

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

254

CWP No. 25461 of 2023

Date of Decision:07.02.2024

A.S.Sandhu

....Petitioner

VS.

Union of India and another

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. K.L.Singla, Advocate
for the petitioner

Mr. Arun Gosain, Senior Panel Counsel
for the Union of India

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 01.06.2023 (Annexure P-17) whereby respondents have deducted a sum of Rs. 6.5 Lakh from the gratuity of the petitioner and further reduced pension by 10% for two years commencing from 01.07.2023.

2. The petitioner joined respondent No. 2-National Institute of Pharmaceutical Education and Research, Mohali on 10.05.1996 and he served the said institute upto 30.04.2020. The petitioner was posted as Garden Supervisor in the department of Industrial Products and in January' 2019 he was assigned additional charge of Registrar though he was neither eligible for appointment on the said post nor he was having any knowledge

of administration. The date of superannuation of the petitioner was 30.04.2020 and respondent No. 2, on 15.02.2020, in terms of Rule 14 of CCS (CCA) Rules, 1965 served charge-sheet upon the petitioner. The respondent No. 2 by impugned order dated 01.06.2023 has partially held the petitioner guilty of charges levelled in the charge-sheet. The petitioner was subjected to following punishments:-

- i) Recovery of a sum of Rs. 6.5 lakh from the gratuity payable to the petitioner:
- ii) Reduction of 10% of pension for two years under Rule 9 of CCS (Pension) Rules, 1972.

3. Counsel for the petitioner submits that petitioner has been held guilty and penalty has been imposed for making payment to a lawyer who was engaged with respect to litigation between Chairman and Director of the Institute. The fee bill was approved by Director and petitioner at that point of time was posted as officiating Registrar. The petitioner was not part of the litigation. The lawyer was not engaged by the petitioner and he had simply cleared fee bill of the lawyer which was approved by Director.

4. The respondent No. 2 in the reply has primarily disputed maintainability of the present petition on the ground that petitioner has alternative remedy of appeal before Appellate Authority as prescribed under CCS (CCA) Rules, 1964.

5. Mr. Arun Gosain, counsel for respondents submits that proper enquiry was conducted and petitioner was found guilty, thus, there is no illegality in the impugned order. The petitioner has not preferred appeal before Appellate Authority, thus, writ petition deserves to be dismissed. In support of his contention, he places reliance upon judgment of Hon'ble

Supreme Court in **Deputy Commissioner, KVS and others vs. Hussain, AIR 2014 Supreme Court 766.**

6. I have heard counsel for the parties and perused the record with their able assistance.

7. The prime objection of the respondents is that impugned order is an appealable order. It is settled proposition of law that there is no absolute bar to entertain writ petition despite availability of alternative remedy of appeal. If the Court finds that there is *prime facie* illegality or action of authority is arbitrary, there is no restriction to entertain writ petition.

8. Justice K. Subba Rao in his lectures compiled in a book titled '*Some Constitutional Problems*', critically analysing the trends of Indian constitutional development has opined that if courts instead of limiting the scope of Article 226 of the Constitution of India exercise their jurisdiction in appropriate cases, arbitrariness of the authorities will be minimised. The opinion of Justice K. Subba Rao as noticed by Hon'ble Supreme Court in **Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1**, is reproduced as below:-

"If the courts, instead of limiting the scope of the articles by construction, exercise their jurisdiction in appropriate cases, I have no doubt that the arbitrariness of the authorities will be minimised. If these authorities entrusted with the discretionary powers, realise that their illegal orders infringing the rights of the people would be quashed by the appropriate authority, they would rarely pass orders in excess of their powers. If they knew that not only the form but the substance of the orders would be scrutinised in open court, they would try to keep

within their bounds. The fear of ventilation of grievance in public has always been an effective deterrent. The apprehension that the High Courts would be swamped with writs has no basis.”

9. A Three Judge Bench of Hon’ble Supreme Court in **Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., 2021 SCC OnLine SC 801** after considering its earlier judgment in **Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai (1998) 8 SCC 1, Harbanslal Sahni Vs. Indian Oil Corporation Ltd. (2003) 2 SCC 107 & Radha Krishan Industries Vs. State of Himachal Pradesh 2021 SCC OnLine SC 334** has concluded that there is no complete bar on entertaining writ petition inspite of alternative remedy, however it should be exercised in circumstances as enumerated below:

- (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.

10. In **Hari Krishna Mandir Trust Vs. State of Maharashtra and Others (2020) 6 SCC 356**, Supreme Court has held that High Courts under Article 226 of Constitution of India not only have the power to issue writs but also are duty bound to exercise such power where a public authority has wrongly exercised discretion conferred upon it. The relevant extracts of the judgment read as:

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly

exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.

102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In Directors of Settlements, Andhra Pradesh and Others v. M.R. Apparao and Anr. (2002) 4 SCC 638. Pattanaik J. observed: (SCC p. 659, para 17)

“17 One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the

common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (see kalia Singh v. State of U.P. AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.” (emphasis in original)

103. The Court is duty bound to issue a writ of Mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of Mandamus is that Mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through Mandamus. Unless a statutory duty or right can be read in the provision, Mandamus cannot be issued to enforce the same.

104. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. Reference may be made inter alia to the judgments of this Court Gunwant Kaur v. Municipal Committee, Bhatinda (1969) 3 SCC 769 and State of Kerala v. M.k. Jose. In M.K. Jose (2015) 9 SCC 433, this Court held: (SCC pp. 442-43, para 16)

“16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone

into. In Gunwant Kaur v. Municipal Committee, Bhatinda (1969) 3 SCC 769, it has been held thus: (SCC p. 774, paras 14-16)

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. *From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.*

16. *In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.”*

(emphasis in original and supplied)

11. **In Uttar Pradesh Power Transmission Corporation Ltd. and Ors. Vs. CG Power and Industrial Solutions Limited and Ors. (2021) 6 SCC 15,** Supreme Court has held that High Court may entertain a writ petition notwithstanding availability of an alternative remedy. The relevant extracts of the judgment read as:

67. *It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (1) where the writ petition seeks*

enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. reported in MANU/SC/0664/1998 : AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corporation and Ors. v. Gayatri Construction Co. and Ors. reported in MANU/SC/7917/2008 : (2008) 8 SCC 172, cited on behalf of Respondent No. 1.

68. *In HarbanslalSahnia and Ors. v. Indian Oil Corporation Ltd. reported in MANU/SC/1199/2002 : (2003) 2 SCC 107, this Court allowed the appeal from an order of the High Court dismissing a writ petition and set aside the impugned judgment of the High Court as also the impugned order of the Indian Oil Corporation terminating the dealership of the Appellants, notwithstanding the fact that the dealership agreement contained an arbitration clause.*

69. *It is now well settled by a plethora of decisions of this Court that relief Under Article 226 of the Constitution of India may be granted in a case arising out of contract. However, the writ jurisdiction Under Article 226, being discretionary, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses. Monetary relief can also be granted in a writ petition.”*

12. This Court, in the present case, finds that on account of litigation between two officials of the Institute, the petitioner has been made scapegoat and thereafter punished. The petitioner was not even holding regular charge of the Registrar. He, at the fag end of his service career, has

been punished on account of ongoing dispute between two senior officials of

the Institute. This Court finds that it is a fit case to entertain the writ petition. Accordingly, objection of the respondent qua maintainability is hereby rejected.

13. From the perusal of reply as well as arguments of the respondents, it comes out that respondents are unable to controvert the fact that petitioner was not duly appointed 'Registrar' at the relevant point of time and he was just holding charge of Registrar as regular Registrar was not available. The litigation with respect to which fee bill was cleared was between Director and Chairman of the Institute and petitioner was not party to the litigation. He, in no way, was beneficiary of the litigation. The fee bill was duly approved by Director and the petitioner had simply cleared the fee bill of the lawyer.

The petitioner was not beneficiary of fee bill paid to lawyer and lawyer was engaged by the Institute. The petitioner was not having any personal stake and fee bill was duly approved by Director of the Institute, thus, he could not be held guilty for clearing fee bill of the lawyer. There is no allegation of connivance between petitioner and lawyer, thus, it was unfair and unjustified to hold the petitioner guilty.

14. In view of the above facts and discussion, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 01.06.2023 (Annexure P-17) is hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

07.02.2024
paramjit

Whether speaking/reasoned: Yes
Whether reportable: Yes