

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 793 of 2009

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Raj Kamal Gupta S/o Sri Suresh Prasad, R/o Mohalla – Lodikatarra, P.O. – Patna
City, P.S. – Khajekala, District – Patna.

.... Petitioner

Versus

1. The Union of India, through the Chairman, Railway Recruitment Board, Govt. of India, New Delhi.
2. The Chairman, Railway Recruitment Board, Patna.
3. The Assistant Secretary cum APIO Railway Recruitment Board, Patna.
4. Bihar School Examination Board (H.S.) Patna through its Chairman.
5. The Secretary, Bihar School Examination Board (H.S.), Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh
Mr. Mrityunjay Kumar
Mr. Shashi Bhushan Kumar
Mr. Alok Kumar Singh

For the Respondent/s : Mr. Bijay Kumar Sinha
Mr. Purnendu Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 09-05-2017

Heard Sri Rajeev Kumar Singh, learned counsel for the petitioner, Sri Bijay Kumar Sinha, learned counsel, who appears on behalf of respondent no. 1 to 3/Railway Recruitment Board and learned counsel for respondent/Bihar School Examination Board.

2. The petitioner has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India by filing the present writ petition in the month of January, 2009 for following reliefs:-

- (i) **To quash the letter no. 44/08 dated 14.09.2008 issued by Respondent No. 3 which has been communicated to the mother of petitioner under Right to Information Act, whereby and whereunder the candidature of petitioner for**



selection on the post of Health and Malaria Inspector in Indian Railways has not been found eligible on the ground that multipurpose health worker certificate given as vocational course by Bihar Intermediate Education Council, Patna, Now Bihar School Examination Board, Patna is not equivalent to one year diploma course in Health/Sanitary course.

- (ii) **For direction to the Respondents to consider the certificate of multipurpose health workers as vocational course given by Bihar Intermediate Education Council (hereinafter referred as the council) equivalent to one year diploma of Health/Sanitary Inspector and accordingly consider the candidature of petitioner as eligible for the post of Health/Sanitary Inspector and publish the result accordingly.**

3. In this case, for the first time, a counter affidavit was filed in the year 2011 on behalf of the respondent no. 1 to 3 and in paragraph – 3 and 4 of its counter affidavit, an objection was raised on the point of maintainability of the writ petition. It was pleaded that since the writ petition is related to the service matter in the Central Government Organisation i.e. Indian Railway, the original jurisdiction was available with the Central Administrative Tribunal, Patna Bench, Patna, in view of Section 14 and 28 of the Administrative Tribunal Act, 1985 (hereinafter referred to as ‘Act’).

4. Ofcourse, after filing of the counter affidavit, reply was filed and on number of dates, the case was argued. Finally, at the stage of admission itself, learned counsel for the respondent/Railway



has raised the said preliminary objection i.e. maintainability of the writ petition. According to Sri Bijay Kumar Sinha, learned counsel for the respondent/Railway, once as per statute i.e. Administrative Tribunal Act, 1985, special jurisdiction was created in the Central Administrative Tribunal to exercise powers of all the courts, except the power of Supreme Court, the petitioner, in the matter relating to recruitment in the Railway, was required to firstly approach the Central Administrative Tribunal, instead of approaching this Court and as such, a prayer was made to reject the writ petition on the ground of lack of jurisdiction of this Court.

5. Sri Rajeev Kumar Singh, learned counsel for the petitioner has firstly argued that after such belated stage, the respondents may not be allowed to raise preliminary objection on the point of maintainability of the writ petition. He submits that the petitioner had approached this Court in the year 2009 and the writ petition was taken up for hearing on the point of admission on number of dates and earlier, save and except raising objection in the counter affidavit, orally no objection was raised and as such, respondents are debarred from raising such preliminary objection. Sri Singh has argued that even in case of alternative remedy, this Court is well competent to entertain the writ petition. He has specifically relied on a judgment of this Court, reported in **1999 (1) PLJR 309 (D.B.) (Tata**



Iron & Steel Co. Ltd. vs. The State of Bihar & Ors). He has placed paragraph – 13 to 15 of the judgment, which are quoted hereinbelow:-

“13. Learned Counsel for the respondent submitted that since the matter is kept open vide order dated 20.11.80, therefore, still the petitioner may be asked to resort to the statutory remedy under the Act available to it and in support of his submission strongly relied upon the decisions in the cases of *Titaghur Paper Mills Co. Ltd. vs. State of Orissa: AIR 1983 S.C. 603*, *Tata Iron and Steel Co. Ltd. vs. State of Bihar and others: 1986 P.L.J.R. 477* and *H.B. Gandhi vs. M/s Gopinath and Sons and another : 1992 (Suppl.) 2 S.C.C., 312*, and contended that both the petitions are liable to be dismissed.

14. However, equally strong reliance has also been placed on behalf of the petitioner on a decision in the case of *L. Hirday Narain vs. Income-Tax Officer, Bareilly : AIR 1971 S.C., 33*. After the admission of the writ petition, the petitioner cannot be relegated to avail the alternative remedy. We have already observed that though the matter is kept pending for 18 years but yet the petitions have not been admitted. Thus *L. Hirday Narain* case (supra), does not help the petitioner. However, this is not all. Recently in *Commissioner of Income Tax, Lucknow vs. U.P. Forest Corporation, (1998) 3 S.C.C. 530*, the Apex Court has held that where alternative remedy is available and the same is not exhausted, the writ petition is liable to be thrown out on this ground alone. But if the matter is kept pending since long and at the very threshold the petition was not disposed of, this ground is not available and instead of resorting the principle of exhaustion of alternative remedy the writ petition requires to be disposed of on merits.

15. This being so, no doubt the petitions could have been thrown out at the very threshold but since the matter has been kept pending for the last 18 years, it will not be proper in the interest of justice to dismiss the petitions on the ground of non-exhaustion of alternative remedy.”

6. He has further relied on 2007 (4) PLJR 674 (D.B.)

(*M/s Bachan Traders vs. The State of Bihar & Ors.*). He has placed



reliance on paragraph – 7, which is quoted hereinbelow:-

“7. Another ground taken for review is that it has wrongly been held by the Division Bench that petitioner did not raise objection relating to jurisdiction before respondent no. 4, as such, he has waived his right to raise the question of jurisdiction subsequently. Petitioner's stand is that so far the question relating to not raising question before respondent no. 4 is concerned, it has no bearing, as at that time the matter was pending before High Court and an order of stay was persisting in favour of the petitioner. I find that this also can not be a ground for review of the order passed by the Division Bench. It is well settled that question of jurisdiction should be raised at the first instance, in case it is not raised it amounts waiver.”

7. Besides aforesaid cases, he has placed reliance on **2000 (4) PLJR 199 (Bhagwan Singh vs. Heavy Engineering Corporation Ltd. & Ors.)** as also on **1998 (2) PLJR 148 (D.B.) (Tis Fab Limited vs. State of Bihar and Others)**. He also referred to a judgment of the Apex Court, reported in **(2014) 9 Supreme Court Cases 329 (Nawal Kishore Sharma vs. Union of India)**. He has specifically referred to paragraph – 18, which is quoted hereinbelow:-

“18. Apart from that, from the counter affidavit of the Respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the respondents appeared and participated in the proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.9.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs. 2.75 lakhs, which shall be subject to the result of the writ petition. Pursuant to the interim order, the respondent Shipping Corporation of India remitted Rs. 2,67,270/- (after deduction of income tax) to the bank account of the appellant. However, when the writ petition was taken up for



hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.”

8. In reply, Sri Bijay Kumar Sinha, learned counsel for the respondent no. 1 to 3 has placed reliance on **(1995) 1 Supreme Court Cases 21 (U.P. Jal Nigam and Anr. Vs. Nareshwar Sahai Mathur and Anr.), 2000 (4) PLJR 834 (D.B.) (The Indian Lac Research Institute & Anr. Vs. Smt. Nazma Bano & Ors.) and 2000 (2) PLJR 295 (D.B.) (ALCATEL Modi Network System Limited vs. The State of Bihar and Ors.)**. Referring to the case of **Indian Lac Research Institute’s (*supra*)**, it has been argued by Sri Bijay Kumar Sinha that the matter relating to filing petition before Central Administrative Tribunal was examined in detail and relying on a judgment of the Apex Court, reported in **1997 (3) SCC 261 (L. Chandra Kumar vs. Union of India and others)**, the Division Bench has categorically held that if the petitioner was having remedy to approach the Central Administrative Tribunal, he, at the first instance, was required to approach there and only thereafter, if being aggrieved with the order of the Central Administrative Tribunal, there was remedy available to the party to approach before this Court for its judicial review under Article 226 and 227 of the Constitution of India. He submits that the petitioner in the present writ petition, in sum and substance, has claimed his selection/recruitment in the Indian Railway



and as such, the matter was covered under Section 14 of the Act and as such, directly he was not required to approach this Court by filing the present writ petition. While replying to the question that whether at much belated stage, such point can be raised or not, he has placed reliance on **ALCATEL Modi Network System Limited's case** (*supra*) and submits that in the said writ petition, the case was admitted and at the stage of hearing, the Division Bench had held that on the point of jurisdiction, a writ petition may not be entertained, even after admission of the writ petition. He submits that the Division Bench had said that the point of jurisdiction can be raised at any stage.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Before delving further, the Court proposes to incorporate Section – 14 of the Administrative Tribunal Act, 1985 which is as follows:-

14. Jurisdiction, Powers and authority of the Central Administrative Tribunal. - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court ⁴⁶[*] in relation to-**

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or



(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation⁴⁷ [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation⁴⁷ [or society] or other body, at the disposal of the Central Government for such appointment.

⁴⁸[Explanation.-For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations⁴⁹ [or societies] owned or controlled by Government, not being a local or other authority or corporation⁴⁹ [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other



authorities or corporations ⁴⁹[or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation ⁴⁹ [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all Courts (except the Supreme Court ⁵⁰ [*]) in relation to-**

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation ⁴⁹[or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation ⁴⁹[or society] and pertaining to the service of such person in connection with such affairs.

10. In view of aforesaid proposition, it is evident that in case of recruitment in the present case, the petitioner was having statutory remedy before the Central Administrative Tribunal. So far as case of **Tata Iron & Steel Co.Ltd. (*supra*)**, on which reliance has been placed by learned counsel for the petitioner is concerned, the case was related to the dispute under the Sales Tax Act, in which, there was remedy to the said writ petitioner for filing revision against the order of the appeal, whereas, in the present case, as per Section – 14 of the Act, there was specific remedy available to the petitioner to approach Central Administrative Tribunal and after the order of the



Central Administrative Tribunal, the petitioner was having remedy to approach this Court before the Division Bench under Article 226 and 227 of the Constitution of India for review of the order of the Central Administrative Tribunal and as such, the petitioner may not get benefit from the case of **Tata Iron & Steel Co. Ltd. (*supra*)**.

11. So far as **Bachan Traders' case (*supra*)** is concerned, in that case, the objection was raised at the stage of hearing, whereas in the present case, the writ petition was never admitted and at the first instance, when counter affidavit was filed, an objection was raised regarding maintainability of the writ petition. Similarly, the petitioner may not get any benefit from **Nawal Kishore Sharma's case (*supra*)**. In the said case, at initial stage, High Court had passed an interim order and that interim order was obeyed by the respondent and subsequently, at much belated stage, the objection was raised regarding maintainability of the writ petition. In the present writ petition, there is no such interim order.

12. The Court is in agreement with the submission of learned counsel for respondent no. 1 to 3 and it would be appropriate to refer paragraph – 8 of the **Indian Lac Research Institute's case (*supra*)**, which is as follows:-

“8. Counsel for the writ petitioners further submitted that in the case of *L. Chandra Kumar vs. Union of India* (1997) 3 Supreme Court Cases 261; 1997 (1) PLJR (SC) 84, the jurisdiction of the High Court under Articles 226/227 of the Constitution of India has been restored



and, therefore, the question of jurisdiction is no more available to the appellants. Counsel relied on the observations contained in paragraph 99 of the judgment. Counsel for the appellants also relied on certain observations contained in the same paragraph i.e. paragraph 99 of the judgment. Since counsel of both the parties placed reliance on same very judgment and, in fact same paragraph, it would be appropriate to quote the relevant part of the judgment as under:

The jurisdiction conferred upon the High Court under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the Constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the virus of statutory legislations by overlooking the jurisdiction of the Tribunal concerned.

From the judgment it would appear that one of the points at issue was whether the power of judicial review conferred on the High Courts under Articles 226/227 of the Constitutional could be ousted by enacting law under section 323 A (2) (d) or section 323 B (3) (d) of the Constitution. The Supreme Court answered the question in negative and held that all decisions of the Tribunal would be subject to the scrutiny by a Division Bench of the High Court. While saying so, as would appear from the aforequoted passage, the court clarified that the Tribunals will continue to act like courts of first instance in respect of the areas of law for which they have constituted and therefore, it would not be open to the litigants to directly approach the High Court. In order words, the person aggrieved is required to approach the Tribunal i.e. Central Administrative Tribunal for redressal of his grievances, at the first instance. He may thereafter seek judicial review of such decision of the Tribunal before the High Court under Articles 226/227 of the Constitution.”



13. In view of proposition of law, which has already been indicated by the Apex Court and clarified by the Division Bench of this Court, there is no reason to take a different view and as such, the Court is of the opinion that the writ petition is fit to be rejected on the ground that petitioner is having statutory remedy under the Administrative Tribunal Act, 1985 and as such, this Court refrains from exercising its writ jurisdiction.

14. The writ petition stands dismissed.

15. It goes without saying that if petitioner approaches the Central Administrative Tribunal for the relief sought for in the present writ petition, the period consumed by the petitioner in pursuing the present writ petition i.e. from 15-01-2009 till date shall be excluded while considering the limitation matter.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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