

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No. 104 of 2023

1. Sri Subhasish Debnath, S/O- Sri Gobinda Ch. Debnath, R/O - Vill- Kumaria Kucha, P.O- Bagmara, P.S- Melaghar, Dist- Sepahijala Tripura, Pin-799103, Age - 39 years.
2. Sri Bapi Sarkar, S/O- Lt. Rabindra Sarkar, R/O- Vill + P.O- Kamrangatali, P.S- Melaghar, Dist- Sepahijala Tripura, Pin- 799105, Age -44 years.
3. Sri Mrinal Kanti Das, S/O- Lt. Nabendra Ch. Das, R/O- Vill- and P.O- Khash Chowmuhani, P.S- Melaghar, Dist- Sepahijala Tripura, Pin- 799115, Age - 42 years.
4. Maniru Jjaman, S/O- Lt. Ismail Miah, R/O- Tamsabari, Ward No. 8, Sonamura Nagar Panchayat, P.O- Sonamura, P.S- Sonamura, Dist- Sepahijala Tripura, Pin-799131, Age 40 years.
5. Sri Mrinal Kanti Deb, S/O- Lt. Manoranjan Deb, R/O- Santanagar, Siddhi Ashram, P.O- Siddhi Ashram, P.S- Amtali, Dist- West Tripura, Pin-799003, Age - 47 years.
6. Sri Pradyut Bhowmik, S/O- Lt. Prabodh Bhowmik, R/O- Vill and P.O - Urmai, P.S- Sonamura, Dist- Sepahijala Tripura, Pin-799115, Age - 40 years.
7. Sri Sankar Das, S/O- Sri Dhananjoy Das, R/O- Vill -Padma Dhepa, P.O and P.S- Melaghar, Dist- Sepahijala Tripura, Pin- 799115, Age- 41 years.
8. Smt. Shikha Das, W/O -Sri Pankaj Sarkar, R/O- Ramkrishna Pally, Near Tripura University, P.O- Tripura University, P.S- Amtali, Dist - West Tripura, Pin- 799022, Age- 43 years.
9. Sri Dulal Chandra Das, S/O- Lt. Dwarika Mohan Das, R/O - Vill and P.O- Bagabasa, P.S- Melaghar, Dist - Sepahijala Tripura, Pin-799115, Age - 49 years.

.....*Petitioner(s)*

_V_E_R_S_U_S_

1. The State of Tripura, Represented by its Principal Secretary, School Education Department, Government of Tripura, New Secretariat Complex, P.O -Secretariat, P.S- New Capital Complex, District -West Tripura, Pin- 799006.
2. The Director of Secondary Education, Directorate of Secondary Education School Education Department ,Government of Tripura, P.O -Agartala, P.S- West Agartala, District -West Tripura, Pin 799001.
3. The Principal Secretary, Finance Department, Government of Tripura, P.O -Kunjaban, P.S - New Capital Complex, District-West Tripura, Pin- 799006.

.....*Respondent(s)*

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE (ACTING)

For Petitioner(s)	:	Mr. A. Bhowmik, Advocate. Mr. S. Dey, Advocate.
For Respondent(s)	:	Mr. D. Bhattacharjee, G.A. Mr. S. Saha, Advocate.
Whether fit for reporting	:	YES

Judgment and order dated 04.04.2023

JUDGMENT & ORDER

Heard Mr. A. Bhowmik, learned counsel assisted by Mr.S. Dey, learned counsel appearing for the petitioners. Also heard Mr. D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the respondents.

[2] This present petition has been filed under Article-226 of the Constitution of India seeking a writ of mandamus directing the respondents to grant one advance increment in favour of the petitioners under Rule-13(1) (ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009. Further for setting aside the memorandum dated 6th July, 2011 issued by the Finance Department, Government of Tripura whereby a decision has been taken to provide lumpsum benefit to the teachers who obtained B.Ed. training prior to entry into the service.

[3] The petitioners have prayed for the following reliefs:

“i. Issue notice upon the respondents.

ii. Call for the records.

iii. Issue rule calling upon the respondents to show causes as to why the petitioners shall not be given the benefit of one increment as per Rule-13(1)(ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009.

AND

Issue rule calling upon the respondents to show cause as to why the increment under Rule-13(1) of rules of 2009 shall not be counted in the present service of the petitioners and further direction to re-fix the pay of the petitioners and grant arrears accordingly shall not be issued.

AND

Issue rule calling upon the respondents to show cause as to why the memorandum dated 6th July, 2011 issued by the Finance Department, Government of Tripura shall not be set aside and quashed.

AND

Issue rule calling upon the respondents to show cause as to why the petitioners shall not be granted all financial benefits as per the judgment and order dated 19th March, 2021 passed in W.P(C) No.703/2019 by this Hon'ble High Court as upheld by this Ld. Division Bench in W.A. No. 207/2021 as well as the judgment and order dated 23.11.2022 passed in W.P. (C) No.469/2021.

iv. And after hearing the parties, be pleased to make the rule absolute.”

[4] The brief fact which falls for considering in this writ petition is that the petitioners have sought for one increment for the B.Ed training undergone by the petitioners prior to entry into the service as per Rule-13(1) (ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009. The petitioners further sought a writ of certiorari for setting aside the memorandum dated 6th July, 2011 issued by the Finance Department, Government of Tripura whereby a decision has been taken to provide lumpsum benefit as training incentive in lieu of increment as provided under Rule-13(1) (ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009.

[5] The petitioners further raised demands regarding violation of Rule-13(1) (ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009. All the petitioners entered into service in the year 2010 either as Graduate Teacher or Post Graduate Teacher and their appointment was set aside by this Court in Tanmay Nath's case which was upheld by the Hon'ble Apex Court. However, in paragraph-125 of Tanmay Nath's case this Court had provided that if the appointee whose appointment are set aside and again selected, they shall be entitled to past service counted for all purpose viz. seniority, pension, pay protection etc. The petitioners accordingly participated in the fresh selection process and got selected either in the same post.

[6] Upon joining in the new post, the petitioners were denied the benefits of past service and accordingly, the petitioners filed writ petition before this Court and subsequently, the Court directed that for cases where the appointee has been appointed in the same post the past service has been

counted for all purposes like seniority, pension, pay protection, leave at credit, declared benefit etc. Thus, all the petitioners have got the benefit of past service for the purpose of pay protection which is pivotal to the adjudication of the present petition.

[7] Mr. A. Bhowmik, learned counsel appearing petitioners has submitted that the petitioners entered into service in the year 2010 either as Graduate Teacher or Post Graduate Teacher and their appointment was set aside by this Court in Tanmay Nath's case which was upheld by the Hon'ble Apex Court. However, in paragraph No.125 the High Court had provided that if the appointee whose appointment are set aside and again selected, they shall be entitled to past service counted for all purpose viz. seniority, pension, pay protection etc.

[8] The petitioners accordingly, participated in the fresh selection process and got selected either in the same. Upon joining in the new post, the petitioners were denied the benefits of past service and accordingly the petitioners filed writ petition before this Court and the Court directed that in cases where the appointee has been appointed in the same post the past service has been counted for all purpose like seniority, pension, pay protection, leave at credit, declared benefit etc.

[9] Thus, all the petitioners have got the benefit of past service for the purpose of pay protection which is pivotal to the adjudication of the present case. He has further submitted that all the petitioners completed their B.Ed prior to entry into service and as such the petitioners craves leave of this Court to highlight Rule-13(1) (ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009 which provides that those teachers who had obtained B.Ed./UGBT before entry into service and have not got any other form of training incentive shall be provided with one increment in the pre-revised scale as incentive on 01.01.2006 or from the date of coming over of this rule or from the date of his appointment whichever is later for the purpose of revision under the rules.

[10] Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has submitted that the Finance Department, Govt. of Tripura

issued a memorandum on 6th July, 2011 whereby it was provided that the fixed pay employees do not come under the purview of revision of pay rules and therefore the teachers who completed the B.Ed. prior to entry into service are entitled to lump-sum benefit and not the increment as provided under the rules. The said memorandum has the effect of stopping the operation of Rule-13(1) (ii) of the Tripura State Civil Services (Revised Pay) Rules, 2009.

[11] This Court after hearing the parties and having observed the factual aspects of the matter, without expressing any opinion on merit, is of the view that before come to a definite conclusion, it would be apposite to discuss about the settled principles of law as laid down by the Constitution of India to decide a writ filed under Article-226.

[12] In Tripura even without there being any impugned order or any cause of action, writ petitions are filed under Article-226 of the Constitution of India. Mandamus cannot be issued unless there is any impugned order or impugned action is challenged. Since, these writ petitions are filed without challenging any action or any order, directive of mandamus cannot be issued. Accordingly, the present writ petition is disposed of. Considering the cases of the petitioners that they may be retired employees, teachers, or being aggrieved by any kind of arbitrary action of the competent authorities, according to the Constitution of India, there are certain principles to be followed.

[13] Powers of High Courts to issue certain writs:

(1) Notwithstanding anything in Article-32....every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement any of the rights conferred by Part-III and for any other purpose].

(2) The power conferred by Clause-(1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause(1) without:

(a) Furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) Giving such party an opportunity of being heard,

Makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by Clause-(2) of Article-32.

[14] Alternative remedy:

It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but there can be no reason why the High Court should entertain a petition filed under Article-226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and that the particular legislation contains a detailed mechanism for redressal of his grievance. In the case of United Bank of India vs. Satyawati Tondon reported in (2010) 8 SCC 110, wherein the Court held thus:

“For few years, the new dispensation worked well and the officers appointed to man the Tribunals worked with great zeal for ensuring that cases involving recovery of the dues of banks and financial institutions are decided expeditiously. However, with the passage of time, the proceedings before the Tribunals became synonymous with those of the regular Courts and the lawyers representing the borrowers and defaulters used every possible mechanism and dilatory tactics to impede the expeditious adjudication of such cases. The flawed appointment procedure adopted by the Government greatly contributed to the malaise of delay in disposal of the cases instituted before the Tribunals.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for

any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antanim Zila Parishad* AIR 1969 SC 556, *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai* (1998) 8 SCC 1 and *Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others* (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

19. In *Thansingh Nathmal v. Superintendent of Taxes* (1964) 6 SCR 654, the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article-226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

"The jurisdiction of the High Court under Article-226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self- imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article-226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal

against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article-226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

20. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 2 SCC 433, a three-Judge Bench considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the Central Sales Tax Act, 1956 and corresponding law enacted by the State legislature and answered the same in negative by making the following observations:

"Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. . . the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd.* and *Secretary of State v. Mask & Co.* It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

21. The views expressed in *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (supra) were echoed in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others* (1985) 1 SCC 260 in the following words:

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

22. In *Punjab National Bank v. O.C. Krishnan and others* (2001) 6 SCC 569, this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed:

"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

Breach of concomitant fundamental right is a breach of fundamental rights and gives aggrieved person the right to approach the Supreme Court directly under Article-32.

[16] **Role of High Courts:**

The wide powers under Article-226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties, Role of High Courts as sentinels and as guardians of equal rights protection should not be forgotten.

[17] **Certiorari:**

The supervision of the High Court exercised through writs of certiorari goes on two points. One is the area of jurisdiction and the qualifications and conditions of its exercise, the other is the observance of law in the course of its exercise. A writ of certiorari will not issue as a cloak of an appeal in disguise. It does not lie to bring up an order or decision for rehearing. Such writs are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice.

Whenever a public officer or government has done some act which violates the fundamental right of a person, the Court would issue a writ of mandamus, restraining the public officer or government from enforcing that order or doing that act against the person whose fundamental right has been violated. In the present case, there is no cause of action challenged or impugned order to issue directives under mandamus. The primary scope and function of mandamus is to "command" and "execute" rather than to "enquire" and "adjudicate". It cannot be issued to change the decision of a body so as to suit the petitioner. Obligations which are not of a statutory nature cannot be enforced by mandamus.

[18] According to the *Black's law dictionary* "A Writ issued by a court to compel performance of a particular act by lower court or governmental officer or body, to correct a prior action or failure to act." In other words, it's a writ of command that compels someone to perform a statutory duty that he/she is obligated to do. The High Court has been conferred power by the Article-226 of the Constitution for the enforcement of fundamental rights under Part III of the Constitution. Under Article-226 of the Constitution, writ is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted.

[19] Mandamus is a high prerogative writ of a most extensive remedial nature. In form, it is a command issued by High Courts and addressed to any person, corporation, or inferior court of judicature requiring them to do something therein specified, which appertains to their office, and which the court holds to be consonant to right and justice. It is used principally for public purposes, and to enforce the performance of public duties. It enforces, however, some private rights when they are withheld by public officers. Hence, a Writ of Mandamus has been granted as a measure to check the power of the executive. The Supreme Court and High Courts through their orders strive towards ensuring that the writs act as a tool of judicial constraint to actions of the authorities that are unfair, unreasonable and against the interest of the general public. For purpose of reference, the true meaning of mandamus and maintainability may be reproduced hereinbelow:

“Mandamus for appointment, cannot be issued in case a person has wrongly not been considered for/has been wrongly denied appointment, since there is no fundamental right to appointment but only a right to be fairly considered for appointment.”

Maintainability:

An aided educational institution like government institution discharge public function by way of imparting education to students and therefore they are amenable to the writ jurisdiction under Article-226.

Maintainability of writ petition:

Writ petition challenging termination order passed by Managing Committee of private school, not maintainable since Managing Committee of private school is not “State” within meaning of Article-12.

[20] The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of

Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.

[21] When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

[22] Now, since there is no cause of action, question of setting aside or declaring any action as illegal and further issuing a direction does not arise. There is no impugned action challenged to issue mandamus. Accordingly, the writ petition fails in the test of mandamus.

[23] Certiorari is a corrective writ which gives special emphasis on correcting various errors in record. The meaning of certiorari is “to be informed” or “to be certified”. It is basically issued by the Supreme Court and high court to lower courts for transferring cases. In contrast to writ of prohibition which is only by nature preventive certiorari basically implies a writ which is both curative and preventive. The Supreme Court along with the high court has the power to issue writ of certiorari against inferior or lower courts for not maintaining rights of individuals in the constitution. Article 32 and article 226 deals with certiorari in the constitution of India. Since, in the present case there is no certified copy of any impugned order or action, this petition fails in the test of certiorari too.

[24] In any case, the hierarchy in our legal framework mandates that a legislative enactment cannot curtail a Constitutional right. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article-226 of the Constitution of India is a basic feature of the Constitution and cannot be curtailed by parliamentary

legislation. It is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

[25] In view of above analysis, this Court is of the considered opinion that no writ petition is maintainable to ascertain the civil rights and liabilities of parties that too on the basis of disputed facts. Thus, it is not for this Court to decide the matter when alternative mechanisms are available to the petitioner and in the factum of existence of the aforesaid alternative dispute redressal mechanism. As such, without expressing any opinion on the merits, this Court is of the considered opinion that ends of justice would be met if the writ petition is disposed of directing the petitioners to represent their case along with all relevant documents before the concerned respondent and thereafter, the respondents shall decide the matter following the due process of with law within a period of three months, after receipt of the representation of the petitioners. In the light of the above, the present writ petition stands disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A.Ghash

