CIVIL MISCELLANEOUS

Before J. S. Bedi and Prem Chand Pandit, JJ.

NARANJAN DAS KAPUR,—*Petitioner*

versus

P. M. DALAL AND ANOTHER,—*Respondents*

Civil Writ No. 127-D of 1957

1962

September, 24th

Punjab High Court Rules and Orders, Volume V—Chapter 3-B, Rule 1(xviii) (a)—Single Judge—Whether can refer a petition under Article 226 of the Constitution to a Division Bench—Chief Justice—Whether competent to constitute Division Bench to hear writ petition when the same is referred by a Single Judge to a Division Bench—Constitution of India (1950)—Article 226—Remedy under—Whether can be availed of by a person who has pursued alternative remedy.

Held, that ordinarily a petition under Article 226 of the Constitution, as mentioned in Rule 1(xviii)(a) of Chapter 3-B of the Punjab High Court Rules and Orders, Volume V, will be heard and disposed of by a Judge sitting alone. He cannot refer the same to a Division Bench, but can only, with the sanction of the Chief Justice, obtain the assistance of any other Judge or Judges for its decision. But the Chief Justice is fully competent to direct that a petition be heard by a Division Bench when his attention is drawn by a Single Judge that it deserves to be decided by a larger Bench because several important law points are involved therein.

Held, that where the petitioner has himself availed of the alternative remedy by filing a suit, it would not be proper to allow him to invoke the discretionary jurisdiction under article 226 of the Constitution.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased to call up and quash the order dated 25th January, 1957, as contrary to law and as otherwise opposed to the principles of natural justice or such other writ or writs, directions or orders be made as to this Hon'ble Court may appear to be just and equitable in the circumstances of the case.

R.L. ANAND WITH N. N. DHAWAN, ADVOCATE, for the Petitioner.

GURBACHAN SINGH WITH YOGESHWAR DAYAL, ADVOCATE, for the Repondent.

JUDGMENT

Pandit, J.

PANDIT, J.—Naranjan Das Kapur, petitioner, was the Managing Director of the Indian Mutual Insurance Company. Under Articles 34 and 68 of the Articles of Association of this Company, he was to hold this office permanently and was not liable to retirement. On 19th January, 1956, the Life Insurance (Emergency Provision) Ordinance (Ordinance No. 1 of 1956) was promulgated and by virtue of the provisions of this Ordinance, the management of this Company vested in the Central Government. In exercise of the powers conferred on it, under section 4 of the Ordinance, the Central Government appointed Shri A. L. Dutta as the Custodian of the business of this Company. By a communication dated 2nd February, 1956, Shri A. L. Dutta informed the petitioner that his contract with the Indian Mutual Insurance Company was deemed to have been terminated on 19th January, 1956, and although his remuneration had to be fixed by the Central Government, the petitioner would continue to be paid at the rate of Rs. 450 per mensem, which he was drawing before 19th January, 1956. On 17th March, 1956, the petitioner was working as the principal Officer of the Company on a total monthly remuneration of Rs. 450. On 18th June, 1956, the Life Insurance Corporation Act 31 of 1956 (hereinafter called the Act) was enacted and came into force on 1st September, 1956. On 17th October, 1956, the petitioner was permitted to work as a Superintendent pending categorisation. On 25th January, 1957, Shri P. M. Dalal, the Deputy Zonal Manager, informed the petitioner that his services had been transferred to the Life Insurance Corporation of India in accordance with Section 11 of the Act and since he was more than 60 years and the Life Insurance Corporation of India had fixed 60 years as the

maximum age for retirement, his services in the Corporation were terminated with immediate effect. He was, however, to be paid three months' salary as compensation. It is against this order that the present petition was filed under Article 226 of the Constitution on 26th March, 1957.

This writ petition came up for hearing before Grover, J., who, in view of certain important points having been raised therein, passed the following order on 11th August, 1959:—

> "I consider, therefore, that this petition should be decided by a larger Bench. The order of my Lord, the Chief Justice may be obtained for constituting a Division Bench, under Rule 1(xx), Chapter 3-B, of the Rules and Orders of the Punjab High Court, Volume V".

That is how, it has been placed before us.

A preliminary objection has been raised by the learned counsel for the petitioner that this Bench has no jurisdiction to hear this petition, because it could not be referred to a Division Bench and Grover, J., could only, with the sanction of the Chief Justice, obtain the assistance of any other Judge or Judges of this Court for hearing the same. Reliance in this connection was placed on provisos (a) and (b) to Rule 1 in Chapter 3-B of the Rules and Orders of the Punjab High Court, Volume V.

The relevant portion of Rule 1 runs thus—

> "R. 1. Subject to the provisos hereinafter set forth, the following classes of cases shall ordinarily be heard and disposed of by a Judge sitting alone:—

* * * *

* * *

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(xviii)(a) Application or petition under Article 226 of the Constitution of India for the issue of any directions, orders or writs in the nature of mandamus, prohibition, *quo warranto* or *certiorari* or for the enforcement of the fundamental rights conferred by Part III of the Constitution of India or for any other purpose.

* * *

* * *

Provided that—

(a) a Judge may, if he thinks fit, refer any matter mentioned in any of the clauses of this rule other than clauses (x), (xviii) or (xx), and, with the sanction of the Chief Justice, any matter mentioned in clauses (xvii) and (xx), to a Division Bench of two Judges;

(b) a Judge before whom any proceeding mentioned in clause (xviii) is pending, may, with the sanction of the Chief Justice, obtain the assistance of any other Judge or Judges for the hearing and determination of such proceeding or of any question or questions arising therein".

A bare reading of his Rule would show that ordinarily a petition under Article 226, as mentioned in Rule 1(xviii)(a), will be heard and disposed of by a Judge sitting alone. He cannot refer the same to a Division Bench, but can only, with the sanction of the Chief Justice, obtain the assistance of any other Judge or Judges for its decision.

It is, therefore, true that Grover, J., could not refer it to a Division Bench. It is also clear from the above-quoted order of Grover, J., that he had not asked the Chief Justice for the assistance of any other Judge or Judges for its disposal. The question arises whether, under these circumstances, the Chief Justice was competent to direct that this petition be heard by a Division Bench.

Rule 1, quoted above, mentions that the writ petitions covered by clause (xviii)(a) shall *ordinarily* be heard by a Single Judge. In other words, there can be exceptional cases, which are covered by proviso (b) to this Rule. The use of the word 'ordinarily' in this Rule as held in *Shri Chand and others* v. *Union of India and others* (1), indicates that such an appeal can also be heard by a Division Bench. There is no Rule which mentions these exceptional cases. The point arises who can decide as to whether a particular case is an exceptional one and should be heard by a Division Bench. In my view, the Chief Justice has got the inherent powers to decide this point. By Article 225 of the Constitution, the jurisdiction of the existing High Courts and the powers of the Judges in relation to the administration of justice, including the powers to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, as it existed before the commencement of this Constitution, have been specially preserved. Before the commencement of this Constitution, the Government of India Act, 1935, was in force and by virtue of section 223 thereof, all these powers, as they existed in section 108 of the Government of India Act, 1915, were kept intact. Section 108 of the

(1) 1962 P.L.R. 870.

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Government of India Act, 1915, is to the following effect:—

> "S. 108. (1) Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges, of the High Court, of the original and appellate jurisdiction vested in the Court.
>
> (2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts".

This section gives ample powers to the Chief Justice to determine what Judge in each case is to sit alone and what Judges of the Court are to constitute the Division Benches. Further, Rule 4 of Chapter 3-B, of the Rules and Orders of the Punjab High Court, Volume V, which is in the following terms, also indicates that the Chief Justice has the powers to pass special orders with regard to particular cases:—

> "R. 4. Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges".

My view is supported by a decision of the Calcutta High Court in *Saurendra Mohan Basu* v. *Saroj Ranjan Sarkar* (2), observed—

> "*Para* 7. Now, it is true, in Rule 9 of the Appellate Side, Rules, Chapter II, there is no express provision corresponding to

(2) A.I.R. 1961 Cal. 461.

the proviso (ii) to Rule 1, which relates to civil matters. But this does not, in our opinion, take away the inherent power of the learned Chief Justice to refer any matter to a Bench of three Judges, when the matter is of some importance. As already pointed out, sub-rule (1) of Rule 9, provides that a Criminal Bench may consist of two or more Judges. Ordinarily, a Bench consists of two Judges, excepting in matters which can be disposed of by a Single Judge. A criminal matter would be referred to a larger Bench consisting of three or more Judges only when the matter is of considerable importance. The Chief Justice may, on his own initiative, allot such an important matter to a Bench of three Judges, or his attention may be drawn to the fact that the matter is of some importance and then he may exercise his discretion and refer the matter to a larger Bench. In the present case, the attention of the learned Chief Justice was drawn to the fact that matter was of some importance, by the Bench of two Judges to which the cases had been referred in the first instance. There was nothing illegal in drawing the attention of the learned Chief Justice to the fact that the cases involved some matter of importance and recommending that the cases should be referred to a larger Bench. Thereafter, the learned Chief Justice acted in the exercise of his inherent jurisdiction and referred the cases to a larger Bench, namely, this Bench, and we do not think that there was any illegality in such reference and, therefore, there

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can be no question as to our competence to deal with the matters".

Referrence in this connection may also be made to a decision of the Lahore High Court *in re*: *K. L. Gauba, Barrister-at-law* (3).

It may be mentioned that the counsel for the petitioner referred to a decision of the Bombay High Court in *Emperor* v. *Goverdhan Radkaran* (4), where the word 'ordinarily' in section 177 of the Code of Criminal Procedure, was interpreted to mean "except in the cases provided hereinafter to the contrary". But this decision is not contrary to the view I have taken above, because in the Rules framed by this High Court no such exceptional cases have been mentioned, while in the Code of Criminal Procedure those have been specifically referred. It, therefore, follows that the Chief Justice in the present case was fully competent to direct that this petition be heard by a Division Bench, when attention was drawn of the Chief Justice by Grover, J., that this case deserved to be decided by a larger Bench, because several important law points were involved therein. The preliminary objection, therefore, fails.

Learned Counsel for the respondents raised the following four preliminary objections to the maintainability of the writ petition:—

(1) On 15th July, 1957, the petitioner filed a civil suit against the Life Insurance Corporation of India for a declaration and rendition of accounts, in which he had contested that his service had been

(3) A.I.R. 1942 Lah. 105.
(4) A.I.R. 1928 Bom. 140 (1).

illegally and unreasonably terminated by the Life Insurance Corporation of India. In this suit, he had challenged the orders dated 25th January, 1957 and 6th/9th April, 1957. Since the petitioner had already made use of the alternative remedy available to him, this Court should not interfere in writ proceedings.

(2) The present proceedings are infructuous and the writ petition is liable to be dismissed, as the order dated 25th January, 1957, passed by the Deputy Zonal Manager, already stood cancelled by another order dated 6th/9th April, 1957, passed by Shri P. R. Gupta, the Zonal Manager of the Northern Zone of the Life Insurance Corporation of India. In spite of this fact the petitioner had not amended his writ petition so as to challenge the subsequent order by which his services were terminated with effect from 6th/9th April, 1957;

(3) The petitioner is, admittedly, of 65 years of age. He in his notice dated 19th February, 1957 (Annexure 'A') sent through his counsel to the Zonal Manager Life Insurance Corporation of India, New Delhi, had mentioned that he was entitled to remain in the service of the Corporation until he had attained the age of 65 years and his services could not be terminated on the plea that he had reached the age of 60 years. Under these circumstances, there was no use in issuing this writ; and

(4) The relief claimed by the petitioner in this writ petition was for quashing the

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order dated 25th January, 1957 terminating his services. Such a declaratory relief could not be granted even by a civil Court and, consequently, he could not get this relief by filing this writ petition.

As regards preliminary objection No. 1, it is conceded by the learned counsel for the petitioner that after the filing of the present writ petition, his client has filed a civil suit in which the orders dated 25th January, 1957 and 6th/9th April, 1957 terminating his services have been challenged. It is also conceded that the evidence in that case has finished and the case is ripe for arguments. It is undisputed that where the petitioner has himself availed of the alternative remedy by filing a suit, it would not be proper to allow him to invoke the discretionary jurisdiction under Article 226 of the Constitution. Reference in this connection may be made to a decision of the Patna Division Bench in *Ajit Kumar Chakravarty* v. *Smt. Sarba Mangala Devi and another* (5), where it was observed—

> "The petitioner had availed himself of the alternative remedy by way of a suit. The question at issue in the civil suit was essentially the question of jurisdiction of the House Controller and of the Commissioner in appeal. The question raised in this application involved precisely the same matter as to the jurisdiction of the House Controller to order eviction of the petitioner under the provisions of section 11 of the Bihar Act 3 of 1947.

(5) A I R. 1954 Patna 476.

Held, that this application for a writ under Article 226 of the Constitution or for interference by the High Court under Article 227 of the Constitution could not be obviously entertained and the petitioner must prosecute his remedy in Civil Court where he had already instituted a suit for precisely the same relief."

In *K. S. Rashid and Son* v. *Income-tax Investigation Commission and others* (6), it was also held as under—

'The remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. Where the petitioners have already availed themselves of the remedy provided for in section 8(5) of the Taxation of Income (Investigation Commission) Act and a reference has been made to the High Court in terms of that provision which is awaiting decision, it would not be proper to allow the petitioners to invoke the discretionary jurisdiction under Article 226 of the Constitution at this stage. In case the proceeding occasions a gross miscarriage of justice, there is always the jurisdiction in the Supreme Court to interfere by way of special leave".

Under these circumstance, I decline to exercise my discretionary powers under Article 226 of the Constitution. Consequently, the preliminary objection prevails and the writ petition fails.

(6) A.I.R. 1954 S.C. 207.

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In view of this finding, there is no necessity of discussing the other preliminary objection raised by the learned counsel for the respondents.

In the result, this petition is dismissed. In the circumstances of this case, however, the parties are left to bear their own costs in these proceedings.

J. S. BEDI, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before J. S. Bedi and Prem Chand Pandit, JJ.

TEK CHAND MITAL,—*Petitioner*

versus

THE ZONAL MANAGER IN-CHARGE OF NORTHERN ZONAL OFFICE LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER, *Respondents.*

Civil Writ No. 198-D of 1959.

1962

September, 24th.

Life Insurance Corporation Act (XXXI of 1956)—Ss. 11 and 49—Life Insurance Corporation—Whether competent to make regulations concerning the terms and conditions of service of old employees pending categorisation by Central Government—Life Insurance Corporation of India (Staff) Regulations, 1956—Whether applicable to old employees—Regulation 42—Appeal under—Whether equally efficacious alternative remedy.

Held, that the Life Insurance Corporation is competent to frame Regulations regarding the remuneration and terms and conditions of service of the employees of the various Insurance Companies whose life insurance business was taken over by the Corporation under the Life Insurance Corporation Act, 1956, by virtue of the provisions of section 11(1) read with section 49(1) and (2)(b) of the Act. In sub-section (1) of section 11, there is no bar in the way of the Corporation to make Regulations for such employees pending their categorisation by the Central Government under sub-section (2) of this section.