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Court : Kolkata

Decided On : Sep-09-2009

Judge : Jayanta Kumar Biswas, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 1(3), 2, 10, 11A, 74 and 75; ;Uttar Pradesh [Industrial Disputes Act, 1947](#); ;[Constitution of India](#) - Articles 21 and 226; ;Model Standing Order - Section 17

Appeal No. : W.P. No. 13541 (W) of 2007

Appellant : Ashoke Kumar Mukherjee

Respondent : The Eastern Coalfields Ltd. and ors.

Advocate for Def. : Alok Kumar Banerjee and ;Pradyut Kumar Das, Advs.

Advocate for Pet/Ap. : Party-in-Person

Disposition : Petition dismissed

Judgement :

Jayanta Kumar Biswas, J.

1. The petitioner in this writ petition dated June 18, 2007 has challenged the order of the Chief General Manager, Kunustoria Area, Eastern Coalfields Ltd. dated March 25/27, 2006, Annexure P29 at p.83, inflicting on him the punishment of

termination of service.

2. In 1991 the petitioner joined Kunustoria Colliery of the Eastern Coal Fields Ltd. as a general mazdoor. He was given a compassionate employment on the ground that his father who was working in the colliery died in harness.

3. By issuing a charge-sheet dated June 17/18, 1996, Annexure P1 at p.31, the petitioner's employer asked him to explain why disciplinary action should not be taken against him for leaving the workplace without permission on June 17, 1996. It was further alleged that he was in the habit of leaving the place of work after marking his attendance. By another charge-sheet dated March 1, 1997, Annexure P3 at p.33, his employer asked him to explain why disciplinary action should not be taken against him for unauthorizedly leaving the workplace on February 28, 1997 and also for indulging in the habit of leaving the workplace unauthorizedly. Challenging the charge-sheet dated March 1, 1997 he moved this Court by filing a writ petition.

4. The petitioner's employer issued another charge-sheet dated September 16, 1997, Annexure P10 at p.40, asking him to explain why disciplinary action should not be taken against him for unauthorizedly leaving the workplace on September 8,9,10,11,12 and 13,1997 and also for leaving the workplace regularly after marking his attendance. By yet another charge-sheet dated September 16, 1997, Annexure P10 at p.41, his employer asked him to show cause why disciplinary action should not be taken against him for threatening the senior under-manager of the colliery when the senior under-manger wanted to know why he was not checking the workmen who were going underground. It was alleged that he used bad language, became violent and rushed the senior under-manager intending to assault him physically.

5. When the proposed enquiries in connection with the above-noted charge-sheets were yet to be initiated, a fresh charge-sheet dated January 1/3, 1998, Annexure P20, at p.56, was issued calling upon the petitioner to explain why disciplinary action should not be taken against him for unauthorizedly absenting himself from duty from October 17, 1997. It was alleged that his act constituted misconduct under Clause 17(i)(n) of the standing orders. Challenging this charge-sheet dated

January 1/3, 1998 he moved W.P. No. 9054 (W) of 1998. It is submitted that the writ petition was dismissed observing that he should participate in the domestic enquiry. The termination order impugned in this writ petition was issued after conducting domestic enquiry into the allegation made in this charge-sheet dated January 1/3, 1998.

6. The petitioner submitted reply to the charge-sheet. He denied the correctness of the allegation. The disciplinary authority appointed an enquiry officer. The petitioner participated in the enquiry. After concluding the enquiry, the enquiry officer submitted his report, Annexure P27 at p.74, saying as follows:

Considering all the facts and figure the undersigned has arrived at the conclusion that Sri Mukherjee was not allowed on 17.10.97 & 18.10.97 for duties. From 19.10.97 Sri Mukherjee did not report for duties nor made any representation before the management. As such the Charge levelled against Sri Ashoke Kumar Mukherjee under Section 17(i)(n) of Model Standing Order is proved for absence period on and from 19.10.97.

7. With the second show-cause notice dated February 23, 2006, Annexure P27 at p.73, the agent of the colliery supplied the petitioner a copy of the enquiry report. He was given an opportunity of making representation against the findings of the enquiry officer. Accordingly, he submitted a detailed representation dated March 1, 2006, Annexure P28, at p.76. After considering his representation the chief general manager issued the impugned punishment order terminating his service with immediate effect.

8. It is not disputed that the petitioner is a workman within the meaning of Section 2(s) of the [Industrial Disputes Act, 1947](#); that the dispute between him and his employer is an industrial dispute within the meaning of Section 2(k) of the [Industrial Disputes Act, 1947](#); that he did not lodge any appeal from the impugned order of termination with any appellate authority; and that he did not take any step for approaching the industrial tribunal under provisions of the [Industrial Disputes Act, 1947](#). He directly moved this Court by filing this writ petition that was admitted by an order dated August 7, 2007. The first respondent has filed an opposition dated November 20, 2007. The petitioner has filed a reply dated March 4, 2008.

9. Over the course of hearing on August 17, 2009 the question arose why the petitioner should be permitted to avoid the forum under the special statute, the [Industrial Disputes Act, 1947](#), when admittedly his remedy against the impugned order of termination of his service was available before the forum established under the provisions of the [Industrial Disputes Act, 1947](#). I adjourned hearing giving the petitioner, appearing in person, an opportunity to consider the Supreme Court decisions in *Basant Kumar Sarkar and Ors. v. The Eagle Rolling Mills Ltd. and Ors.* : A.I.R. 1964 SC 1260; *Scooters India and Ors. v. Vijay E.V. Eldred* : (1998) 6 SCC 549; *U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh* : (2004) 4 SCC 268; *U.P. State Spinning Co. Ltd. v. R.S. Pandey and Anr.* : (2005) 8 SCC 264; and *Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors.* : (2007) 2 SCC 112.

10. The petitioner has considered the decisions and submitted as follows. Since his fundamental right to work has been infringed by the respondents who issued an illegal order of termination of service, since the charge-sheet was issued under a wrong provision of the standing orders, since the respondents took around eight years for concluding the disciplinary proceedings, since the allegation that he was absenting from duty from October 17, 1997 was not proved, since alternative remedy available under the [Industrial Disputes Act, 1947](#) is not an absolute bar to entertaining the writ petition that has already been entertained, and since the respondents have not taken the point at the time of admission or in their opposition, there is no reason to say that he should go to the forum available under the [Industrial Disputes Act, 1947](#).

11. On the other hand, relying on *Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant* : AIR 1995 SC 1715; *Westinghouse Saxby Farmer Ltd. v. Raj Behari Ram and Ors.* 1995(2) CLJ 145; and *Nirmalendu Roy v. Steel Authority of India and Anr.* 2000(2) CLJ 283, Mr. Banerjee, Counsel for the respondents, has submitted that though the point that in view of the availability of remedy under the [Industrial Disputes Act, 1947](#) the petitioner was not entitled to approach the writ court, was not taken at the time of admission of the writ petition or specifically in the opposition, he is entitled to take the point even at the time of hearing. According to him the writ petition is not maintainable.

12. In *Basant Kumar Sarkar and Ors. v. The Eagle Rolling Mills Ltd. and Ors.* : AIR 1964 SC 1260, their Lordships of the Supreme Court noticed, said and held (para.7):

Before we part with these appeals, there is one more point to which reference must be made. We have already mentioned that after the notification was issued under Section 1(3) by respondent No. 3 appointing August 28, 1960 as the date on which some of the provisions of the Act should come into force in certain areas of the State of Bihar, the Chief Executive Officer of respondent No. 1 issued notices giving effect to the State Government's notification and intimating to the appellants that by reason of the said notification, the medical benefits which were being given to them in the past would be received by them under the relevant provisions of the Act. It was urged by the appellants before the High Court that these notices were invalid and should be struck down. The argument which was urged in support of this contention was that respondents No. 1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the Scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notices and circulars issued by respondents No. 1 were invalid, could not be considered under Article 226 of the Constitution; that is a matter which can be appropriately raised in the form of a dispute by the appellants under Section 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act or seek relief, if possible, under Sections 74 and 75 of the Act.

13. In *Scooters India and Ors. v. Vijay E.V. Eldred* : (1998) 6 SCC 549, Vijay's service was terminated by Scooter India alleging that he absented himself from duty from August 25, 1982 without any leave or intimation. Challenging the order

dated September 4, 1982 regarding termination of his service, Vijay moved the Allahabad High Court under Article 226 of the [Constitution of India](#). Allowing the writ petition the high court directed Scooter India to reinstate Vijay with three years' back wages. In the appeal their Lordships of the Supreme Court held (para.2):

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 termination of disputed questions of fact for which remedy under the industrial laws was available to the workmen.

14. In U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh : (2004) 4 SCC 268, the Sangh, a union, moved a writ petition before the Allahabad High Court questioning the decision of the corporation terminating services of 168 workmen on the ground that by absenting themselves within the meaning of the relevant Clause of the certified standing orders they had abandoned their services with the corporation. The writ petition was allowed, and allowing the appeal their Lordships of the Supreme Court held (para.11):

We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent Union at all. The dispute was an industrial dispute both within the meaning of the [Industrial Disputes Act, 1947](#) as well U.P.IDA, 1947. The rights and obligations sought to be enforced by the respondent Union in the writ petition are those created by the Industrial Disputes Act.

15. In U.P. State Spinning Co. Ltd. v. R.S. Pandey and Anr. : (2005) 8 SCC 264, questioning orders terminating their services Pandey and his co-petitioner filed a writ petition before the Allahabad High Court. The company contended that in view of availability of an efficacious alternative statutory remedy under the [Industrial Disputes Act, 1947](#) read with the U.P. [Industrial Disputes Act, 1947](#), the writ petition should not be entertained. Citing long pendency of the case and violation of principles of natural justice, the high court turned down the objection. Holding (para.24) that the high court was not justified in entertaining the writ petition, their Lordships of the Supreme Court said (para. 20):

In a catena of decisions it has been held that writ petition under Article 226 of the constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

16. In *Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors.* : (2007) 2 SCC 112, their Lordships of the Supreme Court noticed, said and held (para.44):

In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute. The High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition.

17. Mr. Banerjee has relied on the *Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant* : AIR 1995 SC 1715 to show that remedies provided under the [Industrial Disputes Act, 1947](#) are equally effective. He is right. In that case their Lordships of the Supreme Court held (para. 32):

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.

18. I do not think the decision in *Raj Behari Ram and Ors. v. Westinghouse Saxby Farmer Ltd.* 1995(2) CLJ 145 is of any assistance in this case. In that case Westinghouse moved the writ petition challenging an award of the industrial tribunal. In *Nirmalendu Roy v. Steel Authority of India and Anr.* 2000(2) CLJ 283, on the facts of that case the court was not inclined to relegate Nirmalendu to the forum established under the [Industrial Disputes Act, 1947](#), but to the disciplinary authority. It was, however, clarified that if Nirmalendu was aggrieved by the

decision of the disciplinary authority, he would be free to avail of such remedies as would be available under the [Industrial Disputes Act, 1947](#).

19. It is, therefore, evident that a writ petition under Article 226 of the constitution concerning an industrial dispute should not be entertained by the high court, unless there are exceptional reasons to entertain it. In the present case, I am of the view that though the point was not raised by the respondents at the time of admission or in their opposition, it is my duty to decide it, and I am fortified by the several Supreme Court decisions for considering which I gave the petitioner reasonable opportunity. In my view, the question whether the petitioner should be relegated to the industrial tribunal requires a decision, and hence I have decided to decide it.

20. I am unable to accept the argument that by issuing the termination order the respondents have infringed the petitioner's fundamental right guaranteed by Article 21 of the [Constitution of India](#). The termination order was issued after issuing a charge-sheet and conducting a domestic enquiry in which the allegation made in the charge-sheet, according to the respondents, was proved. The petitioner participated in the enquiry and was given second show-cause opportunity. I am unable to see any exceptional reason why he should be permitted to avoid the forum established under the [Industrial Disputes Act, 1947](#) when, admittedly, he is a workman within the meaning of Section 2(s) of the Act, and the dispute involving which he took out this writ petition is an industrial dispute within the meaning of Section 2(k) of the Act. On these facts, I am unable to hold that he has made out an exceptional case for permitting him to bypass the forum established under the [Industrial Disputes Act, 1947](#).

21. Whether the domestic enquiry was conducted lawfully and fairly is to be examined by the industrial tribunal, if the petitioner approaches it according to law; and if the tribunal finds that the domestic enquiry was not conducted fairly, then the employer would acquire a right to prove the allegation made in the charge-sheet by giving evidence before the tribunal. Needless to say that before the writ court the employer will not get such an opportunity. Besides, the powers which the tribunal can exercise, if necessary, under Section 11A are not available to the writ

court. I am, therefore, of the view that the petitioner ought to have availed of the effective and efficacious special statutory remedy available under the [Industrial Disputes Act, 1947](#). In my opinion, he should be relegated to the tribunal.

22. For these reasons, I dismiss the writ petition saying that the petitioner is at liberty to approach the industrial tribunal in accordance with law. There shall be no order for costs.

23. The petitioner insists that I must incorporate in my judgment a part of what has been recorded in the document at p.75. I am unable to see how he can make the submission that I must incorporate in my judgment a part of the contents of the document. I only say that I have given him sufficient opportunity of hearing.

24. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.

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