

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20207 of 2015

Date of Decision:- 01.09.2016.

Ravinder Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. A.S. Ahluwalia, Advocate for the petitioners.

Mr. Keshav Gupta, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioners have questioned the communication dated 28.7.2015 (Annexure P-8). It is an appealable order under Section 11 of the Trade Unions Act, 1926. The petitioners have not exhausted remedy of appeal only on the contention that Annexure P-8 dated 28.7.2015 is illegal order. It was further contended that if an order is illegal under Article 226 of the Constitution of India, the Court can interfere. In support of the above contention, learned counsel for the petitioner relied on two decisions (i) Andhra Pradesh High Court reported in **1997(1) LLJ 448 (Tirumala Tirupati Devasthanam Vs. Commissioner of Labour, Andhra Pradesh)** and (ii) Supreme Court decision reported in **2004 (1) LLJ 197 (Bokajan Cement Corporation Employees' Union and Cement Corporation of India Ltd.)**.

exhausting remedy of appeal, petitioners have rushed to this Court. When there is an alternative remedy of appeal they should have exhausted the remedy. Under Article 226 of the Constitution of India, High Court can interfere only if the order is *void ab initio* or contrary to statutory provision. Whereas, contention of the petitioner is that order or communication dated 28.7.2015 vide Annexure P-8 is stated to be only illegal order.

3.) Heard learned counsel for the parties.

4.) Short question for consideration is whether under Article 226 of the Constitution of India, this Court can interfere with the communication/order appealable under a statutory provision or not. Time and again Supreme Court has held that an order, if it is appealable, Court can interfere only on the ground that if the order is *void ab initio* or the order is passed by an incompetent authority and if it is in violation of any statutory provision, in such circumstances only Court can interfere. Hon'ble the Supreme Court in the case of **State of Kerala and others Vs. M.K. Jose** reported in **(2015) 9 SCC 433** held as under:-

“14. In State of Bihar v. Jain Plastics and Chemicals Ltd., a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated: (SCC p.217, para 3)

“3. ...It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that

remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under [Article 226](#).”

In **Union of India s. Shri Kant Sharma (2015) 6 SCC 773,**

Hon'ble the Supreme Court held as under:-

“22. Judicial review under [Article 32](#) and [226](#) is a basic feature of the Constitution beyond the plea of amendability. While under [Article 32](#) of the Constitution a person has a right to move before Supreme Court by appropriate proceedings for enforcement of the rights conferred by Part III of the Constitution, no fundamental right can be claimed by any person to move before the High Court by appropriate proceedings under [Article 226](#) for enforcement of the rights conferred by the Constitution or Statute.

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36. The aforesaid decisions rendered by this Court can be summarised as follows:

(i) The power of judicial review vested in the High Court under [Article 226](#) is one of the basic essential features of the Constitution and any legislation including [Armed Forces Act, 2007](#) cannot override or curtail jurisdiction of the High Court under [Article 226](#) of the Constitution of India.(Refer: L. Chandra and S.N. Mukherjee).

(ii) The jurisdiction of the High Court under [Article 226](#) and this Court under [Article 32](#) though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of

the Acts and would exercise their jurisdiction consistent with the provisions of the Act.(Refer: Mafatlal Industries Ltd.).

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma).

(iv) The High Court will not entertain a petition under [Article 226](#) of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma).”

5.) In view of the above, the petition stands dismissed. This order will not come in the way of the petitioners to prefer an appeal in accordance with statutory provisions. If the appeal is filed by the petitioners, Appellate Authority is requested to consider such appeal in accordance with law at the earliest.

(P.B. BAJANTHRI)
JUDGE

September 01, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.