(1989) 05 PAT CK 0010

Patna High Court

Case No: C.W.J.C. No. 2693 of 1988

Bachchu Prasad Singh		APPELLANT
	Vs	
Bharat Wagon and Engineering Company		RESPONDENT

Date of Decision: May 1, 1989

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 33A, 35
- Industrial Disputes Act, 1947 - Section 10, 2, 25B, 25F

Citation: (1990) 1 BLJR 215 : (1990) 1 PLJR 536

Hon'ble Judges: Prabha Shanker Mishra, J; Binod Kumar Roy, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Prabha Shanker Mishra and Binod Kumar Roy, JJ.
Since this application has to be disposed of on a short question, whether there has been any valid departmental proceeding against the petitioner or not and whether the said enquiry had been conducted in accordance with law or not we are not required to detail all the facts and the contentions stated and raised on behalf of the parties in this judgment.

2. Petitioner was working as Office Superintendent-cum-Care Taker with the Mokameh Unit of the Bharat Wagon and Engineering Company Limited, Government of India undertaking, when by an order dated 18.1.1986, issued by the respondent-General Manager suspended, followed by a memo of charges dated 31.1.1986 (Annexure 2). The charge-sheet, in short informed the petitioner that as per office order dated 6.6.1983 he was made over all Incharge of the Guest House and fully responsible for implementation of the instructions issued from time to time, but as per scrutiny and observation of the Guest entertainment Bills it was

detected that during the financial year 1983-84 he had submitted bills (Expense Sheet) towards the alleged entertainment of Company''s Guests which appeared to be bogus and inflated and that most of the bills were found without any supporting vouchers thus drawing from the said allegation that the petitioner was in the habit of submitting bogus bills as at many times the then General Manager reduced the number of guests submitted by the petitioner and scored through the expenses shown incurred towards different items, yet the petitioner accepted them. Petitioner demanded certain documents; his defence helper etc., but finally submitted the statement of defence in the enquiry. The Enquiring Officer recorded that the charges were substantiated by such evidence which the department produced in course of the enquiry and recommended for imposition of punishment against the petitioner. A notice calling upon the petitioner to show-cause against the proposed punishment of dismissal was also served upon him to which he replied by denying the allegations and conteded that the enquiry was not held in accordance with law that copies of relevant documents were not given to him and that allegations against him were not true. The General Manager of the Company, however, recorded. "Having considered the pros and cons of the matter, came to the conclusion that you are no longer fit to the retained in the services of the Company, Both the charges have been proved against you by reliable documentary evidence, and you are guilty of the charges under Clause 14(3)(b) of the Model Standing Orders. You have lost the managements* confidence and are no longer tit to be retained in the service of the Company." Petitioner was accordingly dismissed from the service of the respondent company by order of the General Manager dated 13.10.1987 (Annexure 18). Thereafter petitioner appealed as provided under the Staff Regulations of the Company. His appeal was finally disposed of by the Managing Director of the Company on 19.3.1988 (Annexure 20)

3. We have extracted the charges from the memo served upon the petitioner only to notice hat they are so vague and incomplete that it is difficult to imagine any misconduct in them. The memo is opened by stating that the petitioner was responsible for implementation of the instructions issued from time to time but has stated no where that any instruction that every item must be found supported by a voucher or that expense sheet be maintained in a particular punier or otherwise was ever issued and that the petitioner violated any such instruction The only basis to allege that the bills were inflated is the final bills sanctioned by the General Manager who, it appears, scored the number of guests, reduced them some times from three to two and some limes reduced the amount with respect to certain items. Submissions of bills to the General Manager was always for the purpose of scrutiny. It is not the case of the respondents that the petitioner ever received any payment against any the bills which were not scrutinised by the General Manager. Hills which were scrutinised by the General Manager were thus the only bills submitted by the petitioner and payment was made to him accordingly. Bills which he submitted but were not accepted by the General Manager never caused any expense to the

company and thus there was never any realisation by the petitioner of any amount which was not duly sanctioned by the General Manager In course of the enquiry also only such facts were brought on the record which noticeably recorded the approval of the General Manager to the bills submitted by the petitioner after sushi modification which the General Manager thought fit and proper. The charges for the aforementioned reasons thus could not suggest any misconduct on the part of the petitioner. Any inference of misconduct drawn for the reasons aforementioned, in our view, was unwarranted. This is, in our opinion, enough to conclude the case. Learned Counsel for the respondents, however has submitted that this Court should not exercise its extraordinary writ jurisdiction when alternative and efficacious remedy is available to the petitioner. He has pointed out that petitioner had two remedies open, one to invoke Section 26 of the Bihar Shops and establishments Act and Rules and other to invoke Section 10 of the Industrial Disputes Act, Shops and Establishment Act is made applicable to the local areas comprised within the Municipality, notified are or a municipal corporation constituted, and established under any law for the time being in force and to any mining settlement for which a Mines Board of Health has been established u/s 5 of the Bihar and Orissa Minings Settlement Act. Learned Counsel for the petitioner has submitted that unless exempted by inclusion in the 3rd column of the schedule to the Act, the 1st respondent being an industry and an establishment shall be subject to the provisions of the Act. First impression of the said argument is to accept that the petitioner has got a remedy u/s 26 of the said Act where his claims could be expeditiously and efficaciously adjudicated. Our attention, however, has been drawn to item No. 3 of the Schedule which reads; ''offices of or under the Central or State Government of a Municipal Committee or District Board or any other Authority entitled to the control or management of a municipal on local fund. The Schedule states that no provision of the Act shall apply to such establishments. It is not in dispute that the first respondent is a Government of India undertaking. It being an agent of the Government of India the latter is principle under which it is the agent. That being the position it is difficult to accept the contention of the learned Counsel for the respondents that Shops and Establishment Act provides a remedy and forma to the petitioner to raise the dispute. As to whether a work-rn-ins remedy u/s 10 of the Industrial Disputes Act is alternative to a proceeding in a court of law or not fell tot consideration before the Supreme Court in the Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and Ors. 1975 SC 2238. That was a case where a dispute had arisen with respect to the implementation of an incentive scheme to the workmen of Motor Production Department of the Premier Automobiles. The said scheme had been arrived at under an agreement between the workmen on the one hand and the employer company on the other hand. When a contention was raised that a suit in the Civil Court was not maintainable for non implementation of the said investigation scheme the Supreme Court observed:

It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial dispute But since of individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the Government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the Civil Court for trial of Industrial disputes. If the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil Courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right obligation or liability under the general law or common law and not a right obligation or liability created under the Act, then alternative forums are there giving an election to the suit or to choose hit? remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he can''t have both. He has to choose the one or the other. But we shall presently show that the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act.
In a Full Bench this Court has also examined the question of alternative remedy and restrain exercised by the Court in issuing any writ. In Dinesh Prasad and Others Vs. State of Bihar and Others, this Court has said.

Now, it could not be disputed before us that if not all yet most of the industrial rights concerned on the workmen were pure creatures of the statute not necessarily having any foundation or root in the general or if one may say so in common law. Indeed some of these rights are in derogation of and in essence and overriding of the ordinary law.

It has thus proceeded to examine whether any violation of Section 25-F of the Industrial Disputes Act or invoking Section 25-B of the said Act for claiming continuance in service are rights under the Industrial Disputes Act or not the court has said:

As a representative example learned Counsel for the respondents rightly pointed out that in the context of Section 25-F of the Act a necessary factual base is always a pre-condition for its application-, and ordinarily if not invariably it is controverter and therefore, it is a wholly inappropriate Us for the writ jurisdiction in the first instance. In order to claim relief u/s 25-F it must first be factually established that the workman had been in continuous employment for one year which for statutory purpose would mean 240 days of continuous service as defined in Section 25-B with regard to the deeming provision of uninterrupted service thereunder. Equally where there has been a works contract or what as a term of art is called a closure of a project, then again the provisions of Section 25-F would not be attracted. All these factors are necessarily in issue for relief u/s 25-F and for the writ court to rush into

the thicket of controverter and tangled facts would be plainly unwarranted on principle policy, convenience and discretion.

Thus applying the test laid down by the Supreme Court the Full Bench opened that the petitioner were wholly unable to show any exceptional circumstances for from any monstrous situation imperatively warranting the overriding of the well-settled rule that where an alternative remedy exists the suitor must be directed thereto in the first instance. The above two judgments and a plethora of other decisions have crystallised the law that where a right is claimed under a special law and a remedy therefore is provided under the said special law the court should ordinarily declaine to exercise its writ jurisdiction under Article 226 of the Constitution of India and ask the petitions to exhaust the alternative remedy before invoking the writ jurisdiction. Petitioner herein has not claimed any right under any special law. He has also not alleged violation of any special statute governing his service conditions. Industrial Disputes Act may in the instant case be giving to the petitioner a forum to seek reconciliation and in the event of reconciliation not succeeding to seek a reference to the Industrial Tribunal or court u/s 10 of the Act. Yet, it is a case, in our view wholly covered by the law laid down by the Supreme Court in the case of Premier Automobiles (supra) in which the petitioner had the right to elect the remedy either of suing in a civil court of alternately involving the efficacious writ jurisdiction or to move the State Government raising an industrial dispute for a reference u/s 10 of the Act. The dispute raised by the petitioner may be an industrial dispute within the meaning of Section 2(k) of the industrial Disputes Act but ii is also a challenge to an order which, according to the petitioner, is illegal and without jurisdiction under the general law or the common law. It is not a right obligation or liability created under the Act which according to the petitioner has been violated by the respondents. They have violated the common law of natural justice and denied to the petitioner a legal right to be in the service untill the service is determined in accordance with law.

4. A plea as to the alternative remedy if raised at the first instance by the respondents before the case was admitted to hearing would have been of some importance. Such a plea is never a plea as to any bar to jurisdiction under Article 226 of the Constitution of India. It is only reminding the court that an alternative and efficacious remedy is available where the whole dispute may adequately be adjudicated and for the court 10 decide as to whether it shall impose upon its jurisdiction any limitation as to the petitioner''s exhausting the alternative remedy or not In L. Hirday Narain Vs. Income Tax Officer, Bareilly, the Supreme Court considered a case where an alterative remedy of revision u/s 33-A of the Income Tax Act was available to the writ petitioner, but without exhausting the same he moved the High Court under Article 226 of the Constitution of India. When reminded of the alternative remedy not exhausted before moving the High Court, the Supreme Court said:

If the High Court had not entertained his petition, Hirday Narain could have moved the Commissioner in revision, because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income Tax Officer u/s 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits.

5. Learned Counsel for the respondents has endeavoured to demonstrate before us that the charges levelled against the petitioner were enough to dispense with his services and that there has been no error on the face of the record committed either in course of the enquiry or in making the order of dismissal or appellate order affirming the order of dismissal. This Court should not embark upon any enquiry into the evidence and to a conclusion different from the conclusion arrived at by the Disciplinary authority. He has also endeavoured to demonstrate before us that it was not one act of the petitioner or two acts on in discretion which were taken notice of before deciding to remove him from service but his continuous behaviour in placing before the Manager inflated bills and thus trying to extract money in the name of expenses on guests entertained at the cost of the company. Since we have taken the view that the charges are vague and that there has been no instruction demanding any voucher or any other supporting document, petitioner committed no misconduct, we do not land any merit in the aforementioned contentions of the learned Counsel for the respondents. We have some hesitation, however, in straight way directing for the reinstatement of the petitioner in the post of the Care Taker of the Guest House or if reinstated as the Care taker to deal with any money of the company spent on entertainment of the guests. While we have no hesitation in concluding that the impugned orders are illegal and without jurisdiction we may not fail to take notice of the loss of confidence which the management may have for the reasons aforementioned we propose to give option to the management at least in the matter of giving to the petitioner after reinstatement any post in the same rank and scale of pay and with similar avenues of promotion etc., as the post of the care taker of the Guest House.

6. in the result, this application is allowed with cost. Hearing Fee Rs. 1000/-. The orders as contained in Annexures and 20 are quashed. Let a writ in the nature of certiorari accordingly issue. Let a consequential mandamus issue directing the respondents to reinstate the petitioner in the post of Care taker last held by him in the service of the respondent company or in any other equivalent post in the same rank and scale of pay with due protection to his service conditions including promotion etc.