

Court No. - 10

Case :- WRIT - A No. - 16614 of 2023

Petitioner :- Bheem And 2 Others

Respondent :- Purvanchal Vidyut Vitran Nigam Limited And 2 Others

Counsel for Petitioner :- Vishal Tandon

Counsel for Respondent :- Adarsh Bhushan, Devesh Vikram

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Vishal Tandon, learned counsel for the petitioners, Sri Ajay Kumar Patel, holding brief of Sri Adarsh Bhushan, learned Standing Counsel for Respondent No.1 and Sri Devesh Vikram for Respondent No.2.

2. Raising doubts on the maintainability of the writ petition, a detailed order was passed by this Court on 26.10.2023 in the following terms:

"1. This writ petition has been nominated to this Bench under the order dated 09.10.2023 passed by Hon'ble The Chief Justice.

2. Heard Shri Vishal Tandon, learned counsel for the petitioners, Shri Abhay Singh Tomar, learned counsel holding brief of Shri Adarsh Bhushan, learned counsel for respondent Nos. 1 and 2.

3. Out of many prayers contained in the writ petition, learned counsel for the petitioners is pressing the first prayer, by which a direction has been sought upon respondent No. 2 to take appropriate action/decision in pursuance of his own communication dated 12.06.2023.

4. I have perused the said communication and I find that the respondent No.2, Executive Engineer, Purvanchal Vidyut Vitran Nigam Limited, Vidyut Vitran Khand, Hata, Kushinagar has requested the General Director of S.M.M. Infotech Private Limited, Gonda to complete an enquiry into the matter and submit a report before respondent No. 2.

5. Learned counsel for respondents has raised a preliminary objection that once enquiry is pending before respondent No. 3, which is a private body, no writ of Mandamus can be issued.

6. However, Shri Vishal Tandon, learned counsel submits that direction has been sought not for respondent No. 3, but for respondent No. 2, which is covered by the definition of instrumentality of State under Article 12 of Constitution of India and, therefore, the writ petition is maintainable.

7. Having heard the learned counsel for the parties, I find that the grievance of the petitioners is to the effect that while they were not involved in the strike/boycott of work for the period mentioned in the communication dated 12.06.2023, they have been penalized in terms of their disengagement. I also find that this matter is being enquired by respondent No. 3, which is a private body and, therefore, no direction can be issued to respondent No. 3 directly in writ jurisdiction and issuance of direction to respondent no. 2 would be a futile exercise. Nevertheless the Court finds that under the Industrial Disputes Act, 1947/Uttar Pradesh Industrial Disputes Act, 1947, the petitioners may have a remedy in the facts and circumstances of the case.

8. Shri Vishal Tandon, learned counsel seeks time to address the Court in the light of aforesaid narration of facts.

9. Put up this case as fresh on 21.11.2023."

3. Sri Vishal Tandan, learned counsel for the petitioners sticks to his stand that in view of the prayer No.1, the writ petition is still maintainable as direction has not been sought for the private body i.e. Respondent No.3.

4. Sri Devesh Vikram has placed before this Court a copy of the order dated 17.5.2023 passed in Writ A No. 3658 of 2023 which is quoted hereunder:

"1. The present petition has been filed by the petitioners alleging that the petitioners were employed on contract basis by the respondent no.8, however, during the period of strike, general order was passed by the respondent no.3 issuing general directions that during the period of strike, steps be taken to get the electricity distribution work done by the reserved contractual labourers. General directions were also issued that in the event contractual labourer are on strike, they shall not be reemployed.

2. It is argued by the Counsel for the petitioner that due to misreading of the said general directions, the respondent no.8 has terminated the services of the petitioners.

3. Considering the fact that the privity of contract is with the respondent no.8 who does not fall within the meaning 'State' as defined under Article 12 of the Constitution of India coupled with the fact that the directions given vide order dated 16.03.2023 were only pertaining to the period of strike. No relief can be granted in exercise of power under Article 226 of the Constitution of India.

4. However the petitioners will be at liberty to avail such remedy as may be available to them.

5. In addition to the remedy, the petitioners would also entitled to raise their grievance before any Executive or Legislative Authority.

6. In view of above, the writ petition is dismissed.

7. This order has been passed in the presence of Sri Amarjeet Singh Rakhra, learned Counsel for the respondents no.3 to 7 and Sri Neerav Chitravanshi, learned Counsel appearing on behalf of the respondent no.2."

5. It is contended by Sri Devesh Vikaram that in relation to the same department and same strike and consequential termination of services of identically placed workers, this court has already held the writ petition as not maintainable and dismissed the same with liberty to the concerned petitioners to avail remedy before the executive or the legislative authority (vide paragraphs No. 4 and 5 of the aforesaid order).

6. Sri Vishal Tandon, learned counsel submits that petitioners may also be set at liberty on the same line.

7. The writ petition is **dismissed** as not maintainable with **liberty** granted as noted in paragraphs No. 4 and 5 of the order dated 17.5.2023 quoted above.

Order Date :- 29.11.2023

Kumar Manish.