U.P. State Spinning Co. Ltd vs R.S. Pandey And Anr on 26 September, 2005

Equivalent citations: AIRONLINE 2005 SC 944

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Appeal (civil)  1346 of 2005

PETITIONER:
U.P. STATE SPINNING CO. LTD.

RESPONDENT:
R.S. PANDEY AND ANR.

DATE OF JUDGMENT: 26/09/2005

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

Appellant (hereinafter referred to as the `employer') calls in question legality of the judgment rendered by a Division Bench of the Allahabad High Court dismissing Special Appeal filed by the appellant. The Special Appeal was filed by the appellant questioning correctness of the judgment rendered by a learned Single Judge who had questioned the orders of termination in respect of respondents Nos. 1 and 2.

The main stand of the appellant before the High Court was that the writ petition filed by the respondents should not be entertained as they had efficacious, alternative and statutory remedy provided under the Industrial Disputes Act, 1947 (in short the `Act') read with U.P. Industrial Disputes Act, 1947 (in short the `U.P Act').

The background facts are as follows:

> The respondents while working in the appellant's concern made claims of 15% of the basic pay as an interim relief as was being paid to the officers and clerical staff at the Headquarters of the appellant's concern, as according to them there was no justifiable reason for refusing the said relief to the staff at some units. The writ petition was filed (including amended prayers), inter alia, with the following prayers:

(a) to issue a writ, order or direction restraining the respondents from transferring, terminating the services of the petitioners and harassing and causing any harm to petitioners;

(b) to issue a writ, order or direction directing the respondents to pay 15% of the basic pay as interim relief and fixed D.A. of Rs. 100 to the clerical staff of the Maunath Bhanjan Unit Mills;

(c) to issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case; and

(d) to award costs of this writ petition to the petitioners against the contesting respondents.

It is to be noted that five applications for amendments were filed and some of them were allowed by the High Court. Right from the beginning, the appellant was questioning maintainability of the writ petition as according to it statutory remedies were available and in the writ petition itself the writ petitioners accepted that the standing orders governing the service conditions were in operation. By one of the amendments, the order of dismissal passed was permitted to be questioned. So far as the respondent No.1 is concerned, the stand was that the notice of show cause was alleged to have been refused by him when sent by the appellant on 21.11.1987. The same show cause notice was sent on 23.11.1987 by registered post which was received by the respondent No.1 on 26.11.1987. The writ petitioner (respondent No. 1) sent his reply to the show cause notice dated 26.11.1987 which was received by the appellant on 2.12.1987. But the order of dismissal was passed on 1.12.1987. Learned Single Judge rejected the plea relating to existence of alternative remedy and only on the ground that the final order was passed before the receipt of the show cause reply, quashed the proceedings.

So far as the respondent No.2 is concerned, it was held that the notice was given by publishing in the news item on the purported ground that he did not join the transferred post. The High Court held that the show cause notice containing the allegation of non-joining was not established to have been served.

Learned Single Judge noted that the writ petition was pending for great length of time and, therefore, it would not be legal and proper to dismiss the writ petition. He did not find substance in the plea that had the writ petitioners availed a statutory remedy under the Act and the U.P. Act, the employer would have got the opportunity to show that the departmental proceedings were fair by adducing evidence in terms of Section 11-A of the Act. By filing writ petition according to the appellant, such a statutory right was rendered ineffective.

In the Special Appeal filed before the Division Bench, the stands taken were re-iterated. It was specifically pointed out that the long pendency of the writ petition was primarily on account of the fact that several amendments were sought for and prayers for new reliefs were introduced. It was further submitted that even if the Industrial Tribunal or the Labour Court comes to the conclusion that domestic enquiry is vitiated, the employer has a statutory right to lead evidence to show that the

order of termination is justified on the materials which may be placed on record. This right was being denied by the workmen approaching the High Court under Article 226 of the Constitution of India, 1950 (in short the `Constitution'). The High Court did not consider the plea relating to the existence of alternative remedy and denial of opportunity to justify the order of termination by leading evidence to be of any consequence and held that the learned Single Judge had permitted the appellant-employer to proceed further in accordance with law. Since the order of termination was passed in gross violation of principles of natural justice and in hasty manner the writ petition was maintainable.

In support of the appeal, Mr. M.N. Rao, learned senior counsel submitted that the approach of the High Court is clearly erroneous. No reason was indicated by the writ petitioners for by-passing the statutory remedies. Even in the writ petition, nothing was said to justify by-passing the statutory remedy. In fact it was clearly stated that the standing orders governing the service conditions were in operation. The High Court should not have considered the passage of time as a factor to justify the action of the writ petitioners in straightway filing the writ petition. As noted above, the long pendency was on account of the various amendments sought for by the writ petitioners. They should not have been permitted to take advantage of their own dilutory methods. It was however accepted that the appeal is not pressed so far as respondent No.2 is concerned as he had died during the pendency of the appeal and the appellant has settled the matter with the legal heirs of said deceased respondent No.2.

In response, learned counsel for respondent No.1-workman submitted that existence of statutory remedy is not a rule of law but a law of caution and in appropriate cases the High Court can entertain writ petitions. This was a case where there was gross violation of principles of natural justice and, therefore, the High Court was justified in entertaining the writ petition and deciding the matter on merits. Merely because the employer had a right to justify the order of dismissal by adducing evidence, that cannot be a ground to deny the affected party the right to approach the High Court by filing a writ petition. In fact the employer has been permitted to take such action as is available in law by the orders of learned Single Judge and the Division Bench.

The issues relating to entertaining writ petitions when alternative remedy is available, were examined by this Court in several cases and recently in State of Himachal Pradesh and Ors. v. M/s Gujarat Ambuja Cement Ltd. and Anr., [2005] 6 SCC 499.

Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.

Constitution Benches of this Court in K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

Another Constitution Bench of this Court in State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. etc., AIR (1964) SC 1006 held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been re- iterated in N.T. Veluswami Thevar v. G. Raja Nainar and Ors., AIR (1959) SC 422; Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr., AIR (1965) SC 1321; Siliguri Municipality and Ors. v. Amalendu Das and Ors., AIR (1984) SC 653; S.T. Muthusami v. K. Natarajan and Ors., AIR (1988) SC 616; R.S.R.T.C. and Anr. v. Krishna Kant and Ors., AIR (1995) SC 1715; Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors., AIR (2000) SC 2573; A. Venkatasubbiah Naidu v. S. Chellappan and Ors., [2000] 7 SCC 695; and L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors., [2001] 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors., [2001] 8 SCC 509; Pratap Singh and Anr. v. State of Haryana, [2002] 7 SCC 484 and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors., [2003] 1 SCC 72.

In Harbans Lal Sahnia v. Indian Oil Corporation Ltd., [2003] 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In G. Veerappa Pillai v. Raman and Raman Ltd., AIR (1952) SC 192; Assistant Collector of Central Excise v. Dunlop India Ltd., AIR (1985) SC 330; Ramendra Kishore Biswas v. State of Tripura, AIR (1999) SC 294; Shivgonda Anna Patil and Ors. v. State of Maharashtra and Ors., AIR (1999) SC 2281; C.A. Abraham v. I.T.O. Kottayam and Ors., AIR (1961) SC 609; Titaghur Paper Mills Co. Ltd. v. State of Orissa and Anr., AIR (1983) SC 603; H.B. Gandhi v. M/s Gopinath and Sons, [1992] Suppl. 2 SCC 312; Whirlpool Corporation v. Registrar of Trade Marks and Ors., AIR (1999) SC 22; Tin Plate Co. of India Ltd. v. State of Bihar and Ors., AIR (1999) SC 74; Sheela Devi v. Jaspal Singh, [1999] 1 SCC 209 and Punjab National Bank v. O.C. Krishnan and Ors., [2001] 6 SCC 569, this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

If, as was noted in Ram and Shyam Co. v. State of Haryana and Ors., AIR (1985) SC 1147 the appeal is from "Caeser to Caeser's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724. That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. Income Tax Officer, Bareilly AIR (1971) SC 33 that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

At this juncture, it would be appropriate to take note of the few expressions in Reg v. Hillington, London Borough Council, (1974) 1 QB 720 which seems to bring out well the position. Lord Widgery, C.J. stated in this case:

> "It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy..."

The statutory system of appeals is more effective and more convenient than application for certiorari and the principal reason why it may prove itself more convenient and more effective is

that an appeal to (say) the Secretary of State can be disposed of at one hearing whether the issue between them is a matter of law or fact or policy or opinion or a combination of some or all of these ……..whereas of course an appeal for certiorari is limited to cases where the issue is a matter of law and then only it is a matter of law appearing on the face of the order."

> "An application for certiorari has however this advantage that it is speedier and cheaper than the other methods and in a proper case therefore it may well be right to allow it to be used…..I would, however, define a proper case as being one where the decision in question is liable to be upset as a matter of law because on its face it is clearly made without jurisdiction or in consequence of an error of law."

After all the above discussion, the following observations of Roskill L.J. in Hanson v. Church Commissioner, (1978) QB 823 may not be welcomed but it should not be forgotten also:

> "There are a number of shoals and very little safe water in the unchartered seas which divide the line between prerogative orders and statutory appeals, and I do not propose to plunge into those seas…."

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.

In U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh, [2004] 4 SCC 268, it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantarum Wadke, [1976] 1 SCC 496, Rajasthan SRTC v. Krishna Kant, [1995] 5 SCC 75, Chandrakant Tukaram Nikam v. Muncipal Corporation of Ahmedabad and Anr., [2002] 2 SCC 542 and in Scooters India and Ors. v. Vijai V. Eldred, [1998] 6 SCC 549.

In Premier Automobiles Ltd., case (Supra) it was observed as follows:

> "A speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedure followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They

> can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them".

In Basant Kumar Sarkar and Ors. v. Eagle Rolling Mills Ltd. and Ors., [1964] 6 SCR 913 the Constitution Bench of this Court observed as follows:

> "It is true that the powers conferred on the High Courts under Art. 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 s. 10 of the Industrial Disputes Act, or seek relief, if possible, under sections 74 and 75 of the Act."

The above position was recently highlighted in Hindustan Steel Works Construction Ltd. and Anr. v. Hindustan Steel Works Construction Ltd. Employees Union, (2005) 6 SCALE 430.

Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition. Usually when writ petition is entertained notwithstanding availability of alternative remedy and issues are decided on merits, this Court is slow to interfere merely on the ground of availability of alternative remedy. But the facts of the present case have special features, which warrant interference.

The residual question is what would the appropriate direction in such a case. Stand of the employer is that it could have justified the order of termination by adducing any evidence even if it was held that there was some defect in the departmental proceedings. The solution is found in what was stated by this Court in Managing Director, ECIL v. B. Karunakar, [1993] 4 SCC 737. In paragraph 31, it was observed as follows:

> "In all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of non-supply of the report. If the non-supply of the report would have made no difference to the ultimate findings and

> the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct re-instatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his re-instatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be re-instated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the re- instatement and to what benefits, if any and the extent of the benefits, he will be entitled. The re-instatement made as a result of the setting aside the inquiry for failure to furnish the report, should be treated as a re-instatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

In view of above, we set aside the order of learned Single Judge as affirmed by the Division Bench by the impugned judgment and direct that within a period of four months the enquiry shall be completed by starting from the stage of service of show cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field. The respondent No. 1 shall be re-instated to service but without any back wages and other service benefits and his re-instatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

The appeal is allowed to the aforesaid extent with no order as to costs.