

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WA.No. 2716 of 2015 IN WP(C).12186/2004

AGAINST THE JUDGMENT IN WP(C) 12186/2004 DATED 30.10.2015
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APPELLANTS/RESPONDENTS :

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1. SYNDICATE BANK
REPRESENTED BY ITS GENERAL MANAGER, HEAD OFFICE
MANIPAL 576 104.
 2. THE GENERAL MANAGER (PERSONNEL)
(APPELLATE AUTHORITY), SYNDICATE BANK
MANIPAL 576 104.
 3. THE ASSISTANT GENERAL MANAGER
(DISCIPLINARY AUTHORITY) SYNDICATE BANK
ZONAL OFFICE, LEELAVATHI BUILDING, 69 ARMENIAN STREET
CHENNAI 600 001.

BY ADVS.SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENT/PETITIONER :

P.S.VIJAYAN
CLERK (NOW UNDER ORDERS OF SUSPENSION) SYNDICATE BANK
REGIONAL OFFICE
THIRUVANANTHAPURAM RESIDING AT TC 15/1883
PADMAJAYAM, VAZHUTHAKKAD, THIRUVANANTHAPURAM 695 014.

BY SRI.MURALI PURUSHOTHAMAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & K.RAMAKRISHNAN, J.

W.A. No. 2716 OF 2015

Dated this the 17th day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard Sri.M.P.Ashok Kumar, learned counsel appearing for the appellants.

2. This writ appeal has been filed against the judgment dated 30.10.2015 in W.P.(C) No. 12186 of 2004 by which the writ petition filed by the 1st respondent herein has been disposed of. In the writ petition the 1st respondent/petitioner had challenged the dismissal awarded to him (Ext.P17 order) and passed Ext.P19 by the appellate authority. Hereinafter parties shall be referred to as described in the writ petition.

3. While the petitioner was working as Clerk in the Alappuzha Branch of the 1st respondent Bank, a complaint was preferred alleging fraudulent withdrawals from two Savings Bank Account. The petitioner was charged in criminal cases (CC No.24/1998 and 25/1998) and was suspended. Thereafter the petitioner was acquitted. The Bank served memo of charges on 17.06.1999 and proceeded with the enquiry. The petitioner

challenged the disciplinary proceeding which challenge was repelled in O.P. No.17972 of 1999 which was affirmed by the Apex Court. In the disciplinary proceeding the petitioner has made an application before the enquiry officer to get assistance of a legal practitioner, which request was denied. The Bank after conducting the enquiry submitted a report on 09.07.2003 and thereafter the order of dismissal was passed on 23.10.2003 and the appellate authority passed order on 30.01.2004.

4. Challenging the dismissal order and the appellate order the writ petition was filed in the year 2004 itself which remained pending and could be finally decided on 30.10.2015. The learned Single Judge has held that the denial of assistance by a legally trained person to the petitioner was violation of principle of natural justice. However, it was also observed that at this distance of time when the petitioner has already retired, no purpose shall be served in directing to re-conduct the enquiry by the Bank. Learned Single Judge took the view that interest of justice be served in converting the punishment of dismissal to discharge. With the above said direction the writ petition was disposed of. The Bank, aggrieved by the said judgment, has come up in the appeal.

5. Learned counsel for the appellants submits that the writ petition itself was not maintainable since the remedy of the writ petitioner was to avail the remedy as provided under the Industrial Disputes Act, 1947. He submits that the writ petitioner was a workman and hence he could not have challenged the dismissal and appellate order in a writ proceeding. Learned Single Judge ought to have dismissed the writ petition on the ground that remedy is available under the Industrial Disputes Act. He further submits that the mere fact that the writ petition was pending for 11 years, cannot be a relevant factor for not relegating the writ petitioner under the Industrial Disputes Act. It is submitted that the Bank has raised the submission before learned Single Judge that the writ petition is not maintainable.

6. We have considered the submission of learned counsel for the appellant and perused the record. There cannot be any dispute to the proposition that a workman, covered under the Industrial Disputes Act, 1947, has to avail the remedy provided under the Industrial Disputes Act which law is well settled. In the **Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others** [AIR 1975 SC 2238]. The Apex

Court had laid down that the remedy available to a workman governed by the industrial law is to seek remedy under the act itself. In paragraph 23 of the judgment following principles were summed up:

"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 particular 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 unforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be. "

7. Thus in so far as the legal position as contended by learned counsel for the appellant, there cannot be any dispute. But, however, whether a writ petition filed under Article 226 of

the Constitution is to be entertained or the petitioner is to be relegated to avail the remedy is a question which has to be looked into by this Court while entertaining the writ petition. Well known exception for entertaining the writ petition despite the availability of alternate remedy has already been enumerated. In the present case the learned Single Judge has taken a decision over ruling the objection of counsel for the Bank regarding the maintainability of the writ petition on certain factors which has been noticed by the judgment which are to the following effect:

"9. It is clear that this writ petition having been admitted by this Court on 06.04.2004, with prior notice to the counsel appearing for the petitioner, a plea of availability of alternative remedy which had not been raised at the time of admission, or had not found favour with this Court at the initial stage, cannot be raised by the management after the pendency of this writ petition before this Court for a long period of 11 years. Such a contention raised by the learned counsel appearing for the respondents is completely misconceived and cannot be countenanced. With regard to the facts of the case it is seen that this case had been adjourned several times at the instance of the parties. On 8.11.2011 it appears that learned counsel appearing for the petitioner had submitted in Court that in pursuance to the directions of this Court, the bank had converted the punishment in the case of a similarly situated employee from dismissal to discharge. An authorised office of the management

was directed to be present on 15.11.2011 with records to assist the Court on that day. The relevant records were placed before the Court and the personal appearance of the officer was dispensed with. Thereafter, the matter was adjourned.”

8. The first reason given by the learned Single Judge is that the writ petition was pending for a long period of 11 years. Secondly, the petitioner had already attained the age of superannuation, thirdly the learned Single Judge found that there was violation of principles of natural justice. The petitioner was denied the service of legally trained person in the disciplinary enquiry. Due to the aforesaid reasons the learned Single Judge took the view that no purpose shall be served by directing to re-conduct the enquiry from the stage of its initiation which shall be not in the interest of justice. From the reasons as given by the learned Single Judge we are of the view that there was no error in exercise of jurisdiction by this Court under Article 226 of the Constitution in disposing the writ petition by converting the punishment of dismissal into discharge. The apprehension which has been expressed by counsel for the Bank is that if the writ petition in a particular case is entertained despite the availability of the remedy that may affect the Bank since similarly situated

persons may come up taking similar plea. We make it clear that exercise of jurisdiction by this Court under Article 226 of the Constitution by the learned Single Judge was in peculiar facts of the present case and the factors as noted above. No such preposition can be said to have been laid down by learned Single Judge that despite the availability of alternate remedy under the Industrial Disputes Act, the writ petition should be entertained, even though the case may not be covered by any exceptions as enumerated by the Apex Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others** [(1998) 8 SCC 1].

9. The learned Single Judge has rightly observed that in the circumstances of the present case the order for re-conduct of the enquiry from the stage of initiation shall not serve the purpose especially when the petitioner has already attained the age of superannuation. It was further held by learned Single Judge that there was serious charges levelled against the petitioner. Looking to the aforesaid facts the learned Single Judge took the view that the punishment of dismissal be converted as that of discharge.

10. We are of the view that the discretion exercised by learned Single Judge under Article 226 of the Constitution cannot be faulted and in the facts of the present case the learned Single Judge has rightly disposed of the writ petition.

We do not find any good ground to interfere with the judgment of learned Single Judge. We however make it clear that the judgment of learned Single Judge was in the facts of that case and cannot be treated as a precedent. The Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**K. Ramakrishnan,
Judge.**