

(2005) 11 AHC CK 0130

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 71135 of 2005

Gulam Murtaza

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Nov. 23, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 2A, 2K, 33C

Citation: (2006) 5 AWC 4722 : (2006) 108 FLR 652

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: N.K. Chaturvedi and Sunil Gupta, for the Appellant; Vivek Saran Advocate and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard Counsel for the parties and perused the record.

2. This writ petition is directed against the order dated 27.6.2003 passed by the Managing Director of the U.P. Rajkiya Nirman Nigam Ltd. rejecting the claim of the petitioner for grant of revised pay scale in accordance with the recommendations of 2nd and 3rd Pay Commissions.

3. The petitioner has been working as Shovel Operator Grade II in the U.P. Rajkiya Nirman Nigam Ltd., Naini. Allahabad since 6.7.1981 in the pay scale of Rs. 400-750. One Santosh Kumar Pandey was also appointed as Shovel Operator Grade 1 in the U.P. Rajkiya Nirman Nigam Ltd. on 30.7.1981 in the pay scale of Rs. 500-1100. The grievance of the petitioner is that he sent several applications/representations to the Managing Director of the U.P. Rajkiya Nirman Nigam Ltd., Lucknow for conversion of his pay scale into the pay scale of Rs. 1400-2900 in accordance with the recommendations of 2nd and 3rd Pay Commission as has been granted to Sri

Santosh Kumar Pandey, but when the petitioner was not granted the revised pay scale, he filed Writ Petition No. 39917 Of 2003 which was disposed of with direction to the concerned authority to consider the claim of the petitioner. However, vide impugned . order dated 27.6.2003 the Managing Director has rejected the representation of the petitioner dated 7.10.2002 for grant of the aforesaid revised pay scale, hence this writ petition.

4. The Standing Counsel submits that the petitioner has approached this Court without exhausting the alternative remedy available to him before the U.P. Public Services Tribunal.

5. The matter requires findings of fact by adducing oral and documentary evidence which can not be gone into by this Court under Article 226 of the Constitution of India.

6. In the case of Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke (supra) the principles of alternative remedy, in so far as the dispute falling under the industrial adjudication are concerned, have been laid down by the apex Court in paras 23 and 24 of the judgment which are as under:

23. To sum up, the principles applicable to the jurisdiction of the civil Court in relation to an industrial dispute may be stated thus:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief, which is competent to be granted in a civil Court and remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right, which is sought to be enforced, is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to Principle No. 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute, therefore, will have hardly an occasion to deal with the type of cases falling under Principle No. 2. Cases

of industrial disputes In and large, almost invariably, are bound to be covered by Principle No. 3 stated above.

7. In *Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant and Ors.* 1995 (5) SC 75, the apex Court has laid down the principles in respect of alternative remedy under the Industrial Disputes Act, 1947.

8. In [Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another](#), the apex Court has held as under: -

11. These appeals are preferred against the order made by the High Court of Judicature at Allahabad in Civil Misc. WP No. 47130 of 2000 etc. on 1-2-2001. A Division Bench of the High Court of Allahabad by the impugned judgment has held that the petitioner in the said writ petitions has an alternate remedy by way of petitions before the U.P. Public Services Tribunal (the Tribunal), and had permitted the writ petitioner therein to approach the Tribunal and directed the Tribunal to entertain and such petition to be filed by the writ petitioner without raising any objection as to limitation. There was a further direction to the Tribunal to decide the matter expeditiously.

12. Mr. Sunil Gupta, learned Counsel appearing for the petitioner contended that the remedy before the Tribunal under the U.P. Public Services (Tribunals) Act is wholly illusory inasmuch as the Tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the petitioner to a fresh proceeding before the said Tribunal. We do not agree with these arguments of the learned counsel. When the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to bypass the said Tribunal. In an appropriate case after entertaining the petitions by an aggrieved party if the Tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution but that is no ground to bypass the said Tribunal in the first instance itself. Having perused the impugned order, we find no infirmity whatsoever in the said order and the High Court was justified in directing the petitioner to approach the Tribunal. In the said view of the matter, the appeals are dismissed. No costs.

9. Recently in [Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union](#), and [U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another](#), Hon'ble Supreme Court has held that where specific remedy is provided, High Court cannot interfere and deviate from the general rule of exhaustion of alternative remedies under Article 226 except when a very strong case is made out.

10. The law is well entrenched that alternative remedy can not be bypassed and it has to be exhausted before approaching the High Court under Article 226 of the

Constitution of India, particularly in cases where Labour Court or Tribunal having jurisdiction in the matter have been established. Alternative remedy is absolute bar in the cases where such question of facts is to be decided by adjudication.

11. The petitioner has an alternative and efficacious remedy available under the provisions of the U.P. Public Services Tribunal. For these reasons, this Court is not inclined to interfere in the matters.

12. For the aforesaid reasons the petitioner has an alternative and efficacious remedy before the U.P. Public Services Tribunal for redressal of his grievance, which he has not exhausted. The writ petition is dismissed on the ground of alternative remedy. No order as to costs.