2024:DHC:4033

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 14th May, 2024**

\+ W.P.(C) 4455/2017 & CM APPL. 19463/2017

MAYA AND ORS ..... Petitioners

Through: Mr. R. K. Saini and Mr. Ravi Kumar, Advocates

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Rishesh Mani Tripathi, Advocate for UOI
Mr. Rajiv Kapur, Mr. Akshit Kapur, and Mr. Aditya Saxena, Advocates for SBI

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners seeking the following reliefs:

> *"a) A writ of Certiorari calling for the record of the case for perusal;*
> *b) A Writ in the nature of certiorari quashing the action on part of the Respondents in terminating the service of the petitioners by way of retrenchment order dated 31.3.2017,issued to the petitioners (Annexure P-2 Colly) and directing their reinstatement with full back wages and other consequential benefits including continuity of service and increments etc.;*

c) A Writ of mandamus directing the Respondents to regularize the services of the Petitioners w.e.f. the initial dates of their joining or in the alternative, to treat the petitioners as having been regularized as State Bank of Mysore employees before 1.4.2017 and consequently take them into service of the merged entity i.e. State Bank of India w.e.f. 1.4.2017 at their respective branches and pay salary to them accordingly w.e.f. 1.4.2017; d) A writ of certiorari quashing the merger scheme to the extent that it restricts the absorption and continuation in services of only the permanent and regular employees of the Respondents 2-3 in the services of the State Bank of India / Respondent No.4; e) A Writ of Mandamus commanding the Respondent to pay the costs of this petition to the Petitioners;
f) Any other writ order or direction as this Hon'ble Court may deem fit in the nature and circumstances of the case and in the interest of justice."

2. The relevant facts leading to the filing of the instant petition are as follows:

a. The petitioners/workmen joined the services of the respondent no. 2 i.e., State Bank of Mysore (merged with State Bank of India w.e.f. 1st April, 2017) as Sweeper/Sweeper-cum-Peon at various branches of the Delhi region between the years 2004 to 2010 on temporary basis.

b. Thereafter, the petitioners on 31st March, 2017, were served with the retrenchment notice owing to the proposed merger of six subsidiary/associate banks including the respondent no. 2 with the State Bank of India. The terms of the said

merger scheme contained a condition that only the permanent employees on the rolls of the six subsidiary/associate banks will be absorbed and continue their services with State Bank of India.

c. Being aggrieved by the above, the petitioners have approached this Court seeking reinstatement as well as regularization of their services and setting aside of the same.

3. Learned Counsel appearing on behalf of the petitioners submitted that the respondent no. 2 wrongfully terminated the services of the workmen and failed to take into consideration the fact that the duties and nature of work performed by the them were of a permanent nature and they had been working with the respondent for over ten years.

4. It is submitted that the petitioners were entitled to be regularized on the basis of seniority as the respondent no.2 had a policy in place for regularizing the services of their employees on the basis of seniority. It is further submitted that the respondent did not prepare a seniority list and chose to regularize the employees by adopting a 'pick and choose' method which is contrary to the policy of the respondent as well as the settled position of law.

5. It is submitted that post the merger of respondent no. 2 with the respondent no. 4 w.e.f 1st April, 2017, only the permanent employees of respondent no. 2 were absorbed. It is also submitted that the petitioners were on an earlier occasions assured that they will be regularized before the merger but on 31st March, 2017, they were served with retrenchment notices,

therefore, the said merger scheme is discriminatory and violative of Article 14 of the Constitution of India to the extent that it provides for absorption and continuation of services of only permanent employees. .

6. It is also submitted that the petitioners had become members of State Bank of Mysore Employees Union, who had filed writ petition bearing Nos. 13864-14080/2017 and 14094-14097/2017 before the High Court of Karnataka on behalf of 221 similarly placed employees, wherein, termination was stayed and notice was issued to the respondents on 13th April, 2017.

7. It is submitted that the petitioners had worked with the respondent no. 2 for over 240 days in a calendar year for the last 10 years and should have been regularized thus, the act of not regularizing the petitioners when their appointment was legal is in direct contravention of the mandate settled by the Hon'ble Supreme Court in ***Secretary, State of Karnataka v Uma Devi,* (2006) 4 SCC 1**.

8. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

9. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed at the threshold.

10. It is submitted that the instant petition is not maintainable as the petitioners being 'workmen' have an efficacious alternative remedy under the Industrial Disputes Act, 1947 (hereinafter "the Act"), under which all the disputes pertaining to employment and retrenchment are mandated to be

adjudicated by an Industrial Tribunal/Labour Court.

11. It is submitted that the writ jurisdiction under Article 226 of Constitution of India is discretionary in nature and cannot be invoked when an alternative statutory remedy is available. Hence, the instant writ petition is not maintainable.

12. It is submitted that the impugned retrenchment order falls squarely within the requirements of section 25-F of the Act, whereby, the prescribed mandate under the said section i.e., compensation of 15 days of pay for every completed year of service was paid to the petitioners.

13. It is submitted that as per the settled position of law, if there has been a wrongful termination of services of a daily wager due to non-compliance of section 25-F of the Act, the aggrieved person is entitled to monetary compensation and not reinstatement.

14. It is also submitted that the petitioners were employed on a temporary basis and were called intermittently as per requirement, hence, there was no continuity of service.

15. It is further submitted that it is a settled position of law that by mere completion of requirement of 240 days, does not entitle the workman to be eligible for regularization in service.

16. Therefore, in view of the foregoing submissions, the instant petition may be dismissed.

17. Heard the learned counsel appearing on behalf of the parties and perused the record.

18. It is the case of the petitioners that they have been illegally terminated

by the respondent no. 2 and that as per the settled position of law, they are duly entitled to be reinstated back in service and have prayed for the same along with regularization. It has been contended that they were assured by the respondent no. 2 that their services will be regularized, however, they were terminated before the merger took place. It has been further submitted that the said conduct of the respondent no. 2 is discriminatory and violative of their legal as well as fundamental rights. Moreover, the petitioners seek regularization of their services on the ground that they have worked with the respondent no. 2 for a period of ten years and as per the settled position of law, they are entitled for regularization.

19. In rival that submissions, it has been submitted on behalf of the respondent that the instant petition is not maintainable and may be dismissed at the outset since, there exists an efficacious alternative remedy to challenge the alleged termination before the Industrial Tribunal/Labour Court under the Act. The instant petition has also been opposed on merits and it has been submitted that the termination of the petitioners is as per the statutory mandate of Section 25-F of the Act.

20. At the outset, before delving into the merits of the instant petition, this Court deems it imperative to decide the preliminary objection raised on behalf of the respondents with regard to the maintainability of the instant petition.

21. According to Article 226 of the Constitution of India, the High Courts are entrusted with the duty to protect the fundamental and legal rights of individuals by issuing an appropriate writ. The writ jurisdiction of a High

Court although, is supervisory, discretionary and extraordinary, in nature however, the same does not confer an unlimited discretion upon the Courts to entertain each and every kind of claim under the writ jurisdiction as such discretion has to be exercised reasonably and in accordance with the law.

22. It is a settled position of law that the writ jurisdiction is not unlimited and cannot render the existing statutory reliefs futile. The extraordinary nature of the jurisdiction conferred under Article 226 of the Constitution of India prescribes a limitation on the Constitutional Courts in exercise of discretion and the Hon'ble Supreme Court in ***Union of India v T.R. Verma*, 1957 AIR 1982**, has held that if an efficacious alternative remedy is available to the litigant, he cannot invoke the extraordinary jurisdiction of the Court under Article 226.

23. The principle of exhaustion of alternatives remedy emphasizes that to avoid squandering valuable judicial resources due to forum shopping the litigants must approach the forum which is closest to them in the judicial hierarchy. This principle aims to prevent litigants from strategically selecting forums solely for their own advantage, which can lead to inefficiencies and potential abuse of the mechanism prescribed under the Indian legal system.

24. This Court is of the view that the writ jurisdiction must be invoked to protect infringement of legal or fundamental rights and only in the event when alternative remedy has been exhausted. However, it is pertinent to mention that there is no bar upon a writ Court which would restrict the invocation of such powers given to it under Article 226/227 of the

Constitution of India. The basis of the same lies in the fact that the writ Courts have discretion to grant reliefs under the above said provision if the party invoking such jurisdiction has made out an exceptional case warranting such interference and/or there exist sufficient grounds to invoke the extraordinary writ jurisdiction. In this regard, this Court deems it appropriate to refer to the judgment of the Hon'ble Supreme Court passed in ***CIT v. Chhabil Dass Agarwal,*** **(2014) 1 SCC 603**, wherein, the following was observed:

> "*...**11.** Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499])*
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> ***15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the*

> *statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation….*"

25. Upon perusal of the above stated judgment, it is made out that the Constitution Bench of the Hon'ble Supreme Court has time and again interpreted the powers of a writ Court and held that the powers conferred to the High Courts are wide, however, the same is subject to the exercise of discretion by the writ Court. In case, the High Court is satisfied that the aggrieved party has an alternate remedy, it can refuse to exercise its powers, however, in extraordinary circumstances, the Court may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure mandated to be followed has not been adopted.

26. With regard to the facts of the instant matter, it is observed that the Industrial Disputes Act, 1947, constitutes an extensive and a self-contained

legislative framework, providing a detailed mechanism for the resolution of industrial disputes and the corresponding remedies available to the aggrieved parties.

27. As a matter of statutory design and policy, all industrial disputes are initially required to be adjudicated by the Industrial Tribunal/Labour Courts and the decisions rendered by the Tribunal/Labour Courts are subject to the invocation of the writ jurisdiction of the High Court. This hierarchical structure is a deliberate reflection of the legislative intent underlying the Industrial Disputes Act, 1947.

28. The Hon'ble Supreme Court in ***Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke,*** **(1976) 1 SCC 496,** held that writ petitions pertaining to industrial disputes, for which a statutory remedy is available under the Industrial Disputes Act, 1947 should not be entertained unless the aggrieved party can demonstrate the existence of *'exceptional circumstances'*. Furthermore, the Hon'ble Supreme Court has emphasized that where a writ petition involves disputed questions of fact, it is generally not appropriate for the Courts to exercise its writ jurisdiction. The relevant paragraphs of the same is as under:

> "…***12.*** *The decision of the House of Lords in the case of Barraclough v. Brown [(1897) AC 615 : 65 LJ QB 672 : 13 TLR 527] is very much to the point. The special statute under consideration there gave a right to recover expenses in a court of summary jurisdiction from a person who was not otherwise liable at common law. It was held that there was no right to come to the High Court for a declaration that the applicant had a right to recover the expenses in a court of summary*

jurisdiction. He could take proceedings only in the latter court. Lord Herschell after referring to the right conferred under the statute "to recover such expenses from the owner of such vessel in a court of summary jurisdiction" said at p. 620:

> *"I do not think the appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right."*

Lord Watson said at p. 622:

> *"The right and the remedy are given uno flatu, and the one cannot be dissociated from the other."*

In other words if a statute confers a right and in the same breath provides for a remedy for enforcement of such right the remedy provided by the statute is an exclusive one. But as noticed by Lord Simonds in Cutler v. Wandsworth Stadium Ltd. at p. 408 from the earlier English cases, the scope and purpose of a statute and in particular for whose benefit it is intended has got to be considered. If a statute

> *"intended to compel mine owners to make due provision for the safety of the men working in their mines, and the persons for whose benefit all these rules are to be enforced are the persons exposed to danger",*

there arises at common law

"a co-relative right in these persons who may be injured by its contravention".

Such a type of case was under consideration before Lord Goddard, C.J. in the case of Solomons v. R. Gertzenstein Ltd. [(1954) 2 WLR 823 : (1954) 1 All ER 1008] vide p. 831. Lord Denning, M.R. relied upon the principles enunciated by Lord Tenterden in Doe v. Bridges [(1831) 1 B & Ad 847 : 9 LJ OS KB 113 : 199 ER 1001] approved in Pasmore case [(1898) AC 387 : 67 LJ QB 635 : 14 TLR 368] at p. 743 in the case of Southwark London Borough Council v. Williams [1971 Ch

734 : (1971) 2 WLR 467] . The celebrated and learned Master of the Rolls said at p. 743:

> *"Likewise here in the case of temporary accommodation for those in need. It cannot have been intended by Parliament that every person who was in need of temporary accommodation should be able to sue the local authority for it: or to take the law into his own hands for the purpose."...*"

29. The exercise of writ jurisdiction is inherently discretionary, and as a general principle, the Courts should refrain from entertaining petitions where an efficacious alternative remedy is available to the aggrieved party. The Hon'ble Supreme Court has distilled the sole test for entertaining a writ petition related to an industrial dispute in cases, wherein, there exists presence of *'exceptional circumstances'*, thereby, underscoring the importance of adhering to the statutory framework and exhausting the remedies available under law before seeking recourse to the writ jurisdiction of a High Court.

30. In the instant case, the factual matrix concerns an industrial dispute between the petitioners and the respondents, where the petitioners allege to have been retrenched illegally by the respondent no. 2.

31. It is observed by this Court that both the parties have the recourse to approach an appropriate forum under the Act which is the efficacious alternative remedy. Furthermore, the petitioners have failed to demonstrate a case for *'exceptional circumstances'* for this Court to exercise its jurisdiction under Article 226 of the Constitution of India.

32. Therefore, bearing in mind the foregoing discussions, it is held that

the present petition is not maintainable under Article 226 since the petitioners have failed to exhaust the alternative remedy available to them under the Act, i.e., to approach the Industrial Tribunal/Labour Courts. It is also held that the petitioners have failed to bring before this Court, any point of contention in order to showcase as to why this Court may invoke its extraordinary writ jurisdiction in the instant matter.

33. It is made clear that no observations have been made by this Court on the merits of the instant case and the petitioners are at liberty to assert their rights, if any, and approach the appropriate forum under the appropriate law. This Court also deems it imperative to state that the time taken for the disposal of the present petition shall not affect the limitation period to raise the industrial dispute.

34. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 14, 2024
gs/ryp/da

Click here to check corrigendum, if any