

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5157 of 2020

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Bhup Narayan Pandey, S/o Late Paras Nath Pandey, Resident of Village-Jaitpur, P.S.-Daudpur, District-Saran at Chhapra.

... .. Petitioner/s

Versus

1. The Bihar State Road Transport Corporation through the Administrator, B.S.R.T.C., Birchand Patel Path, Pariwahan Bhawan, Patna-800001, Bihar.
2. The Chief of Administration, the Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna-800001, Bihar.
3. The Chief of Account Officer, Bihar State Road Transport Corporation, Birchand Patel Path, Pariwahan Bhawan, Patna, Bihar.
4. The Regional Manager, B.S.R.T.C., Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satya Prakash Sinha, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma, Sr. Advocate Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-11-2024

Heard Mr. Satya Prakash Sinha, learned counsel for the petitioner and Dr. Anand Kumar, learned counsel for the Bihar Road Transport Corporation (for short 'the Corporation').

2. The petitioner by filing the present writ petition prays for issuance of a writ in the nature of certiorari seeking quashing of the Memo No. St. Estt. Complain-03/2014 (Part), 1898/Patna, dated 06.06.2019 passed by the Chief of Administration, B.S.R.T.C., whereby the amount of 90%



Gratuity and 50% of unutilized leave of the petitioner has been forfeited.

3. Learned counsel for the petitioner contended that irrespective of the fact that the petitioner superannuated way back on 31.03.2018 from the post of Conductor, Gaya Depot under the authority of B.S.R.T.C., the impugned order of punishment has been passed on 06.06.2019, when the relationship of the employer and the employee had already been severed. Reliance has also been placed on a judgment rendered by this Court in the case of **Baikunth Tiwary v. Bihar State Road Transport and Others [C.W.J.C. No. 4159 of 2001]** on the point that there is no applicability of Bihar Pension Rules, 1950, especially rule 43(b) thereof, in the case of an employee of B.S.R.T.C. It is also contended that the order of the learned Single Judge has also been affirmed by the learned Division Bench of this Court, the copies of which have been placed on record vide Annexures-5 and 6 to the writ petition. Various submissions have also been made in course of assailing the impugned order, the copy of which is marked as Annexure-4 to the writ petition.

4. At the outset, learned counsel for the Corporation made a preliminary objection that the writ petition is not



maintainable in view of the decision of the learned co-ordinate Bench of this Court in the case of **Sidheshwar Prasad v. Bihar State Road Transport Corporation and Others [2003 (2) PLJR 841]**, wherein the learned Court having taken note of the various provisions of Industrial Dispute Act, 1947 (for brevity 'the Act, 1947) has held that the matter of dismissal of a workman employed by the Corporation can appropriately be adjudicated in accordance with the mechanism provided under the Act, 1947. The learned Court categorically observed that the petitioner has alternative efficacious remedy under the Act, 1947; jurisdiction under Article 226 of the Constitution is not fit to be exercised. The Court also unequivocally reiterated the settled principle that irrespective of the fact that the existence of an alternative remedy does not bar the jurisdiction of the High Court; however, this is a rule of discretion and not of jurisdiction.

5. Learned counsel for the Corporation further contended that placing reliance on the afore-noted decision of this Court, the learned co-ordinate Bench of this Court in the case of **Sheela Devi v. The State of Bihar and Others [C.W.J.C. No. 19107 of 2014]** vide its decision dated 17.08.2023 has held that the writ petition is not maintainable in



view of the judgment rendered by this Court in **Sidheshwar Prasad** (supra) as also the decision of the learned Division Bench of this Court in the case of **Rajeshwar Prasad v. The State of Bihar and Others [L.P.A. No. 822 of 2015]** and accordingly it was disposed off giving liberty to the petitioner of the said writ petition to file appropriate petition under the Act, 1947. The copy of the said order has also been brought on record as Annexure-E to the supplementary counter affidavit.

6. Dr. Anand, learned counsel for the Corporation also countered the submissions of the learned counsel for the petitioner on the point of merit(s).

7. Since the preliminary objection has been raised with regard to the maintainability of the writ petition, thus instead of delving into the merit of the case, it would be proper to consider the objection raised by the learned counsel for the Corporation.

8. Having gone through the decisions rendered by the learned Division Bench of this Court in **Rajeshwar Prasad** (supra) as also the order/judgment of the learned co-ordinate Bench of this Court in **Sidheshwar Prasad** (supra), this Court has no hesitation to observe that the issue of maintainability has already been discussed and settled by this Court in the afore-



noted decisions. It would be apt to quote the relevant paragraphs of the decision of **Sidheshwar Prasad** (supra).

“10. Having appreciated the rival submission, I do not have the slightest hesitation in accepting the broad submission of Mr. Mukhopadhyaya that existence of an alternative remedy does not bar the jurisdiction of this Court. This is a rule of discretion and not of jurisdiction. In fact no fetter has been placed by the Constitution on this Court for exercise of power under Article 226 of the Constitution but this Court has imposed upon itself certain restrictions for exercise of the power and one of the well known limitations put by this Court upon itself is that in the face of alternative efficacious remedy, jurisdiction under Article 226 of the Constitution is not fit to be exercised, except in grave and exceptional cases. In the present case, the allegation against the petitioner is of misconduct in relation to carrying passengers without ticket. He has been found guilty of said misconduct and dismissed from service. I am of the opinion that the matter of dismissal of a workman employed by the Corporation can appropriately be adjudicated in accordance with the mechanism provided under the Act. The view which I have taken is in conformity with the decision of this Court in the case of **Abdul Khalique v. H.E.C. Ltd. (1985 BBCJ 114)** in which it has been held as follows:—



“Where a right or liability is created by statute, if that statute provides a remedy, the remedy provided by that statute alone must be followed. The rights and liabilities have been created by the certified Standing Orders. Whether the Standing Orders Act provides any remedy. The only relevant section of that Act is section 13A which provides that if any question arises as to the application or interpretation of a Standing Order certified under that Act, any employer or workman may refer the question to any of the Labour Courts constituted under the I.D. Act and specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazette and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.”

11. Further in the case of **Rajasthan State Road Transport Corporation etc. etc. v. Krishna Kant etc. etc.** (AIR 1995 SC 1715) the Supreme Court in paragraph 32(4)(6) of judgment, held as follows:—

“32(4)(6). We may now summarise the principles flowing from



the above discussion:

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to “statutory provisions”. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to



Civil Court is open according to the principles indicated herein”. (Underlining mine)

12. On my finding that the petitioner has alternative efficacious remedy under the Industrial Disputes Act, jurisdiction under Article 226 of the Constitution is not fit to be exercised and on that account alone I am not inclined to enter into the merits of the case. Further in my opinion, in case respondent-Corporation in some of the cases had not taken this plea, same shall not preclude it from taking this plea in the present case. Petitioner, if so advised, may take recourse to the remedy available to him under the Act.”

9. In view of the aforesaid legal position and the facts in hand, this Court is of the opinion that the petitioner has efficacious alternative remedy under the Act, 1947 to redress his grievance. Accordingly, the writ petition stands disposed off with a liberty to the petitioner to file an appropriate petition along with an application for condonation of delay under the provisions of the Act, 1947.

10. Suffice it to observe that in case such a petition is filed under the provisions of the Act, 1947, the learned Court shall consider the application for condonation of delay in the light of Section 14 of the Indian Limitation Act, as the writ petition remained pending before this Court since 2020. It is



also expected that the learned Court/Authority shall expedite the matter and pass appropriate order thereon, in accordance with law.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12-11-2024
Transmission Date	

