

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7125 OF 2021

1. Chaitali Jitendra Katariya
Age : 27 years, R/o. Loni Budruk,
Vitthalnagar, Tq. Rahata,
Dist. Ahmednagar
 2. Arif Rafiq Patel
Age : 34 years, R/o. Sakur,
Tal. Sangamner, Dist. Ahmednagar
- .. Petitioners

Versus

1. State of Maharashtra
Through its Secretary,
General Administration Department,
Govt. of Maharashtra,
Mantralaya, Mumbai.
 2. The Principal Secretary,
Revenue and Forest Department,
Govt. of Maharashtra,
Mantralaya, Mumbai.
 3. The District Collector,
Office of the District Collector,
Ahmednagar
- .. Respondents

...

WITH

CIVIL APPLICATION NO.6255 OF 2021

IN

WRIT PETITION NO.7125 OF 2021

AND

WRIT PETITION NO.8602 OF 2021

Nikita Mahendrasing Rajput
Age : 28 years, Occu : Household,
R/o. Plot No.08, Rajput Colony,
Near Maharana Pratap High School,
Devpur, Dhule

.. Petitioner

Versus

1. State of Maharashtra
Through its Secretary,
General Administration Department,
Govt. of Maharashtra,
Mantralaya, Mumbai.

2. The Principal Secretary,
Revenue and Forest Department,
Govt. of Maharashtra,
Mantralaya, Mumbai.

3. The District Collector,
Office of the District Collector,
Dhule.

.. Respondents

...

Mr. Sayyed Tauseef Yaseen, Advocate for the Petitioners
in both the matters

Mr. S.B. Yawalkar, AGP for Respondent Nos.1 to 3
in both the matters

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 22-08-2022
PRONOUNCED ON : 29-08-2022**

JUDGMENT (*PER* SANDEEP V. MARNE, J.):

. It has been 37 long years since enactment of the Administrative Tribunals Act, 1985 and establishment of Administrative Tribunals under Article 323A and 323B of the Constitution of India for adjudication of disputes in respect of recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of the State. However, despite availability of remedy of seeking adjudication in respect of service matters before the Administrative Tribunals, several writ petitions still continue to be directly filed before this Court under specious plea that mere existence of alternate remedy is not a bar for exercise of writ jurisdiction by us under Article 226 of the Constitution of India. We have before us two such petitions filed by the candidates / petitioners, who are seeking recruitment to the post of Talathi in the Revenue and Forest Department of the Government of Maharashtra.

2. The petitioners in both the petitions have participated in the selection process initiated by the District Collector, Ahmednagar and Dhule for recruitment on the post of Talathi. The petitioners are essentially aggrieved by the action of the State Government in publishing notification dated 15.06.2021 as well as issuing

Government Resolution dated 31.05.2021 allowing candidates belonging to Socially and Educationally Backward Category (SEBC) to change the reservation category to Economically Weaker Section (EWS) Category thereby impinging upon their chances of being selected and appointed on the post of Talathi.

3. There is no dispute that the grievance sought to be redressed before us in the present petition is a service matter within the meaning of Section 14 of the Administrative Tribunals Act, 1985 (in short 'Act of 1985'). There is also no dispute that the petitioners have the remedy of filing applications under Section 19 of the Act of 1985 before Maharashtra Administrative Tribunal, which has jurisdiction to decide it.

4. When we expressed to Mr. Sayyed Tauseef Yaseen, the learned Counsel appearing for the petitioners as to how the petitioners can directly approach this Court in respect of their cause of action which is admittedly covered by Section 14 of the Act of 1985 and in respect of which the petitioners have remedy under Section 19, numerous reasons have been cited before us urging us to entertain the present writ petitions rather than relegating the petitioners to the Administrative Tribunal in view of availability of an

alternate remedy.

5. Mr. Sayyed Tauseef Yaseen submits that mere existence of alternate remedy is not a bar for exercise of jurisdiction under Article - 226 of the Constitution of India. He submits that since the petitioners are yet to become government servants, they are justified in directly approaching this Court in respect of their cause of action of seeking recruitment into the State service. He further submitted that when merely a question of law is involved, the High Court can always entertain a writ petition rather than relegating the parties to an alternate remedy. He submitted that the question of law involved in the present case has been decided by this Court in **Vikas Balwant Alase and others Vs. Union of India through Secretary and Others in Writ Petition No.2663 of 2021** decided on 29.07.2022 and therefore, this Court will have to merely follow the decision and issue a declaration in favour of the petitioners. Lastly, he submitted that since the present petitions are pending since 22.02.2021, it would not be appropriate at this stage to relegate the petitioners to an alternate remedy.

6. In support of his contentions, Mr. Sayyed Tauseef Yaseen relied upon the following decisions:

- (i) **State of Uttar Pradesh and Ors Vs. Indian Hume Pipe Co. Ltd., AIR 1977 SC 1132.**
- (ii) **Bal Krishna Agarwal Vs. State of U.P. and Ors. [1995] 1 SCR 148.**
- (iii) **National Company, Represented by its Managing Partner Vs. Territory Manager, Bharat Petroleum Corporation Ltd and another, 2021 SCC OnLine SC 1042.**
- (iv) **Dr. Sanjay Ramrao Kadam & Others Vs. The State of Maharashtra & Others, Writ Petition No.5402 of 2018 decided on 20.03.2020.**

7. Per contra, learned AGP Mr. S.B. Yawalkar appearing for the respondents - State opposed the petitions and relied upon the decision of Constitution Bench of the Supreme Court in **L. Chandra Kumar Vs. Union of India & Others, (1997) 3 SCC 261** in support of his contention that the petitioners cannot directly approach this Court in respect of service dispute covered by the provisions of the Act of 1985.

8. It has been an attempt on the part of Mr. Sayyed Tauseef Yaseen to compare the remedy of filing application under Section 19 of the Act of 1985 before the Administrative Tribunal with the alternate remedies provided for in various other statutes or in administrative instructions. This is a reason why he relied upon few decisions to buttress his contention that in an appropriate case this

Court can always decide an issue in writ jurisdiction by ignoring alternate remedies available to the parties. However, Mr. Sayyed Tauseef Yaseen misses a very important distinguishing factor when it comes to alternate remedy of filing application before an Administrative Tribunal. Section 28 of the Act of 1985 reads as under:

“28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution.- On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, 3 [no court except - (a) the Supreme Court; or (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.”

Thus, Section 28, at one point of time, excluded jurisdiction of even High Courts with regard to the service matters covered by Section 14 of the Act. The question of validity of Section 28 of the Act of 1985 came up before 7 Judge bench of the Apex Court in **L. Chandra Kumar** (supra). The Court held that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the

jurisdiction of the High Courts and the Supreme Court under Articles 226 / 227 and 32 of the Constitution of India are unconstitutional. The Court further held that the jurisdiction conferred upon High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of inviolable basic structure of the Constitution and that the same cannot be ousted. The Court further held that all decisions of the Administrative Tribunals would be subject to scrutiny before Division Bench of High Courts within whose jurisdiction the Tribunal concerned falls. This is how the remedy of challenging decision of an Administrative Tribunal before the High Court came to be judicially created by way of decision in **L. Chandra Kumar** (supra). Otherwise, prior to the decision in **L. Chandra Kumar**(supra) the High Court did not even have jurisdiction to decide any matters covered by Section 14 of the Act of 1985.

9. In **L. Chandra Kumar** (supra) the Apex Court was conscious of the fact that while creating an avenue of challenging decisions of Administrative Tribunals before Division Bench of the High Courts, there could be a tendency to interpret the said directions to mean as if the High Courts would continue to exercise inherent jurisdiction under Article 226 and could directly entertain service matters covered by Section 14 of the Act of 1985. To avoid such

interpretation, the Apex Court issued following directions.

“The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

Thus, the mandate of the 7 Bench Judge decision in **L. Chandra Kumar** (supra) is that it is not open for the litigants to directly approach High Courts overlooking the jurisdiction of the Tribunal concerned.

10. Despite the decision in **L. Chandra Kumar** (supra) the Apex Court was required to restate the principles in several decisions rendered thereafter. We may refer to some of them. In **Kendriya Vidyalaya Sangathan & Anr. Vs. Subhas Sharma**, (2002) 4 SCC 145 it is held as under:

“12. The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall

continue to act as the only courts of first instance 'in respect of areas of law for which they have been constituted'. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

13. In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit bench in the State of Jammu and Kashmir for disposal in accordance with law.”

11. In **Rajeev Kumar & another Vs. Hemraj Singh Chauhan & Others**, (2010) 4 SCC 554. It is held in para no.13 as under:

“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.”

12. Thus, it now needs no reiteration that writ petitions

directly filed before High Courts in respect of matters covered by Section 14 of the Act of 1985 are not maintainable and that the usual pretext of the High Courts exercising inherent jurisdiction under Article 226 of the Constitution ignoring availability of alternate remedy cannot be applied in respect of the remedy of filing application under Section 19 of the Act of 1985.

13. We would be failing in our duty if we do not refer to one decision of the Apex Court in **T.K. Rangarajan Vs. Government of T.N. and Others, (2003) 6 SCC 581** where a departure has been made by the Apex Court in upholding direct approach of litigants to the High Court under Article 226 in respect of a service matter. However, this exception is made by the Apex Court in the light of existence of exceptional circumstances in that case. The case involved termination of services of thousands of employees who had resorted to strike. It is on account of this unique circumstance that the Apex Court permitted direct filing of the writ petition before the High Court by observing in para 10 as under:

“10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the

cause. Hence, as stated earlier, because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.”

Thus, in **T.K. Rangarajan** (supra) the Apex Court used the words “very very exceptional circumstances” while making possibly one time exception to the settled law that parties cannot directly approach High Court in respect of matters covered by Section 14 of the Act of 1985. In the present case, there exist no such exceptional circumstances. In fact, in the petition there is no averment about availability of alternate remedy and the reason why the same was not resorted.

14. We have, therefore, no hesitation in coming to the conclusion that the petitions directly filed before this Court in respect of recruitment to the post of Talathi in State service are not at all maintainable.

15. What remains are the judgments relied by Mr. Sayyed Tauseef Yaseen. (i) **State of Uttar Pradesh and Ors Vs. Indian Hume Pipe Co. Ltd.** (supra) is cited in support of a proposition that when a pure question of law is involved the High Court can always entertain

writ petition despite availability of alternate remedy. Para 4 of the decision reads thus:

“4. Lastly, it was feebly argued by Mr. Manchanda that the High Court ought not to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act, particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably, or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Art. 136 of the Constitution to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention.”

This ratio, in our opinion, cannot be applied to the matters covered by the provisions of the Act of 1985 in view of authoritative and

repeated decisions of the Apex Court holding that the parties cannot directly approach High Court in respect of service matters covered by the Act.

16. **National Company** (supra) is relied upon in support of the contention that when similar relief is already granted in another set of litigation, this Court would be justified in entertaining the petition. We fail to comprehend as to how this decision can assist the case of the petitioners as the same is in the context of the tenure of lease and does not even deal with the issue of availability of alternate remedy.

17. **Bal Krishna Agarwal** (supra) is relied upon in support of the proposition that once a writ petition is admitted and is pending in the High Court for a long period, mere existence of alternate remedy would not bar the jurisdiction of the High Court. The case involved alternate remedy of reference to the Chancellor under Section 68 of the U.P. State Universities Act, 1973. In our opinion, such departmental remedy cannot be compared with the remedy available before statutory Administrative Tribunal established by the Act of 1985. Even otherwise, present petitions ought not to have been filed in this Court in the first place. They are yet to be admitted. Even if

the petitions were to be admitted, we are afraid the plea of alternate remedy does not get washed out. In **Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and another, 2019 SCC OnLine SC 1500** the Apex Court considered the issue as to whether writ petitions could be dismissed on the ground of alternate remedy after admission. The Court held in para nos.25 and 26 as under:

“25. We do not, therefore, find any infirmity in the approach adopted by the High Court in refusing to entertain the Writ Petition. The submission that once the threshold was crossed despite the preliminary objection being raised, the High Court ought not to have considered the issue regarding alternate remedy, may not be correct. The first order dated 25.01.2017 passed by the High Court did record the preliminary objection but was *prima facie* of the view that the transactions defined in Section 115QA were initially confined only to those covered by Section 77A of the Companies Act. Therefore, without rejecting the preliminary objection, notice was issued in the matter. The subsequent order undoubtedly made the earlier interim order absolute. However, the preliminary objection having not been dealt with and disposed of, the matter was still at large.

26. In State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others this Court dealt with an issue whether after admission, the Writ Petition could not be dismissed on the ground of alternate remedy.”

Therefore, even if the petitions were to be admitted, it cannot be a ground for not relegating the petitioners to have alternate remedy.

18. **Dr. Sanjay Ramrao Kadam** (supra) is relied upon to demonstrate that this Court had rejected the plea of alternate remedy before Administrative Tribunal and had entertained writ petition directly filed before it. Para Nos.13 and 54 read thus:

“13. He lastly opposes the petitioner on the ground that the petitioners are Government employees and they can raise their grievance before the Administrative Tribunal.”

“54. Since, we have already held that the impugned Government Resolutions, increasing the age of superannuation, are illegal and the same have been issued without authority or power, we reject the plea of alternate remedy raised by the respondents. More over there is no complete bar to exercise writ jurisdiction. Looking to the illegality involved in the present matter we are of the opinion that the said objection is liable to be rejected.”

We are afraid, this Court has not considered the aforesaid decisions of the Apex Court while deciding the issue of alternate remedy. This Court is bound by the authoritative and repeated declaration of law by the Apex Court to the effect that parties cannot directly approach this Court under Article 226 of the Constitution in respect of service matters covered by the Act of 1985. Therefore, the decision in **Dr. Sanjay Ramrao Kadam** rendered in facts of that case, cannot be relied upon to contend that this Court can entertain each and every petition directly filed without approaching the Administrative Tribunal.

19. Lastly, strong reliance is placed by Mr. Sayyed Tauseef Yaseen on the decision of this Court in **Vikas Balwant Alase** (supra). There is no dispute that in **Vikas Balwant Alase** (supra) this Court decided the very same issue that is involved in the present petition. However, in that case, the recruiting agency was Maharashtra State Power Generation Company, which is admittedly not amenable to jurisdiction of Maharashtra Administrative Tribunal. Therefore, the issue of existence of alternate remedy was neither involved nor was it decided by this Court. Mr. Sayyed Tauseef Yaseen vehemently submitted that since a question of law has already been decided in **Vikas Balwant Alase** (supra), we must follow it and issue a declaration in the present case also that the action of the State Government in allowing SEBC category candidates to change their reservation category to EWS category is unwarranted. We are afraid, we cannot accept this contention. In our opinion, the present petitions ought not to have been filed directly before this Court. When these petitions were filed, the decision in **Vikas Balwant Alase** (supra) was not available and therefore, mere availability of subsequent decision deciding similar question of law cannot be a reason to make an exception to well settled law preventing the petitioners from filing the petitions directly before this Court. In every matter, there is bound to be some question of law being

decided by other courts. However, jurisdiction of Court cannot be determined on the basis of similar issue being decided by another Court. We, therefore, reject this contention as well.

20. In the result, we are of the considered opinion that the petitions are not maintainable and are liable to be dismissed. The petitioners shall, however, have the liberty to approach the Maharashtra Administrative Tribunal with regard to their grievances raised in the present petitions. Considering the fact that the present petitions are pending before this Court since June 2021, the Tribunal is requested to expedite the hearing of the original applications after filing it by the petitioners. If such original applications are filed within two weeks from today, the time spent in prosecuting the present petitions be appropriately considered by the Tribunal while deciding the question of delay, if any. With these directions, the petitions are dismissed.

21. Pending Civil Application stands disposed of.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)