

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-2900-2020(O&M)

Naveen Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

2. CWP-14918-2020(O&M)

Rohit

.....Petitioner

Versus

Union of India and others

.....Respondents

3. CWP-16844-2020(O&M)

Sunil Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

4. CWP-18063-2020(O&M)

Sarita

.....Petitioner

Versus

Union of India and others

.....Respondents

5. CWP-18142-2020(O&M)

Ishwar Singh

.....Petitioner

Versus

CWP-2900-2020(O&M)
and connected cases 2

Union of India and others
.....Respondents

6. CWP-18148-2020(O&M)
Hari Om
.....Petitioner

Versus

Union of India and others
.....Respondents

7. CWP-18382-2020(O&M)
Suman Devi
.....Petitioner

Versus

Union of India and others
.....Respondents

8. CWP-17979-2020(O&M)
Ajit
.....Petitioner

Versus

Union of India and others
.....Respondents

9. CWP-27001-2019(O&M)
Sandeep Kohar
.....Petitioner

Versus

Union of India and others
.....Respondents

10. CWP-28859-2019(O&M)

CWP-2900-2020(O&M)
and connected cases 3

RaviPetitioner

Versus

Union of India and othersRespondents

11 CWP-29182-2019(O&M)
Amit KumarPetitioner

Versus

Union of India and othersRespondents

12. CWP-28863-2019(O&M)
Pardeep KumarPetitioner

Versus

Union of India and othersRespondents

13. CWP-30055-2019(O&M)
Sandeep Singh @ SandeepPetitioner

Versus

Union of India and othersRespondents

14. CWP-35025-2019(O&M)
Ankit SinghPetitioner

Versus

CWP-2900-2020(O&M)
and connected cases 4

Union of India and others

.....Respondents

15. CWP-13198-2020(O&M)

Dilawar

.....Petitioner

Versus

Union of India and others

.....Respondents

16. CWP-8015-2020(O&M)

Robin Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

17. CWP-8192-2020(O&M)

Manoj Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

18. CWP-8479-2020(O&M)

Sandeep Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

19. CWP-9023-2020(O&M)

Harish

.....Petitioner

CWP-2900-2020(O&M)
and connected cases

5

Versus

Union of India and others

.....**Respondents**

20. CWP-9063-2020(O&M)

Amit Kumar

.....**Petitioner**

Versus

Union of India and others

.....**Respondents**

21. CWP-19023-2020(O&M)

Parveen

.....**Petitioner**

Versus

Union of India and others

.....**Respondents**

22. CWP-19619-2020(O&M)

Sunil Kumar

.....**Petitioner**

Versus

Union of India and others

.....**Respondents**

23. CWP-19661-2020(O&M)

Manish

.....**Petitioner**

Versus

Union of India and others

.....**Respondents**

24. CWP-19674-2020(O&M)

Amit

.....Petitioner

Versus

Union of India and others

.....Respondents

25. CWP-6496-2020(O&M)

Arvind Yadav

.....Petitioner

Versus

Union of India and others

.....Respondents

26. CWP-9379-2020(O&M)

Sarvan Kumar Suthar

.....Petitioner

Versus

Union of India and others

.....Respondents

27. COCP-1345-2020(O&M)

ARVIND YADAV

.....Petitioner

Versus

RANJU PARSAD CHIEF POST MASTER GENERAL HARYANA
AND ANR

.....Respondents

28. COCP-1635-2020(O&M)

SANDEEP SINGH

.....Petitioner

**CWP-2900-2020(O&M)
and connected cases**

7

Versus

PARDEEP KUMAR BISOI AND OTHERS

.....Respondents

29. COCP-1970-2020(O&M)

AMIT KUMAR

.....Petitioner

Versus

NIRMAL SINGH AND OTHERS

.....Respondents

30. COCP-4006-2019(O&M)

SANDEEP KOHAR

.....Petitioner(s)

Versus

TARA CHAND SHARMA

.....Respondents

Date of decision:05.01.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sandeep Singh Sangwan, Advocate, for the petitioner
in CWP-2900 of 2020, 27001, 28859, 29182, 28863, 30055
35025 of 2019, COCP-4006-2019

Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate for the petitioner
in CWP-9023-2020

Mr. Akshay Chadha, Advocate for the petitioner
in CWP-14918, 16844, 9063, 9379 of 2020

Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Japjit Singh Johal, Advocate for the petitioner
in COCP-1635-2020, CWP-13198, 8015, 8192, 8479 of
2020

Mr. Vikas Bahl, Sr. Advocate with
Mr. Nikhil Sabharwal, Advocate and
Ms. Surbhi Kaushik, Advocate for the petitioner
in COCP-1970 of 2020

Mr. S.S.Nain and
Mr. S.S.Goripuria, Advocates for the petitioner
in CWP-18063, 18142, 18148, 17979, 19023, 19619, 19661
19674 of 2020

Mr. Nitin Jain, Advocate for the petitioner
in CWP-18382 of 2020

Mr. S.S.Kharb, Advocate for the petitioner
in COCP-1345 of 2020 and CWP-6496-2020

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Lokesh Narang,
Mr. Namit Kumar and
Mr. Nishad Ahuja, Advocates for UOI

ANIL KSHETARPAL, J.

By this order 30 petitions i.e 26 CWPs i.e 27001, 28859, 29182, 28863, 30055, 35025 of 2019, 2900, 14918, 16844, 18063, 18142, 18148, 18382, 17979, 13198, 8015, 8192, 8479, 9023, 9063, 19023, 19619, 19661, 19674, 6496 & 9379 of 2020 and 4 COCPs i.e 1345, 1635, 1970 of 2020 and 4006 of 2019 shall stand disposed of.

In 13 writ petitions, the petitioners have laid challenge to the order of dismissal/removal from the service. In some cases, the statutory appeal filed have also been dismissed. In 11 writ petitions, the petitioners have challenged the charge-sheet issued for initiating disciplinary proceedings. Whereas in two writ petitions, the petitioners were found ineligible to be appointed.

At the outset, it must be noticed that this Court has heard learned counsel for the parties on the question of availability of equally efficacious remedy and hence, in view thereof, whether this Court

should entertain writ petition under Article 226/27 of the Constitution of India.

It may be noted here that learned counsels appearing for the petitioners in various petitions do not dispute that all the petitioners do have an alternative remedy. In some cases, appeal against the order of dismissal/removal is maintainable, however, no such appeal has been filed. Further, against the orders of dismissal/removal after dismissal of the statutory appeal, the remedies of revision/review are also maintainable. All these petitioners were employees of Department of Communication and Information Technology, under the Central Government. They were selected pursuant to a recruitment notice issued on 21.2.2014 to work as Postal Assistants/Sorting Assistants in the Post Offices. In December, 2015, a recruitment examination held for post of Postal Assistants/Sorting Assistants was ordered to be cancelled. Various petitions before the Central Administrative Tribunals were filed. It is alleged that the aforesaid petitions were allowed. However, High Court of Gujarat set aside the same. The Hon'ble Supreme Court disposed of these matters on 13.7.2017. It held that since the allegations of illegality are in the areas of States of Uttarakhand, Rajasthan, Chhatisgarh, Haryana and Gujarat therefore, it would not be appropriate to cancel the entire examination. Thus, the Supreme Court permitted the Department to proceed with the disciplinary proceedings. Basic allegation against the employees is that they had not appeared in the recruitment examination themselves and certain other persons had impersonated them. After receiving report

from the Forensic Science Laboratory regarding comparison of signatures of the candidates on the Aptitude Test, Typing Test and Data Entry Test with the standard signatures, the disciplinary proceedings have been initiated against the petitioners.

Learned counsel for the petitioners have submitted that since the writ petitions have been entertained and interim protections in certain cases have been granted, therefore, it would not be now appropriate to relegate the petitioners to the alternative remedy. They further submitted that the jurisdiction of High Court under Article 226/227 of the Constitution is absolute and therefore, the Court has correctly entertained writ petitions. In support of their arguments, learned counsels placed reliance on a recent judgment of the Supreme Court in **Bal Krishan Ram vs. UOI (2020) 2 SCC 442**. Learned counsels have also drawn attention of the Court to a Constitution Bench judgment in **State of UP vs. Mohd. Nooh (1958) SCR 595**. Further reliance has been placed on case titled as **Hindustan Steel Construction vs. Hindustan Steel Works Construction Employees Union (2005) 6 SCC 725** and an unreported judgment in **Genpact India Private Limited vs. Deputy Commissioner Income Tax** Civil Appeal No. 8945 of 2019 decided on 22.11.2019.

On the other hand, learned Additional Solicitor General of India, appearing for the respondents has submitted that the petitioners do have equally effective alternative remedies. He relies upon Constitution Bench judgment in **L.Chandra Kumar vs. UOI and others (1997) 2 SCT 423**.

After having heard learned counsel for the parties at length, this Court is of the considered opinion that the petitioners are required to be relegated to alternative remedies. No doubt, the jurisdiction under Article 226/227 of the Constitution of India does not prohibit or debar the Court from entertaining the writ petitions filed under the Constitution however, there is self imposed rule of prudence to the effect that if an equally efficacious alternative remedy is available the writ petition should not be entertained, ignoring the statutory dispensations. No doubt, it is not a rule of law, however, its a rule of discretion. It is neither rule of jurisdiction but of prudence. Now let us examine the case law relied upon by the learned counsel for the petitioners. In Bal Krishan Ram's case (supra), the Hon'ble Supreme Court was hearing civil appeal challenging a full bench judgment of the Allahabad High Court. In that case, the question was whether after constitution of the Armed Forces Tribunal, appeal against the judgment of the Single Judge would be maintainable before the Division Bench or before the Armed Forces Tribunal. The Full Bench in **Nand Kishore Sahu vs. Chief of Army Staff, New Delhi and others 2012 SCC Online Allahabad, 3559**, held that after the judgment passed by the Single Bench, appeal would be maintainable before the Division Bench and the parties are not required to be referred to Armed Forces Tribunal. The Hon'ble Supreme Court while dismissing the civil appeal observed that the alternative remedy is the rule of prudence and not a rule of law. Hence, the aforesaid judgment does not help the petitioners. This judgment does not lay down that the High Court

should entertain the writ petitions irrespective of effective alternative remedies available. Next judgment relied upon by the learned counsels is Hindustan Steel Construction's case (supra). On careful reading thereof, it is apparent that the Supreme Court directed the parties to avail alternative remedy. In that case, a writ petition was filed in the High Court alleging violation of Section 9-A of the Industrial Disputes Act, 1947, as the construction allowance has been withdrawn. The High Court allowed the writ petition, whereas Supreme Court set aside the same and directed the parties to avail alternative remedy. While deciding the aforesaid case, certain observations were made which cannot be read out of context. Ultimately, the Supreme Court directed the parties to avail alternative remedy.

Next reliance is upon Genpact's case (supra). In this case, an order passed by the authority was challenged before the Delhi High Court. The writ petition was entertained. Ultimately, the writ petition was disposed of by directing the petitioner to avail alternative remedy. When the matter was taken to Supreme Court, it was ultimately held that the parties should be relegated to the alternative remedy.

Last judgment relied upon by the counsel for the petitioners is State of UP (supra). In this judgment, a Five Judges Bench of the Supreme Court held that availability of effective alternative remedy is a matter of discretion and it all depends upon facts and circumstances of the case. The Bench ultimately went on to set aside the judgment of the High Court on an entirely different issue.

Next argument of the learned counsel is that once the writ

petitions have been entertained and interim orders have been granted, therefore, now it would not be appropriate to relegate the petitioners. This aspect has also been examined by the Supreme Court in **State of UP vs. UP Rajya Khanji Vikas Nigam Sangarsh Samiti and others 2008 (12) SCC 675**. After noticing that the writ petition has been admitted for final hearing the Court still held that once alternative remedy is available, the petitioners should be relegated to the alternative remedy.

In view of the aforesaid discussions as also the facts of these cases, this Court is of the considered view that all the petitioners should be relegated to the alternative remedies as available. The petitioners have failed to draw attention of the Court to any special circumstances to persuade the Court to take a different view. Hence, all the writ petitions are disposed of in view of the observations made above.

There are certain contempt petitions for initiation of proceedings under the Contempt of Courts Act, 1971. It is alleged that the interim orders passed by this Court have been violated.

Since this Court has already held that the petitioners are required to be relegated to the alternative remedy, therefore, it would not be appropriate to proceed with the petitions for initiation of contempt proceedings. Hence, they are also disposed of, particularly, when the interim orders merge with this judgment.

05.01.2021

rekha

Whether speaking/reasoned
Whether Reportable

Yes /No
Yes / No

(ANIL KSHETARPAL)
JUDGE