

24.01.2022
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Sl. No. 03
Ct. No. 05

WPA 15923 of 2021

[Via Video Conference]

Panchanan Khan
-Versus-
Visva Bharati University & Ors.

Mr. Puspall Chakraborty
Ms. Prasanna Ganguly
..... for the petitioner

Mr. Soumya Majumder
..... for the University

The Court: The respondent University has raised a point of maintainability which is being addressed in this order.

The writ petition has been filed against an order of 24th August, 2021 passed by the Registrar (Acting), Visva-Bharati terminating the temporary services of the petitioner pursuant to a decision of the Executive Council taken on 14th August 2021. The petitioner has also challenged a decision of 4th July, 2020 of the University which found the petitioner guilty of forgery and terminated the petitioner's engagement with the University.

Learned Counsel appearing for the University submits that the writ petitioner has already availed of an alternative remedy by approaching the Office of the Deputy Chief Labour Commissioner (Central) which would be evident from a communication from

the said authority dated 6th September 2021 asking the University for its comments and the action taken by it. Counsel relied on *K.S. Rashid and Son vs. Income Tax Investigation Commission Etc.*; AIR 1954 SC 207 in respect of the contention that the remedy provided under Article 226 of the Constitution is discretionary in nature and the High Court has the discretion to refuse the grant of writ if it is satisfied that the aggrieved party has an adequate remedy elsewhere. Counsel also cites *Delhi Cloth and General Mills Co. vs Ludh Budh Singh*; (1972) 1 SCC 595 to urge that the Tribunal under the Industrial Disputes Act has wide powers to conduct a fresh inquiry and also to reinstate the petitioner.

Learned Counsel appearing for the petitioner relies on *Whirlpool Cooperation vs Registrar of Trade Marks, Mumbai and Ors.*; (1998) 8 SCC 1 and on *Harbanslal Sahnia and Ors. vs Indian Oil Corpn. Ltd. and Ors.*; (2003) 2 SCC 107 to contend that the inquiry against the petitioner suffers from breach of the principles of natural justice and the petitioner would hence be entitled to approach the Writ Court. Counsel submits that no proper inquiry was held and the petitioner was not given a copy of the inquiry report and was also not permitted to deal with inquiry report or examine witnesses.

Upon hearing learned counsel, it is clear that the undisputed facts involves not only the availability of an efficacious alternative remedy but also whether the petitioner has availed of such efficacious alternative remedy. The judicial pronouncements on the issue make it clear that the remedy must be efficacious and of a nature which would afford relief to a petitioner even if the doors of a Writ Court were to remain closed for the petitioner.

In the present case, the petitioner had filed an earlier writ petition being WPA No. 9961 of 2021 against a show-cause notice issued by the University on 20th March, 2020 and disciplinary proceedings initiated against the petitioner. The writ petition was disposed of by an order of a learned Single Judge dated 26th July, 2021 by directing the Karma Samiti (Executive Council), Visva-Bharati, to consider the application for review filed by the petitioner and pass a reasoned order thereon. The order was to be communicated to the petitioner without delay. The representation handed up on behalf of the petitioner shows that the petitioner thereafter approached the Deputy Chief Labour Commissioner on 26th August, 2021 by way of a representation containing the factual details of the case and the grievances of the petitioner in relation thereto. Pursuant to such representation, the Deputy Chief Labour

Commissioner wrote to the Registrar of the University on 6th September, 2021 seeking particulars of the action taken on behalf of the University. It is evident therefore that even after Executive Council held a meeting to consider the application of the petitioner, pursuant to the order of Court, the petitioner approached the Deputy Chief Labour Commissioner for relief on the same issue which was pending adjudication before the Executive Council of the University. The petitioner hence approached and availed of a parallel forum after invoking the jurisdiction of the Writ Court in July, 2021.

The argument of breach of the principles of natural justice and the conditions enumerated in *Whirlpool* loses significance since the petitioner has taken concrete steps to set a parallel proceeding in motion despite the order of the Writ Court directing the Executive Council of the University to take a decision on the petitioner's application for review. In *Harbanslal Sahnia*, the Supreme Court was concerned with existence of an arbitration clause in the agreement entered into between the appellants before it and the Indian Oil Corporation. The Supreme Court was however of the view that availability of an alternative remedy is a rule of discretion and not one of compulsion. This very

aspect, namely, that the remedy under Article 226 is a discretionary remedy, was laid down in *K.S. Rashid. Delhi Cloth Mills* supports the contention of the respondent University that the Deputy Chief Labour Commissioner and the Forum which the petitioner has availed of has statutory powers not only to conduct a fresh inquiry if the Tribunal finds any shortcomings in the process undertaken but also to reinstate the petitioner if required. Hence, the Deputy Chief Labour Commissioner is not only an alternative remedy available to the petitioner but also an efficacious one. The argument that proceedings before the Tribunal can only be said to have been initiated under section 10 or 33 of the Industrial Disputes Act, 1947 cannot be accepted since section 12 of the said Act provides for conciliation for the purpose of bringing about a settlement of the dispute. A Conciliation Officer has been empowered to investigate the dispute and all matters affecting the merits of the dispute under this section.

Since it is admitted fact that the petitioner has made a representation and applied before the Deputy Chief Labour Commissioner pursuant to which there has also been a measure of progress of the steps taken by the parallel forum as well as the University, the petitioner cannot be permitted to approach the

Writ Court for relief pertaining to the same dispute between the same parties. The Writ Court retains discretion to shut matters out where there is an effective alternative remedy available and particularly where a litigant has already set a parallel proceeding in motion.

Since learned counsel appearing for the parties have only advanced their arguments on the maintainability of the matter, the question of going into the merits does not arise.

Having found that the writ petition is not maintainable, WPA 15923 of 2021 is accordingly dismissed on the ground of maintainability, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Moushumi Bhattacharya, J)