

**The High Court of Madhya Pradesh Bench at Indore**

Case Number	<b>W.A. No.746/2021</b>
Parties Name	Shramik Janta Sangh & Ors. Vs. State of MP & Ors.
Date of Judgment	<b>13<sup>th</sup> September, 2021</b>
Bench	<b><u>Division Bench:</u></b> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri.Sanjay Parikh, learned Sr.Counsel with Shri Pratyush Mishra, learned counsel for appellants.  Shri. Aditya Garg, learned counsel for respondent/State.  Shri Chandra Uday Singh, learned Sr.Counsel with Shri Sudeep Bhargav, learned counsel for respondent No.3 and 4.
Law laid down	<b>Article 12 &amp; 226 of the Constitution</b> – Writ petition filed against notice of voluntary retirement issued by purely private entity namely Century Textiles and Industries - The said industry is not covered under Article 12 of the Constitution. The government has no direct, indirect or pervasive control on the industry. Employer is not performing any public function. The workmen and employer has master-servant relation under the contract of service or as per service conditions which has no public law element. Order of single judge affirmed.  <b>Alternative remedy under Industrial Disputes Act</b> - Petitioner in pleadings and relief claimed, clearly averred that the action of employer runs contrary to the provisions of Industrial Disputes Act, 1947. Thus, it cannot be said that remedy under the said Act is not

	<p>available to the union.</p> <p><b>Second and Third Schedule of ID Act, 1947</b> – Second and Third Schedule provides subject wise distribution of work between labour Court and industrial tribunal. However, as per proviso to Sec.10(1)(c) &amp; (d) of Act when number of employees are more than 100, industrial court can decide the matters falling within the jurisdiction of the labour court under Second Schedule.</p> <p><b>Writ of <i>mandamus</i> to the State government - relief B and C are directed against the State government</b> - It could not be established that State government is under any obligation to take care of those reliefs. Unless it is shown that the petitioners have a right in relation to the relief claimed and State has a corresponding duty/obligation to fulfill the same, writ of mandamus cannot be issued.</p> <p><b>Section u/S.2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005</b> - Learned Single Judge has taken a plausible view regarding availability of alternative remedy and maintainability of petition under Article 226 of the Constitution. In the light of <b>Management of Narendra &amp; Company Private Limited Vs. Workmen of Narendra &amp; Company (2016) 3 SCC 340</b>, interference was declined.</p>
Significant paragraph numbers	7,14,15,16,17,17,19,20 & 22

**ORDER**  
**13.9.2021**

**Sujoy Paul,J.**

This intra court appeal takes exception to the order of learned Single Judge dated 3<sup>rd</sup> August, 2021 passed in WP No.11885/2021 whereby interference on the notice of voluntary retirement issued by a purely private industry i.e. Century Textile & Industry Ltd. is decided. The writ petition of the trade union was dismissed mainly on the

ground of maintainability and availability of alternative remedy under the Industrial Disputes Act, 1947 (ID Act). The appellant union has drawn the attention of this bench on the chequered history of litigation between the union and the respondent employer and urged that in previous round, the transfer agreement between present respondents and Wearit Global Limited has been found to be sham/bogus and, therefore, certain reliefs were granted to the union/workmen which were not interfered with by this Court and the Supreme Court.

2. To elaborate, Shri Sanjay Parikh, learned Sr.Counsel for appellants submits that the present respondents prepared a sham transaction agreement with Wearit Global Ltd which became subject matter of an industrial dispute raised u/S.10 of ID Act. The reference order was unsuccessfully challenged by the employer in WP No.2296/2019. In MP No.2248/2019 the respondent/employer assailed the award of the industrial tribunal dated 22/1/2019 passed in Complaint Case No.1/ID Act/2018 wherein a direction was issued to the employer to run and operate units and by giving a finding that they cannot be allowed to close down the same. This award was assailed by employer in WP No.2248/2019. The award was interfered with to the extent employer was directed to run the unit and it was directed that employer shall continue to pay the wages to the employees as per the agreement. SLP No.5671/2020 was filed against the order passed in MP No.2248/2019 dated 25/11/2019 which was disposed of by recording that any application filed by employer u/S.25-O of ID Act, 1947 shall be continued without being influenced by observations made by the High Court on the viability of the unit. The undertaking given by respondents regarding payment of wages must be scrupulously complied with. Learned Sr.Counsel for appellants submits that pleadings and relief claimed in the writ petition were mainly based on the past conduct of the employer. In view whereof, the writ petition was maintainable and learned writ court has erred in

relegating the appellants to avail the alternative remedy under the ID Act.

3. The appellant does not have any alternative remedy under the ID Act is the next submission of Shri Parikh based on Third Schedule of the Industrial Disputes Act. It is urged that the impugned notice dated 29<sup>th</sup> July 2021 Annexure P/1 for voluntary retirement is not covered by any of the entries of Third Schedule. Thus, the appellant cannot be made remediless. In view of past conduct of employer coupled with the fact that fate of about 1000 workmen is involved, the writ petition was maintainable.

4. To bolster the argument that writ petition is maintainable Shri Parikh placed reliance on *U.P. State Coop. Land Development Bank Ltd. Vs. Chandra Bhan Dubey (1999) 1 SCC 741 (para 27)*, *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani (1989) 2 SCC 691* and *Gattaiah Vs. Commissioner of Labour 1981 SCC Online AP 25*. The judgment of Apex Court reported in *Anakapalle Coop. Agricultural and Industrial Society Ltd. Vs. Workmen (1963) supplementary 1 SCR 730* was relied upon to show what are the conditions precedent for the employer under the ID Act for transferring a unit. If those conditions are not satisfied, the relief contained in para 7 (B & C) could have been granted to the appellant.

5. Sec.25-FF of ID Act was referred to submit that this is the only statutory protection/ provision available to the workmen in the event of transfer of ownership of an industry. Since more than 100 employees are working with the respondents, Sec.25-O in the case of 'closure' and Sec.25-N in the case of 'retrenchment' would be applicable. In both the situations, the employer is under an obligation to obtain permission of state government. Reliance is placed on *Workmen Vs. Meenakshi Mills Ltd (1992) 3 SCC 336*. For these

cumulative reasons, it is submitted that the learned Single Judge has erroneously dismissed the petition for aforesaid twin reasons.

6. *Per contra*, Shri Chandra Uday Singh, learned Sr.Counsel submits that earlier interference was made by this Court (arising out of a reference made u/S.10 of ID Act) mainly on the ground that a contract was entered into by employer with Wearit Global Ltd. without paying the stamp duty and fulfilling other statutory requirements. In addition, the agreement entered into between union and respondents were not taken care of. By placing reliance on condition No.2 and 3 of settlement dated 17/8/2017 (Annexure P/3) it is urged that union itself agreed that in the event of sale or leasing out to present industry, the workmen shall be given voluntary retirement as per government rules. After having signed the said settlement, it is no more open to the union to raise eye brows on the notice for Voluntary Retirement Scheme (VRS).

7. The employer supported the impugned order of learned Single Judge by contending that the definition of 'industrial dispute' as contained in Sec.2(k) of ID Act is wide enough to cover the dispute relating to issuance of Annexure P/1. Second and Third Schedule of ID Act are there in order to bifurcate/distribute the work among the labour court and industrial tribunal. The proviso to Sec.10(1)(c) & (d) makes it clear that if number of workmen are more than 100, the industrial tribunal will assume jurisdiction on subject matters which are within the jurisdiction of labour Court. Thus, argument of non availability of remedy under ID Act was vehemently opposed.

8. The judgment of Apex Court in ***Chandrabhan Dubey*** (supra) is not binding precedent is the next contention of learned employer. By placing reliance on ***Jatya Pal Singh Vs. Union of India*** (2013) 6 SCC 452, ***K.K. Saksena Vs. International Commission on Irrigation and Drainage*** (2015) 4 SCC 670 and ***Ramakrishna Mission Vs. Kago Kunya*** (2019) 16 SCC 303, it is submitted that the writ petition

under Article 226 of the Constitution is maintainable provided the respondents are covered under Article 12 of the Constitution. Against a private industry writ petition is clearly not maintainable as per *Praga Tools Vs. C.A. Imanual (1969) 1 SCC 585* and *Binny Ltd. V. Sadasivan (2005) 6 SCC 657*.

9. By placing reliance on *Rohtas Industries Vs. Rohtas Industries Staff Union (1976) 2 SCC 82*, *Chandrakant Tukaram Nikam Vs. Municipal Corporation of Ahmedabad (2002) 2 SCC 542*, *U.P. State Bridge Corporation Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh (2004) 4 SCC 268* and *Chief Engineer, Hydrel Projet Vs. Ravinder Nath (2008) 2 SCC 350*, the next contention is that even if writ petition was maintainable, since alternative remedy under the ID Act is available, interference was rightly declined.

10. It is urged that Sec.25-FF of ID Act does not prohibit the right of employer/industry to transfer it to another. At best, statutory protection flowing from said provision can be claimed.

11. No other point is pressed by learned counsel for parties.

12. We have bestowed our anxious consideration on rival contentions and perused the record.

13. In the writ petition, the appellant/petitioner prayed for following reliefs:-

“A) To quash and set aside the Notice dated 29.06.2021 (Annexure P/1 and P/2) issued by Factory Manager of Century Textiles and Industries Ltd. that are illegal, **against the provisions of ID Act** and undertaking given in IA No.10 and in MP No.2248/2019 and order dated of the High Court in 25.11.2019 and the order dated 05.06.2020 of the Hon'ble Supreme Court.

B) Direct that a inquiry be conducted by the State Government into the malafide conduct of the respondent no.2 in transferring the Mills to M/s Manjeet Cotton Private Limited and M/s Manjeet Global Private Limited and thus illegally and **in violation of the ID Act** dispensing with the services of the workmen.

C) To issue a direction to the State Government and all other concerned departments **to submit a viable scheme to revive the Century Yarn/Denim Division of Century Textiles and Industries Limited** situated at village and post Satrati, AB Road, District Khargone, Madhya Pradesh allowing the workers participation and management in consonance with Article 43A, 41 of the Constitution r/w Article 21 of the Constitution.”

(emphasis supplied)

14. Interestingly, the petitioner in relief A and B clearly stated that the notice dated 29/6/2021 and their action of transferring the employee is illegal and runs contrary to the provisions of ID Act, 1947. Thus, as per petitioners' own pleadings, the provisions of I.D Act are breached. Thus, we are unable to hold that remedy under the ID Act is not available to the appellant. Apart from this, in view of stand of learned Sr.Counsel for the respondents, it cannot be doubted that there exists a remedy under the ID Act 1947. Pertinently, the appellant earlier also raised an industrial dispute. The terms of reference of the same is as under:-

“ क्या सेंचुरी यार्न एवं डेनिम तथा वियरिट ग्लोबल लिमिटेड के मध्य बिजनेस ट्रान्सफर एग्रीमेंट के अनुसार सेंचुरी यार्न एवं डेनिम का हस्तांतरण वियरिट ग्लोबल लिमिटेड में किये जाने पर हस्तांतरण के समय नियोजित श्रमिकों को स्वेच्छिक सेवा निवृत्ति योजना अथवा स्वेच्छिक सेप्रेशन योजना का लाभ दिये जाने का औचित्य है यदि हाँ तो इसकी क्या योजना होनी चाहिए एवं इस संबंध में प्रबंधन को क्या निर्देश दिये जाने चाहिए ?”

(emphasis supplied)

15. The validity of *transfer agreement* was considered in the previous reference when intended transfer was to a different unit. As an incidental and essential question, the industrial court examined the 'business transfer agreement' and said matter travelled to this court and supreme Court. This itself shows that an alternative statutory remedy under the ID Act clearly exists. Thus, we are unable to hold that petitioner will be remediless, if writ petition is not entertained.

16. So far the relief B & C are concerned, despite repeated query from the bench, learned counsel for appellants could not point out any statutory/constitutional provision which makes it obligatory for the state government to conduct an enquiry regarding 'transfer agreement' between the employer and M/s. Manjeer Global Pvt. Ltd. Similarly no provision was pointed out to establish that state government is under an obligation to submit a viable scheme for revival of century yarn/denim division of **Century Textile and Industry Limited**. The

Apex Court in *Director of Settlements, A.P. and others Vs. M.R. Apparao and another (2002) 4 SCC 638* opined as under:

“17.....A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition*. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

(emphasis supplied)

17. The same view is followed in *Municipal Corporation of Greater Mumbai & ors. Vs. Rafiqunnisa M. Khalifa (deceased) through His Legal Heir Mohd. Muqueen Qureshi & another (2019) 5 SCC 119*. It is apposite to consider following para:-

“26. It is a settled principle of law that a writ of mandamus under Article 226 of the Constitution is issued, when there is a right and correspondingly there is a legal duty to perform. In this case, neither was there any right (contractual or legal) in a writ petitioner’s favour and nor is there any provision in the Act which casts an obligation to provide any alternate land to the respondents.”

(emphasis supplied)

18. The same view is taken by this court in *Bhartiya Kishan Sangh District Bhind Vs. Union of India & Ors. 2007(4) MPLJ 548* (para 12) and *Indore Development Authority & another Vs. Sansar Publication Pvt. Ltd. ILR (2019) MP 742*.

“27. It is a settled preposition of law that in order to obtain a writ or order in the nature of mandamus, a person has to satisfy the following conditions:-

(a) The petitioner has to establish that he is having legally enforceable right as held by the Hon’ble Supreme Court in the case of *Union of India Vs. E. Merck (India)* reported in (1998) 9 SCC 412, and the other party against whom the *mandamus* is sought is having a legal duty to perform.



(b) The duty or the right, which is being enforced by issuing a *mandamus* should be a duty imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

Thus, in short for issuing a *mandamus* there has to be a legally enforceable right under the statute and the public authority is under an obligation to follow the statute and to perform.”

(emphasis supplied)

19. In absence of showing any legal right in respect to reliefs B & C and corresponding obligation/duty of the government to act in a particular manner, no case is made out to interfere in writ jurisdiction. No fault can be found in the order of learned single judge in this regard.

20. So far maintainability of petition under Article 226 of the Constitution is concerned, we find substance in the argument of learned counsel for respondents that writ petition was not maintainable against a private industry which has no characteristics/features on the strength of which it can be said to be covered under Article 12 of the Constitution of India. The government has no direct, indirect or pervasive control of respondent No.2 and 3. The employer is not performing any public function/duty. The workmen and the employer has master servant relation either under the contract of service or as per the service conditions which has no public law element at all. Thus, in view of *Jatya Pal Singh Vs. Union of India (2013) 6 SCC 452*, *K.K. Saksena Vs. International Commission on Irrigation and Drainage (2015) 4 SCC 670*, *Ramakrishna Mission Vs. Kago Kunya (2019) 16 SCC 303*, *Praga Tools Vs. C.A. Imanual (1969) 1 SCC 585* and *Binny Ltd. V. Sadasivan (2005) 6 SCC 657*, we deem it proper to give stamp of approval to the plausible view taken by the learned Single Judge.

21. In view of judgments mentioned in para 20 above and as per the *litmus test* laid down by seven Judges bench in *Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology (2002) 5 SCC 111*,

the judgment of *Chandra Bhan Dubey* (supra) is of no assistance to the appellants.

22. No doubt earlier the parties have fought a long drawn battle in the corridors of the courts. But such battle was originated in the court of first instance under the ID Act 1947. No previous litigation by the union was entertained by this Court on original side under Article 226 of the Constitution. Union or employer assailed certain orders of industrial court in supervisory jurisdiction under Article 227 of the Constitution. In this view of the matter, we find no fault in the order of learned Single Judge. The plausible view cannot be disturbed in view of *Narendra & Company Private Limited Vs. Workmen of Narendra & Company (2016) 3 SCC 340*.

23. Resultantly, admission is declined and **appeal is dismissed**.

(Sujoy Paul)  
Judge

(Anil Verma)  
Judge

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