

Ram Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-04-1999

Reported in : 2000(1)WLC273; 1999(1)WLN444

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Writ Petition No. 4413 of 1998

Appellant : Ram Singh

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. Petitioner claims that he was initially appointed as a Class IV employee known as 'Jaldhari' in the Government Upper Primary School in Panchayat Samiti, Bagidora, district Banswara, with effect from 16-7-1993 and since then he has been continuously working as such. However, he is being treated as a part-time employee and is being paid the consolidated salary and not the salary in the minimum pay scale of the post of Class IV employee. Thus, the petition has been filed seeking direction for regularisation and for payment of the pay scale of a regular employee.

2. The issue whether the petitioner is a part-time employee or is working whole day, is a question of fact which cannot be entertained in writ jurisdiction. Thus, the main issue involved in the present case is whether the petition be entertained or petitioner be relegated to avail the remedy under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

3. The issue of maintainability of a writ petition where some alternative remedy is available, is no more res integral and there can be no dispute regarding the legal proposition that a party should ordinarily avail the statutory remedy instead of approaching the writ Court, however the alternative remedy should be adequate, efficacious, speedy and not of burden-some or onerous in character. Vide *Himmat Lal Hari Lall Mehta v. State of Madhya Pradesh and Ors.* : [1954]1SCR1122 *State of Bombay v. United Motors India Ltd.* : [1953]4SCR1069 *State of U.P. v. Mohd. Nooh* AIR 1958 SC 86; *K.S. Rashid & Sons v. Income Tax Investigating Commissioner* : [1954]25ITR167(SC) ; *A.B. Venketaswaran, Collector or Customs, Bombay v. Ram Chandra Shobraj Wadhwani* : 1983ECR2151D(SC) ; and *Calcutta Discount Co. Ltd. v. Income Tax Officer* : [1961]41ITR191(SC) .

4. In *Whirlpool Corporation v. Registrar of D.M. Trade-marks, Mumbai* 1998 (7) SCC 243, the Apex Court has observed as under:

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But an alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, (i) where the writ petition has been filed for the enforcement of any of the fundamental rights; or (ii) where there has been a violation of the principles of natural justice; or (iii) where the order or proceedings are held without jurisdiction or the vires of the Act is challenged.

5. So far as the issue of industrial dispute is concerned, it was considered by the Constitution Bench of the Hon'ble Supreme Court in *Basant Kumar Sarkar v. Eagle Rolling Mills* : (1964)11LLJ105SC and the Court observed as under:

The High Court has held that the question as to whether the notices and circulars issued by the respondent No. 1 were valid, could not be considered under Article 226 of the Constitution; that is a matter which can be appropriately raised in the form of dispute by the appellants under Section 10 of the Industrial Disputes Act....We would confirm the finding of the High Court that the proper remedy, which is available to the appellants to ventilate their grievance in respect of such notice and circulars is to take recourse to Section 10 of the Industrial Disputes Act....

6. A similar view has been reiterated by the Constitution Bench of the Supreme Court in *G. Virrai Pillai v. Raman & Raman Ltd.* : [1952]1SCR583 . In *U.P. Jal Nigam v. N.S. Mathur* : (1995)1SCC21 , the Court observed as under

Where a statutory Tribunal has been constituted specially to look into the grievance of the government servant, it is a statutory obligation on the part of such government servant first to avail those of the statutory remedies. In case they are aggrieved against the order passed by the Tribunal, the remedy under Article 226 is always available to them.... Under these circumstances...it was wholly unjustified in entertaining the writ petition.

7. This view has been fortified by the recent judgments of the Hon'ble Supreme Court in *Commissioner of Income Tax, Lucknow v. U.P. Forest Corporation and Ors.* : [1998]230ITR945(SC) . In *Scooters India Ltd. v. Vijai E.V. Eldred* : (1998)6SCC549 , the Hon'ble Supreme Court has held as under-

The above facts alone are sufficient to indicate that there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving the determination of disputed questions of facts, for which remedy under the Industrial Law was available to the workman.

8. In *Life Insurance Corporation of India v. D.J. Bahadur* : (1981)1LLJ1SC , the Hon'ble Supreme Court held as under-

In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain

purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes - so too in life. The I.D. Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, Solution of and adjudication upon industrial disputes. It also provides the necessary machiner for enforcement of awards and settlements. From alpha to omega the I.D. Act has one special mission the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the I.D. Act is a special statute and the L.I.C. Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the L.I.C. Act. And whenever there was a dispute between workmen and management, the I.D. Act mechanism was resorted to.

9. A Constitution Bench of this Court in *Gopi Lal Teli v. State of Rajasthan* 1995 (2) WLC 1. has considered this aspect and held that in a case of termination of service of a workman, the normal rule for an employee should be to avail remedy provided under the Industrial Disputes Act and entertainment of the writ petition by this Court under Article 226 of the Constitution of India, without exhausting the remedies, should be with great care and caution and in very exceptional cases.

10. In *Tin Plate Co. of India Ltd. v. State of Bihar* : AIR 1999 SC74 , the Court observed as under-

It is, no doubt, true that when an alternative and equally efficacious remedy is open to a person, he should be required to persue that remedy and not to invoke

extraordinary jurisdiction of the High Court under Article 226 of the Constitution and where such a remedy is available, it would be sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the Constitution.

11. Similar view has been reiterated in *Sheela Devi v. Jaspal Singh* : AIR 1999 SC2859 .

12. It is settled proposition of law that where adequate remedy can be read in the statute, plea of resort to writ remedy under Article 226/227 must be discouraged. Vide *Shyam Kishore v. Municipal Corporation of Delhi* AIR 1992 SWC 2279; and *Mohan Pandey v. Smt. Usha Rani Rajgaria* : [1992]3SCR904 .

13. The question of having absolute bar in writ jurisdiction to entertain a petition does not arise as it is settled proposition of law that judicial review in writ jurisdiction is permissible with certain limitations which have been explained from time to time by the Court and the same are reiterated in *Whirlpool* (supra). Holding an absolute bar to entertain a writ petition in respect of industrial disputes or industrial relations would tantamount to holding the Court not having competence to judicially review an order impugned order. Judicial review, being the basic feature of the Constitution, cannot be taken away by such interpretation. Thus, the Court has power to entertain such a petition but the self-imposed restrictions do not warrant the exercise of such power in cases where the statutory remedy is provided for and disputed questions of facts are involved.

14. In *S.R. Bommai v. Union of India and Ors.* : [1994]2SCR644 , the Hon'ble Supreme Court has observed as under-

Judicial review is a basic feature of the Constitution. This Court/High Courts have Constitutional duty and responsibility to exercise judicial review as sentinel on the quivive. Judicial review is not concerned with the merit of the decision but in the manner in which the decision was taken...judicial review must be distinguished from the justiciability by the Court. The two concepts are not synonymous. The power of judicial review is a constituent power and cannot be abdicated by judicial process of interpretation.

15. Thus, even if the Court has a power of judicial review, it does not mean that it should be exercised in a case where a statute provides for a particular remedy and disputed questions of facts are involved. Under the Rent Control Act, there may be a case where a landlord can satisfy the writ court that the tenant has committed default in making the payment of rent which rendered him liable to be evicted. The writ court cannot be permitted to entertain the petition for the simple reason that an effective remedy is provided under a particular Statute and a party must resort to the same and prove the factual position thereby adducing the sufficient evidence.

16. The issue of granting relief under the mandate of Article 39(d) of the Constitution has been considered by the Hon'ble Supreme Court from time to time and it has been held that the State, being a model employer, cannot be permitted to exploit the helplessness of the employees. Vide *Vijay Kumar v. State of Punjab and Ors.* 1995 (4) SCC 513; and *State of Haryana and Anr. v. Ramchandra and Anr.* : AIR 1997 SC2468 . However, the grant of relief under the said provisions impliedly require that the quality and quantity of the work done by the employee should be of the same/similar nature of a regular employee as the principle of 'equal pay for equal work' is not applicable where there are inherent difficulties in comparing and evaluating the work done by different persons in different organisations or even in the same organisation. Vide *State of Haryana v. Jasmer Singh* : (1997)IILLJ667SC ; *State of Haryana v. Surinder Kumar* : [1997]2SCR917 ; *Union Territory of Chandigarh v. Krishna Murari* : (1997)IILLJ809SC ; *State Bank Officers Association v. State Bank of India and Ors.* : (1998)1SCC428 ; *Sita Devi and Ors. v. State of Haryana and Ors.* : (1996)IILLJ817SC ; *State of M.P. and Ors. v. Pramod Bharti and Ors.* : (1993)ILLJ490SC ; *State of Haryana and Ors. v. Ravi Bala* : (1997)IILLJ 1000 SC ; *Nain Singh Bhakuni and Ors. v. Union of India and Ors.* : [1998]1SCR41 ; and *Chandreshwar Narain Dube v. Union of India and Ors.* 1998 (6) SCC 671.

17. Whether the petitioner is doing the work full-time or working for a short-period, or as a part-time employee, is a question of fact which requires evidence and as the disputed questions of facts are involved, I am not inclined to interfere in the matter. The petition is accordingly dismissed. However, the petitioner is at liberty to approach the Appropriate Government under Section 10 of the Act for making a

reference to the Labour Court. If petitioner moves the Government for making the reference, it is directed that his application would be disposed of expeditiously and preferably within two months from moving the application.

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