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W.P.(MD) No.9826 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.9826 of 2019

and

W.M.P. (MD) Nos.7723 & 7724 of 2019

Nasumudeen

... Petitioner

vs.

1.The Managing Director  
Tamilnadu State Transport  
Corporation (Tirunelveli) Ltd.,  
Tirunelveli

2.The General Manager  
Tamilnadu State Transport  
Corporation (Tirunelveli) Ltd.,  
Ranithottam, Nagercoil-629 001  
Kanyakumari District

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records passed by the second respondent in proceedings No.5238/Legal 04/Departmental Proceedings/T.N.S.T.C./Raa-1/2018, dated 30.01.2019 and quash the same and consequentially direct the respondents to reimbursement the recovered amount to the petitioner.

For Petitioner : Mr.K.Vamanan

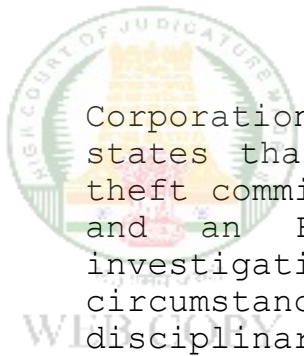
For Respondents : Mr.K.Sathiya Singh

### **O R D E R**

The order dated 30.01.2019, passed by the second respondent, which is a final order in the departmental disciplinary proceedings, is under challenge in this writ petition.

2. The petitioner was imposed with the punishment of recovery of loss of tickets and it's value amounting to Rs.1,97,066/- Challenging the said punishment of recovery, the petitioner has chosen to file this writ petition.

3. The petitioner was working as a Conductor in the respondent - Transport Corporation and a charge memo along with order of suspension was issued on 18.09.2018. The petitioner states that when he was servicing as Conductor, on 06.09.2018, in route No.505-T, caused loss of tickets amounting to Rs.1,97,066/- to the



Corporation by his carelessness during service. The petitioner states that he was not responsible for any such loss. It was a theft committed by some person and he made a complaint to the Police and an F.I.R. was registered, however, the Police, after investigation, issued a non-traceable certificate. Under these circumstances, the respondents proceeded with the departmental disciplinary proceedings and after conducting enquiry, imposed the punishment of recovery equivalent to the financial loss caused to the Transport Corporation.

4. The learned counsel for the petitioner states that the petitioner is not responsible for the loss of tickets, however, such disputed facts cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Whether it is a theft and the manner in which the theft had occurred and the liability of the Conductor or other person all to be decided only after a complete adjudication with reference to the oral and documentary evidence, if required. Contrarily, High Court cannot form an opinion and conclude that the petitioner is an innocent person merely based on the affidavit filed in support of the writ petition and copies of few documents filed. In the event of taking such a decision in a writ proceedings, there is a possibility for committing error, commission or omission in the matter of providing clear finding in disputed facts. Therefore, High Court cannot enter into an adjudication of such disputed facts, which are to be done in an appropriate manner by the competent Forum.

5. The petitioner is a workman and he is governed under the Settlement entered into between the Management and the workman under Section 12(3) of the Industrial Disputes Act, 1947. Thus, the petitioner has to approach the competent Labour Court for the purpose of adjudication of issues in the manner known to law. In this regard, this Court has elaborately considered the principles in W.P.(MD) Nos. 10416 of 2009 & 2926 of 2010, by order dated 25.07.2019 and the relevant paragraphs of the said order are extracted hereunder:

*"42. Section 29 contemplates penalty for breach of settlement or award. Section 31 deals with penalty for other offence. Even amended Section 11(9) and 11(10) provides procedures for execution of the award passed by the Labour Court. Thus, the scheme of the Industrial Dispute Act is undoubtedly comprehensive in nature. The statement of object and reasons are also unambiguous and in respect of the service conditions of the workmen, falling within the definition of the Act, enquiry is warranted for the purpose of ascertaining the disputes and to resolve the same or to redress the grievances. The procedures are contemplated for*



adjudication by the Industrial Labour Courts. Such Labour Courts are created specially for adjudication to be conducted by way of a trial and by examining the documents and witnesses. The procedures are undoubtedly contemplated and there is no ambiguity as such.

43.The question arises whether the writ petitioner would not get any efficacious remedy before the Labour Court or not. The present writ petitions are filed for a mandamus. The very writ petition is filed based on the apprehension that there is a likelihood of change of service conditions and there is likelihood of denial of promotion to the post of Foreman to the individual writ petitioners who filed writ petition. Thus, both writ petitions are filed based on the apprehension and there is no decision as such taken by the respondent management either denying the claim of the writ petitioner or granting promotion to any other persons. The notification issued for direct recruitment made these writ petitioners to approach this Court by stating that service conditions are violated. Contrarily, the counter filed reveals that whatsoever decision to alter the service conditions, the policy decision agreed upon are still in force and the respondents have not taken any decision to modify or alter the service conditions and therefore, the question of issuing any notice under Section 9-A of the Industrial Disputes Act does not arise at all.

44.This being the factum, which necessitated this Court for entertaining these writ petitions under Article 226 of the Constitution of India, whether a writ petition can be entertained on such apprehensions and a direction can be issued based on such apprehensions forbearing the respondents from taking a decision or issuing some orders on the basis of the policy or service conditions. Such presumptive reliefs cannot be granted by the High Courts under Article 226 of the Constitution of India. Certain apprehensions if concrete or if fructified, then alone such directions can be issued and not otherwise. Such directions certainly cannot be issued more specifically in service matters. In service matters, there must be a definite cause of action. In the absence of any definite cause of action, no writ petition can be



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entertained in service matters. Only in cases where certain public importance or public interest are involved, the High Courts would be in a position to issue any such presumptive directions or some directions based on the apprehensions raised by the litigant concerned and not otherwise.

45. This Court is of an undoubted opinion that the power of judicial review under Article 226 of the Constitution of India is well defined. Repeatedly, the Supreme Court held that the judicial review under Article 226 of the Constitution of India is directed, not against a decision, but the decision making process. Of course, a patent illegality and / or error apparent on the face of the decision which goes to the root of the decision, made various decision making process. In the event of no such decision or in the event of no such actions on the part of the respondents, in a writ petition, then the High Court cannot issue any direction based on certain apprehensions raised by the parties in the writ petition. Thus, the scope of judicial review under Article 226 of the Constitution of India has been well defined and therefore, the High Court cannot entertain a writ petition in a routine manner where a statutory remedy is very much available for the litigants to redress their grievances by following the procedures.

46. Forum choosing by the litigants can never be encouraged. It is not as if the aggrieved persons can choose the forum. When a definite forum is contemplated under the Statute, they are bound to approach the same and thereafter approach the High Court under Article 226 of the Constitution of India. If such litigants who all are claiming to be aggrieved is permitted to approach the High Court directly without exhausting the statutory remedies provided under the Act, then the High Courts are not only overburdened, but the High Courts would not be in a position to render justice as warranted under the constitutional principles. The extraordinary jurisdiction are to be exercised efficiently, speedily in order to provide justice to the citizen at large. In the event of entertaining such matters, where alternate remedy is available



under the Statute which all are procedurally effective, then the High Courts must be cautious in entertaining the writ petition and direct those aggrieved persons to approach the Courts competent and thereafter approach the High Court.

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47.The very apprehension of these writ petitioners even can be brought before the Industrial Labour Court and the Industrial Labour Courts are competent to issue interim orders also. Industrial Labour Courts are competent to pass orders, whenever the Court thought fit to issue such orders. Thus, it is not as if the industrial Labour Courts are not having any powers to issue any such interim orders or any other orders as necessity warrants. Thus, this Court is of the considered opinion that all the Special Courts, appellate authorities created under the Statute as well as under the service Rules must be respected at the first instance by the High Courts and all such authorities / competent Courts / competent forums must be allowed to exercise their powers in the manner known to law.

48. The speedy redressal of the grievances of the litigants of our great Nation is undoubtedly a constitutional perspective. Thus, while dealing with all such cases, the High Court should ensure that the aggrieved persons approach the appropriate Forum at the first instance. Sometimes, it happens that the legal brains are advising to file cases directly in the High Court, without exhausting the statutory remedies available to the aggrieved persons. Such ill-advises or opinions may commercialize the litigations. Commercialization of the judicial systems and dispensation of justice is unconstitutional and can never be tolerated nor be allowed by the constitutional Courts. Commercialization being adopted in certain circumstances, through such ill-advises. The Court must be cautious and take a decision to exhaust the statutory remedies and thereafter, approach the higher Courts. Under these circumstances, all these aspects are weighing in the minds of this Court and it is undoubtedly important to ensure that such specially constituted Courts or Tribunals or Forums are also exercising their



powers as contemplated under the provisions of such special statutes or general statutes. Apart from this, an enquiry or trial can never be conducted by the High Court, under Article 226 of the Constitution of India. The power of Judicial review cannot be extended for the purpose of conducting an enquiry or trial by examination of documents or witnesses. Thus, such a process is to be undertaken by the competent authorities or the Forums or the Tribunals or the Special Courts constituted for that purpose. Under these circumstances, in the event of non-adjudication of the disputed issues and facts by these Tribunals, Labour Courts etc., the High Court would not be in a position to decide the cases by exercising the power of judicial review under Article 226 of the Constitution of India. Adjudication of issues and facts are highly warranted. Only in the event of finding of the facts and adjudication of the documents and circumstances, the High Court would be in a position to deal with the writ petitions properly and exercise the power of judicial review, so as to provide complete justice to the aggrieved persons, who all are approaching the Court of law.

49. The Apex Court time and again reiterated that mere apprehension is insufficient to entertain a writ petition. Only in the event of establishing any such apprehensions or probabilities or there is no other way to restrain such illegality or unconstitutionality, then alone, the High Court can entertain writ petitions on exceptional circumstances. In all other cases, a definite cause of action is mandatory for entertaining a writ petition. In the present case on hand, mere apprehension was taken as a cause by the writ petitioners. However, they have not followed the procedure of approaching the Labour Tribunal at the first instance. The service conditions are neither altered nor any changes are made. Under these circumstances, the writ petitioners have not made out any cause of action even for entertaining the present writ petitions.

50. Undoubtedly, Labour Tribunals, Special Courts created under special statutes are functioning effectively. The process of enquiry



may take some more time. However, the delay in conducting trial would not be a cause for approaching the constitutional Courts. Even in Civil Courts, such a delay is happening. In many Forums, including certain Appellate Authorities, some delay is inevitable. In this regard, every Institutions are thriving hard to improve the procedural aspects and to ensure speedy disposal of appeals, cases for providing redressal to the aggrieved persons. When the Institutions are also thriving hard to provide speedy redressal, the litigants cannot be permitted to bypass the alternative remedies available under the statute.

51. In respect of exhausting the alternate remedy, this Court also considered the principles laid down by the Supreme Court and rendered a judgment in W.P.No.22508 of 2007 dated 16.07.2018, in the case of **M/s.Hyundai Motor India Limited Vs. The Deputy Commissioner of Income Tax and another** and the relevant paragraphs are extracted hereunder:

'19. Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While



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entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered.

If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014-SC): MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.
- (2) Republican and Democratic form of government and sovereignty of the country.
- (3) Secular and federal character of the Constitution.
- (4) Demarcation of power between the Legislature, the executive and the judiciary.
- (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
- (6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine



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of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said: It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.





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provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21.Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22.When an effective alternative remedy is available, a writ petition cannot be maintained.

1. In City and Industrial Development Corporation v. DosuAardeshirBhiwandiwalla and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that: The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;



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(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*; *Surya Dev Rai v. Ram Chander Rai* and *SBI v. Allied Chemical Laboratories.*)

3. Commissioner of Income Tax and Ors. v. Chhabildass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised 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, *Titaghur 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



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should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India vs. Satyawati Tandon and others*, 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbali and others*, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. *State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd.* reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and



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never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. *K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors.*, AIR (1954) SC 207; *Sangram Singh v. Election Tribunal, Kotah and Ors.*, AIR (1955) SC 425; *Union of India v. T.R. Varma*, AIR (1957) SC 882; *State of U.P. and Ors. v. Mohammad Nooh*, AIR (1958) SC 86 and *M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras*, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. *First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd.*, [1966] 3 SCR 84 and *State of U.P. And Ors. v. M/s. Indian Hume Pipe Co. Ltd.*, [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court



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for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.'

52.As far as the judgment cited by the learned Counsel for the writ petitioners are concerned, the case of **M.Madhanraj Vs. Managing Director, Metropolitan Transport Corporation, (Chennai Division II), Ltd.**, reported in **2004 (2) L.L.N. 1081** is concerned, it was held that the conditions of service cannot be altered. The relief sought for is to regularise the services and to engage them. In view of the fact that the subsequent Full Bench judgment also dealt with this point, it may not be required to consider the judgment elaborately. Even the earlier judgments rendered by the Hon'ble Single Judge of this Court, the Division Bench of this Court cannot be considered as a binding judgment as the principles regarding the binding judgments of various Courts are now settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, reported in **2017 (16) SCC 680**.

53.Accordingly, if the Full Bench settled the issues, then, the Full Bench judgment is binding on the other Courts and in such circumstances, the principles if any laid down by the Hon'ble Single Judges cannot be followed as a binding precedents. Thus, the judgments delivered by the Hon'ble Single Judges as well as the Division Bench cannot be relied upon for the purpose of deciding the issue whether the writ petition can be entertained without approaching the Labour Court in such circumstances for the purpose of issuing a writ of Mandamus. In respect of one Supreme Court judgment cited by the learned Counsel for the writ petitioner reported in **(2001) 9 SCC 99**, the Workmen was dismissed from service and an application was filed under Section 33(2) (b) before the Tribunal. The Tribunal rejected the application on maintainability.





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or the Court concerned. In violation of these line of procedures, large number of writ petitions are filed seeking adjudication of main issues and disputes under Article 226 of the Constitution of India, which can never be allowed and if at all, any imminent circumstance arise, then by way of exception, a writ proceedings can be entertained and issues can be settled. Contrarily, entertaining a writ petition for the purpose of adjudication of disputes and issues can never be a routine affair by the High Courts. Exhausting the alternative remedy is the rule and entertaining a writ proceedings is an exception.

57.The contentions of the writ petitioners that the Judgment of the Honourable Full Bench of this Court cited supra was in a case where the employer is a Private Company. Such an argument undoubtedly has no relevance. The Full Bench has answered the question and decided the principles and held the importance of exhausting the alternative remedy by the workman before the Labour Court at the first instance. Thus, the very argument of the writ petitioners deserves no merit consideration. Once a settlement is arrived between the Management and the Workmen under Section 12(3) of the Industrial Disputes Act, 1947, it is binding on the parties to the agreement and accordingly, the disputes, issues and grievances are to be adjudicated and resolved only through the procedures contemplated and as well as before the Forums created and bypassing such procedures or mandatory provisions of the statutory can never be dispensed with nor be waived.

58.This being the legal principles to be followed, the Full Bench judgment in the case of **P.Pitchumani** cited supra, categorically enumerates that if the Industrial Dispute relates to enforcement of a right or an obligation created under the Act, then, the only remedy available is to adjudicate the same under the Act. It is made clear that the grievances of the writ petitioners are in relation to their service conditions which were recognised under the Settlements under Section 12(3) of the Industrial Disputes Act. Therefore, those rights and service conditions are



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to be enforced through appropriate adjudication under the provisions of the Industrial Disputes Act more specifically before the Labour Court. Even in the absence of issuing any such 9-A notice, it is to be construed as violation of the provisions of the Industrial Disputes Act. Then also, the "workmen" is entitled to approach the Industrial Labour Court for redressal of their grievances.

59.All such grievances even in the absence of any notice or in the absence of any order can be adjudicated before the competent Industrial Labour Court and it is not necessary that those cases are also to be entertained by the High Court under Article 226 of the Constitution of India.

60.In the present case, this Court is of the opinion that it became unnecessary on account of the counter filed by the respondents that the respondents have not taken any decision to alter or modify the service conditions of the workmen. Therefore, entertaining a writ petition for the year 2009-10, keeping it pending for about 9 years and considering the fact that the respondents have not taken any steps to alter certain conditions became meaningless. Under these circumstances, this Court is of the considered opinion that the workmen must approach the Labour Court at the first instance instead of approaching the High Court based on certain apprehensions.

61.The principles laid down by the Full Bench are enumerated in paragraphs 7 and 14, which are extracted hereunder:

"7.General contract of employment is governed by common law and any breach of the contract and dispute arising therefrom is to be adjudicated by common law Court. But, if the matter is governed by the I.D. Act or the Standing Orders relating thereto, by necessary implication, the common law remedy is barred and more so, if the adjudicatory forums, be it Labour Court or Industrial Tribunal, are constituted under I.D. Act. Earliest is the judgment of the Supreme Court in Premier Automobiles Limited Vs. Kamlakar Shantaram Wadke and others, 1975 (2) LLJ 445. In the said case, there was a dispute as to



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whether a civil suit was maintainable in a matter arising under the Industrial Disputes Act. The case related to the payment of the amounts under the Memorandum of Settlement and as to whether there was an infraction of Section 9-A of the Industrial Disputes Act, 1947. A suit in representative capacity was filed under Order 1, Rule 8 of C.P.C., and it was partly decreed, against which an appeal was filed questioning the jurisdiction of the Civil Court, but the appeal failed. Then the matter was taken in a Letters Patent Appeal, but there also the finding with regard to sustainability of the suit before the Civil Court was upheld, and later on the matter landed in Supreme Court. The legal contentions were comprehensively considered by referring to several important judgments and following are the legal principles stated in the said case:

(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief, which is competent to be granted in a particular remedy.

(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ Jurisdiction under Article 226 of Constitution of India;



(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act.

(v) the appellants / petitioners - employees shall be entitled to seek for reference by filing application under Section 10 of the I.D. Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants / petitioners - employees, on weeks time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents - managements shall sympathetically consider the payments of wages / salaries to the appellants / petitioners - employees so as to maintain the industrial peace and harmony.

The Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, the connected W.A.M.Ps. are closed."

62. The above judgment of the Hon'ble Full Bench of this Court is also unambiguous that the Workmen should approach the Industrial Labour Court at the first instance and thereafter, if



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**W.P.(MD) No.9826 of 2019**

their grievances are not redressed, then they are at liberty to approach the High Court under Article 226 of the Constitution of India challenging the order / award passed by the Competent Industrial Labour Court. As far as the present writ petitions are concerned, the apprehensions of the writ petitioners were clarified by the respondents that no such change in service conditions are made and the apprehensions are baseless and presumptive. In view of the facts and circumstances this Court is of the opinion that entertaining a writ petition for issuing a writ of Mandamus should not be entertained where the workmen approaches the High Court directly under Article 226 without exhausting the remedy provided under the Industrial Disputes Act before the competent Industrial Labour Court. Thus, this Court is of the undoubted opinion that the writ petitions for Mandamus based on certain apprehensions filed by the Workmen aggrieved under the provisions of the Industrial Disputes Act, cannot be entertained."

6. In view of the above principles settled in the case cited supra, the petitioner is at liberty to approach the competent Labour Court for adjudication of the disputed issues and to redress his grievances in the manner known to law.

7. In the event of filing any such petition before the Labour Court, the period, during which the writ petition was pending before this Court, is to be taken into consideration for the purpose of condoning the delay, if any.

8. With these observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

krk

+1 CC to M/s.K.SATHIYA SINGH, Advocate( SR-5547[F] dated 11/02/2022 )

**W.P. (MD) No.9826 of 2019**

**and**

**W.M.P. (MD) No.7723 & 7724 of 2019**

**10.02.2022**

MGJ(18.02.2022) 21P 2C

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