

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4351 of 2020

Narendra Singh S/o Shri Birbal Singh Aged About 31 Years R/o H. No. R/154,
Ashirwaed Valley, Bodri, Bilaspur Chhattisgarh 495223

---- Petitioner

Versus

1. Union of India, through its Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi 110001
2. National Highway Authority of India, through its Secretary, G-5 and 6, Section 10, Dwarka, New Delhi 110075
3. The Chief General Manager (Admn. Hr) The National Highway Authority of India, G-5 and 6, Section 10, Dwarka, New Delhi 110075
4. The Project Director National Highway Authority of India Project Implementation Unit-Bilaspur House /plot No. D-61, HIG-I (Akash), Abhilasha Parisar, Tifra, Bilaspur Chhattisgarh Pin 495001

---- Respondents

(Cause Title has been taken from Case Information System)

For Petitioner	: Mr. Pranjal Agrawal, Advocate
For Respondent No.1/UOI	: Mr. Ramakant Mishra, Assistant Solicitor General
For Respondents No.2 to 4 / NHAI	: Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

18.11.2021

Heard Mr. Pranjal Agrawal, learned counsel for the petitioner. Also heard Mr. Ramakant Mishra, learned Assistant Solicitor General for Union of India appearing for respondent No.1 and Mr. Goutam Khetrapal, learned counsel appearing for respondents No.2 to 4.

2. By this writ petition, the petitioner challenges National Highway Authority of India (Recruitment, Seniority and Promotion) Amendment Regulation, 2020 as unconstitutional and violative of the Constitution of India to the extent of prescribing the qualifications and eligibility criteria for the post of Deputy General Manager (Technical) in Schedule of Deputy General Manager (Technical) column 8, Clause (2)(ii)(iii) of the said regulations along with further prayer for declaration that all the candidates, whether departmental or otherwise, is entitled for promotional post of DGM (Technical) on completion of 4 years of service.

3. Learned counsel appearing for the respondents have questioned the maintainability of the writ petition on the ground of availability of alternative remedy before the Central Administrative Tribunal. Reliance is placed upon the decision of the Hon'ble Supreme Court in the case of *L. Chandra Kumar vs. Union of India*, reported in *(1997) 3 SCC 261* as well as in the case of *Rajeev Kumar vs. Hemraj Singh Chauhan*, reported in *(2010) 4 SCC 554*.

4. Mr. Pranjal Agrawal, learned counsel for the petitioner, on the other hand, submits that though the Central Administrative Tribunal has competence to decide validity of a statute, there is no bar for this Court to entertain the present writ petition though alternative remedy is available. In support of his contention, he has placed reliance in the decisions of the Hon'ble Supreme Court of India in the cases of *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*, reported in *(1998) 8 SCC 1*, with particular reference to paragraph 15, *Harbanslal Sahnia and Another vs. Indian Oil Corpn. Ltd. and Others*, reported in *(2003) 2 SCC 107*, with particular reference to paragraph 7, *Nivedita Sharma*

vs. Cellular Operators Association of India and Others, reported in (2011) 14 SCC 337, with particular reference to paragraph 11 and *Assistant Commissioner of State Tax and Others vs. Commercial Steel Limited*, reported in 2021 SCC OnLine SC 884, with particular reference to paragraph 11.

5. In *L. Chandra Kumar (supra)*, the Hon'ble Supreme Court at paragraph 93 of the judgment held as follows :

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High

Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”

6. In *Rajeev Kumar (supra)*, the Hon’ble Supreme Court in paragraph 13 observed as follows :

“13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which C.A.T. has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a Court of first instance in respect of their service disputes, for adjudication of which C.A.T. has been constituted.”

7. The decision rendered in *L. Chandra Kumar (supra)* makes it clear that the Central Administrative Tribunal is competent to hear and decide matters where the vires of statutory provision, subordinate legislation and rules are questioned, subject to the exception that it cannot entertain any question regarding the vires of its parent statutes.

8. In *Whirlpool Corporation (supra)*, the Hon'ble Supreme Court at paragraph 15 observed as follows :

“15. Under Article 226 of the Constitution of India, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But, the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

9. In *Harbanslal Sahnia* (supra), the Hon'ble Supreme Court at paragraph 7 observed as follows :

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

10. In *Nivedita Sharma* (supra), the Hon'ble Supreme Court at paragraph 11 observed as follows :

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation – *L.Chandra Kumar v. Union of India* (1997) 3 SCC 261: 1997 SCC (L&S) 577. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and / or its agency / instrumentality or any public authority or order passed by a quasi-judicial body / authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

11. In *Assistant Commissioner* (supra), the Hon'ble Supreme Court at paragraph 11 observed as follows :

“11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principle of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.”

12. A perusal of the above decisions cited by Mr. Agrawal would go to show that under Article 226 of the Constitution of India, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The High Court has imposed upon itself certain self-imposed restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. Rule of exclusion of writ jurisdiction because of availability of an alternative remedy is a rule of discretion and not one of compulsion. It is not that each and every

petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. But a writ petition can be entertained in exceptional circumstances where there is a breach of fundamental rights, where there is violation of the principles of natural justice, where there is an excess of jurisdiction, or where there is a challenge to the vires of a statute or delegated legislation.

13. The alternative remedy available before the petitioner is Central Administrative Tribunal. Where a statutory forum is created by law for redressal of service disputes, in the facts of the present nature, we are of the opinion that a writ petition ought not be entertained ignoring the statutory dispensation.

14. In view of the above discussion, we decline to entertain this writ petition and accordingly, relegate the petitioner to avail remedy in accordance with law, if so advised.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge