

23.06.2026
Item No.1
Ct. No. 236
PG

WPA 20825 of 2023
Jayantri Ram
Vs.
Union of India & Ors.

Mr. Sandip Royfor the petitioner

Mr. Amrit Sharma.....for the Union of India

Mr. SM. Obaidullah

Mr. R.N. Majumdar

Mr. Roni Chowdhury.....for the Bank of India

1. Parties are represented by their respective learned advocates.
2. Since on behalf of the respondent-bank maintainability of the instant writ petition is raised at the very first instance, this Court proposes to hear the learned advocates for the contending parties on the point of maintainability.
3. In course of his submission, Mr. Obaidullah, learned advocate appearing on behalf of the respondent-bank at the very outset draws attention of this Court to Page-3 of the instant writ petition. It is submitted by Mr. Obaidullah that it is the specific case of the writ petitioner that the writ petitioner was a Daftary (in Group-D post) in the respondent-bank. At this juncture, attention of the Court is drawn to Page Nos.31 to 33 of the instant writ petition being a copy of the charge-sheet dated 21.11.2015, as issued by the respondent-bank in

the name of the writ petitioner. It is submitted that from the copy of the said charge-sheet dated 21.11.2015, it would reveal that the charge-sheet was issued against the delinquent by the respondent-bank on account of his misconduct when the delinquent was posted as Daftary in the respondent-bank. Drawing further attention to the Page No.3 of the affidavit-in-opposition, it is submitted by Mr. Obaidullah that in the affidavit-in-opposition of the respondent-bank it is the specific case of the respondent-bank that since the writ petitioner was a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 ('Act of 1947' in short), the writ petitioner has an alternative remedy under the said Act before the Central Government Industrial Tribunal.

4. In course of his argument, Mr. Obaidullah places a Compendium of Memoranda of Settlement. Attention of this Court is drawn to Page Nos.127 to 136 of the said Compendium which deals with various clauses of the Memoranda of Settlement dated 10.04.2002 and 27.05.2002. It is submitted by Mr. Obaidullah that from the said Memoranda of Settlement dated 10.04.2002, it would reveal that 52 banks which are on date 'A' class Banks and listed in Schedule-I to such Settlement and their workmen were parties to the said settlement who

are represented by the representatives of the employers (member Banks) and representatives of the workmen, namely, Indian Banks' Association, All India Bank Employees Association, National Federation Bank Employees and Indian National Bank Employees Federation. Drawing further attention to the various clauses of recitals of the said Memoranda, it is further submitted by Mr. Obaidullah that in the said Memoranda of Settlement, the procedure for initiation of disciplinary action has been duly described and signed by the parties wherein the expression 'gross misconduct' has been duly dealt with and described in various sub-clauses. It is further submitted by Mr. Obaidullah that on perusal of the last page of charge-sheet dated 21.11.2015, as issued in the name of delinquent/writ petitioner, it would reveal that the charge-sheet was issued on account of acts of gross misconduct in terms of clause-5(j) of the Bipartite Settlement dated 10.04.2002. It is further submitted by Mr. Obaidullah that from the said settlement dated 10.04.2002, it would reveal such settlement was arrived at in terms of provisions of the section 2(p) and section 18(1) of the Act of 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 ('Rules of 1957' in short).

5. At this juncture, Mr. Obaidullah took me to the provision of section 2(p) of the Act of 1947, which deals with the definition of 'settlement'. It is submitted by Mr. Obaidullah that on perusal of the definition of 'settlement', it reveals that a written agreement between the employer and the workmen arrived at, otherwise than in the course of conciliation proceeding comes under the purview of definition 'settlement'.
6. In his next limb of submission Mr. Obaidullah places his reliance upon section 2A of the Act of 1947, which deals with the subject of dismissal etc. of an individual workman to be deemed to be an 'industrial dispute'.
7. It is submitted by Mr. Obaidullah that on perusal of section 2A of the Act of 1947 it would reveal that discharge and/or dismissal and/or retrenchment and/or termination of service of an individual workman comes under the purview of 'industrial dispute' within the meaning of section 2A of the Act of 1947 and thus, the writ petitioner being an individual workman has his remedy before the Central Government Industrial Tribunal within the meaning of section 2A(2) of the Act of 1947. It is, thus, submitted by Mr. Obaidullah that since the writ petitioner has an alternative, efficacious,

effective and statutory remedy, the instant writ petition is not maintainable.

8. *Per contra*: Mr. Roy, learned advocate appearing on behalf of the writ petitioner, in course of his submission, does not dispute the existence of the memorandum of settlement dated 10.04.2002. Placing reliance upon the reported decision in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.*** reported in ***[1998] SUPP. 2 SCR 359: (1998) 8 SCC 1***, it is submitted by Mr. Roy that the Hon'ble Supreme Court in the said judgment of ***Whirlpool Corporation (supra)*** has specifically held that where there has been a violation of principle of natural justice, the writ petition filed before a High Court is very much maintainable even if there exists an effective and efficacious alternative remedy.
9. In support of such contention, Mr. Roy took me to Page No. 55 of the writ petition being a copy of the memo dated 21.11.2015. It is submitted by Mr. Roy that from the said copy of the memo dated 21.11.2015, as issued by the respondent-bank to the writ petitioner, it would reveal that in the alleged disciplinary proceeding, they have placed reliance upon 05 numbers of documents, particulars of which have been mentioned in the said memo dated 21.11.2015.

10. Attention of this Court is also drawn to Page No.

58 of the instant writ petition being a copy of the letter dated 30.11.2015, as issued by the writ petitioner to the respondent-bank authority. It is submitted by Mr. Roy that under cover of his letter dated 30.11.2015, the writ petitioner requested the respondent-bank and its officials to provide copies of some documents, particulars of which have been mentioned in paragraph 4 of the said letter. However, those documents were not provided to the writ petitioner and without furnishing such documents, the respondent-bank proceeded with the disciplinary proceeding and thus, there occurred violation of principle of natural justice and therefore, in view of the proposition of law, as decided by the Hon'ble Supreme Court in the case of ***Whirpool Corporation (supra)***, the instant writ petition may be held to be maintainable.

11. On being asked by this Court Mr. Roy submitted before this Court that though in the writ petition, the writ petitioner in so many words did not ventilate his grievance regarding non-supply of relevant documents by the respondent-bank to the petitioner and/or regarding violation of principle of natural justice but the same has been stated specifically on affidavit in paragraph 5 of the affidavit in reply.

12. It is, thus, submitted that there are sufficient pleadings and evidence placed before this Court that principle of natural justice has been violated in the disciplinary proceeding, as conducted by the bank and therefore, by no stretch of imagination, it can be said that the instant writ petition is not maintainable only on the ground of availability of alternative, efficacious remedy.

13. In his next limb of submission, Mr. Roy further contended that the Central Government Industrial Tribunal is not an alternative, efficacious and effective forum for adjudication of the dispute between the writ petitioner and the respondent-bank since the matters pending before the said tribunal are getting delayed for a couple of number of years.

14. It is, thus, submitted by Mr. Roy that it is a fit case for turning down the point of maintainability, as raised by the respondent/bank. To strengthen his argument, he has also placed his reliance upon the reported decision of ***M/s. Radha Krishan Industries vs. State of Himachal Pradesh & Ors.*** reported in ***[2021] 3 SCR 406: (2021) 6 SCC 771.***

15. This Court has meticulously gone through the entire materials, as placed before this Court. This Court has given its due consideration over the submissions of the learned advocates for the

contending parties. This Court has also gone through the reported decisions of the Hon'ble Supreme Court, as cited by Mr. Roy.

16. On careful perusal of the entire materials, as placed before this Court, it reveals that the existence of memorandum of settlement dated 10.04.2002 between the respondent-bank and its workmen is not in dispute. Admittedly, the writ petitioner was an employee in the Group-D category as Daftary prior to issuance of the charge sheet dated 21.11.2025. On careful perusal of the different recital clauses of the said memorandum of settlement, it would reveal that the alleged act of the writ petitioner comes under the purview of clause 5(j) of the said memorandum of settlement, which tantamounts to misconduct, as has been indicated in the said charge sheet and therefore, in view of terms of the memorandum of settlement, section 2(p) and (s) and section 18(1) vis-à-vis the other provisions of the Act of 1947 will apply.

17. For better understanding, this Court proposes to look to the definitions of 'settlement' and 'workman', as mentioned in section 2(s) and (p) of the Act of 1947, which are quoted hereinbelow *in verbatim*:

“(p) “settlement’ means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation

proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.”

“2[(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

18. On perusal of the definitions of ‘settlement’ and ‘workman’, as mentioned in section 2(s) and (p) of the Act of 1947, it would reveal that the present writ petitioner does not come under the exclusion clause of the workman and on the contrary from the various clauses of the memorandum of settlement, it rather appears that the writ petitioner is a

‘workman’ within the meaning of section 2(s) of the Act of 1947.

19. At this juncture, this Court also proposes to look to the provision of section 2A of the Act of 1947, which is as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— (1)]

Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

20. On careful scrutiny of section 2A of the Act of 1947, it appears that it is the legislative intention that in the event, an employer terminates the service of an individual workman, it will come under the purview of an 'industrial dispute' within the meaning of the Act of 1947 and such dispute is required to be adjudicated in terms of section 2A (2) of the Act of 1947.

21. Keeping in mind the aforesaid legislative provision and the factual aspects, as involved in the instant writ petition, it reveals that the dismissal and/or termination of the writ petitioner by the respondent/bank comes under the periphery of 'industrial dispute' within the meaning of section 2A(1) of the Act of 1947, which is required to be adjudicated in terms of the provisions of section 2A (2) of the Act of 1947.

22. Interestingly, Mr. Roy, in course of his submission did not dispute such contention of the respondent-bank.

23. The next question that arises for consideration before this Court is as to whether even on account of availability of an efficacious alternative remedy,

the instant writ petition is at all maintainable. In order to come to a logical finding in this regard, this Court, at the very outset, proposes to look to some of the relevant paragraphs of the judgment of **Whirlpool Corporation (supra)**, which reads as under:

“The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

[Emphasis supplied]

24. In the reported decision of **M/s. Radha Krishan Industries** (supra), the Hon’ble Supreme Court while dealing with the subject of maintainability of

the writ petition before a High Court despite availability of an alternative efficacious remedy expressed the following view:

“27. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

[Emphasis Supplied]

25. In course of his argument, Mr. Roy strongly contended that in view of the settled proposition of

law, as decided by the Hon'ble Supreme Court in the case of ***Whirlpool Corporation (supra)*** and ***M/s. Radha Krishan Industries (supra)***, there cannot be any difficulty in reaching to a conclusion that the instant writ petition is maintainable in view of the fact that before this Court, sufficient materials have been placed that in the disciplinary proceeding, the respondent/bank has violated the principle of natural justice by not supplying the relevant documents, as requested to be supplied under cover of the letter of the writ petitioner, as issued on 30.11.2015 (annexure-'P4' of the writ petition).

26. It is settled principle of law that in a writ petition, a writ petitioner is duty bound to plead his case and to adduce evidence as well by way of supplying documents supported by affidavit since a writ Court does not have any machinery to record evidence and therefore, writ Court disposes a writ petition upon exchange of affidavits and not by trial on evidence.

27. On careful perusal of the entire writ petition, this Court finds no pleading at all regarding the violation of principle of natural justice, though, a stray document i.e. the copy of the letter dated 30.11.2015 has been annexed. Naturally, the respondent-bank could not get an opportunity to

deal with such allegation in its affidavit in opposition. Admittedly, in his affidavit in reply, the writ petitioner while dealing with the affidavit in opposition, for the first time raised the point of non-supply of critical documents.

28. In considered view of this Court, since the writ petitioner for the first time raised the non-supply of material documents in his affidavit in reply, the respondent-bank could not get any opportunity to deal with such allegation since as per practice, there cannot be any reply to the reply. In view of such, this Court considers that in the event at this stage, the writ petitioner is allowed to raise the point of principle of violation of natural justice, the respondent-bank would suffer immensely.

29. On careful perusal of the decisions of ***Whirlpool Corporation (supra)*** and ***M/s. Radha Krishan Industries (supra)***, as submitted by Mr. Roy, it appears to this Court that in both the aforementioned reported decisions, the Hon'ble Supreme Court dealt with the subject of maintainability of a writ petition despite availability of the efficacious alternative remedy.

30. It has been noticed by this Court that the Hon'ble Supreme Court time and again cautioned the High Courts not to entertain a writ petition if there is an adequate efficacious alternative remedy. If

somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.

31. In the reported decision of ***U.P. State Spinning Co. Ltd. vs. R.S. Pandey and Another*** reported in ***(2005) 8 SCC 264*** the Hon'ble Supreme Court had dealt with the exceptions to the doctrine of exhaustion of statutory remedies, the relevant portion of which is as under:

“16.....There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken place before the forum under a provision of law which is ultra virus, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice.....”

32. It appears to this Court that the reported decisions of ***Whirlpool Corporation (supra)*** and ***M/s. Radha Krishan Industries (supra)***, as cited by Mr. Roy practically helps the respondent-bank since no cogent material is forthcoming from the side of the writ petitioner especially in the writ petition in absence of any pleading regarding violation of principle of natural justice for

entertaining the instant writ petition despite availability of alternative, efficacious suitable statutory remedy.

33. This Court is in respectful disagreement with the submission of Mr. Roy that the tribunal, which the writ petitioner is supposed to approach in terms of section 2A(2) of the Act of 1947, is not an efficacious and effective forum for redressal of an industrial dispute in absence of any contrary material.

34. In view of the discussions made hereinabove, this Court is thus, constrained to hold that the instant writ petition is not at all maintainable.

35. Consequently, WPA 20825 of 2023 is dismissed.

36. There shall be, however, no order as to costs.

37. Before parting with, it is, however, made clear that since the writ petitioner is pursuing his remedy before a wrong forum, may be on account of wrong advice, this Court directs that in the event an appropriate application is made for adjudication of the industrial dispute within the meaning of section 2A(1) of the Act of 1947 before the appropriate forum within 45 working days from today, the said forum shall treat such application as within time and shall not treat such application as barred by law of limitation. Before parting with, it is however, made clear that this Court has not gone into the

merits of the instant writ petition and thus, all points are kept open.

38. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(PARTHA SARATHI SEN, J.)