

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9014 of 2017
and
W.M.P.Nos.9930 & 9931 of 2017
and
W.M.P.No.24319 of 2017

Pentafour Products Limited,
No.5, Sridevi Garden Road
Valasaravakkam, Chennai - 600 087
Represented by its Chairman and Managing
Director,
Mr.V.Ramakrishnan

..Petitioner

vs

- 1.The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour-II
Chennai - 600 006
- 2.The District Collector,
Collectorate Building,
Singagraveller Malligai,
George Town,
Chennai - 600 001
- 3.Tahsildar,
Egmore Taluk,
No.88, Spur Tank Road,
Chetpet, Chennai,
Tamil Nadu, Chennai - 600 031.
- 4.V.Sugumaran
- 5.N.Krishnamurthy
- 6.S.Mohan
- 7.P.Krishnamurthy
- 8.V.Sekar
- 9.R.Nagarathinam

10.M.R.Gowri
11.G.Usha Rani
12.S.Jayam
13.Y.Jayakumar

(R4 to R13 impleaded as per order dated
02.08.2017 in W.M.P.No.19925/2017 in
W.P.No.9014 of 2017)

14.K.Sridharan
15.S.Ananthakrishnan
16.K.Mahendran
17.R.Aravamudhan
18.S.Jayarangababu
19.J.Pachianathan
20.S.Muninagarathinam
21.D.Mari
22.S.Sivakumar
23.J.Krishnan
24.A.Sudhakar
25.K.Somasundaran
26.V.Amarnath Rao
27.V.Sankar
28.R.Chandrasekar
29.G.Noelkent
30.K.Raju
31.D.Vellappan
32.M.Ramachandran
33.V.Aravamudhan
34.S.Palani
35.N.Radhakrishnan
36.A.Sheik Hashim
37.K.Devan
38.K.Ravisankar
39.R.Mahendran
40.J.Karunakaran
41.N.Sankaran
42.A.Hemalatha
43.V.Sundar
44.R.Parthasarathy
45.S.Sandrasekaran
46.P.Subramaniam
47.T.Mani
48.V.Selvaraj

49.V.Subramanian
50.P.Thayagaraju
51.K.Jayakumar
52.A.Dhanapal
53.M.Selvaraj
54.S.Neelakandan
55.M.Maahalingam
56.P.Jayashree
57.N.Ramanathan
58.K.Srinivasan
59.G.Shreesharan
60.K.Shantha
61.D.Dhanapalan
62.K.Mani
63.S.Abdul Kareem
64.D.Santhanam
65.K.Shankaran
66.T.Srinivasan
67.S.Kothandam
68.A.Velayutham
69.S.Kannan
70.V.Arumugam
71.H.Sethuraman
72.V.Rosebai
73.G.Venu
74.V.Mani
75.N.Rajagopal
76.K.Balachander
77.R.Ramadurai
78.K.Srinivasan
79.A.Peyarejan
80.D.Banumathi
81.N.Manimegalai
82.R.Sunitha Bai
83.R.Pandari Bai
84.V.Vijayakumari
(R14 to R84 are impleaded as per
order dated 13.09.2019 in
W.M.P.No.11895/2018 in
W.P.No.9014 of 2017)

..Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of
Certiorari, calling for the records relating to the order

of the 2nd Respondent dated 16.07.2016 bearing reference No.G3/12614/16 and the subsequent order of the 3rd Respondent vide order dated 27.07.2016 bearing reference No.C6/5692/2016 and quash the same.

For Petitioner : Mr.T.K.Bhaskar

For Respondents : Mr.M.Elumalai
Government Advocate for R1 to R3
Mr.K.S.Viswanathan
for R4 to R84

O R D E R

The lis on hand is filed to call for the records relating to the order of the 2nd respondent dated 16.07.2016 bearing reference No.G3/12614/16 and the consequent order of the 3rd respondent dated 27.07.2016 bearing reference No.C6/5692/2016 and quash the same.

2. The writ petitioner is a Company registered under the Companies Act, 1956 and carrying on the business of manufacturing various products like Auto Components, Chemicals and Electronics Products and Air Conditioners.

3. The learned counsel for the respondents raised the preliminary objection that the writ petition cannot be entertained in view of the fact that the order of the Controlling Authority under the Payment of Gratuity Act 1972, is not under challenge in the present writ petition.

4. Only the consequential orders passed by the revenue officials are challenged and therefore, the writ petition cannot be entertained. Secondly, it is contended that an appeal is provided under the provisions of the Gratuity Act, more specifically, Section 7(7) provides an appeal to be preferred before the Appellate Authority. Admittedly, the writ petitioner has already filed an appeal before the Appellate Authority and all the grounds raised in the present writ petition are to be adjudicated by the Appellate Authority by following the procedures as contemplated.

5. The learned counsel appearing on behalf of the writ petitioner states that the Controlling authority had taken a decision contrary to the principles settled by the High Court in a writ petition and therefore, the petitioner is constrained to move the present writ petition, challenging the consequential orders passed by the District Collector as well as the Tahsildar under the provisions of the Revenue Recovery Act.

6. This Court is of the considered opinion that all such grounds may be raised before the Appellate Authority in the appeal already filed by the writ petitioner under Section 7(7) of the Payment of Gratuity Act, 1972. The Appellate Authority is the quasi-judicial authority and therefore, empowered to consider the factual as well as the legal grounds raised by the respective parties. Thus, the writ petitioner is entitled to raise all the grounds including legal grounds in the appeal already filed by him before the authorities. The appeal is to be numbered, undoubtedly after the verification of the documents filed by the writ petitioner and by fulfilling the condition of pre-deposit as contemplated under the Payment of Gratuity Act.

7. The learned counsel for the writ petitioner urged this Court by stating that along with the appeal, an application was filed for Waiver of the pre-deposit amount. On a perusal of the provisions of the Payment of Gratuity Act, no such proviso clause has been provided for grant of waiver any appeal provisions of Section 7-0 in the Employees Provident Fund and Miscellaneous Petitions Act. Contrarily, the Act contemplates payment of the awarded amount, if any party prefers to file an appeal. Thus, the hearing of the waiver petition may not have any relevance and undoubtedly, any petition is filed before the Appellate Authority, the same may be heard and appropriate decision may be taken strictly in accordance with the provisions of law and as well as by affording an opportunity to all the parties concerned. The grounds raised by the writ petitioner is that the High Court order has been violated,

has to be adjudicated by the Appellate Authority with reference to the order, which is cited by the writ petitioner. Contrarily, such an adjudication cannot be undertaken in the present writ petition as the writ petitioner has already chosen to file the appeal under Section 7(7) of the Payment of Gratuity Act.

8. Exhausting all the appeal remedy, which is efficacious, is of paramount importance. No writ petition can be entertained without exhausting the appeal remedy provided under the statute. Filing an appeal must be the rule and entertaining a writ petition under Article 226 of the Constitution is an exception. Only on exceptional circumstances, the High Court is of an opinion that there is a gross injustice are required an urgent interference, then only the waiver of appeal can be granted and in all other circumstances, the parties must exhaust the statutory remedies provided under the Act.

9. This being the principles considered by this Court in the case of M/s.Hyundai Motor India Limited Vs. The Deputy Commissioner of Income Tax in W.P.No.22508 of 2017 dated 16.07.2018 and the relevant paragraphs are extracted hereunder:

"19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then

the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.
- (2) Republican and Democratic form of government and sovereignty of the country.
- (3) Secular and federal character of the Constitution.
- (4) Demarcation of power between the Legislature, the executive and the judiciary.
- (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and

the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973] : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs-- legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature

(Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

20. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The

Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained. In *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors.* MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other

factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. Chhabil Dass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that 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 still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore

and Ors. vs. Mathew K.C. (30.01.2018 - SC) :
MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India vs. Satyawati Tandon and others*, 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others*, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. *State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd.* reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been

considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

10. In view of the legal principles considered by this Court, the present writ petition deserves no merit consideration as the order of the Controlling authority, which is an appealable one, has already taken by way of an appeal before the Appellate Authority by the writ petitioner. Thus, the grounds raised in the writ petition can be placed before the Appellate Authority for effective adjudication. As far as the impugned orders in the present writ petitions are concerned, it is only consequential orders and therefore, the writ petitioner can seek all appropriate remedies before the Appellate authority in the appeal already filed.

11. With these observations, the writ petition stands dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour-II
Chennai - 600 006
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Tamil Nadu, Chennai - 600 031.

+1cc to Mr.T.K.Bhaskar , Advocate SR.No. 79515
+1cc to Mr.V.Suthakar , Advocate SR.No. 80244

W.P.No.9014 of 2017

A.SK(24/10/2019)