jurisdiction under Article 226.'

15. From the above Apex Court judgment which has considered earlier judgments of the Apex Court laying down scope and ambit of Article 226, it is clear that language of Article 226 is clear and no shackles can be put on the limit of jurisdiction of the High Court. Apex Court has laid down that if citizen or person has been wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not or even an individual. However, in the same paragraph. Apex Court has laid down the self-imposed restrictions which have been laid down in various pronouncement of Apex Court. Following words of the Apex Court are very material :

'But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial 'bull in a china shop' in the exercise of its jurisdiction under Article 226.'

16. In view of the law laid down by the Apex Court in the above cases, it is clear that the High Court, while exercising its jurisdiction under Article 226, can issue a writ even to a company registered under the Companies Act. However, the issuance of a writ is hedged by self-imposed restrictions laid down by the High Court and Apex Court in exercise of its jurisdiction. Thus from the above discussion, this submission of the counsel for the petitioner is correct that writ can be issued to respondent Nos. 3 and 4 by High Court while exercising jurisdiction under Article 226. however, while issuing the writ High Court has to keep in mind the self-imposed restrictions as explained above.

17. The second important issue which arises for consideration is as to whether a writ as prayed by the petitioner be issued by this Court or the petitioner can be relegated to avail his remedy under the Industrial Disputes Act.

18. Counsel for the respondents in support of his submission has placed reliance on the following judgments :

(1) Workmen of Pepsi India Ltd. v. Deputy Labour Commissioner, Kanpur and Ors. 2000 (3) AWC 1800.

(2) Chandrama Singh u. Managing Director. U. P. Co-operative Union and Ors. 1996 (63) SLR (FB).

(3) Rajasthan State Road Transport Corporation and Ors. v. Krishna Kant and Ors. 1995 (71) FLR 211.

19. Full Bench of our Court in Chandrama Singh v. Managing Director has taken a view that Industrial Disputes Act. 1947 provides for an adequate and efficacious remedy and the writ petition cannot be entertained. In paragraph 13 it was held :

'13. The decisions of the Hon'ble Supreme Court of India and this Court noted above, lead to an irresistible conclusion that the High Court must not allow its extraordinary jurisdiction under Article 226 of the [Constitution of India](#) to be invoked if the petitioner has got an alternative remedy and such remedy is not pleaded and proved to be inadequate or inefficacious, or if it is not established from the material on record that there exist exceptional or extraordinary circumstances to deviate from the well settled normal rule of relegating the petitioner to alternative remedy and permit him to by-pass the alternative remedy. The hurdle of alternative remedy cannot be allowed to be skipped over lightly on a casual and bald statement in the petition that 'there is no other equally efficacious or adequate alternative remedy than to invoke the extraordinary jurisdiction of the High Court under Article 226 of the [Constitution of India](#).' The petitioner must furnish material facts and particulars to sustain such a plea.

On the pleadings contained in the instant petition, the petitioner should not be allowed to invoke the jurisdiction of this Court under Article 226 of the [Constitution](#)

[of India](#). The petitioner has complained violation of the provisions of Section 25F of the [Industrial Disputes Act, 1947](#) and for redressal of this grievance an adequate and efficacious remedy of reference under the provisions of Section 10 of the said Act itself exists. The petitioner has neither pleaded nor proved the said remedy to be inadequate or inefficacious. He has also not demonstrated the existence of any exceptional or extraordinary circumstances to permit him to bypass the alternative remedy available to him under the [Industrial Disputes Act, 1947](#). The petition deserved to be dismissed on the ground of availability of remedy to the petitioner.'

20. The Division Bench of this Court in *Workmen of Pepsi India Ltd. v. Deputy Labour Commissioner, Kanpur* (supra), again considered the same question. Division Bench after considering the several decisions of Apex Court and High Courts laid down. It was held in paragraphs 8, 9 and 10 :

'8. In several decisions, it has been held that a writ does not ordinarily lie against private bodies e.g., *Praga Tools Corporation v. Imanuel*. AIR 1969 SC 1306 ; *Carisbad Mineral Water Mfg. Co. Ltd. v. Jagttani*. AIR 1952 Cal 315 and *C. M. Khanna v. NCERT*, AIR 1992 SC 76. etc. Thus, while exercising writ jurisdiction, the Court must keep in mind the history and origin of the high prerogative writs in England and In India, and it cannot be guided by the words used in Articles 226 alone. The ordinary principle, therefore, remains that a writ will not ordinarily be issued to a private body (except a writ of habeas corpus).

9. In *Scooter India v. Jijay Eldred*, 1998 (6) SCC 540. the Supreme Court held that a writ should not be ordinarily entertained when there is an alternative remedy under industrial law. This was also held by a Full Bench of this Court in *Chandrania Singh v. Managing Director* (supra).

10. Since admittedly, the respondent company is a purely private body and is not instrumentality of the State and since the petitioner has an alternative remedy under industrial law, in our opinion, we are not inclined to interfere in this case.'

21. The Apex Court in the case of *Rojasthan State Road Transport Corporation* (supra), considering the nature and character of the Certified Standing Order and the question as to why the remedy under the Industrial Disputes Act will be only

remedy. In the aforesaid case, 3 Judges Bench of the Apex Court laid down that Certified Standing Orders of a company are not statutory. Court also took a view that a writ can lie for breach of Standing Order which is non-statutory in character. Apex Court also laid down in the said judgment that when dispute is a dispute within the meaning of industrial dispute under Section 2K or 2A of Industrial Disputes Act, 1947. The remedy under the industrial Disputes Act, 1947 is the only remedy. Summarizing the principle laid down in that judgment the Apex Court held :

'(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally 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.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly, i.e.. without the requirement of a reference by the Government in case of Industrial disputes covered by Section 2A of the Industrial Disputes Act. This would go a long way in removing the misgiving with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Order) 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.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactment is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.'

22. From the judgment of the Apex Court in Rajasthan State Road Transport Corporation (supra), it is clear that the Standing Orders itself is not statutory in character and its breach cannot be enforced under Article 226. Further, it was laid down that remedy under Industrial Disputes Act, 1947 is efficacious and speedy remedy.

23. In the present case, there is no denial that petitioner has remedy under the [Industrial Disputes Act, 1947](#) which Court can grant all relief as claimed by the petitioner.

24. The next judgment relief by counsel for petitioner is Narendra Pal Gahlot v. State of U. P. and Anr. 1994 (1) UPL.BEC 51. In above case, this Court issued writ on the premise that certified Standing Orders have statutory effect and hence order may be questioned under Article 226 of the Constitution. Apex Court in the Rajasthan State Road Transport Corporation (supra), has laid down that the certified Standing Orders do not constitute statutory provisions themselves but are only statutorily imposed conditions. In view of above, the decision does not help the petitioner.

25. Counsel for the petitioner lastly submitted that since in the present writ petition, counter and rejoinder-affidavits have been exchanged, the petitioner cannot be relegated to alternative remedy. Counsel for the petitioner has placed reliance on several judgments of this Court including Awadhesh Rat v. Regional Manager. U.P.S.R.T.C. 1993 AWC 1077 ; D. S. Mishra v. N. T. C.. 1994 AWC 1369 and Shalini Ranjan v. Chairman, L.I.C.. 1991 AWC 546.

26. In the present case, there are two reasons due to which the aforesaid cases cannot be held to be applicable in the present case :

Firstly, there is judgment of this Court in Writ Petition No. 20336 of 1995. Ikhtaq Hussain v. Labour Commissioner, Kanpur dated 6.3.1997 in which other similarly situated workmen of respondent Nos. 3 and 4 had challenged the similar termination orders issued by Geep Industrial Syndicate Ltd. This Court has dismissed those writ petitions after hearing both the parties by leaving it open to pursue the alternative remedy under the provisions of [Industrial Disputes Act, 1947](#) and secondly, the respondents on first opportunity, i.e.. In counter-affidavit has raised the objection relating the maintainability of the writ petition and alternative remedy under the Industrial Disputes Act. 1947.

When this Court in number of writ petitions raising similar question against the same Employer, i.e., Geep Industrial Syndicate Ltd. has already dismissed the writ petitions with liberty to raise the industrial disputes, it is just and proper that the same decision be followed to keep the uniformity in decision on similar issues raised in the same organization. This Court have already dismissed the writ petitions which challenged the termination order issued in the same year. The petitioner's present writ petition has also to follow the same fate. The petitioner has not been able to demonstrate any distinct feature in the petitioner's case for not following the decision given by this Court on same issues of same organization. The present writ petition although was filed in the year 1995 but when this Court decided the matter on 6.3.1997 in writ petition of other workman of same organization, the view of the Court was clear and petitioner cannot gain any additional advantage only because writ petition which was filed in the same year remained pending and can be taken for hearing in the year 2001.

27. With regard to the challenge of the Standing Order 25, the counsel for the respondent has rightly said that petitioner has a remedy under Section 10 of the Industrial Employment (Standing Orders) Act, 1946. Section 10 of the Act is quoted below :

'10. Duration and modification of Standing Orders.--(I) Standing orders finally certified under this Act shall not, except on agreement between the employer and

the workmen {or a trade union or other representative body of workmen) be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation.

(2) Subject to the provisions of Sub-section (1) an employer or workmen (or a trade union or other representative body of the workmen) may apply to the Certifying Officer to have the Standing Orders modified, and such application shall be accompanied by five copies of [\*\*\*] the modifications proposed to be made, and where such modifications are the workmen (or a trade union or other representative body of the workmen) a certified copy of that agreement shall be filed along with the application).

(3) The foregoing provisions of this Act shall apply in respect of an application under Sub-section (3) as they apply to the certification of the first Standing Orders.

(4) Nothing contained in Sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of, the State of Maharashtra.

28. If the petitioner is aggrieved by the Standing Orders 25, he ought to have filed an application under Section 10 of the Act which is an efficacious and alternative remedy.

29. In view of the above discussion, I do not find any reasons to not follow the earlier judgments of this Court dated 6.3.1997 passed in Writ Petition 207 of 1995, Ikhlaq Hussain v. Labour Commissioner, Kanpur and Ors.

30. Accordingly, the writ petition is dismissed leaving it open to the petitioner to pursue the alternative remedy under the provisions of U. P. [Industrial Disputes Act, 1947](#) and the Industrial Employment (Standing Orders) Act, 1946.