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P. Pitchumani Vs. the Management of Sri Chakra Tyres Ltd., Rep. by Its Managing Director and the Human Resource Development Manager, Sri Chakra Tyres Ltd.

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Court : Chennai

Decided On : May-05-2004

Reported in : [2004]121CompCas127(Mad); [2004(102)FLR384]; (2004)IILLJ994Mad

Judge : B. Subhashan Reddy, C.J., ;R. Balasubramanian and ;M. Thanikachalam, JJ.

Acts : Constitution of India - Article 226

Appeal No. : W.A. Nos. 1387, 1390, 1391, 1393 and 16313 to 16317 of 2002, W.P. Nos. 15513 and 17182 of 2003 and W

Appellant : P. Pitchumani;b. Anikumar;r. Ganesan;s. Venu;c.M. Sakappa, ;t. Parasuraman, ;g.S. Sekar, ;g. Jambuli

Respondent : The Management of Sri Chakra Tyres Ltd., Rep. by Its Managing Director and the Human Resource Develo

Advocate for Def. : Meenakshi Sundaram, Adv. in in W.As. 1387 to 1389 of 2002, ;V. Karthik, Adv. in W.A. Nos.1390 to 1392 of 2002, ;A.L. Somayaji, S.C. for ;N. Balasubramanian, Adv. in W.A. Nos.1393 to 1411 of 2002, ;M.

Advocate for Pet/Ap. : V. Prakash, Adv. and ;A.L. Somayahi, S.C. for Gupta Ravi and Rangarajan Prahakaran

Judgement :

B. Subhashan Reddy, C.J.

1. The matters have been referred to Full Bench to answer whether a private company is amenable to writ jurisdiction under Article 226 of Constitution of India and if so what are the parameters.

2. These matters relate to transfer of employees of Sri Chakra Tyres Limited., T.V.S.Suziki Limited, Axle India Limited, ICICI Bank India Limited and G.E. Power Controls India Limited. While the employees complain the managements' act of their transfers as a measure of victimization and thus extraneous and mala fide, the managements counter the said allegations asserting that transfers are made in exigencies of service and for better performance of the companies, and not for any extraneous reasons or as a measure of victimization.

3. The learned single Judge has upheld the contention raised on behalf of the Managements that the Writ Petition is not maintainable and that the employees have to approach the forums created under the Industrial Disputes Act, hereinafter referred to as the ID Act. Writ Appeals have been preferred by the employees before the Division Bench and then other Writ Petitions were also tagged on to the said Writ Appeals and after hearing the matters, by a common order passed on 31.10.2003, the Division Bench was inclined to concur with the findings of the learned single Judges but felt that the matter be referred to the Full Bench as another coordinate Bench in CHEMPLAST SANMAR LTD. v. METTUR CHEMICALS PODHU THOZHILALAR SANGAM & ANOTHER 2000 (1) L.L.J. 1335 took a view that for violation of a statutory provision, Writ Petition is maintainable even against a private company.

4. W.A.Nos.1387 to 1389 of 2002 relate to Sri Chakra Tyres Ltd., and filed by the employees against the order of the learned single Judge. W.A.Nos.1390 to 1392 of 2002 are filed by employees of T.V.S. Suziki Ltd., against the order of the

learned single Judge. W.A.Nos.1392 to 1411 of 2002 have been filed by the employees of the Axle India Ltd., aggrieved by the order of the learned single Judge. So far as the writ petitions are concerned, they have been referred to be heard along with the writ appeals, when they came up before the learned single Judge.

5. Mr. V. Prakash, the learned counsel appearing for the writ appellants and writ petitioners strenuously contended that the transfers, which have been effected, are mala fide due to extraneous reasons and not in exigencies of service as projected by the management, that a reference under Section 10 of the Industrial Disputes Act, 1947 is not an answer to redress the grievance of the employees, and that in fact, such a reference at the instance of certain individuals is not maintainable as only Employees Union can avail of Section 10 of the Industrial Disputes Act, 1947. As such, alternative remedy doesn't exist, and even if it exists, it is not efficacious. It is also argued by Mr. V. Prakash, learned counsel for the employees that civil suits are barred and there is no remedy under the Industrial Disputes Act, 1947, and the only remedy, which is available is the one provided under Article 226 of the Constitution of India, and this Court shall not shut the doors to the employees. He also submitted that in the case of ICICI Bank the pensionery benefits are being curtailed and that is a change in service condition, and pension being a fundamental right traceable under Article 21 of the Constitution of India, writ petition is maintainable. There is no need for adjudication, so far as the pensionery benefits are concerned, as we record the statement made by Mr. A.L. Somayaji, learned Senior Counsel appearing for the ICICI Bank that no pensionery benefits of the employees before this Court shall be affected. What remains is the adjudication relating to transfers.

6. The managements before us are all companies registered under the Companies Act, 1956. They do not come within the definition of State under Article 12 of the Indian Constitution. Unfair Labour Practice, particularly, Clause (7) of Schedule V of Industrial Disputes Act, 1947, which reads 'to transfer a workman mala fide from one place to another, under the guise of following management policy' is being pleaded in the instant cases by the employees, while it is seriously disputed by the managements. In the case of Sri Chakra Tyres Ltd., the appellants are transferred

to outside states. So also in the case of appellants in TVS Suzuki Limited. In Axle India Limited the appellants are sought to be transferred from Sriperumbudur to Gummidipoondi, both in Tamil Nadu. In ICICI Bank Ltd., and G.E. Power Controls India Pvt. Ltd. some appellants are transferred within Tamil Nadu and some to outside States. The transfers are from Hosur to New Delhi. The jobs are transferable. The question is whether the transfers are in exigencies of service or for extraneous reasons, so as to say that they are mala fide, coming within the mischief of unfair labour practice on the part of the managements. Two questions are to be addressed namely.,

(1) whether there is no remedy under common law or before the Forums under Industrial Disputes Act, 1947 to the appellants/employees;

(2) whether Article 226 of the Constitution of India is the proper remedy to redress their grievances.

7. General contract of employment is governed by common law and any breach of the contract and dispute arising therefrom is to be adjudicated by common law court. But if the matter is governed by the I.D. Act or the Standing Orders relating thereto, by necessary implication, the common law remedy is barred and more so, if the ad judicatory forums, be it Labour Court or Industrial Tribunal, are constituted under I.D. Act. Earliest is the judgment of the Supreme Court in PREMIER AUTOMOBILES LIMITED v. KAMLAKAR SHANTARAM WADKE AND OTHERS 1975 (2) LLJ 445. In the said case, there was a dispute as to whether a civil suit was maintainable in a matter arising under the Industrial Disputes Act. The case related to the payment of the amounts under the Memorandum of Settlement and as to whether there was an infraction of Section 9A of the Industrial Disputes Act, 1947. A suit in representative capacity was filed under Order I Rule 8 of C.P.C., and it was partly decreed, against which an appeal was filed questioning the jurisdiction of the civil court, but the appeal failed. Then the matter was taken in a Letters Patent Appeal, but there also the finding with regard to sustainability of the suit before the civil court was upheld, and later on the matter landed in Supreme Court. The legal contentions were comprehensively considered by referring to several important judgments and following are the legal principles stated in the

said case;

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

8. A learned Judge of this Court in T. Rajaiah AND OTHERS v. SOUTHERN ROADWAYS LTD., (REP. BY ITS SECRETARY), MADURAI AND ANOTHER 1993 (3) LLJ 719 has followed the above Supreme Court Judgment in identical circumstances like the present one. The said case also related to transfers in a private company from one place to another place and were questioned on the ground of mala fides by filing a suit, which came by way of Civil Revision Petition. The contentious issue was the maintainability of the suit, and distinction was sought to be made regarding transfer simplicities as compared to transfer mala fide. A further contention was raised that a Reference under Section 10 of I.D. Act having not been made by the Government, the suit is maintainable. The learned single Judge has held that the employees had a choice of either approaching the Civil Court or availing the remedy under the I.D. Act and as they have availed the remedy under the I.D. Act by seeking a Reference under Section 10 thereof and the Government having refused to refer the matter and even affirmed the same on a Review Petition, the employees cannot turn back and invoke the common law remedy by filing the suit. The learned single Judge has invoked the doctrine of election on the ground that if a litigant, having a choice of any of the legal forums,

chooses one, he cannot choose the another even if he is unsuccessful before the first forum. The principle laid down by the learned single Judge is in consonance with the point (ii) of the legal principles stated above in PREMIER AUTOMOBILES LTD. (supra).

9. Next authoritative judgment on the point is RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND ANOTHER v. KRISHNA KANT AND OTHERS : (1995)IILLJ728SC . The employees of the Rajasthan State Road Transport Corporation were dismissed after holding disciplinary enquiries on the charge of mis-conduct. But, their suits before the civil court were decreed setting aside the dismissals and the said decrees were upheld by the first and second appellate courts i.e., District Judge and the High Court respectively. When the appeal was filed before the Supreme Court, the Supreme Court went into the matter very comprehensively on the question of jurisdiction and affirming the view taken in Premier Automobiles Case (cited supra) has held that the remedy lay before the Forum under the Industrial Disputes Act. We feel it apt to extract the summery of the principles laid down in the above case, which is to the following effect:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an 'industrial dispute' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called 'sister enactments' to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the

meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective 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, thought 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 Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal direcly - ie., without the requirement of a reference by the Government - in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings 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 Orders) 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 enactments 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.'

10. Latest on the point is the one decided by the Supreme Court in VST INDUSTRIES LTD. v. VST INDUSTRIES WORKERS' UNION AND ANOTHER 2001) 1 SCC 298. There a private company was running a canteen. The employees of the canteen were later entrusted to a contractor as the company could not run the canteen by itself. The question was whether the canteen employees had to be treated as the workmen of the company or of the contractor. The High Court held that the running of a canteen is a statutory obligation on the part of the company and as such, the employees had to be treated as that of the company and issued a Writ as sought for. The matter ultimately landed in the Supreme Court. Even though the Supreme Court did not disturb the relief granted by the High Court, the High Court's finding on the amenability to the writ jurisdiction has been set aside. It has been held by the Supreme Court that the crucial factor for determining as to whether a company is amenable to writ jurisdiction or not depends as to whether a person, be it real person or a legal one, performs a public duty or not. It has been emphatically held by the Supreme Court that any matter touching upon the service condition of an employee is private to that employee or group of employees and cannot be termed as public duties so as to come within the domain of the public law remedy.

11. In CHEMPLAST SANMAR LTD. v. METTUR CHEMICALS PODHU THOZHILALAR SANGAM AND ANOTHER 2000 (1) LLJ 1335 cited supra, the facts are quite different. There the factual position is admitted. There was a settlement under Section 18(1) of the Industrial Disputes Act, 1947 for payment of fixed monthly amount at the rate of 56.5% of wages for the circumstances stated therein. The time of the settlement expired. The question for consideration was whether after the expiry of the term of settlement the benefits under the settlement enure to the benefit of the workmen till a new settlement is arrived at substituting the old settlement. Basing upon the law laid down by the Supreme Court in the cases referred there to, it was held by the Division Bench that the benefit in the old

settlement continues even after the expiry of its term till a new settlement is arrived at substituting the old one. It was also held that in not honouring the commitment to pay the amounts under the old settlement, there was alteration of service condition without notice to the employees, thus violating Section 9A of the Industrial Disputes Act. In that case there was no dispute with regard to questions of fact and the entire matter lay on the interpretation of Section 18 of the Industrial Disputes Act, in the light of the legal principles laid down by the Supreme Court. In the instant case, the dispute is entirely different as there are serious disputed questions of fact which need to be probed, for which fact finding is necessary, which can be made only after elaborate enquiry and that is only possible either before the Labour Court or by referring industrial disputes under the Industrial Disputes Act, 1947. In this regard the dicta laid down by the Supreme Court for exercising the jurisdiction and the remedy under the Special Act, i.e. Industrial Disputes Act, 1947 needs consideration.

12. Transfers of the employees effected are personal to them and do not involve any public duties. For making out a statutory violation, fact-finding is necessary and the employees have to seek recourse to Section 10 of I.D. Act. There is no embargo on the part of even one employee or a group of employees, even without any reference to any Union, for approaching the Government under Section 10 of ID Act seeking a reference. In the matter of seeking reference, the guiding principles are already there and enunciated in the case of RAJASTHAN STATE ROAD TRANSPORT CORPORATION (supra) that reference is the rule and not referring is an exception, unless the Government feels that the averments seeking reference result in abuse of process of law.

13. The apprehension of delay in adjudication by the forums created under ID Act cannot be a ground to invoke Writ jurisdiction. As already stated above, Writ jurisdiction can be invoked only when an action involves a public duty. However, in appropriate cases, the High Court can always fix a time for adjudicating the disputes. In some cases, as the employees have failed to comply with the orders of transfer by joining at the transferred places, they have been dismissed from service without holding any enquiry. In those cases, the matter has to be viewed with some mercy and there is no need for emphasis that justice should always be

tempered with mercy.

14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v) the appellants/petitioners-employees shall be entitled to seek for reference by filing application under Section 10 of the ID Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants/petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents-managements shall sympathetically consider the payments of wages/salaries to the appellants/petitioners-employees so as to maintain the industrial peace and harmony.

The Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, the connected W.A.M.Ps. are closed.

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