

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.15522 OF 2011

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order of punishment of compulsory retirement inflicted by the 1st respondent vide Lr.No.1603/20/V/T-1043/1818, dated 14.01.2011, while treating the period of suspension from 02.12.2009 as not on duty as confirmed by the 2nd respondent vide Lr.No.660/20/V/T-1043/1498, dated 31.03.2011.

2. Heard Sri P.V.Ramana, learned counsel, appearing for the petitioner and Dr.K.Lakshmi Narasimha, learned counsel, appearing for the respondents, apart from perusing the material available before this Court.

3. According to the petitioner, he was initially appointed as a Security Guard on 10.04.1990 in Andhra Bank, Stone Pet Branch, Nellore and subsequently, on 20.11.2001, he got promotion as Clerk-cum-Cashier. On the complaint of the Life Insurance Corporation of India (LIC) Divisional Office, Nellore, dated 27.11.2009, saying that the deposits made by the LIC on different dates were not accounted for on the dates of deposits, a preliminary enquiry was conducted and a report was submitted on 01.12.2009 and the petitioner was kept under suspension on 02.12.2009. Thereafter, the 1st respondent issued a charge Memo, framing the following four charges on 12.02.2010:

1. *"You have failed to account for in the books of the Bank certain cash deposits remitted by LIC of India for the purpose of crediting to their Current Account on different dates during the year 2009, on the date of deposit.*
2. *You have failed to account for in the books of the Bank, on the same date, an amount of Rs.8,53,067.30/- deposited by LIC of India on*

02.11.2009 to the credit of their account.

3. *As against cash amounting to Rs.2,19,500/- deposited by M/s.Harinath Agencies to the credit of their OCC A/c.No.033613046000425 on 02.11.2009, you have accounted for Rs.10,72,500/- to their account.*
4. *As against Rs.1,48,028.20/- deposited by LIC of India to the credit of their Current Account on 04.11.2009, you have accounted for Rs.1,18,020.20/- only on that date, thereby misappropriated the balance amount.”*

4. In response to the said charge Memo and the charges contained therein, petitioner herein submitted explanation on 03.03.2010 and an enquiry officer, to hold regular enquiry, was appointed on 15.03.2010 and the petitioner herein submitted written brief and the enquiry officer submitted his report dated 29.09.2010. Thereafter, the petitioner submitted his objections on 16.10.2010. Subsequently, notice of provisional conclusion was issued on 30.10.2010 and responding to the same, petitioner submitted objections on 04.01.2011. On 14.01.2011, the

1st respondent passed an order, inflicting the punishment of compulsory retirement from service. Questioning the said order of punishment, petitioner herein carried the matter in Appeal before the 2nd respondent on 28.02.2011 and the 2nd respondent – Appellate Authority dismissed the said Appeal by way of an order dated 31.03.2011.

5. Calling in question, the validity and legal sustainability of the said orders passed by the Disciplinary and Appellate Authorities, the present writ petition came to be filed. This Court on 09.06.2011 issued ‘Rule Nisi’.

6. Submissions/Contentions of the learned counsel for the petitioner:

1. The orders under challenge are illegal, arbitrary,

unreasonable and violative of Articles 14 and 311(2) of the Constitution of India.

2. The findings recorded and the conclusions arrived at by the respondents are patently perverse and contrary to the material available on record.
3. Neither the person who made the complaint nor the persons who claim to have remitted the amounts were examined, which is fatal to the case of the respondents.
4. Nobody was examined from the LIC to prove the contents of the documents on which the respondents placed reliance.
5. The subject transactions covered by the charge sheet were verified by two superior officers and the said officers were neither examined during the course of enquiry nor the respondents initiated departmental proceedings against them.
6. Without there being any proof of the transactions by examining the LIC officials, Enquiry Officer held the charges as proved arbitrarily.
7. No original documents were filed and the enquiry went on based on the Photostat Copies, though the petitioner raised objections before the Appellate Authority.

7. To bolster his submissions and contentions, learned counsel for the petitioner places reliance on the following judgments:

1. Decision of the Hon'ble Apex Court in ***Commissioner of Police, Delhi Vs. Jai Bhagwan***^[1].
2. Decision of the Hon'ble Apex Court in ***Life Insurance Corporation of India and Another Vs. Ram Pal Singh Bisen***^[2].
3. Decision of the Hon'ble Apex Court in ***Roop Singh Negi Vs. Punjab National Bank and Others***^[3].
4. Decision of the Hon'ble Apex Court in ***The State of Punjab Vs. Dewan Chuni Lal***^[4].
5. Decision of the Hon'ble Apex Court in ***M.V.Bijlani Vs. Union of India and Others***^[5].
6. Decision of the Hon'ble Apex Court in ***Nirmala J. Jhala Vs. State of Gujarat and Another***^[6].
7. Decision of the Hon'ble Apex Court in ***Whirlpool***

Corporation Vs. Registrar of Trade Marks, Mumbai and others^[7].

8. Decision of the Division Bench of this Court in **K.Peda Venkataiah and others Vs. Government of Andhra Pradesh and others**^[8].

9. Decision of this Court in **Mir Sabir Ali Vs. Commissioner of Police, Hyderabad**^[9].

8. Submissions and contentions of the learned counsel for the respondents:

1. There is no illegality nor there is any procedural infirmity in the impugned orders, as such, the Writ Petition is not maintainable nor the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India.
2. Writ Petition is not maintainable in view of availability of alternative remedy of raising dispute before the Labour Court.
3. Factual issues pointed out by the petitioner cannot be enquired into under Article 226 of the Constitution of India and re-appreciation of evidence is impermissible.
4. Non-mentioning of dates on the pay slips speaks volumes with regard to conduct of the petitioner.
5. Since it is a financial irregularity, no interference is warranted.

9. In support of his submissions/contentions, learned counsel for the respondents places reliance on the following judgments:

1. Decision of the Hon'ble Apex Court in **Principal Secretary, Government of A.P. and another Vs. M.Adinarayana**^[10].
2. Decision of the Hon'ble Apex Court in **P.D.Agrawal Vs. State Bank of India and Others**^[11].
3. Decision of the Hon'ble Apex Court in **A.P.Foods Vs. S.Samuel and others**^[12].
4. Decision of the Hon'ble Apex Court in **Coimbatore District Central Cooperative Bank Vs. Coimbatore District Central Cooperative Bank Employees**

Association and another ^[13].

5. Decision of the Hon'ble Apex Court in ***West Bokaro***

Colliery (TISCO LTD.) Vs. Ram Pravesh Singh ^[14].

6. Decision of the Hon'ble Apex Court in ***Union of India***

and others Vs. Bishamber Das Dogra ^[15].

7. Decision of the Hon'ble Apex Court in ***Satwati Deswal***

Vs. State of Haryana and others ^[16].

8. Decision of the Hon'ble Apex Court in ***Raj Kumar***

Shivhare Vs. Assistant Director, Directorate of

Enforcement and another ^[17].

10. In the above backdrop, now the issues, which this Court is called upon to consider and answer are:

1. Whether the present writ petition is liable to be dismissed on the ground of availability of alternative remedy?
2. Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

Issue No. 1:

11. In the direction of sustaining maintainability of the writ petition, without availing the alternative remedy by raising industrial dispute, the learned counsel for the petitioner contends vehemently that since this Court admitted the writ petition as long back as on 09.06.2011 and the respondents herein completely violated the principles of natural justice and as the entire proceedings went on contrary to law, the request of the petitioner for the relief in the writ petition cannot be denied on the ground of availability of alternative remedy. In support of the said submissions, the learned counsel for the petitioner pressed into service the following judgments:

1. In ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others (7 supra)***, the Hon'ble Apex Court, at Paragraphs 14 and 15, held as follows:

"14. The power to issue prerogative writs under Article

226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decision of the evolutionary era of the constitutional law as they still hold the filed.”

2. In **K.Peda Venkataiah and others Vs. Government of Andhra Pradesh and others (8 supra)**, Division Bench of this Court, at Paragraphs 26, 27 and 28, held as follows:

“26. In the similar manner, the existence of a statutory remedy shall have no application in a case where the impugned order is a void one.

27. It is a true and very well established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court under Article 226 of the Constitution of India. Ordinarily, an award made under Section 11 of the Act after making enquiry under Section 9 of the Act determining (a) the true area of the land; (b) the compensation which should be allowed for the land; and (c) the apportionment of the said compensation among all the persons known or believed to be

interested in the land, may not be interfered with by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India since the aggrieved persons have an alternative and effective remedy under Section 18 of the Act by way of a reference to competent Court of civil jurisdiction, where objections, be it to the measurement of the land, amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested etc., can be raised and decided. This Court cannot elect to decide for itself the said questions in a proceeding under Article 226 of the Constitution of India. Adequacy or otherwise of the compensation cannot be gone into by this Court in a judicial review proceeding. Nor this Court can undertake to decide what is the true area of the land and as to what would be the market value of the acquired land.

28. *But the case on hand is a case where an award has been passed in utter disregard to the mandatory provisions of the Act. The crucial date for assessing the market value of the land is the date of publication of notification under Section 4, sub-section (1) of the Act. This mandatory requirement has been given a total go-by while actually awarding compensation to the appellants.”*

3. In ***Mir Sabir Ali Vs. Commissioner of Police, Hyderabad, (9 supra)***, this Court, at Paragraph Nos. 12 and 13, held as follows:

“12. *The availability of alternative remedy to a citizen does not debar this Court from exercising the discretion under Article 226 of the Constitution of India in appropriate cases. In this connection, it is useful to refer to the latest ruling of the Apex Court in Whirlpool Corporationi Vs. Registrar of Trade Marks, Mumbai, wherein their Lordships have held:*

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available the High Court would not normally exercise its jurisdiction. But the alternative

remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires an Act is challenged.”

13. *The Hon’ble Supreme Court referred to five Judgments of the Supreme Court rendered during the evolutionary era of the Constitutional law and in paragraph 20 held as under:*

“Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

In this context a question would arise as to whether an order passed by an authority without reasons amounts to violation of principles of natural justice. The doctrine of fairness which is slowly coming to be recognised as the only ground of judicial review, contemplates that every person whose rights are affected should be treated fairly, in that he should be supplied with reasons for the decision which affects his rights. A decision supported by reasons is part of doctrine of fairness and treatment with fairness is part of principle of natural justice. Therefore, if a decision culminating in an order is not supported by reasons, the same would be violating the principles of natural justice. In S.N.Mukherjee’s case, the Hon’ble Supreme Court dealt with this aspect of the matter and held:

“The object underlying the rules of natural justice ‘is to prevent miscarriage of justice’ and secure ‘fair play in action’. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by

excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority”.

Therefore, the impugned order passed by the respondent is in violation of the principles of natural justice. When the principles of natural justice are violated, the availability of alternative remedy is no bar for the exercise of this Court’s jurisdiction under Article 226 of the Constitution of India. Further as seen, Section 14(3) of the Act mandates that the licencing authority shall record the reasons while rejecting the application for arms and such reasons are to be furnished to the applicant on demand. As both these are absent, the impugned order is vitiated by illegality as well as by violation of principles of natural justice. Therefore, this writ petition is disposed of with a direction to the respondent to consider the application of the petitioner for grant of arms licence and pass appropriate orders keeping in view the observations made herein-above.

The Writ Petition is disposed of accordingly. No costs.”

12. On the aspect of the maintainability, it is the categorical submission of the learned counsel for the respondents that in view of various factual controversies pointed out by the learned counsel for the petitioner, the appropriate remedy for the petitioner is to raise an industrial dispute before competent Labour Court and the complex and complicated questions of facts and controversies in the present writ petition cannot be enquired into under Article 226 of the Constitution of India. In support of the said submissions, the learned counsel for the respondent pressed into service the following judgments:

1. In **A.P.Foods Vs. S.Samuel and Others (12 supra)**, the Hon'ble Apex Court, at Paragraphs 3, 6, 8, 10 and 13, held as follows:

"3. Learned counsel for the appellant submitted that on a combined reading of Sections 20, 22 and 32(v)(c) of the Act, the inevitable conclusion is that the writ petition should not have been entertained. Further Section 22 clearly stipulates that the dispute raised is an industrial dispute under the Industrial Disputes Act, 1947 (in short the 'ID Act'). Since disputed questions of fact were involved, the writ petition should not have been entertained.

6. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution of India, 1950 (in short 'the Constitution') should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

8. In Rajasthan SRTC case (Supra) it was observed as follows:

"A speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedure followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are

extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them”.

10. The inevitable conclusion, therefore, is that both learned Single Judge and the Division Bench have failed to consider the basic issues. In the normal course we would have left it to the respondent to avail appropriate remedy under the Act.

13. As disputed questions of fact were involved, and alternative remedy is available under the ID Act, the High Court should not have entertained the writ petition, and should have directed the writ-petitioners to avail the statutory remedy.”

2. In **Satwati Deswal Vs. State of Haryana and others (16 supra)**, the Hon'ble Apex Court, at Paragraphs 4 and 5, held as follows:

“4. Admittedly, in this case, no show-cause notice was issued to her nor the order of termination was passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.

5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if

*there had been a violation of a principle of natural justice;
or where vires of the act were in question.”*

3. In ***Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another (17 supra)***, the Hon’ble Apex Court, at Paragraphs 17 and 35, held as follows:

“17. A reading of Section 35 makes it clear that jurisdiction has been clearly conferred on the High Court to entertain an appeal within 60 days from “any decision or order of the appellate authority”. But such appeal has to be on a question of law. The proviso empowers the High Court to entertain such an appeal after 60 days provided the High Court is satisfied that the appellant was prevented by sufficient cause from appealing earlier.

35. In this case, liability of the appellant is not created under any common law principle but, it is clearly a statutory liability and for which the statutory remedy is an appeal under Section 35 of FEMA, subject to the limitations contained therein. A writ petition in the facts of this case is therefore clearly not maintainable.”

13. In the above background, the issue relating to maintainability of the writ petition is required to be examined in the light of the principles and parameters laid down in the above referred judgments.

14. As evident from the pleadings of the parties and submissions of the learned advocates, a number of factual aspects and controversies have been pointed out. In order to find out the realities, thorough and microscopic appreciation and consideration and examination of various documents and the contents of the same are required to be verified and undertaken.

15. There is absolutely no dispute on the legal proposition sought to be pressed into service by the learned counsel for the petitioner in the above referred judgments, in certain circumstances, despite availability of alternative remedy. But, in the considered opinion of this Court, a thorough factual verification and appreciation of evidence placed on record cannot be undertaken by this Court under Article 226

of the Constitution of India and it is equally not safe from the point of view of the petitioners as well as the respondents. Therefore, this Court is of the definite view that the petitioner can be relegated to avail the alternative remedy of raising dispute before appropriate tribunal under the Industrial Disputes Act.

Issue No.2:

16. In view of findings on Issue No.1, no finding on Issue No.2 is necessary.

17. For the aforesaid reasons, Writ Petition is dismissed, however, with a liberty to the petitioner to approach competent Industrial Tribunal under the provisions of Industrial Dispute Act, for redressal of his grievance and it is also made clear that if any such dispute is raised, the Tribunal shall make an endeavour to dispose of the same in expeditious manner, since the petitioner is out of his employment since 2009.

18. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

15.06.2016

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[\[1\]](#) (2011) 6 SCC 376

[\[2\]](#) (2010) 4 SCC 491

[\[3\]](#) (2009) 2 SCC 570

[\[4\]](#) AIR 1970 SC 2086

[\[5\]](#) (2006) 5 SCC 88

[\[6\]](#) (2013) 4 SCC 301

[\[7\]](#) (1998) 8 SCC 1

[\[8\]](#) 2004 (3) ALT 78 (D.B.)

[\[9\]](#) 1994 (4) ALT 32.

[\[10\]](#) (2004) 12 SCC 579

[\[11\]](#) (2006) 8 SCC 776

[\[12\]](#) (2006) 5 SCC 469

[\[13\]](#) (2007) 4 SCC 669

[\[14\]](#) (2008) 3 SCC 729

[\[15\]](#) (2009) 13 SCC 102

[\[16\]](#) (2010) 1 SCC 126

[\[17\]](#) (2010) 4 SCC 772