



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]Nos. 10416 of 2009 & 2926 of 2010

and

M.P.[MD]Nos.2 of 2009, 1 & 1 of 2010

W.P[MD]No.10416 of 2009:

1.P.Muthukrishanan
2.S.Ganesh
3.G.Sankara Narayanan
4.L.Gurusamy
5.A.Sheik Mansoor
6.A.Murugan
7.T.Selvaraj
8.S.Kanisyou Amuthan ... Petitioners

Vs.

1.The Management of
The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Rep. by its Managing Director,
Bypass Road,
Madurai - 625 016.

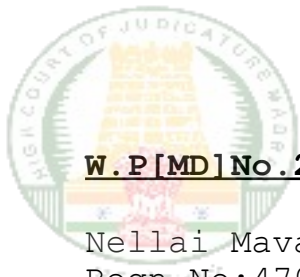
2.The Management of
The Tamil Nadu Transport Corporation (Madurai) Ltd.,
Tirunelveli Region,
Rep. by its General Manager,
Vannarpettai,
Tirunelveli - 627 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to promote / appoint the petitioners as Junior Engineer, before appointing any person as Junior Engineer in the first respondent Corporation by any mode of recruitment.

For Petitioner : Mr.S.Arunachalam

For Respondent No.1 : Mr.D.Sivaraman
Standing Counsel

For Respondent No.2 : Mr.S.C.Herold Singh

**W.P[MD]No.2926 of 2010:**

Nellai Mavatta Pokkuvarathu Thozhilalar Sangam - CITU,
Regn.No:470/TIN,
Rep. by its General Secretary,
P.Muthukrishnan,
Opposite TNSTC head office,
Vannarpettai,
Tirunelveli - 627 003.

... Petitioner

Vs.

1.The Management of
The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Rep. by its Managing Director,
Bypass Road,
Madurai - 625 016.

2.The Management of
The Tamil Nadu Transport Corporation (Madurai) Ltd.,
Tirunelveli Region,
Rep. by its General Manager,
19, Thiruvananthapuram Road,
Vannarpettai,
Tirunelveli - 627 003.

... Respondents

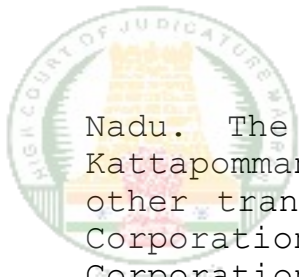
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from altering the existing conditions of service with regard to promotion and filling up of the post of Foreman without issuing notice under Section 9A of I.D.Act, 1947 and also without entering into a settlement with the workmen.

For Petitioner	: Mr.S.Arunachalam
For Respondent No.1	: Mr.D.Sivaraman
	Standing Counsel
For Respondent No.2	: Mr.S.C.Herold Singh

COMMON ORDER

The first writ petition is filed for a direction to direct the respondents to promote / appoint the petitioners as Junior Engineer before appointing any person as Junior Engineer in the first respondent Corporation by any mode of recruitment. The writ petitioners are the workmen. Eight workmen jointly filed this writ petition for a direction as stated above.

2.The petitioners state that the first respondent is the State Transport undertaking within the meaning of Section 2(42) of Motor Vehicles Act, and a company within the meaning of Section 617 Companies Act, which is wholly owned by the Government of Tamil



Nadu. The second respondent is a separate Corporation by name Kattapomman Transport Corporation which was amalgamated with four other transport Corporations, resulting in the Constitution of the Corporation in the name of the Tamil Nadu State Transport Corporation Madurai Limited.

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3.The conditions of service of the workmen employed in all the seven state owned Transport Corporation of Tamil Nadu including the first respondent are governed by periodical settlements made under Section 12(3) of the Industrial Disputes Act, 1947 and signed between the state-wide trade unions and the Transport Corporations once in three years commencing from the first settlement signed with effect from 01.07.1917. Beyond the settlement entered under the provisions of the Industrial Disputes Act, there are some usages and customs which all are being followed in the Transport Corporations as conditions of service.

4.The petitioners state that they are now working as technical / skilled employees in the Maintenance Section of the second respondent region of the first respondent Corporation. They are appointed as Junior Tradesman based on their respective qualification, ITI course. After rendering six years of service, the petitioners were promoted as Assistant Tradesman and after completion of balance years of service, they were further promoted to the post of Tradesman. After completion of 10 years, the Tradesman were given promotion as Tradesman (Special). When the writ petitioners were serving they had undergone the Diploma course in polytechnic after getting permission from the competent authorities. Thus, they acquired additional technical qualification of diploma course.

5.It is contended that the practice is being followed for long number of years that the Government Tamil Nadu Transport Corporation fill up the post of Junior Engineer from amongst the qualified persons working in the cadre of Tradesman and if those workman has completed three years Diploma course, appointments were made after conducting an enquiry based on the seniority.

6.The petitioners state that they were called for interview for appointment to the post of Junior Engineer on 12.04.2001 and there were vacancies. It is stated that the post of Junior Engineers were not filled up and the writ petitioners were not promoted. Once again, the second respondent called for the petitioners for the post of Junior Engineer, on 22.04.2002, but again the post was not filled up and the petitioners were not granted with the promotion without any valid reasons. The post of Junior Engineers, were kept vacant for number of years. Thus, the petitioners were unable to get promotion though they were fully qualified and senior most employees working in the Transport Corporation. During the year 2008, again the respondents called the petitioners for interview and the petitioners attended the interview. However, no promotion was given in the post of Junior Engineer. The petitioners submitted



representations. However, no order has been passed on the representations nor any reply has been received by the writ petitioners.

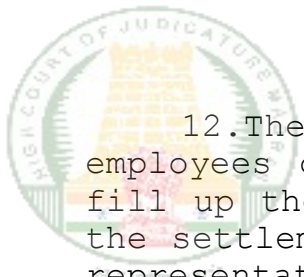
7. Contrarily, the respondents had resorted to fill up the post of Junior Engineer by way of direct recruitment by calling a list of candidates from the employment exchange concerned. During the relevant point of time, the respondents had taken steps to fill up the post by way of direct recruitment and under those circumstances, the writ petitioners were constrained to move the present writ petition.

8. In respect of W.P.[MD]No.2926 of 2010, the writ petition is filed by Nellai Mavatta Pokkuvarathu Thozhilalar Sangam, represented by its General Secretary. The relief sought for is to forbear the respondents from altering the existing service conditions with regard to promotion without issuing notice under Section 9-A of the Industrial Disputes Act, 1947.

9. The petitioner Sangam represented by its General Secretary states that the petitioner's Union is a registered Trade Union under the Trade Unions Act. It is contended that the members of the petitioner Trade Union are working under various categories and they all are workmen within the meaning of the Industrial Disputes Act. The averments in the present writ petition are also akin to that of the averments in the writ petitioner filed in W.P.[MD]No.10416 of 2009. The main contention raised in the present writ petition is that the respondents have made an attempt to alter the service conditions without issuing any mandatory notice under Section 9-A of the Industrial Disputes Act. Thus, the High Court should issue a writ to forbear the respondents from altering the service conditions.

10. Learned Counsel for the writ petitioner states that as far as this writ petition is concerned, the Sangam filed more specifically for promotion to the post of Foreman. The eligible workmen are not promoted to the post of Foreman and they have attempted to alter the service conditions and under those circumstances, the present writ petition is filed.

11. As per the settlement, practice of giving promotion to the post of Foreman to the employees who all are working as Tradesman (Special) based on their seniority had not been violated. The said practice of giving promotion to the post of Foreman from amongst the eligible candidates working in the cadre of Tradesman (Special) is in force. The additional qualifications acquired by the workmen working in the Cadre of Tradesman (Special) also had not been considered by the respondents for promotion to the post of Foreman which is going to be filled up by persons working in the post of Tradesman (Special), based on their seniority. Hence, the respondents are attempting to deviate from the previous practices.



12.The interview call letter dated 21.01.2010 reveals the employees calling them to attend interview to select candidates to fill up the post of Foreman. Opposing the violations in respect of the settlement and the service conditions, the writ petitioner made representations to the respondent management. However, the respondents have not given any reply and thus the writ petitioner is constrained to file the present writ petition.

13.The main contention raised are that in the event of any proposal for change of service conditions contrary to the terms and conditions of settlement, it is mandatory on the part of the respondents to issue a notice under Section 9-A of the Industrial Disputes Act. No such notice was issued to the writ petitioner Sangam. In the absence of any such notice, the writ petitioner Sangam cannot raise the dispute. In the absence of any such notice, the Sangams may not be aware of such alterations of service conditions which all are agreed upon by way of settlement. Only in the event of notice under Section 9-A, the Sangam can adjudicate the issues before the Industrial Labour Court and not otherwise. In this regard, it is stated the in the absence of any such notice, the terms and conditions of the services are violated as per the settlement and therefore, the writ petitioners are having cause for filing the present writ petition under Article 226 of the Constitution of India.

14.Learned Counsel for the writ petitioner to substantiate the arguments made elaborate submissions by stating that the very practice of the respondents are illegal and in violation of the service rights of the workman working in the transport corporations. The respondents are bound to implement the agreed terms and conditions of service. In the event of any proposal of deviation or alteration or modification of service conditions, Section 9-A notice is mandatory under the provisions of the Industrial Disputes Act.

15.Learned Counsel for the writ petitioner referred the judgment of the High Court of Madras in W.P.[MD]No.21567 of 2000 in the case of **M.Madhanraj Vs. Managing Director, M.T.C., Chennai**, reported in **2004 (2) L.L.N. 1081**, which reads as follows:

"6.5.In view of the above undisputed facts, I am unable to appreciate the contention made on behalf of the respondents that no regular order of appointment, appointing the conductors as data entry operators was issued, transferring the conductors from the existing posts of EDP Section.

6.6.Therefore, the proposal to send back the conductors on line duty as rightly contended on behalf of the petitioners is arbitrary, unreasonable and violates Arts. 14 and 19(1)(g) of the Constitution of India. Similarly the proposal to recruit persons as E.D.P. operators either directly from the open market or on contract basis in the place of the petitioners



would amount to change of conditions of service of the petitioners which is permissible only by following the procedure contemplated under S.9A of the Act."

16. In the case of **Arasu Viraivu Pokkuvarathu Oozhiyar Sangam Vs. State Express Transport Corporation** reported in **2006 (3) L.L.N. 916**, the Division Bench also considered the issues and the learned Counsel for the writ petitioner referred paragraph 6 and 14 of the judgment which are extracted hereunder:

"6. The short question which falls for our consideration is whether the action of the Corporation reverting the date entry operators to the post of conductor / technical staff was in violation of S.33(1) (a) of the Act. The question of violation of S.3(1) (1) of the Act requires to be considered in the light of the relevant statutory provisions of the Act. Section 3 (1) which is relevant for our discussion, reads inter alia as under:

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings:

(1) During the pendency of the conciliation proceedings before (an arbitrator or) a Conciliation Officer of the Board or of any proceeding before any Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall:

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding, or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned in such dispute; save with the express permission in writing of the authority before which the proceeding is pending."

14. In the result, the writ appeal is allowed. The order of the learned Single Judge is set aside and impugned order No.13/15039/A1/SETCTN/2002 dated 5 October 2005, issued by respondents 1 and 2 reverting the data entry operators to the post of conductor / technical staff is hereby declared null and void and non est. The State Government is directed to consider the failure report furnished by the Conciliation Officer and make a proper reference to the Labour Court / Industrial Tribunal for adjudication of the dispute between the parties, within a period of four weeks from the date of receipt of a copy of this judgment and till



the dispute is adjudicated by the Labour Court / Tribunal, respondents 1 and 2 are directed not to discontinue the services of the workmen in the post of data entry operators without prior approval of the Labour Court / Tribunal. No order as to costs. Consequently, W.A.M.P.No.806 of 2006 is closed."

17. In the case of **Tamil Nadu Atomic Power Employees Union, Kalpakkam Vs. Nuclear Power Corporation, Kalpakkam in W.P.No.13412 of 2000**, dated **22.12.2000**, paragraphs 13 is relied upon which is extracted hereunder:

"13. From the various decisions referred to in the earlier paragraphs relating to the scope of exercise of power of Government in a matter relating to the reference of a dispute for adjudication, it is well settled that it is no longer open to the Government to delve into the merits of the case or rests its conclusion on matters not germane for consideration. The understanding of the first respondent about the scope of operation of Section 9-A in regard to change in service condition cannot be held to be decisive for declining a reference under Section 12(5) of the Industrial Disputes Act. On the other hand, the very fact that the change which was sought to be introduced by resorting to Section 9-A of the Industrial Disputes Act was under challenge at the instance of the petitioner, as held by the Hon'ble Supreme Court in the judgment reported in 1981-I-LLJ-1, unless the said dispute is resolved one way or the other, the change cannot be brought into force especially in a case like this where it is claimed that the present shift pattern was prevailing right from the date of inception of Power Station of the second respondent. Moreover, even according to the second respondent, very many factors were taken into account before the change was sought to be introduced. In such circumstances, it would only be appropriate that the second respondent establish the justification of the change sought to be introduced before an appropriate adjudicatory forum before its implementation. Unfortunately, the first respondent having misled itself by holding that the change sought to be introduced was after following Section 9-A and therefore, no reference was called for being on the face of it on total misunderstanding of the legal position, the same is liable to be set aside. Therefore, I am unable to subscribe to the submission of the learned counsel for the second respondent that the second respondent having got a right to introduce the change by resorting to Section 9-A and the said provision namely Section 9-A having been complied



with, there should be no scope for further adjudication about the justification of the change as claimed by the petitioner."

18. In the case of **Thanthai Periyar Pokkuvarathu Kazhaga Oozhiyar Sangam Vs. Management of Tamil Nadu State Transport Corporation, Villupuram Ltd.**, reported in 2005 (2) L.L.N. 860, the petitioners referred paragraph No.12, wherein the case of **P.Pitchumani Vs. Management of Sri Chakra Tyres, Ltd.**, reported in 2004 (2) L.L.N. 1086 was referred. Learned Counsel for the writ petitioner referred paragraph 8 also which is extracted hereunder:

"8. The judgment in 1999 (2) L.L.N. 16 (vide supra), is identical in all respects to the facts of the present case.

In both the cases, the workers of the State Transport Corporation were involved.

In both the cases, the impugned action was in violation of the settlement arrived at between the workers and the management.

In both the cases, the writ jurisdiction was invoked.

Even if the settlement between the management and the workers of the Karnataka State Road Transport Corporation was still in force, unlike in this case, that will not make a difference, in view of the legal principle laid down by the Supreme Court in 1980 (2) L.L.N. 575 (vide supra). The only other difference in these two cases is that in the case referred to above, the check-off facility was withdrawn, which is not the case here.

12. Even in the judgment reported in 2005 (1) L.L.N. 878, cited supra, the Division Bench of this Court had held as follows, in Para.5, at page 880:

"...No doubt, it is well settled that alternative remedy is not an absolute bar to a writ petition...."

The Division Bench placed reliance on the Full Bench judgment in **P.Pitchumani Vs. Management of Sri Chakra Tyres, Ltd.**, [2004 (2) L.L.N. 1086] (vide supra), wherein the Full Bench laid down the following parameters for deciding the question of jurisdiction in labour matters in Para.14, at pages 1091 and 1092:

"(i) only such violations under Industrial Disputes Act, which involve public duties, are amenable to writ jurisdiction under Art.226 of the Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by the Industrial Disputes Act, have to be adjudicated only by the forums created under the said statute and not otherwise;



(iii) it is needless to mention that the disputes relating to matters not governed by Industrial Disputes Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v) the appellants / petitioners - employees shall be entitled to seek for reference by filing application under S.10 of the Industrial Disputes Act, within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants / petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect of such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents - managements shall sympathetically consider the payments of wages / salaries to the appellants / petitioners - employees so as to maintain the industrial peace and harmony."

In that case, the matter was referred to the Full Bench because of the differing views taken by two co-ordinate Benches regarding maintainability of a writ petition when the forum constituted under the Industrial Disputes Act, is there. On view was that for violation of a statutory provision, writ petition is maintainable even against a private company, as held by a Bench of this Court in *Chemplast Sanmar Ltd., Vs. Mettur Chemicals Podhu Thozhilalar Sangam* [2000 - I L.L.J. 1335]. The other view was that a writ petition cannot be maintained for the said violation. The Full Bench concluded as above."

19. Learned Counsel for the writ petitioner even referring the Full Bench Judgment of the Madras High Court in the case of **P. Pitchumani Vs. The Management of Sri Chakra Tyres Ltd.**, reported in **2004 (3) CTC 1**, made a submission that the said principle would not apply with reference to the facts and circumstances of the



present case. In Pichumani's case, it is a private management whereas in the present case, it is a transport corporation owned by the Government and therefore, those principles cannot be applied at all. However, he also referred the judgment.

20. In the case of **Radha Raman Samanta Vs. Bank of India**, reported in (2004) 1 SCC 605, the observations are referred with reference to paragraphs 13,14 of the judgment:

"13. It is too elementary to state that powers under Article 226 of the Constitution could be exercised for the enforcement of fundamental rights available under Part III of the Constitution and also for any other purpose. High Courts have often exercised their power under Article 226 of the Constitution for enforcement of a legal right. It is, therefore, open to the learned Single Judge to issue an appropriate direction to the respondent Bank, if otherwise justifiable on facts. To make matter clear, we may cite style (Dress Land) v. Union Territory, Chandigarh in which this Court held that:

"Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field."

14. In this case, pursuant to the direction of the Division Bench in FMAT No.1119 of 1996, the learned Single Judge looked into the relevant documents produced by the respondent Bank and formed an opinion that the appellant herein was working with the Bank during the relevant period. It is also not improper for the learned Single Judge to look into undisputed documents and to infer as to the status of employment of the appellant. Examination of undisputed facts is not debarred in a proceedings under Article 226 of the Constitution vide Kavalappara Kottarathil Kochunni v. State of Madras, Mohd. Ikram Hussain v. State of U.P. and Govt. of AP. v. Karri Chinna Venkata Reddy. Therefore, the procedure adopted by the learned Single Judge pursuant to the direction of the Division Bench is perfectly within the limits of its powers under Article 226 of the Constitution."

21. In the case of **Workman, Food Corporation of India v. M/s. Food Corporation of India** reported in AIR 1985 SC 670, the learned Counsel for the writ petitioner referred in the very footnote by stating that any such legal actions of the management is an offence punishable under Section 31(2) of the Industrial Disputes Act. Thus, in the present case also there is a patent violation and such violations are a punishable offence under the provisions of the Industrial Disputes Act.



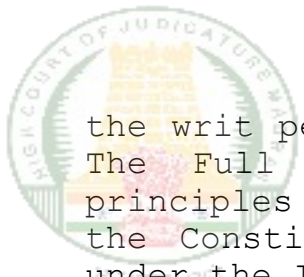
22. In the case of **Tamil Nadu State Transport Corporation Vs. Neethivilangan, Kumbakonam** reported in (2001) 9 SCC 99, the observations in paragraph No.10 is relied upon, which is extracted hereunder:

"10. Section 33 of the Act makes provision for ensuring that the conditions of service remain unchanged during pendency of certain proceedings. In sub-section (1) is incorporated the bar that no employer shall during pendency of any conciliation proceeding before a conciliation officer or a board or any proceeding before an arbitrator or Labour Court or Tribunal in respect of an industrial dispute, in regard to any matter connected with the dispute, alter to the prejudice of the workman concerned with such dispute, conditions of service applicable to them immediately before commencement of the proceedings; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned with such dispute, save with the express permission in writing of the authority before which the proceeding is pending."

23. Relying all the above said judgments, learned Counsel for the writ petitioner strenuously contended that the writ petition would be maintainable and this Court has got jurisdiction to issue a writ of mandamus to forbear the respondents from altering the conditions of service as well as to issue directions to the respondents to promote / appoint the petitioners as Junior Engineers in W.P. [MD] No. 10416 of 2009.

24. Learned Counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioners by stating that in the counter affidavit filed by the second respondent, it is made clear that the respondents have not taken any decision to change the policy regarding promotions and appointments. When there is no change, alteration or modification in the conditions of service, the very writ petition is untenable and therefore, the writ petition is to be rejected on the ground of maintainability. Learned Counsel for the respondent further contended that there was no deviation in promotion policies in promoting the Tradesman to the post of Foreman / Junior Engineer and therefore, the question of issuing any notice under Section 9-A of the Industrial Disputes Act would not arise at all.

25. With reference to the point of maintainability, learned Counsel for the respondent strenuously relied upon the judgment of the Full Bench of this Court settled in the case of **P. Pitchumani Vs. The Management of Sri Chakra Tyres Ltd.**, With reference to the arguments of the writ petitioner, the learned Counsel for the respondent contended that though the Full Bench judgment is in relation to the disputes arose between the workmen and the private management, the legal principles regarding the maintainability of



the writ petition against the industrial disputes are well settled. The Full Bench considered various judgments and arrived the principles for entertaining the writ petition under Article 226 of the Constitution of India, before exhausting the remedy provided under the Industrial Disputes Act.

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26.Learned Counsel for the respondent solicited the attention of this Court to the maintainability of the writ petition with reference to Section 2(k) of the Industrial Disputes Act. It is contended that the writ petitioners are admittedly Workmen within the meaning of the Industrial Disputes Act. Their service conditions are governed under the settlement signed between the respondents and various unions under the provisions of the Industrial Disputes Act. The status of the writ petitioner Sangam is undoubtedly and admittedly Workmen within the meaning of Industrial Disputes Act. Even the writ petitioners admitted that they are Workmen in their affidavits.

27.The learned Counsel for the respondents further continued by stating that the change of condition in respect of Workmen even if proposed in violation of the settlement or agreement, the course of action to be adopted is by approaching the Industrial Labour Tribunal and certainly not the High Court under Article 226 of the Constitution of India. An elaborate enquiry is required. An adjudication is contemplated under the Act. Without conducting any adjudication and an elaborate enquiry, the issues cannot be resolved. Therefore, the very writ petition is rejected on the ground of maintainability.

28.The learned Counsel for the respondent mainly relying on the judgment of the Full Bench of this Court in **P.Pitchumani case**, held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Industrial Disputes Act, then the only remedy available to the suitor is to get an adjudication under the Act. Even in the concluding paragraphs of the Full Bench judgment, it is stated that 'if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party.

29.It is further stated that 'it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts'. 'Dismissals, Transfers and other matters concerning the service conditions of the employees governed by the Industrial Disputes Act have to be adjudicated only by the forums created under the said statute and not otherwise'. Relying on the proposition laid down by the Full Bench of this Court, the respondents urged this Court to reject the writ petition *in limini*, more specifically, on the ground of maintainability and for the purpose of exhausting the remedy provided under the Industrial Disputes Act.



30. This Court considered the facts and circumstances as well as the legal contentions pointed out by the respective learned Counsel appearing on behalf of either of the parties.

31. The issues to be mainly considered in these writ petitions are :

i) whether a Writ of Mandamus, can be issued in the nature which is sought for in the writ petition without any adjudication or enquiry under the provisions of the Industrial Disputes Act.

ii) whether such a roving enquiry in respect of the disputes relating to service conditions of workmen can be undertaken in a writ proceedings.

iii) whether a writ of Mandamus, in this nature can be entertained without exhausting the remedy provided to the Workmen under the Industrial Disputes Act, which is a welfare legislation.

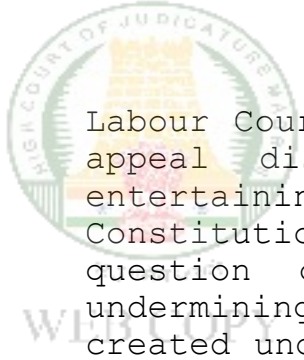
iv) whether the workman in such circumstances can directly file a writ petition without any reference to the award or judgment of the competent Labour Court.

32. The undisputed facts are that the writ petitioner in W.P. [MD]No.2926 of 2010 is a registered Trade Union / Sangam. Their contentions are that the respondents are attempting to deviate the practice of granting promotions to the post of Foreman. Different procedures are attempted to be adopted by the Transport Corporation / respondent including the rights of the workmen for promotion to the post of Foreman. Thus, he prays for a writ of Mandamus to be issued to forbear the respondents from altering the existing conditions of service with regard to promotion and filling up of the post of Foreman without issuing notice under Section 9-A of the Industrial Disputes Act.

33. The other Writ Petition in W.P. [MD]No.10416 of 2009 is filed by 8 Workmen for a direction to direct the respondents to promote / appoint 8 writ petitioners as Junior Engineers.

34. Even in normal circumstances, with reference to any service rules or the service prudence, if at all the promotions or appointments are not provided and if any statutory remedy is contemplated or the service rules provide for appeal remedy, then the Courts must insist upon the aggrieved persons to approach the appellate authority or the forums or the competent courts at the first instance.

35. Various level of procedures are contemplated for redressing the grievances of the aggrieved persons in this country. However, certain exceptions are also drawn by the Courts not only in certain extraordinary circumstances but even if there is a gross injustice or violation of fundamental rights under Part - III of the Constitution of India. Thus, it is not as if in each and every case an aggrieved person must be permitted to approach High Court under Article 226 of the Constitution of India. Various forums, Tribunals,

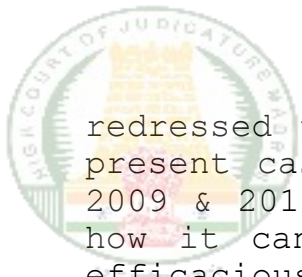


Labour Courts, Appellate authorities are empowered to deal with the appeal disputes etc. The question arises in the event of entertaining the writ petitions under Article 226 of the Constitution of India, in all such circumstances, it is not only the question of over burdening the High Court, whether we are undermining the statutory institutions and the appellate authorities created under the statute. Thus, it is not as if the writ petitions are entertained in a routine manner or the writ petitions are entertained in such cases where the statutory remedy or appellate remedy is contemplated under the Statute or Rules. Importantly, respecting the institutions created under the Statutes as well as the Rules are of paramount importance. It is a constitutional obligation on the part of the High Court to respect the institutions, authorities and Courts and the Special Courts or Tribunals created for the purpose of adjudicating certain issues under the statutes.

36. Thus, the rule is to approach the competent forum and exhaust the remedy at the first instance. Entertaining a writ petition is only an exception. It is made clear that the remedy under Article 226 is undoubtedly available to an aggrieved person, if at all the grievances of such aggrieved persons are not redressed by such forums or Tribunals or appellate authorities created under the Statutes or Rules in force. It is not as if the High Court is not entertaining a writ petition. High Courts are entertaining writ petitions only after exhausting statutory remedies or the appellate remedies provided under the Statutes and Rules.

37. The only deviation is whether bypassing attitude of these persons can be encouraged and entertained by the High Courts or not. Bypassing the Courts constituted for certain specific purpose is certainly not preferable. Bypassing of such Courts created for the purpose of adjudication of certain specific matters in a specialised manner by adopting specialised procedures can never be dispensed with in a routine manner. In such an event, the very constitutional scheme of creation of Courts are violated. The very constitutional scheme contemplates that the writ petitions are to be entertained and it is an extraordinary jurisdiction wherein the remedies are not available to the aggrieved persons in ordinary circumstances. Thus, a writ petition can be entertained if there is a direct violation of Part-III of the Constitution of India or if there is no other alternative remedy provided under the Statute or in any other service rules in force.

38. The point also raised is whether all such remedies provided under the Statute are efficacious or not. This Court is bound to address this issue also. The efficacious remedy does not mean that the litigants are unable to get their grievances redressed within a specified period of time. In our vast country, in a growing present trend of litigation, undoubtedly, we are facing dearth of infrastructural facilities. The adjudication of cases are taking long time. The grievances of the litigants are unable to be



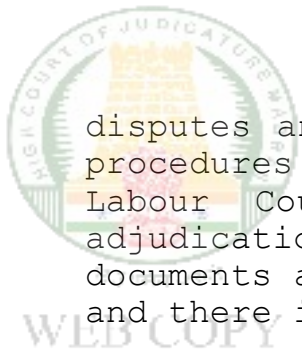
redressed within a short span of time in many cases. Even in the present case, unfortunately writ petitions were filed in the years 2009 & 2010, but are taken for final hearing in the year 2019 and how it can be stated that the writ petitioners got their remedy efficaciously in these writ petitions. Therefore, all these aspects are to be considered with reference to the point of considering the ground that the writ petitioners are not having any other efficacious remedy under the statute.

39. Let us now look into the provisions of the Industrial Disputes Act. The statement of object and reasons provided for enacting the Industrial Disputes Act, 1947 also states that the Industrial Disputes Act was brought to the statute book with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity.

40. Section 2(s) defines 'Workmen' means 'any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

41. Section 2(k) defines 'industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person'. Section 9-A contemplates 'Notice of change - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected.

42. Section 29 contemplates penalty for breach of settlement or award. Section 31 deals with penalty for other offence. Even amended Section 11(9) and 11(10) provides procedures for execution of the award passed by the Labour Court. Thus, the scheme of the Industrial Dispute Act is undoubtedly comprehensive in nature. The statement of object and reasons are also unambiguous and in respect of the service conditions of the workmen, falling within the definition of the Act, enquiry is warranted for the purpose of ascertaining the

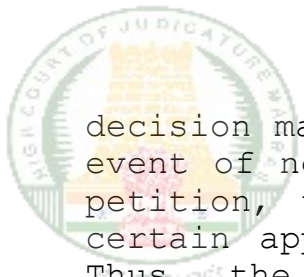


disputes and to resolve the same or to redress the grievances. The procedures are contemplated for adjudication by the Industrial Labour Courts. Such Labour Courts are created specially for adjudication to be conducted by way of a trial and by examining the documents and witnesses. The procedures are undoubtedly contemplated and there is no ambiguity as such.

43. The question arises whether the writ petitioner would not get any efficacious remedy before the Labour Court or not. The present writ petitions are filed for a mandamus. The very writ petition is filed based on the apprehension that there is a likelihood of change of service conditions and there is likelihood of denial of promotion to the post of Foreman to the individual writ petitioners who filed writ petition. Thus, both writ petitions are filed based on the apprehension and there is no decision as such taken by the respondent management either denying the claim of the writ petitioner or granting promotion to any other persons. The notification issued for direct recruitment made these writ petitioners to approach this Court by stating that service conditions are violated. Contrarily, the counter filed reveals that whatsoever decision to alter the service conditions, the policy decision agreed upon are still in force and the respondents have not taken any decision to modify or alter the service conditions and therefore, the question of issuing any notice under Section 9-A of the Industrial Disputes Act does not arise at all.

44. This being the factum, which necessitated this Court for entertaining these writ petitions under Article 226 of the Constitution of India, whether a writ petition can be entertained on such apprehensions and a direction can be issued based on such apprehensions forbearing the respondents from taking a decision or issuing some orders on the basis of the policy or service conditions. Such presumptive reliefs cannot be granted by the High Courts under Article 226 of the Constitution of India. Certain apprehensions if concrete or if fructified, then alone such directions can be issued and not otherwise. Such directions certainly cannot be issued more specifically in service matters. In service matters, there must be a definite cause of action. In the absence of any definite cause of action, no writ petition can be entertained in service matters. Only in cases where certain public importance or public interest are involved, the High Courts would be in a position to issue any such presumptive directions or some directions based on the apprehensions raised by the litigant concerned and not otherwise.

45. This Court is of an undoubted opinion that the power of judicial review under Article 226 of the Constitution of India is well defined. Repeatedly, the Supreme Court held that the judicial review under Article 226 of the Constitution of India is directed, not against a decision, but the decision making process. Of course, a patent illegality and / or error apparent on the face of the decision which goes to the root of the decision, made various



decision making process. In the event of no such decision or in the event of no such actions on the part of the respondents, in a writ petition, then the High Court cannot issue any direction based on certain apprehensions raised by the parties in the writ petition. Thus, the scope of judicial review under Article 226 of the Constitution of India has been well defined and therefore, the High Court cannot entertain a writ petition in a routine manner where a statutory remedy is very much available for the litigants to redress their grievances by following the procedures.

46. Forum choosing by the litigants can never be encouraged. It is not as if the aggrieved persons can choose the forum. When a definite forum is contemplated under the Statute, they are bound to approach the same and thereafter approach the High Court under Article 226 of the Constitution of India. If such litigants who all are claiming to be aggrieved is permitted to approach the High Court directly without exhausting the statutory remedies provided under the Act, then the High Courts are not only over burdened, but the High Courts would not be in a position to render justice as warranted under the constitutional principles. The extraordinary jurisdiction are to be exercised efficiently, speedily in order to provide justice to the citizen at large. In the event of entertaining such matters, where alternate remedy is available under the Statute, which all are procedurally effective, then the High Courts must be cautious in entertaining the writ petition and direct those aggrieved persons to approach the Courts competent and thereafter approach the High Court.

47. The very apprehension of these writ petitioners even can be brought before the Industrial Labour Court and the Industrial Labour Courts are competent to issue interim orders also. Industrial Labour Courts are competent to pass orders, whenever the Court thought fit to issue such orders. Thus, it is not as if the industrial Labour Courts are not having any powers to issue any such interim orders or any other orders as necessity warrants. Thus, this Court is of the considered opinion that all the Special Courts, appellate authorities created under the Statute as well as under the service Rules must be respected at the first instance by the High Courts and all such authorities / competent Courts / competent forums must be allowed to exercise their powers in the manner known to law.

48. The speedy redressal of the grievances of the litigants of our great Nation is undoubtedly a constitutional perspective. Thus, while dealing with all such cases, the High Court should ensure that the aggrieved persons approach the appropriate Forum at the first instance. Sometimes, it happens that the legal brains are advising to file cases directly in the High Court, without exhausting the statutory remedies available to the aggrieved persons. Such ill-advises or opinions may commercialize the litigations. Commercialization of the judicial systems and dispensation of justice is unconstitutional and can never be tolerated nor be allowed by the constitutional Courts. Commercialization being



adopted in certain circumstances, through such ill-advises. The Court must be cautious and take a decision to exhaust the statutory remedies and thereafter, approach the higher Courts. Under these circumstances, all these aspects are weighing in the minds of this Court and it is undoubtedly important to ensure that such specially constituted Courts or Tribunals or Forums are also exercising their powers as contemplated under the provisions of such special statutes or general statutes. Apart from this, an enquiry or trial can never be conducted by the High Court, under Article 226 of the Constitution of India. The power of Judicial review cannot be extended for the purpose of conducting an enquiry or trial by examination of documents or witnesses. Thus, such a process is to be undertaken by the competent authorities or the Forums or the Tribunals or the Special Courts constituted for that purpose. Under these circumstances, in the event of non-adjudication of the disputed issues and facts by these Tribunals, Labour Courts etc., the High Court would not be in a position to decide the cases by exercising the power of judicial review under Article 226 of the Constitution of India. Adjudication of issues and facts are highly warranted. Only in the event of finding of the facts and adjudication of the documents and circumstances, the High Court would be in a position to deal with the writ petitions properly and exercise the power of judicial review, so as to provide complete justice to the aggrieved persons, who all are approaching the Court of law.

49. The Apex Court time and again reiterated that mere apprehension is insufficient to entertain a writ petition. Only in the event of establishing any such apprehensions or probabilities or there is no other way to restrain such illegality or unconstitutionality, then alone, the High Court can entertain writ petitions on exceptional circumstances. In all other cases, a definite cause of action is mandatory for entertaining a writ petition. In the present case on hand, mere apprehension was taken as a cause by the writ petitioners. However, they have not followed the procedure of approaching the Labour Tribunal at the first instance. The service conditions are neither altered nor any changes are made. Under these circumstances, the writ petitioners have not made out any cause of action even for entertaining the present writ petitions.

50. Undoubtedly, Labour Tribunals, Special Courts created under special statutes are functioning effectively. The process of enquiry may take some more time. However, the delay in conducting trial would not be a cause for approaching the constitutional Courts. Even in Civil Courts, such a delay is happening. In many Forums, including certain Appellate Authorities, some delay is inevitable. In this regard, every Institutions are thriving hard to improve the procedural aspects and to ensure speedy disposal of appeals, cases for providing redressal to the aggrieved persons. When the Institutions are also thriving hard to provide speedy redressal, the litigants cannot be permitted to bypass the alternative remedies available under the statute.



51. In respect of exhausting the alternate remedy, this Court also considered the principles laid down by the Supreme Court and rendered a judgment in W.P.No.22508 of 2007 dated 16.07.2018, in the case of **M/s. Hyundai Motor India Limited Vs. The Deputy Commissioner of Income Tax and another** 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.

1. In *City and Industrial Development Corporation v. Dossu 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. Chhabildass 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. Ikbali 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.*



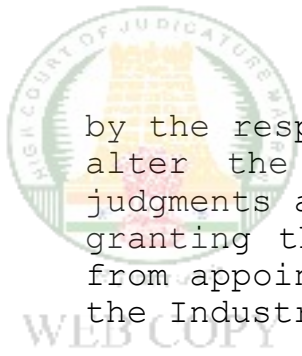
And Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

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.'

52.As far as the judgment cited by the learned Counsel for the writ petitioners are concerned, the case of **M.Madhanraj Vs. Managing Director, Metropolitan Transport Corporation, (Chennai Division II), Ltd.**, reported in **2004 (2) L.L.N. 1081** is concerned, it was held that the conditions of service cannot be altered. The relief sought for is to regularise the services and to engage them. In view of the fact that the subsequent Full Bench judgment also dealt with this point, it may not be required to consider the judgment elaborately. Even the earlier judgments rendered by the Hon'ble Single Judge of this Court, the Division Bench of this Court cannot be considered as a binding judgment as the principles regarding the binding judgments of various Courts are now settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, reported in **2017 (16) SCC 680**.

53.Accordingly, if the Full Bench settled the issues, then, the Full Bench judgment is binding on the other Courts and in such circumstances, the principles if any laid down by the Hon'ble Single Judges cannot be followed as a binding precedents. Thus, the judgments delivered by the Hon'ble Single Judges as well as the Division Bench cannot be relied upon for the purpose of deciding the issue whether the writ petition can be entertained without approaching the Labour Court in such circumstances for the purpose of issuing a writ of Mandamus. In respect of one Supreme Court judgment cited by the learned Counsel for the writ petitioner reported in **(2001) 9 SCC 99**, the Workmen was dismissed from service and an application was filed under Section 33(2)(b) before the Tribunal. The Tribunal rejected the application on maintainability.

54.Those facts and circumstances may not have any direct bearing with reference to the facts and circumstances of the present writ petition where the grievances of the writ petitioners is based on certain apprehensions and even that apprehensions were clarified

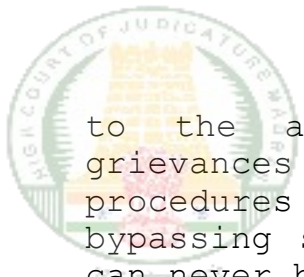


by the respondents that the Management has not taken any decision to alter the procedures for appointment / promotions. Thus, these judgments are of no avail to the writ petitioners for the purpose of granting the relief of the direction to forbearing the respondents from appointing the persons or issuing a notice under Section 9-A of the Industrial Disputes Act.

55. Thus, this Court is bound to consider the legal principles settled by the Full Bench of this Court in the case of **P. Pitchumani Vs. The Management of Sri Chakra Tyres Ltd.**. As far as the judgment of the Full Bench are concerned, the principles are enumerated and those principles are to be applied in respect of entertaining the writ petition under Article 226 of the Constitution of India.

56. When an aggrieved person is a workman within the meaning of the Industrial Disputes Act, 1947 and his service conditions and service benefits are governed under 12(3) settlement, then all such workmen should first approach the Labour Court for adjudication of disputes and issues effectively and thereafter, approach the higher Courts, if their grievances are not redressed. Contrarily, a recent trend is being developed that such industrial disputes are raised before the High Court under Article 226 of the Constitution of India. An argument is put forth by stating that the Transport Corporations or certain other Companies are the Government owned or the Government has made investments on such Companies or Corporations. Such an argument can never be considered as a good proposition. Once an employee comes under the definition of "the workman" and his service conditions are governed under the Industrial Disputes Act, 1947, more specifically under Section 12(3) of the Act, then all such adjudications are to be effectively done at the first instance before the Labour Tribunal or the Court concerned. In violation of these line of procedures, large number of writ petitions are filed seeking adjudication of main issues and disputes under Article 226 of the Constitution of India, which can never be allowed and if at all, any imminent circumstance arise, then by way of exception, a writ proceedings can be entertained and issues can be settled. Contrarily, entertaining a writ petition for the purpose of adjudication of disputes and issues can never be a routine affair by the High Courts. Exhausting the alternative remedy is the rule and entertaining a writ proceedings is an exception.

57. The contentions of the writ petitioners that the Judgment of the Honourable Full Bench of this Court cited supra was in a case where the employer is a Private Company. Such an argument undoubtedly has no relevance. The Full Bench has answered the question and decided the principles and held the importance of exhausting the alternative remedy by the workman before the Labour Court at the first instance. Thus, the very argument of the writ petitioners deserves no merit consideration. Once a settlement is arrived between the Management and the Workmen under Section 12(3) of the Industrial Disputes Act, 1947, it is binding on the parties



to the agreement and accordingly, the disputes, issues and grievances are to be adjudicated and resolved only through the procedures contemplated and as well as before the Forums created and bypassing such procedures or mandatory provisions of the statutory can never be dispensed with nor be waived.

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58. This being the legal principles to be followed, the Full Bench judgment in the case of **P. Pitchumani** cited supra, categorically enumerates that if the Industrial Dispute relates to enforcement of a right or an obligation created under the Act, then, the only remedy available is to adjudicate the same under the Act. It is made clear that the grievances of the writ petitioners are in relation to their service conditions which were recognised under the Settlements under Section 12(3) of the Industrial Disputes Act. Therefore, those rights and service conditions are to be enforced through appropriate adjudication under the provisions of the Industrial Disputes Act more specifically before the Labour Court. Even in the absence of issuing any such 9-A notice, it is to be construed as violation of the provisions of the Industrial Disputes Act. Then also, the "workmen" is entitled to approach the Industrial Labour Court for redressal of their grievances.

59. All such grievances even in the absence of any notice or in the absence of any order can be adjudicated before the competent Industrial Labour Court and it is not necessary that those cases are also to be entertained by the High Court under Article 226 of the Constitution of India.

60. In the present case, this Court is of the opinion that it became unnecessary on account of the counter filed by the respondents that the respondents have not taken any decision to alter or modify the service conditions of the workmen. Therefore, entertaining a writ petition for the year 2009-10, keeping it pending for about 9 years and considering the fact that the respondents have not taken any steps to alter certain conditions became meaningless. Under these circumstances, this Court is of the considered opinion that the workmen must approach the Labour Court at the first instance instead of approaching the High Court based on certain apprehensions.

61. The principles laid down by the Full Bench are enumerated in paragraphs 7 and 14, which are extracted hereunder:

"7. General contract of employment is governed by common law and any breach of the contract and dispute arising therefrom is to be adjudicated by common law Court. But, if the matter is governed by the I.D. Act or the Standing Orders relating thereto, by necessary implication, the common law remedy is barred and more so, if the adjudicatory forums, be it Labour Court or Industrial Tribunal, are constituted under I.D. Act. Earliest is the judgment of the Supreme Court in Premier Automobiles Limited Vs. Kamlakar Shantaram



Wadke and others, 1975 (2) LLJ 445. In the said case, there was a dispute as to whether a civil suit was maintainable in a matter arising under the Industrial Disputes Act. The case related to the payment of the amounts under the Memorandum of Settlement and as to whether there was an infraction of Section 9-A of the Industrial Disputes Act, 1947. A suit in representative capacity was filed under Order 1, Rule 8 of C.P.C., and it was partly decreed, against which an appeal was filed questioning the jurisdiction of the Civil Court, but the appeal failed. Then the matter was taken in a Letters Patent Appeal, but there also the finding with regard to sustainability of the suit before the Civil Court was upheld, and later on the matter landed in Supreme Court. The legal contentions were comprehensively considered by referring to several important judgments and following are the legal principles stated in the said case:

(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief, which is competent to be granted in a particular remedy.

(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ Jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;



(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act.

(v) the appellants / petitioners - employees shall be entitled to seek for reference by filing application under Section 10 of the I.D. Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants / petitioners - employees, on weeks time from the date of receipt of a copy of this order is given to the employees to joint at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents - managements shall sympathetically consider the payments of wages / salaries to the appellants / petitioners - employees so as to maintain the industrial peace and harmony.

The Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, the connected W.A.M.Ps. are closed."

62. The above judgment of the Hon'ble Full Bench of this Court is also unambiguous that the Workmen should approach the Industrial Labour Court at the first instance and thereafter, if their grievances are not redressed, then they are at liberty to approach the High Court under Article 226 of the Constitution of India challenging the order / award passed by the Competent Industrial Labour Court. As far as the present writ petitions are concerned, the apprehensions of the writ petitioners were clarified by the respondents that no such change in service conditions are made and the apprehensions are baseless and presumptive. In view of the facts and circumstances this Court is of the opinion that entertaining a writ petition for issuing a writ of Mandamus should not be entertained where the workmen approaches the High Court directly under Article 226 without exhausting the remedy provided under the Industrial Disputes Act before the competent Industrial Labour Court. Thus, this Court is of the undoubted opinion that the writ petitions for Mandamus based on certain apprehensions filed by the workmen are not entertained under the provisions of the Industrial Disputes Act, cannot be entertained.



63.The General principles is that no writ petition can be dismissed on the ground of maintainability. The power of judicial review under Article 226 of the Constitution of India is extraordinary. Thus, High Court would not dismiss a writ petition on the ground of maintainability. However, the High Court is rejecting a writ petition on the ground that the statute provides a remedy by approaching competent forums / Tribunals / Labour Courts specially created for such adjudications of the issues and to redress their grievances. Thus, the writ petitioners in all such circumstances are bound to approach the Industrial Labour Court in order to resolve the issues arising out of the violations of the provisions of the Industrial Disputes Act, violations of the service conditions or the violations of the terms and conditions of the settlement or otherwise. This being the conclusion, the present writ petitions are devoid of merits.

64.Accordingly, the writ petitions stand dismissed. No costs. Consequently, M.P.[MD]No.1 of 2010, for impleadment and other miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Managing Director,
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Madurai - 625 016.

2.The General Manager,
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+2. C.C. to M/S.S.C.HEROLD SINGH, Advocate SR.No. 78069 & 78071
+1. C.C. to M/S.S.ARUNACHALAM, Advocate SR.No. 78123

COMMON ORDER MADE IN
W.P[MD]Nos. 10416 of 2009 & 2926 of 2010
25.07.2019