

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7839 of 2024

Indian Institute of Psychometry (CIN U72200WB1978NPL031582) having registered/correspondence office at No. 5, Second Floor, A/27, Katju Nagar, Jadavpur, Police Station-Jadavpur, Kolkata, West Bengal-700032 and its Corporate Office address at Evergreen Plaza-1st to 5th Floor, 117 Barrackpore, Trunk Road Dunlop, Police Station-Baranagar, Baranagar, District-North 24 Parganas, Kolkata-700108, West Bengal and its Regional Office-102 Tuffail Residency Before Reliance Centro Mall, Frazer Road, Chhaju Bagh, Police Station-Gandhi Maidan, District-Patna Bihar-800001 through its authorized signatory namely Mr. Amarnath Kumar Yadav (Male), aged about 28 years, son of Nilamber Yadav, permanent address Sonadih, Police Station-Biraul, District-Darbhanga, Bihar-847201, at presently residing at B/2/82, Harish Mukherjee Road, Police Station-Bhowanipur, District-Bhowanipur, Kolkata-700025 (West Bengal).

... .. Petitioner/s

Versus

1. The Bihar Legislative Assembly Secretariat through its Secretary, Bihar, Patna.
2. The Secretary, the Bihar Legislative Assembly Secretariat, Bihar, Patna.
3. The Under Secretary, the Bihar Legislative Assembly Secretariat, Bihar, Patna.
4. The Deputy Secretary, the Bihar Legislative Assembly Secretariat, Bihar, Patna.
5. The Recruitment Committee through its Director/Secretary, the Bihar Legislative Assembly Secretariat, Bihar, Patna.
6. The Members of the Recruitment Committee, the Bihar Legislative Assembly Secretariat, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Adv. Mr. Sanjeev Kumar, Adv. Mr. Pravashankar Mishra, Adv.
For the Respondent/s	:	Mr. P.K. Shahi, A.G. Mr. Chandra Mauli Chaurasia, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 11-07-2024

Heard the learned counsel for the parties.

2. This writ petition has been filed for the following

relief(s):-



“i) To issue a Writ in the nature of Certiorari for quashing the Notice of Termination under Clause-9.2 of the contract Agreement as contained in Letter No.-Ni,Ko-12/2023-830/L.A issued under the signature of under Secretary, Bihar Legislative Assembly Secretariat, Patna.

ii) To issue a Writ in the nature of Certiorari for quashing the Termination of Service Agreement dated 24.02.2023 as contained in Letter No.-Ni,Ko-12/2023-1174/L.A issued under the signature of Under Secretary, Bihar Legislative Assembly Secretariat, Patna.

iii) Consequent upon quashing of the above letters, Issuance of a Writ in the nature of Mandamus commanding the respondents to allow the petitioner to continue the work uninterruptedly for a period of 3 years from the date of signing of Agreement dated 24.02.2023 till 23.02.2026.

iv) During the pendency of the Writ application, the respondents may be restrained from creating 3rd party right related to a new tender during the pendency of the writ application.

v) During the pendency of the Writ application, the respondents may kindly be directed not to take any coercive action against the petitioner.



vi) During the pendency of the Writ application, the respondents may kindly be directed not to encash the Bank Guarantee.”

3. The present writ petition is disposed of with the consent of both the parties.

4. Mr. P.K. Shahi, Learned Advocate General appearing on behalf of the respondents has taken a preliminary objection with regard to the maintainability of the present writ petition. Learned Senior counsel has stated that the petitioner is having an alternative and efficacious remedy of approaching an arbitrator as per the terms and conditions of the agreement entered between the parties.

5. Learned senior counsel Sri. S.D. Sanjay appearing on behalf of the petitioner has stated that the present writ petition is maintainable as the impugned order is passed in violation of principles of natural justice and equity. Learned counsel has stated that the petitioner has been awarded the contract for conducting the examinations for recruitment of security guards for the Legislative Assembly and to that effect they have entered into an agreement dated 24.02.2023. That in order to conduct a foolproof examination, the petitioner had requested the authorities for providing necessary jammers and



also disconnect the internet services. The said request was made so as to prevent the leakage of any question papers/ information with regard to the exams slated to be conducted by the petitioner as per the advertisement No. 01 of 2023 dated 14.04.2023. It is further stated that the tentative date of examination was fixed by the petitioner on 30th July 2023 but due to the unpreparedness of the administration, the same had to be postponed. That subsequently the petitioner has successfully conducted the examination on 10.09.2023 and all the consequential tests were also completed. However, the authorities contrary to the terms and conditions of the agreement have terminated the contract in an arbitrary manner. Learned counsel has stated that the authorities have passed the order of termination without considering the explanation submitted by the petitioner and not supplied the material that they have relied on for terminating the contract. Learned counsel has drawn the attention of the Court to the various provisions of the agreement to buttress his contention that the show cause notice issued to the petitioner is not in strict compliance of the terms and conditions of the agreement. That the explanation submitted by the petitioner to the show cause notice has not been considered at all by the authority before the impugned order was passed. The authority



while passing the impugned order of termination has taken into account, the internal report which was not furnished to the petitioner and some of the grounds taken by the authority while terminating the contract have not been mentioned in the show cause notice. Learned counsel for the petitioner has relied on the judgments reported in **2023 SCC OnLine SC 214:2023(2) BLJ 278 (SC) & (2023) 3 Supreme Court Cases 629 : 2023 SCC OnLine SC 116** in support of his case.

6. *Per contra*, Mr. P.K. Shahi, the Learned Advocate General appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the contract had to be terminated as the petitioner has miserably failed to adhere to the terms and conditions of the contract. That due to the inability of the petitioner to conduct the examination as per the time schedule announced earlier, the test had to be postponed putting scores of candidates to agony and hardship. That even while conducting the test after delay of more than two months, the petitioner had failed to comply with the terms and conditions of the agreement. Learned counsel for the respondents has drawn the attention of the court to the arbitration clause in the agreement and further stated that there are serious disputed questions of facts which



cannot be gone into by this Hon'ble Court under Article 226 of the Constitution of India. That the petitioner is having an alternative and efficacious remedy of approaching the arbitrator and has relied on the judgment of the Hon'ble Supreme Court passed in *Whirlpool Corporation v. Registrar of Trade Marks Mumbai (1998) 8 SCC 1*.

7. In the present case, the petitioner on one hand is contending that he has conducted the exams in a fair and transparent manner without any complaint from any quarters but the said stand is seriously disputed by the respondents. The question as to whether the petitioner has conducted the test properly or not are all disputed questions of fact which cannot be gone into by this Court adjudicating under Article 226 of the Constitution of India. Moreover, once it is stated that there is an arbitration clause in the agreement, this court under normal circumstances will not entertain the writ petition and relegates the parties to settle their dispute before the arbitrator as envisaged under the agreement. Though the petitioner has relied on the judgments of the Hon'ble Supreme Court reported in *2023 SCC OnLine SC 214:2023(2) BLJ 278 (SC) & (2023) 3 Supreme Court Cases 629 : 2023 SCC OnLine SC 116*, the same are distinguishable from the facts of this case.



8. The Hon'ble Supreme Court in *Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited* has held as under:-

The High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so that when an aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure: or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

9. In *Whirlpool Corporation v. Registrar of Trademarks, Mumbai*²¹, The Hon'ble Supreme Court after reviewing the case law on this point has held as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the



High Court not only for issuing writs in the nature of habeas corpus, mandamūs, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

*15. Under Article 226 of the Constitution, 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."*

(emphasis supplied)

10. The Hon'ble Supreme Court in **Harbanslal**

Sahnia v Indian Oil Corpn. Ltd. has held as under :-

"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 is concerned, 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 is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1])** The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' 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."*

(emphasis supplied)

27. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the



enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28 These principles have been consistently



upheld by this Court in Seth Chand Ratan v Pandit Durga Prasad, Babubhai Muljibhai Patel v Nandlal Khodidas Barot²⁴ and Rajasthan SEB v. Union of India, 25 among other decisions.”

11. The above judgments are applicable on all forums to the facts of this case, therefore, this Court is not inclined to entertain the present C.W.J.C.

12. Having regard to the above, the present writ petition is dismissed leaving it open to the petitioner to approach the arbitrator as contemplated under Clause 9.2 of the agreement within a period of four weeks from the date of receipt of the copy of this order. It is made clear that this court has not made any comments on the merits or demerits of the case and leaving all issues open to be agitated by the parties and to be decided by the Arbitrator.

13. With the aforesaid observations, the present writ petition stands dismissed.

(A. Abhishek Reddy , J)

Gauravkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.09.2024.
Transmission Date	N/A

