

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

101

**CM-4851-4852-CWP-2020 in/and
CWP No.7207 of 2020
Decided on : 29.05.2020**

Khushi Kumari and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. S.S. Kamboj, Advocate for the petitioners.

Ms. Monica Chhibber Sharma, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The matter has been taken up by way of Video Conferencing through Cisco Webex Application in view of COVID-19 situation, as per instructions issued.

CM-4851-CWP-2020

Application is allowed, as prayed for.

CM-4852-CWP-2020

Application for preponing the main case is allowed and the same is taken up on board today itself.

CM stands disposed of.

Main case

In the present writ petition filed under Articles 226/227 of the Constitution of India challenge is to the orders dated 08.01.2019 (Annexure P-4) and 11.03.2019 (Annexure P-5) passed under the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short '2015 Act') by the Chairperson of the Child Welfare Committee, Ferozepur.

Vide the said orders, the petitioners who are the inmates of

CM-4851-4852-CWP-2020 in/and CWP No.7207 of 2020

Arya Anathalaya-respondents No.3 & 4 have been ordered to be repatriated to their parent States i.e. Bihar and Jharkhand, since their parents are alive and working in the said States.

Counsel for the State has pointed out that the said order was subject matter of challenge at the hands of the said respondents No.3 & 4 in **CWP No.9810 of 2019** 'Arya Anathalaya and another Vs. State of Punjab and another' decided on 04.07.2019 (Annexure P-7) and the children were to be sent back in a phased manner.

Senior counsel appearing for the inmates as such has submitted that they were not made party in the said case and should have been heard at that point of time.

Admittedly, as per Section 101 of 2015 Act an appeal is provided to the Children's Court. In the writ petition in paragraph No.29 also it has been averred that there is no other statutory remedy of appeal/revision except to move this Court, which is in contradiction to the provision of Section 101, whereby an appeal lies to the District Magistrate against the order of the Committee or the Board, which has passed the said order as the order has passed by Child Welfare Committee, Ferozepur.

Section 101 (1) reads as under:-

“101. (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate.

CM-4851-4852-CWP-2020 in/and CWP No.7207 of 2020

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.”

Once there is a specific remedy available, which is provided under the Act, it is settled principle that the order impugned is not to be interfered with by this Court under the extraordinary writ jurisdiction.

Counsel for the petitioners submits that on an earlier occasion the writ petition (Annexure P-7) was entertained by this Court.

A perusal of the orders passed would go on to show that it is not brought to the notice of the Coordinate Bench regarding the provision of an appeal, which would lie under the Act and in such circumstances this Court had not interfered in the order and had noticed that the State would be implementing the order in a phased manner and a period of one year had been granted as such.

In such circumstances and keeping in view the law laid down in **United Bank of India versus Satyawati Tondon, 2010 (8) SCC 110**, this Court is of the opinion that the writ petition would not lie at the first instance, in view of the provision of statutory appeal available to the petitioners.

Accordingly, the present writ petition is dismissed with the liberty to the petitioners to approach the competent authority for adjudication on merits, as per the provisions of the Act.

MAY 29, 2020

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No