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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 6118 of 2011

1. Secretary Board Of Secondary Education and T.T.M.P. (CNI) through its Secretary – Shri M. K. Singh S/o Late Kalyan Singh, office at – Mission Compound, Tehsil and District Seoni, M.P.
2. The Principal, St. Paul's Higher Secondary School, Byron Bazar, Raipur, Chhattisgarh

---- Petitioners

Versus

1. The Controlling Authority, Payment of Gratuity, Raipur, office of Assistant Labour Commissioner, Raipur, Chhattisgarh
2. Shri A. D. Ganjir, R/o House No. 54 Sector 1 Gitanjali Nagar Raipur C.G.

---- Respondents

For Petitioner	:	Mr. Saurabh Dangi with Mr. Swajit Ubeja, Advocates
For State	:	Mr. Sudeep Verma, Dy. GA
For Respondent no.2	:	Mr. Shiv Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/02/2021

1. The challenge in the present writ petition is to the impugned order Annexure P-1 dated 23.08.2011 passed by the respondent no.1 in claim case no.33/PGA/2010 decided on 23.08.2011. Vide the said impugned order the respondent no.1 had held that respondent no.2 to be entitled for payment of gratuity and has passed the award in favour of the respondent no.2 to the tune of Rs. 7,97,892.12/- which includes interest untill the date of award and authority has further ordered for payment of interest on the said amount amounting of Rs. 3,338/- per month from the date of award till

the date of actual payment. It is this order which is under challenge in the present writ petition.

2. Challenge is on the ground that petitioners primarily is not the employer of the respondent no.2 and since they are not the employer, the liability of paying gratuity cannot be casted upon the petitioner. According to the petitioner it is the case where petitioner establishment is a society registered under the Societies Registration Act and is hundred percent aided institution receiving 100% aid from the Government and as such they do not have any source of income of theirs to meet the order passed by respondent no.1 so far as granting of gratuity to the respondent no.2 is concerned.

3. As regards the objections so far as non maintainability of the writ petition on the ground of their being statutory efficacious alternative remedy, counsel for the petitioner submits that since they do not have any other source of income and they are fully dependent upon the aid that is given by the State Government, the principle employer as such has to be the State Government therefore the award of the respondent no.1 at the first instance itself is bad. The further contention is that the alternative remedy available under the statues also is not one which is efficacious for the reason that since they do not have any source of income, they would not be able to meet preconditions stipulated in the statutes while preferring an appeal and therefore it becomes inefficacious. Thus they are left with no other option but to approach the High Court invoking Article 226 of the Constitution of India.

4. According to the petitioners they do not have any objection in granting benefits of gratuity to respondent no.2 provided the State Government would have provided sufficient funds to meet the expenditure towards this head. That in the event of any such arrangement being made, the petitioner would not prefer challenging the award rather would go in for

compliance of the same with the funds so provided by the State Government.

5. Counsel for the petitioner also referred to the bunch of writ petitions decided by this Court leading of which being the WPL 223/2017 which stood decided on 06.03.2020 wherein this High Court have allowed the bunch of writ petitions holding that liability of the payment of gratuity in respect of the teachers working in the aided institutions would be that of the State Government and wherein the private institutions who had also already paid the gratuity to the teachers pursuant to the controlling authority held to be entitled for the reimbursement from the State.

6. Per contra, counsel appearing for the respondents opposing the petition submitted that writ petition at the first instance is not maintainable for the reason there is a statutory efficacious remedy available to the petitioner which they have evaded. According to the counsel for the respondent no.2 he stood retired from services of the petitioner establishment on 31.08.2001. The respondent no.2 did not get the gratuity amount under the Payment of Gratuity Act.

7. According to the Respondent no.2. his appointment and his retirement all have been under the petitioners establishment which is a private organisation following the Govt. norms and regulations. Hence for all practical purpose the employer so far as the Respondent no.2 is concerned it would be the Petitioners.

8. It was further submitted that issue as regards the teachers being entitled for payment of gratuity is no longer in dispute and as it has been by now been well settled that teachers would also fall within the definition of employee under the payment of gratuity and are entitled for gratuity on their retirement from service. Respondent no.2 further submits that the law under the Payment of Gratuity act as it stood on the date of his retirement was applicable so far as payment of gratuity to a teacher is concerned in

the light of the amendments that was brought into the Payment of Gratuity Act from a retrospective date.

9. Respondent no.2 further submits that since petitioner did not release the payment of gratuity to the petitioner, he was left with no other option but to approach the Controlling Authority under the Act and where the Controlling Authority vide the impugned order has passed the order in his favour which needs to be complied with. Respondent no.2 submits that though he has retired as early as in August, 2001 and that more than almost 10 years have passed, till date the petitioner has been deprived of his gratuity amount which he is otherwise legally entitled for. According to the respondent no.2 since they have not preferred an appeal as provided under the Act of 1972 the writ petition would not be maintainable.

10. Having heard the contentions put forth on either side and on perusal of the record prima facie it appears that the primary contention of the petitioner is that since they do not have their own source of income, they do not have financial stability, firstly to comply with the award passed by the Controlling Authority. Secondly it would be difficult for them to meet the precondition stipulated under Section 7 of the Payment of Gratuity Act for preferring an appeal and it is for this reason that writ petition has been filed.

11. Undoubtedly, the petitioner is a private Educational Institutional Society registered under the Societies Registration Act having its own Board of Directors. The petitioners undoubtedly have got a sanction from the State Government as the aided institutions where the State Government provides 100% aid so far as salary of the sanctioned strength of teaching and non teaching staff. The petitioners herein are charging nominal fees from the students who are taking education from the petitioner establishment which by itself means that they have some source of income. Merely because the petitioner establishment does not have financial capacity or capability to meet the preconditions required to

comply with while preferring an appeal by itself cannot be a ground for holding that remedy of appeal available to the petitioner under the statutes is inefficacious. Once when the statutes provides for payment of gratuity to the teachers the school authorities ought to have taken note of this fact and taken appropriate steps and measures to ensure that teachers on their retirement would be paid the gratuity that they are entitled for.

12. The petitioners in the past have approached this Court for appropriate direction to the State for providing sufficient aid to meet the eventuality of payment of gratuity to teachers on retirement. This Court directed the petitioners to approach the Government in this regard, which has been rejected by the State at one point of time, which has not been further questioned by the petitioners.

13. The law so far as entertaining of writ petition while there is a statutory remedy available has been a bone of contention since ages. The Hon'ble Supreme Court as early as in 1964 in the case of **Basant Kumar Sarkar and Ors. Vs. Eagle Rolling Mills Ltd. and Ors., AIR 1964 SC 1260** has in very categorical terms held that once when there is an alternative remedy available, the issue or the matter cannot be looked into exercising the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

14. The statutory remedy can never be construed to be inefficacious and when there is a statutory remedy provided the litigant is required to first pursue the remedy/mechanism available under the statutes before invoking the writ jurisdiction. Article 226 of Constitution of India otherwise is a prerogative Writ. Even otherwise the discretionary jurisdiction exercised by the High Court under Article 226 is not to be invoked as a matter of routine when under the statutes itself there is a substantive right and remedy of appeal provided. Though there are judgment of the Supreme Court where it has been held that existence of an alternative remedy is not an absolute bar from entertaining the writ petition but such entertainment of writ petition has

to be under exceptional circumstances. The Supreme Court has held that it is a self imposed limitation/restriction that is casted upon the Writ Courts while entertaining the writ petition where there is a statutory remedy available for the litigant unless a strong exceptional case is made out.

15. We should not forget the fact that challenge to the impugned order of the Controlling Authority is not on the aspect of violation of natural justice or the authority not being competent or being without jurisdiction. On the other hand, the sole reason for bypassing the remedy of appeal was on account of petitioner not being in a position to deposit the awarded amount as is mandatorily required while preferring a statutory appeal.

16. In the recent past in the case of **Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal, 2014 1 SCC 603** in Paragraph 11 & 15 the Supreme Court has held as under :-

> "11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

> 15. Thus, while it can be said that this Court has recognized 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, Titagarh 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. “

17. The said view further was further enunciated by the Supreme Court in the case of **Authorised Officer, State Bank of Tranvancore & Anr. Vs. Mathew K.C., 2018 3 SCC 85.**

18. Recently again the same view was reiterated by the Hon'ble Supreme Court in the case of **Genpact India Private Limited Vs. Deputy Commissioner of Income Tax & Anr., Civil Appeal No.8945/2019** decided on 22.11.2019, wherein Hon'ble Supreme Court referring to the aforementioned judgment has affirmed the order of the High Court in refusing to entertain the writ petition on the ground of there being an alternative statutory remedy available to the litigant.

19. Given the fact that petitioners have not preferred an appeal before the appellate authority under the Act of 1972 only on the ground of not having financial capacity to avail the same cannot be accepted as a ground to entertain the writ petition bypassing the statutory provisions and for the said reasons, this Court holds that this writ petition is not maintainable.

20. Reserving the right of the petitioner to avail appropriate remedies available to the petitioner keeping in view the subsequent development, the present writ petition stands rejected on the ground of there being an alternative statutory remedy available.

Sd/-
(P. Sam Koshy)
Judge

Rohit