

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).5185-5186/2009

(From the judgment and order dated 25/04/2008 in WP No. 1229/1998 & WP No. 1461/2003 of The HIGH COURT OF BOMBAY)

TARUN KUMAR BANERJEE

Petitioner(s)

VERSUS

BHARAT ALUMINIUM CO.LTD.& ANR.

Respondent(s)

(With appln(s) for c/delay in filing SLP)

Date: 06/05/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE C.K. PRASAD

For Petitioner(s) Dr. Sumant Bhardwaj,Adv.
 Mr. S.S. Ray,Adv.
 Mr. Amit Verma,Adv.
 Mr. Rajesh Pandey,Adv.
 Mr. Archana Pathak Deve,Adv.
 Ms. Mridula Ray Bharadwaj,Adv.

For Respondent(s) Mr. C.A. Sundaram,Sr.Adv.
 Mr. P.C. Sen,Adv.
 Ms. Anchal Yadav,Adv.

 Mr. Gopal Subramaniam,SG
 Ms. Binu Tamta,Adv.

UPON hearing counsel the Court made the following
O R D E R

These Special Leave Petitions are directed against the final judgment and order dated 25th April, 2008, passed by the Bombay High Court in Writ Petition No.1229/1998 and Writ Petition No.1461/2003, dismissing the writ petitions filed by the petitioner challenging his transfer from Bombay to Korba and, subsequently, his termination from service.

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When the Writ Petitions were taken up for hearing by the High Court, it was found, that on account of disinvestment, the Company was no longer "State" within the meaning of Article 12 of the Constitution and was not, therefore, amenable to writ jurisdiction. The Writ

Petitions were, accordingly, disposed of granting liberty to the petitioners to approach any other forum for redressal of their grievances, if so advised. It was also indicated that the time spent by the petitioners in prosecuting the proceedings before the High Court would be taken into consideration for the purpose of computing limitation in case the petitioner chose any such remedy where the question of limitation would be relevant.

In these Special Leave Petitions, at one stage, a question had arisen as to whether the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, would apply to the respondent No.1-Company after privatization and, in that context, we had requested the learned Solicitor General to assist us. Since then, however, a decision has been rendered by this Court in Civil Appeal No.1858 of 2007, where the said question in the context of Sections 47 and 2(k) of the Act relating to "establishments" has been answered on the finding that Section 47 would not apply to establishments which do not come under the definition of "establishment" in Section 2(k). Accordingly, we are not going into this aspect any further.

However, what is still required to be considered is whether the petitioner would be entitled to any further

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remedy under the aforesaid Act such as under Sections 62 and 63.

In view of the liberty granted by the High Court to approach any other forum, if so advised, and since we are not adjudicating the question as to whether the said Act applies to the petitioner or not, we make it clear that the petitioner may apply before the authorities under the Act or before the Civil Court where the said question can be gone into in accordance with law.

The Special Leave Petitions are disposed of with the
aforesaid observations.

(Ganga Thakur)
P.S. to Registrar

(Juginder Kaur)
Court Master