

Before : S. P. Goyal and Pritpal Singh, JJ.

PIARA SINGH,—Petitioner.

versus

COMMISSIONER, WORKMEN COMPENSATION and another,—
Respondents.

Civil Writ Petition No. 679 of 1985.

February 3, 1986.

Constitution of India, 1950—Article 226—Workmen's Compensation Act (VIII of 1923)—Section 30—Appeal against an order awarding compensation to an employee for injuries sustained by him—Deposit of amount awarded a condition precedent for the entertainment of the appeal—Right of appeal—Whether could be said to be an adequate alternative remedy for purposes of Article 226—Order awarding compensation—Whether could be challenged in a petition under Article 226 without resorting to the remedy of appeal.

Held, that the mere fact that the compensation awarded has to be deposited before an appeal can be entertained, would furnish no ground to entertain the writ petition by passing the statutory remedy of appeal. Moreover, the Workmen's Compensation Act is a welfare legislation meant to provide speedy remedy to the workmen in case of injuries received by them in the course of their employment. The Legislature in its wisdom has laid down that the workman must get the compensation awarded before the matter is allowed to be taken up in appeal by the employer. The entertainment of the petition under Article 226 of the Constitution of India would obviously defeat the intent and purpose of the legislation and it would be only in rare and exceptional cases where the order on the face of it shows violation of some statute or inherent lack of jurisdiction that the court would be justified in entertaining the petition under Article 226 by-passing the statutory remedy.

(Para 3).

Baru Ram vs. The Labour Officer, 1983 P.L.R. 317.

(Over-ruled).

Writ petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to send for the record of the case and after perusing the same issue :—

(a) a writ of certiorari quashing the order Annexure F/12.

- (b) to issue any other writ, order or direction that may be found suitable on the facts and in the circumstances of the case.
- (c) filing of the certified copies of Annexures P/1 to P/12 may be dispensed with.
- (d) Service of advance notices for stay may be dispensed with.
- (e) Costs of the writ petition may also be awarded.

It is further prayed that during the pendency of the writ petition the operation of the impugned order may be stayed.

G. C. Garg, Advocate, for the Petitioner.

Sarjit Singh, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.

(1) This petition under Article 226 of the Constitution was admitted to a Division Bench as the Motion Bench doubted the correctness of the Single Bench decision in *Shri Baru Ram v. The Labour Officer* (1).

(2) Respondent No. 2 was awarded a sum of Rs. 5,643.20 under the Workmen's Compensation Act (hereinafter called the Act) for the injuries received by him while working on the *toka* as employee of the petitioner. The petitioner has challenged the said order through this petition. Admittedly there is a right of appeal against the impugned order under the Act but the payment of the compensation awarded is a condition precedent for the entertainment of appeal. The learned counsel for the petitioner relying on the following observations in *Baru Ram's case* (supra) contended that as the deposit of the compensation amount was a condition precedent, the remedy of appeal cannot be said to be an adequate alternative remedy:

"It has been held in *Himmatlal Harilal Mehta's case* (supra) (*Himmatlal Harilal Mehta v. State of Madhya Pradesh*)

(2) that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was

(1) 1983 P.L.R. 317.

(2) AIR 1954 S.C. 403.

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available could not apply where a party has come to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226. Moreover, the remedy provided by the Act is of an onerous and burdensome character and before the appellant can avail of it he has to deposit the whole amount of the tax, such a provision can hardly be described as an adequate alternative remedy. The ratio of this authority is applicable to the case under consideration and the writ petition cannot be dismissed on the ground that the petitioner can avail of alternative remedy of appeal under section 30 of the Act."

On none of the two reasons given the rule laid down by the learned Single Judge can be sustained.

(3) Even the learned counsel for the petitioner did not subscribe to the view that infringement of any fundamental right would be involved in cases of grant of compensation under the Act. So far as the other reason is concerned the matter stands concluded by the decision of the Supreme Court in *Sales Tax Officer, Jodhpur and another v. M/s Shiv Ratan G. Mohatta* (3), where a similar contention was turned down in the following terms :—

"We are of the opinion that the High Court should have declined to entertain the petition. No exceptional circumstances exist in this case to warrant the exercise of the extraordinary jurisdiction under Article 226. It has not been the object of Article 226 to convert High Courts into original or appellate assessing authorities whenever an assessee chose to attack an assessment order on the ground that a sale was made in the course of import and, therefore, exempt from tax. It was urged on behalf of the assessee that they would have had to deposit sales tax, while filing an appeal. Even if this is so, does this mean that in every case in which the assessee has to deposit sales tax, he can bypass the remedies provided by the Sales Tax Act ? Surely not. There must be something more, in a case to warrant the entertainment of a petition under Article 226, something going to the root of the jurisdiction of the Sales Tax Officer, something to show

that it would be a case of palpable injustice to the assesses to force him to adopt the remedies provided by the Act. * * * *”

Consequently, the simple fact that the compensation awarded has to be deposited before an appeal can be entertained, would furnish no ground to entertain the writ petition bypassing the statutory remedy of appeal. Moreover, the Workmen's Compensation Act is a welfare legislation meant to provide speedy remedy to the workmen in case of injuries received by them in the course of their employment. The Legislature in its wisdom has laid down that the workman must get the compensation awarded before the matter is allowed to be taken up in appeal by the employer. The entertainment of the petition under Article 226 of the Constitution would obviously defeat the intent and purpose of the legislation and it would be only in rare and exceptional cases where the order on the face of it shows violation of some statute or inherent lack of jurisdiction that the court would be justified in entertaining the petition under Article 226 of the Constitution bypassing the statutory remedy. We are, therefore, of the considered opinion that the decision in *Baru Ram's case* (supra) was not correctly arrived at and overrule the same.

(4) As in the present case no exceptional circumstance has been shown apart from the fact that the compensation awarded has to be deposited before the appeal can be maintained, we find no reason to entertain this petition which is accordingly dismissed with costs and the petitioner is relegated to the ordinary remedy under the Act.

N.K.S.

Before: P. C. Jain, C.J., & S. S. Kang, J.

D.A.V. COLLEGE TRUST AND MANAGEMENT SOCIETY and others,—Petitioners.

versus

PANJAB UNIVERSITY, CHANDIGARH and another,—Respondents.

Civil Writ Petition No. 3703 of 1983.

February 4, 1986.

Constitution of India, 1950—Articles 29 and 30—Panjab University Calendar, 1979, Volume I, Chapter VIII (E)—Regulation 7—University framing a regulation fixing an inflexible age of superannuation of teachers of non-government affiliated colleges—Minority