Karnataka High Court Mohini K. vs General Manager, Syndicate Bank, ... on 1 July, 1994 Equivalent citations: ILR 1994 KAR 2759, 1994 (3) KarLJ 175, (1995) ILLJ 351 Kant Author: T Thakur Bench: T S Thakur ORDER T.S. Thakur, J. 1. Should this Court interfere with an order of dismissal passed against an employee who has a remedy available to him under the Industrial Disputes Act, against such a dismissal, is the short question that arises in this petition. Before proceedings any further however, it is appropriate to briefly state the facts in the background. 2. The petitioner who was working as a Stenographer in the respondent-Bank was charged with certain misconduct in the discharged of her official duties which resulted in the holding of a domestic enquiry against her. The Inquiry Officer appointed for this purpose recorded the statements of the witnesses produced before him and finally submitted a report holding the petitioner guilty of misconduct. Based on the said report the petitioner was dismissed from service, which order of dismissal was challenged by way of a writ petition in this Court. The writ petition was however, dismissed on the ground that the petitioner had not exhausted the alternate remedy by way of an appeal that was available to her under the service rules. The dismissal of the writ petition was question by her in a writ appeal which also came to be rejected. The petitioner, thereafter filed an appeal against her dismissal order which was dismissed by respondent No. 1 by his order dated 30th of July, 1993. It is against this order and that passed by respondent No. 2 on 6th of May, 1993, that the present writ petition has been filed by her inter alia on the ground that the domestic enquiry held by the respondent-Bank was not properly conducted nor was she given a reasonable and fair opportunity of defending herself at the same. 3. The respondents have appeared and filed their counter traversing in detail the averments made in the writ petition. 4. I have heard the learned counsel for parties and carefully perused the record. 5. Learned counsel appearing for the respondent has raised a preliminary objection to the maintainability of this petition. He argued that this Court should not in exercise of its extraordinary writ jurisdiction interfere with the impugned orders keeping in view the fact that the petitioner has an equally efficacious remedy available to her by way of a reference under Section 10 of the Industrial Disputes Act to the Industrial Tribunal. He submitted that the remedy available to a workman under the Industrial Disputes Act was more comprehensive and efficacious in comparison to that available under the writ jurisdiction of this Court. He argued that the labour court is not only entitled to go into the question of the validity of the domestic enquiry held by the Management but also go into the merits of the charge framed against the petitioner in case it came to the conclusion that the enquiry had not been properly conducted. Alternatively it was submitted that, even if the enquiry was found by the labour court to have been validly conducted and the misconduct proved against her, the said court can go into the question of quantum of punishment imposed and interfere with the same under Section 11-A of the Act in case it was found that punishment imposed was excessive or incommunicate with the misconduct alleged. The jurisdiction of this Court under Article 226 of the Constitution does not, contended the learned counsel, extend thus far, with the result that the alternate remedy was equally if not more

efficacious and comprehensive as the one under Article 226. 6. Learned counsel for the petitioner on the other hand argued that the respondent-Bank was wholly owned and controlled by the Government; and was therefore an instrumentality of the State hence amenable to the writ jurisdiction of the Court. That being so, the impugned order of dismissal could be examined by the Court, and an appropriate writ issued to undo the wrong done to the petitioner. He submitted that once the court was certain about its jurisdiction to review the validity of the orders in question on whatever grounds, available to the petitioner, it should not force the petitioner to resort to the alternate remedy by way of a reference to the labour court, whatever the advantages attached to such a reference may be. He relied upon the judgment of their Lordships in C. V. Raman v. The Management of Bank of India and Anr. in support of his submission. 7. The jurisdiction of this Court under Article 226 even when couched in wide terms, its exercise is discretionary. The jurisdiction is not exercised simply because it is lawful to do so. On the contrary courts in this country have evolved certain well recognised self-imposed restrictions which regulate the exercise of this power; and this has been done primarily for the reason that the very amplitude of the power conferred upon the High Court demands adherence to certain self-imposed limitations. Now one of such limitations which courts have recognised as a possible bar to the exercise of this extraordinary jurisdiction is the availability of a remedy to the approved which is equally efficacious and speedy. This is all the more so if the remedy is provided by a special statute, and enforceable through a forum specially constituted under it. In any such case, the court would be rather slow in allowing the party would be rather slow in allowing the party concerned to bypass the statutory remedy provided to him by law; and have left the aggrieved to resort to the machinery provided for by any such statutory provision. There are no doubt certain exceptions to this general rule, such as cases in which the orders impugned have been passed in violation of the principles of natural justice, or where the very Constitutional validity of the statute or any part thereof is questioned. In any such case the court may while taking a total view of the controversy decide to interfere without asking the aggrieved to take resort to the remedy provided by the statute. Interference even in such cases is entirely in the discretion of the court, to be exercised on sound judicial principles. 8. Let us then examine the question whether the remedy by way of a reference to the labour court is available to the petitioner and if so whether the same is equally efficacious if not more, as the one chosen by him under Article 226. This will necessarily take us to the provisions of the Industrial Disputes Act and the judicial pronouncements on the subject from this Court and the Supreme Court; for it is only in the context of the provisions of the Act that availability and the efficacy of the remedy can be determined. 9. The term workman has been defined by Section 2(s) of the Industrial Disputes Act (hereinafter called 'the Act'). The definition given is comprehensive but since it was argued by the learned counsel for the petitioner that the petitioner is not a workman within the meaning of the Act, it has become necessary to deal with the said argument at the outset. Section 2(s) reads thus : " 'Workman' means any person (including an apprentice) employed

in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person. (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensum or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature." 11. A plain reading of the above provision shows that any person employed in any industry doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work for a hire or reward, is a workman. The definition however carves out certain exceptions such as persons subject to the Army Act or the Navy Act or those employed in the Police service or those who are employed mainly in a managerial or administrative capacity are excluded. Persons employed in the supervisory capacity drawing wages beyond the prescribed limit have also been excluded from the definition of the term 'Workman'. 12. In the instant case the petitioner was working as a Stenographer in the respondent-Bank. Stenographer's job is skilled in character for it is his/her skill in stenography which nor only earns him his name but constitutes the mainstay of his job. The duties of a Stenographer are neither managerial nor administrative in nature. Nor can the said duties be said to be supervisory in character. The petitioner therefore does not fall within any one of the exceptions to Section 2(s) of the Act and is therefore a workman within the definition of the said 'term'. 13. The fact that the petitioner was employed in an industry can also not be disputed not was it seriously disputed by the learned counsel appearing for the petitioner. The term industry as defined by Section 2(i) means any systematic activity carried on by co-operation between an employer and his workman for production, supply or distribution of goods or services with a view to satisfy human needs or wishes, except those which are merely spiritual or religious in nature. Banking activity is certainly one of such systematic activities which provides services to the community at large. The fact that Section 2-A(1) defines the term 'appropriate Government' in relation to a banking company to be the Central Government also shows that banking activity is considered to be an industry for otherwise there was no reason why the Act should have defined the term 'appropriate Government' qua a banking company. The term banking company has been defined under Section 2-BB of the Act to be a Banking Company as defined in Section 5 of the Banking Companies Act, 1949 including the Industrial Development Bank, Reserve bank and the State bank of India. On a conjoint reading of the provisions of Sections 2-A, 2-BB and 2-J it is apparent that the respondent-Bank is an industry within the meaning of the Act and petitioner herein a workman employed in the same. The argument of the

learned counsel for petitioner that the petitioner is not a workman employed in an industry must accordingly fail. 14. That takes me to the merit of the objection raised by the learned counsel for respondent. The argument, as noticed earlier, is that if the petitioner is a workman employed in an industry, then any dispute pertaining to the validity of her dismissal from service would amount to an industrial dispute within the meaning of Section 2-A which dispute can be legitimately referred to a Labour Court for adjudication in terms of Section 10 of the Act, regardless whether or not the same has been espoused by a Trade Union. I find considerable force in the submission made by the learned counsel for respondents. 15. A dispute regarding the dismissal of an individual workman is also in view of Section 2-A an industrial dispute which may be referred for adjudication by the labour court. In any such reference the first thigh which the labour court is required to do is to determine whether or not the domestic enquiry conducted against the workman was valid. In case the tribunal comes to the conclusion that either no enquiry was conducted or the enquiry conducted was defective for any reason whatsoever, the Management has the choice of adducing evidence before the industrial tribunal in order to prove the charge framed, against the employee. It was so held in Cooper Engineering Ltd. v. P. P. Mundhe where their Lordships observed thus :- "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court." 16. To the same effect is the view taken by their Lordships in M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. v. The Workmen Employed represented by Firestone Tyre Employees' Union, Bharat Sugar Mills Ltd. v. Jai Singh . The Management of Ritz Theatre (Private) Ltd., Delhi v. Its Workmen, , where it was authoritatively held that the mere fact that no enquiry was held or that the enquiry had not been conducted properly, did not absolve the tribunal; of its duty to decide whether the misconduct alleged against the workman had been established. The proper way for performing this duty on the part of the tribunal was to record evidence of both the sides in respect of the alleged misconduct and record its own independent finding. In other words where the tribunal is dealing with an industrial dispute, if it is satisfied that no enquiry has been held or that the enquiry which has been held is not proper or fair or that the findings recorded by the Inquiry Officer are perverse the whole issue is at large before the tribunal. This position is much too well-settled by the judgments referred to above, to require any reiteration. 17. As a corollary it follows that the power and the jurisdiction of the labour court in examining the validity of the domestic enquiry held against the employee, far exceeds that of this Court, under Article 226, for this Court, cannot go beyond the point of examining the validity of the enquiry to look into the merits of the charge

framed against the provided. To that extent therefore the remedy provided by the Act, is certainly more comprehensive than that available under Article 226 of the Constitution. 18. There is yet another aspect of the matter; and the same relates to the introduction of Section 11-A into the Act. With the addition of the said provision, the power of the labour court now extends to examining the quantum of punishment to be imposed upon the workman. The labour court is on the strength of Section 11-A of the Act entitled to interfere with the punishment imposed upon the employee, even when the charge framed against him/her, stands proved and the enquiry is found to have been validly conducted. This, power, is also peculiar to the scheme of the Act and may not be exercisable by this court, under Article 226, for an employer, may be entitled to insist upon an order of severe punishment even when, a lesser penalty may have met the ends of justice. (Refer State of Orissa and Others v. Bidyabhushan Mohapatra . 19. To the same effect, is the view taken by a single Judge of this Court, (M. Rama Jois, Judge as his Lordship then was) in Hariba v. K. S. R. T. C. 1983 (1) Kar. L. J. 261 where, after a conspectus of the entire case-law on the subject, it was held thus : "The result of the discussion may be summed up as follows : Whenever a workman employed in an industry is dismissed or removed from service and the workman desires to challenge the legality of such action of the management of an industry, on grounds of violation of procedure, as regulated by the prescribed rules or rules of natural justice, the workman should resort to the remedy available under Section 10 of the Industrial Disputes Act and a petition under Article 226 should not be entertained, notwithstanding the fact that the industry is under the management of a statutory Corporation or a body, which is an 'authority' falling within the definition of the word 'State' as defined in Article 12 and amenable to the writ jurisdiction of this Court under Article 226 of the Constitution." 20. The above view found favour with a Division bench of this Court, in Sreeramulu B. v. General Manager, K. S. R. T. C. and Others 1984 (2) Kar. L. J. 307 where V. S. Malimath, Chief Justice (as his Lordship then was) speaking for the bench observed thus : "We are in entire agreement with the view taken by Justice Rama Jois in Hariba's case that whenever a workman employed in an industry is dismissed or removed from service and the workman desires to challenge the legality of such action on the ground of violation of the prescribed procedure or the principles of natural justice the work man should resort to the remedy available under Section 10 of the Industrial Disputes Act and that the petition under Article 226 of the Constitution should not be entertained particularly because the parties would be deprived of the valuable rights and privileges to which they would be entitled to if the dispute is adjudicated upon under Section 10 of the Industrial Disputes Act. But, it was contended by Sri Achar, learned counsel for the petitioner that the principle laid down in Hariba's case does not preclude the petitioner in his case from invoking the jurisdiction under Article 226 of the Constitution. It was contended that the grievance of the petitioner that he was not furnished with the report of the Enquiry Officer is in respect of a stage subsequent to the enquiry and that therefore the principle laid down in Hariba's case does not apply to the facts of this case. It is not possible to agree with the contention of Sri Achar for the

obvious reason that the enquiry does not get concluded until a final order is made by the disciplinary authority. The stage at which the Enquiry Officer's report is required to be furnished, according to the petitioner's own showing, is to enable him to make an effective representation against the proposed punishment and therefore that is necessarily to be made before the final order is made. Hence it is not possible to take a view that the principle laid down in Hariba's case does not apply to the facts of this case. As we are in agreement with the view taken in Hariba's case we have to decline to interfere under Article 226 of the Constitution relegating the petitioner to the remedy available to him under the Industrial Disputes Act." 21. I also find considerable force in the submission of learned counsel for respondent that interference by this Court under Article 226 of the Constitution with an order of dismissal will have the effect of denying to the respondent a valuable defence available to it in the proceedings under Section 10 of the Industrial Dispute Act. As pointed out earlier, the labour court can after finding the domestic enquiry to have been improperly conducted go into the merits of the charge against the employee and return its own independent finding on the same. This power of the labour court to examine the merits of the charge framed against the workman is primarily if not entirely for the benefit of the management, for the Management can sustain an order of dismissal even on merits before the industrial court even if it is found that the domestic enquiry conducted by it was improper. No such opportunity will however, be available to the Management in writ proceedings under Article 226 of the Constitution. Interference by this Court, would therefore, have the effect of depriving the Management of a valuable defence available defence available to it before the alternative forum. 22. I may now deal with the submission made by the learned counsel for the respondent that since the respondent is amenable to the writ jurisdiction should be exercised regardless of the availability of an alternate remedy. It is no doubt true that the respondent's action is amenable to the writ jurisdiction of this Court, as the respondent is an instrumentality of the State. But the very fact that it is so amenable does not in my opinion ipso facto entitle the petitioner to invoke the said jurisdiction as a matter of right. In Hariba's and Sriramulu's cases, a similar argument was repelled by this Court on the ground that the very fact that the jurisdiction could be exercised did not mean that it must be exercised no matter the alternative remedy provided by the Industrial Disputes Act was more comprehensive and efficacious. 23. Reliance placed by the learned counsel upon the judgment of their Lordships in Supreme Court in C. V. Raman's case, is also of no avail to him. In the said case, the question whether an alternative remedy by way of a reference to the labour court is a bar to the exercise of the jurisdiction under Article 226 did not arise. Their Lordships were in that case considering the provisions of the Tamil Nadu Shops and Establishments Act, Andhra Pradesh Shops and Establishments Act, Kerala Shops and Establishments Act, in relation to the application of those provisions to Nationalised Banks and State Bank of India. No such question, however, arises in the present case nor does the present case involve the interpretation of any such local Act for determining the validity of dismissal of the employee. 24. In the result, this petition must fail and is

accordingly dismissed. The petitioner shall however be at liberty to invoke the provisions of the Industrial Disputes Act for the redresal of her grievance against the order of her dismissal, on all such grounds as are legally open to her. 25. In the circumstances of the case there will be no order as to costs.