

CWP No. 9684-2020

Date of Decision: 03.09.2020

Harsh Prabhakar

.....Petitioner

Vs.

Hero DMC Heart Institute Ludhiana and another Respondents

118-A

CWP No. 10222 of 2020

Gurdev Singh

...Petitioner

vs.

Hero DMC Heart Institute, Ludhiana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Gurpreet Kaur, Advocate, for the petitioners.
Mr. D.S.Sobti, Advocate, for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

By these petitions, the petitioners seek issuance of writs in the nature of *certiorari*, quashing/setting aside the impugned retirement order/letter no. HDHI/HR/2019/3660, dated 04.12.2019 and HDHI/HR/2019/2820 dated 13.09.2019, respectively (Annexure P-2).

CWP No. 9684-2020

On 06.08.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

Learned counsel for the petitioners seeks further time to address arguments to try and show

CWP No. 9684-2020 and CWP No. 10222 of 2020 -2-

before this court that the judgment of the Constitution Bench in Zee Telefilms Ltd. and another vs. Union of India and others (2005) 4 SCC 649, would not be applicable to the case in hand, despite what has been observed by this court in the last order passed in CWP No. 10222 of 2020.

Mr. Sobti, learned counsel appearing for the respondents, of course reiterates that the service conditions of the petitioners in these two petitions not being a public duty performed by the respondents, the writ petitions themselves would not be maintainable on the touchstone of the ratio of the judgment aforesaid.

He further submits that as regards the petitioner in CWP No. 9684 of 2020, i.e. Harsh Prabhakar, he has already in any case approached the Assistant Labour Commissioner, Circle IV, Ludhiana, in January 2020, by way of raising a demand notice under the provisions of the Industrial Disputes Act, 1947 and therefore, that fact not having been disclosed in the present petition, it deserves to be dismissed on that ground alone.

Learned counsel for the petitioners would take instructions with regard to the aforesaid contention and if that is so, why then, without even going into the maintainability of a petition under Article 226 of the Constitution of India, this court should not dismiss CWP No. 9684 of 2020, for concealment of a very material fact.

Adjourned to 26.08.2020.

A photocopy of this order be placed on the file of the other connected case.”

Thereafter, learned counsel for the petitioner did not appear on the last date of hearing, i.e. 26.08.2020.

CWP No. 9684-2020 and CWP No. 10222 of 2020 -3

Today, she appears and as regards maintainability of both the petitions, she cites a judgment of the Supreme Court in **Ramesh Ahluwalia** vs. **State of Punjab and others** (Civil Appeal no. 6634 of 2012), decided on 13.09.2020, to submit that the Supreme Court, after considering the judgments in **Zee Telefilms Ltd.** (supra), has held that a writ petition in similar circumstances against a private institution is maintainable.

However, Mr. Sobti again draws attention of this court to the fact that the petitioner in this petition, i.e. in CWP No. 9684 of 2020, having already availed of his remedy under the Industrial Disputes Act, 1947, and having concealed that fact before this court, is not entitled to invoke the jurisdiction of this court under Article 226 of the Constitution of India.

Learned counsel for the petitioners submits that she was not aware of the fact.

However, she does not deny that the petitioner has availed of that remedy under the Industrial Disputes Act, 1947.

Considering the fact though even though learned counsel herself may not have been aware of that fact but with the petitioner himself not having disclosed the fact to his counsel, hence, I would absolutely see no reason to entertain this petition when the alternative remedy has already been availed of, with both learned counsel being *ad idem* that the said proceedings are still pending.

Consequently, without making any comment on the actual merits of the case, this petition is dismissed, on the ground of concealment alone, with the petitioner in any case having an alternative remedy that he is availing of.

However, it is made absolutely clear that nothing observed hereinabove will be taken to be a comment for or against the petitioner on the

CWP No. 9684-2020 and CWP No. 10222 of 2020 -4-

aforesaid proceedings pending which, naturally, would be decided by the learned Tribunal on its merits.

CWP No. 10222 of 2020

For learned counsel for the respondent to address arguments in terms of the judgment cited by learned counsel for the petitioner, adjourned to 18.09.2020.

September 03, 2020
nitin

(AMOL RATTAN SINGH)
JUDGE