(2002) 10 AHC CK 0092

Allahabad High Court

Case No: C.M.W.P. No. 30557 of 1991

Brij Nath Singh		APPELLANT
	Vs	
Anpara Thermal Project, U.P. State Electricity Board and Others		RESPONDENT

Date of Decision: Oct. 11, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4K

Citation: (2003) 1 AWC 156 : (2002) 95 FLR 837

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Rajesh Tiwari, K.P. Agarwal and Arvind Kumar, for the Appellant; A.S. Kapoor, Anil Mehrotra and Vinod Mishra, for the Respondent

Judgement

Rakesh Tiwari, J.
Heard the counsel for the parties.

2. The claim of the petitioner is that he was given a temporary appointment on 10.2.1984 on the post of caretaker on a monthly salary of Rs. 500 in the field hostel of the Anpara Thermal Project and since then he has been working on the said post.

3. It is alleged by him that the pay scale of caretaker has been fixed by the Board by its order dated 30.6.1987 in pay scale of Rs. 490-750, therefore, he is entitled for the same. It is further alleged that since he worked for more than 7 years and as such he should be regularized in service. The petitioner contends that the respondents have been depriving him of the status of a regular/ permanent employee and have been keeping him as a temporary/casual employee, which is against the provisions of Sections 25T and 25U of the Industrial Disputes Act, 1947.

4. In the counter-affidavit, the respondents have submitted that hundred of contractors are engaged against various work contracts in respect of construction and operation and maintenance of the Anpara Thermal Project. It is submitted that the petitioner was an employee of the contractor who had executed certain work-contracts at the Anpara Thermal Project and there is a ban on fresh recruitment. It is denied that the Board has ever given any appointment to the petitioner or he was an employee of the Board. Copy of the agreement dated 28.4.1988 has also been annexed as Annexure-1 to the counter-affidavit. The counsel for the respondents has placed reliance on condition 19B of the General Conditions of Contract, which provides that the contractor shall pay to his labourers a fair wage. In para 10 of the counter-affidavit, it has been denied that Sections 25T and 25U of the Industrial Disputes Act, 1947, are attracted. It is alleged that the petitioner was an employee of one Mahendra Prasad Singh, contractor who was given contracts of various types of works for a specified period. On the question of alternate remedy, it is stated that the writ petitioner should not be relegated after 11 years.

5. The petitioner is a workman within the meaning of Section 2(z) of the U. P. Industrial Disputes Act, 1947. Since the disputed questions of facts as to whether there ever was any relationship of master and servant between the petitioner and the respondents or that he was an employee of independent contractor can only be determined in adjudication proceedings on the basis of oral documentary evidence which may be adduced under the aforesaid Act before the labour court. This Court cannot take such an exercise under Article 226 of the Constitution of India and enter into arena of disputed questions of facts, therefore, it would be proper to relegate the petitioner to the alternative and efficacious remedy available to him before the labour court as has been held in Chandrama Singh v. Managing Director, U. P. Cooperative Union Lucknow and Ors. 1991 (2) AWC 1005 : 1991 UPLBEC 898 wherein the Court relying upon the judgment of the Hon''ble Supreme Court has held that the remedy before the labour court is more efficacious.

6. In Scooters of India and Ors. v. Vijay E. V. Elder 1998 SCO 1611 it has been held that the High Court should keep its hands off in cases where alternative and efficacious remedy is available.

7. In the decision in Hari Krishna Geeta Rastriya Degree College, W. P. No. 6709 of 2002, the Division Bench after referring to the case of Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and Dr. Km. Santosh Gupta (1987) UPLBEC 734 held :

"In our opinion, these decision do not lay down any absolute proposition that a writ petition can never be dismissed on the ground of alternative remedy, if there is violation of natural justice or order is without jurisdiction. It all depends on the facts of each case. Writ is a discretionary remedy and the existence of an alternative remedy Is certainly an important consideration to be taken into account to decide

whether to exercise that discretion or not ..... Article 226 is not meant to shortcircuit or circumvent the statutory procedures. It is only when statutory remedies are entirely ill-suited to demand of extraordinary situation as for instance the very vires of a statute is in question or where private or public wrongs are so Inexorably mixed up and the prevention of public injury and jurisdiction of public justice require that recourse be had to Article 226 of the Constitution, but then the Court must have good and sufficient reason to by-pass alternative remedy provided by statute."

8. Similarly in State of U. P. v. Ali Abbas Abdi 2001 (2) AWC 1331 : 2001 (2) ESC 619 the Division Bench after quoting the observation made by Supreme Court in the case of Whirlpool Corporation u. Registrar Trade Marks 1998 (8) SCC said :

"The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the fires of an Act is challenged.

Therefore, the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution inspite of the alternative statutory remedies is not affected, specially in a case where the authority against whom the writ petition is filed, is shown to have had no Jurisdiction or had purported to usurp jurisdiction without any legal foundation."

9. Unless extraordinary or exceptional circumstances exist or the machinery/remedy does not cover the grievance of the petitioner the machinery or remedy is demonstrated and prayed by the petitioner inadequate or inefficacious, the petitioner has to be relegated to the alternative remedy and the Court should not entertain a writ petition under Article 226 of the Constitution of India for redressal of the grievance by the petitioner.

10. The decisions of the Hon''ble Supreme Court of India and this Court noted above, lead to an irresistible conclusion that the High Court must not allow its extraordinary Jurisdiction under Article 226 of the Constitution of India to be invoked if the petitioner has got an alternative remedy and such remedy is not pleaded and proved to be inadequate or inefficacious or if it is not established from the material on record that there exist exceptional or extraordinary circumstances to deviate from the well-settled normal rule of relegating the petitioner to

alternative remedy and permit him to by-pass the alternative remedy. The hurdle of alternative remedy cannot be allowed to be skipped over lightly on a casual and bald statement in the petition that there is no other equally efficacious or adequate alternative remedy than to invoke the extraordinary Jurisdiction of the High Court under Article 226 of the Constitution of India.

11. In this view of the matter the writ petition is dismissed on the ground of alternative remedy. However, it is directed that if the petitioner raises an industrial dispute before the concerned Regional Conciliation Officer within two months from today, the said authority will try to amicably settle the dispute under the provisions of the U. P. Industrial Disputes Act, 1947. In case no settlement is arrived at, the matter shall be immediately referred by the competent authority to the labour court for adjudication. The reference so made, shall be decided by the labour court in the manner prescribed and the time limits for filing written statements, rejoinder statements, framing of issues, filing of documentary evidence and taking oral evidence as provided under Rule 12 of the U. P. Industrial Disputes Rules, 1957. If necessary, the proceedings may be held on day-to-day basis under Rule 12 (4) of the Rules. The case may be decided by the labour court preferably within a period of six months and not beyond from the date of receipt of reference. No order as to costs.