

12.09.2024
Item No.6
PG/KS
Ct. No.1

W.P.A. (P) 309 of 2024
With
IA No. CAN 1 of 2024
Electricity Employees Welfare Union
Versus
Union of India & Ors.

Mr. Biswaroop Bhattacharya
Mr. Debottam Das
Mr. Tirupati Mukherjee
Ms. Dibyanjona Das

..... For the Petitioner

Mr. Shatadru Chakraborty
Mr. Dibesh Divedi

.....for the Respondent Nos.1 to 6

1. This writ petition styled as a public interest litigation is filed by the Electricity Employees Welfare Union, which is stated to be a registered Trade Union and the affidavit has been sworn by Mr. Abdul Aziz and his occupation has been shown as Regular Mazdoor.
2. Learned advocate appearing for the respondent/ Administration had raised a preliminary objection as regards the maintainability of the writ petition. Therefore, we had heard the learned advocates for the parties on that issue.
3. Learned advocate appearing for the writ petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Salil Sabhlok & Ors.*** reported in ***(2013) 5 SCC 1*** and submitted that in the said decision, the Hon'ble Supreme Court has held that even in cases of service matters, the writ petitions are maintainable.

4. Per contra, learned advocate appearing for the respondent/Administration placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.*** reported in **(2013) 4 SCC 465** and submitted that the writ petition is not maintainable as the matter concerns a service dispute of the private respondents.
5. Further it is submitted that the person, who has affirmed the affidavit on behalf of the writ petitioner- employees union is an employee of the Electricity Department of Andaman & Nicobar Islands Administration and in this regard, an order of transfer dated 9th July, 2024 has been produced before this Court and the name of the person, who has filed the affidavit in this writ petition is in Serial No.8.
6. It is further submitted that the said Mr. Abdul Aziz has questioned the order of transfer and litigation is going on.
7. Learned advocate appearing for the petitioner would submit that the private respondents are very powerful persons and in spite of action being taken against her and she having been unsuccessful before the Central Administrative Tribunal, the Administration has now accommodated her in a post, which is a non-existing post. In this regard, learned advocate appearing for the petitioner referred to the reply received to a query by an advocate under the Right to Information Act by a reply dated 20th October, 2020.

8. The first and foremost question that is to be considered is whether the writ petition is maintainable or not. Admittedly, the writ petitioner is an employees-union, whose members are all employees of the Electricity Department of the Andaman & Nicobar Islands Administration. The person, who has affirmed the affidavit is also an employee, who is a Regular Mazdoor. Thus, the petitioner-union as well as its members have a direct interest in the matter, since, they are questioning the appointment of the private respondent in the Electricity Department.
9. Therefore, this is a good ground to reject the writ petition as it cannot be treated to be a public interest litigation. The second aspect is whether if the matter is treated to be a service matter, is a public interest writ petition maintainable. The law on the subject had been settled by various suggestions, which have been noted by the Hon'ble Supreme Court in the decision of **Ayaaubkhan Noorkhan Pathan (supra)**. Some of the decisions of the Hon'ble Supreme Court being **Duryodhan Sahu Vs. Jitendra Kumar Mishra** reported in **(1998) 7 SCC 273**, **Dattaraj Nathuji Thaware Vs. State of Maharashtra** reported in **(2005) 1 SCC 590** and **Neetu Vs. State of Punjab** reported in **(2007) 10 SCC 614**.
10. The Hon'ble Supreme Court by referring to the above decisions has held that it has been consistently held by the Hon'ble Supreme Court that filing of a public interest litigation in a service matter is not permissible. The

decision in the case of ***Salil Sabhlok & Ors. (supra)*** relied on by the learned advocate appearing for the petitioner relates to challenge to an appointment of a Chairman of the Punjab Public Service Commission. The question, which fell for consideration was whether the appointment of the Chairman of the Public Service Commission is a service matter and whether a public interest litigation could be entertained. The defence raised was that it is a constitutional post.

11. Considering the importance of the post of the Chairman of a Public Service Commission and taking note of the functional test as regards the functions of the Public Service Commission, the Court on the facts and circumstances held that the writ petition was maintainable.
12. Further, the Hon'ble Supreme Court in ***Salil Sabhlok & Ors. (supra)*** has pointed out that the appointment of a Chairperson in Public Service Commission does not fall in the category of service matter.
13. In our view, the decision in ***Salil Sabhlok & Ors. (supra)*** can be of no assistance to the case of the writ petitioner and as held by the Hon'ble Supreme Court in ***Ayaaubkhan Noorkhan Pathan (supra)*** and the other decisions referred to above, this writ petition cannot be entertained.
14. Learned advocate appearing for the petitioner submitted that a complaint had been given to the Central Vigilance Commission and a reply has been received by the

advocate from the Commission on 2nd September, 2024, wherein it has been stated that the complaint has been forwarded to the Central Vigilance Officer, Andaman & Nicobar Islands Administration for necessary action and as per the complaint handling policy, the Commission expects CVOs to scrutinize the complaints sent for necessary action on such complaints.

15. So far as the said complaint is concerned, we are of the view that it is up to the Central Vigilance Officer to do the needful in the matter in accordance with law.
16. With the above observations, writ petition is dismissed as not maintainable. In view thereof, I.A. No. CAN 1 of 2024 is dismissed.
17. No costs.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)