* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th APRIL, 2024

IN THE MATTER OF:

\+ **W.P.(C) 1282/2021 & CM APPLs. 3562/2021, 45421/2023**

SANJAY SHARMA ..... Petitioner

Through: Mr. Bhakti Vardhan Singh, Mr. Ankit Khatri and Mr. Lallan Ojha, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Ms. Anushree Narain, Standing Counsel and Ms. Simran Kumari, Advocates.

\+ **CONT.CAS(C) 889/2023**

SANJAY SHARMA ..... Petitioner

Through: Mr. Bhakti Vardhan Singh, Mr. Ankit Khatri and Mr. Lallan Ojha, Advocates.

versus

ZUBAIR RIAZ COMMISSIONER OF CUSTOMS ..... Respondent

Through: Ms. Anushree Narain, Standing Counsel and Ms. Simran Kumari, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. W.P.(C) 1282/2021 has been filed by the Petitioner challenging the direction of the Internal Complaints Committee (ICC) recommending initiation of Departmental Proceedings against the Petitioner even though there is no evidence to indicate that the Petitioner was directly involved in the incident of sexual harassment of a lady passenger for which the Internal

Complaints Committee (ICC) was constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (*hereinafter referred to as "2013 Act"*).

2. The short issue for consideration as per the learned Counsel, appearing for the Petitioner, is that the ICC has exceeded its jurisdiction under the 2013 Act inasmuch as it could recommend any action against a delinquent only after it records finding of guilt of sexual harassment under the 2013 Act.

3. Pithily put, proceedings under the 2013 Act was initiated against the Petitioner on the complaint of a lady passenger alleging sexual harassment at workplace against the Petitioner. An Internal Complaints Committee (ICC) was constituted by the Respondents. The statement of the complainant as recorded by the ICC reads as under:

> ***"BRIEF OF THE STATEMENT DATED 14.05.2019 OF MS. BABAEVA NAZOKAT (D.O.B. 03.07.1982) HOLDER OF UZBEKISTAN PASSPORT NO. FA0087319 (hereinafter referred to as the "LADY PASSENGER")***
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> *The Lady Passenger tendered her voluntary statement on 14.05.2019 before Ms Anubha Sinha, Joint Commissioner of Customs, IGI Airport, New Delhi. The contents of this statement made by her therein are summarized below:-*
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> *1. She arrived at Terminal 3, IGI Airport on 03.05.2019 by flight No. HY 421 from Tashkent for the purpose of the ongoing treatment of her sister's son in Jaypee Hospital. She keeps travelling to India for this reason. She was carrying two bags with her on 03.05.2019.*
>
> *2. She was carrying cigarettes in her two bags. She had also carried cigarettes on her two previous arrivals in*

Delhi.

3. She was alone and standing near the baggage belt with her luggage when one Customs Officer approached her, took her passport and asked her to come to the Green Channel along with him.

4. She recognized the aforementioned officer (who had approached her) since the said officer had stopped her on her previous arrival at Delhi and hence she remembered him. On this previous occasion, the said officer had questioned her and let her go after keeping all the cigarettes without giving any receipt of the same and without imposing any penalty / fine.

5. She was shown photographs of Shri Sanjay Sharma, ACS, AIU (Shift-B) - whom she recognized to be the same officer referred to in para. 3 above. She circled and signed printouts of these photos in token of recognising this officer and was incorporated in her statement dated 14.05.2019 as Annexure-I.

6. After she was brought to the green channel by Shri Sanjay sharma, ACS -- her bags were scanned by other officers. Shri Sanjay Sharma was now joined by another officer for checking and questioning. He was elder in age and was very tall and he asked her to go inside which she refused saying she does not know their language. Then Shri Sanjay Sharma talked to her through a translator on his phone and told her to do whatever that elder / aged person asks her to do as he is the Boss.

7. This elder officer then took her inside a room alongwith one of her bags. She remained inside the room with this elder officer for about 15 minutes. He looked the room which made her very uneasy. He pulled his trousers down and pulled her towards himself. He tried to force himself on her. She felt very uncomfortable and threatened. He molested her. She resisted him, but he *opened his pant zipper flashed in front of her, masturbated on his own and wiped it with tissue and her shawl/stole. She felt very ashamed and humiliated. All through this while, she kept resisting and protesting, and continuously asked him to let her go.*

8. The officer was very tall and kept a tight physical grip on her. He told her that he would let her go with her cigarettes if she does whatever he asked her to do. But she kept on resisting and protesting. He also threatened to hurt her.

9. The elder officer was forcefully trying to remove her clothes when she was inside the room. He took off her stole / shawl then. Later on after masturbating, he cleaned himself with it also. She took the stole / shawl with her and washed it at her place. This was a purpte coloured stole/shawl and she was wearing it when she was sent inside the Preventive Area.

10. After all his misdeeds, he threatened her through a translator on his phone that he would hurt her if she revealed anything to anybody outside. He asked her to pick her bags and get out immediately without talking to anyone.

11. No female officer was present inside the room during her stay in the room with the elder / aged officer.

12. She was shown photographs and CCTV footage of Shri Devender Kumar / Sh Devender Kumar (Hooda), ACS, Shift B - whom she recognized to be the same elder/aged officer referred to in paras. 6 - 11 above, who had taken her inside the room and sexually assaulted her. She circled and signed printouts of these photos and CCTV footage screenshots in token of recognising this of officer and this was incorporated in her statement dated 14.05.2019 as Annexures II, III and IV.

13. She came out of the Preventive Area with the bag she had taken inside and took her other bag from outside near the X-ray machine and started moving towards the exit. Near the exit, she was again stopped by Shri Sanjay Sharma, ACS, who asked her, through a translator on his phone, about what had happened inside. She asked him to to let her go. He again met her outside around 9 AM and asked her about the details.

14. She intended to stay in Delhi at Shanti Villa Hotel, Paharganj."

4. The matter was thoroughly examined by the ICC. The submissions of the complainant, Petitioner herein and the Delinquent Officer - Mr. Devender Kumar Hooda were recorded. The conclusion of ICC, in regard to the Delinquent Officer, reads as under:

"Thus the Internal Complaints Committee (ICC) unanimously concludes that:-

- *There is sufficient evidence available on record to indicate that the complaint of the Lady Passenger, stating that she was subjected to sexual assault in the SIT room in the Preventive Area during the time period 08:20 AM - 08:32 AM by Shri Devender Kumar (Hooda), is correct.*

- *The evidence also strongly indicates that Shri Devender Kumar (Hooda) masterminded the retraction affidavit by the Lady Passenger by coercing/threatening her through Shri Sanjay Sahni and Promising her and her friends smooth future Customs clearance in lieu. This is tantamount to a direct interference with the ongoing investigation and a well-planned attempt to derail the investigation.*

- *Shri Sanjay Sharma was not directly involved in* *the act of sexual assault but abetted and assisted Shri Devender Kumar (Hooda), intentionally or unintentionally, by not following the due procedures while dealing with a female passenger, discharging his duties in a casual and careless manner and assisting Shri Devender Kumar (Hooda) in following up the dubious retraction of the Lady Passenger Further, it appears that Sh. Sanjay Sharma was fully aware of the actions of Sh. Devender Kumar (Hooda) (both the alleged sexual assault and the stage managed retraction affidavit)."*

5. Even though it was found that the Petitioner herein was not directly involved in the act of sexual assault with the lady passenger but rather abetted and assisted, intentionally or unintentionally, the main accused, Mr. Devender Kumar Hooda, by not following due procedure while dealing with a lady passenger and discharging his duties. The conclusion of ICC, in regard to the Petitioner, reads as under:

"II. <u>In respect of Sh. Sanjay Sharma, Air Customs Superintendent –</u>

Based on the foregoing conclusions of this report - Articles of charge and the concomitant statement of imputations of misconduct - on the lines of an indicative enumeration below - be drawn and delivered to Sanjay Sharma, Air Customs Superintendent, within the terms of Rule 14(3) and 14(4) of the CCS (CCA) Rules, 1965 for violations of a number of rules stipulated in the Conduct Rules. However, there is no evidence to indicate that Sh. Sanjay Sharma was directly involved in the incident of sexual harassment of the Lady Passenger and therefore, his case may be treated as a regular disciplinary matter. Notwithstanding the foregoing observation, it is apparent that Sh. Sanjay Sharma was aware that sexual harassment of the Lady Passenger had taken place but he *failed to take any action to prevent it or to report the matter to his superior officers at any stage. Even during the Committee's investigation, he persistently failed to cooperate in any meaningful manner.*

i. The conduct of Sh. Sanjay Sharma on the morning of 03 May, 2019 violates:

a) Rule 3(1)(i) of the Conduct Rules - failure to maintain absolute integrity; b) Rule 3(1)(ii) of the Conduct Rules - failure to maintain absolute devotion to duty;

c) Rule 3(1)(iii) of the Conduct Rules - conduct unbecoming of a Government servant;

d) Rule 3(1)(v) of the Conduct Rules - failure to defend and uphold decency and morality;

e) Rule 3(1)(vi) of the Conduct Rules - failure to maintain high ethical standards and honesty;

f) Rule 3(1)(ix) of the Conduct Rules - failure to maintain accountability and transparency;

g) Rule 3(1)(xii) of the Conduct Rules inasmuch as he, by allowing the Lady Passenger to leave without effecting or causing to be effected the seizure of contraband, failed to take decisions solely in the public interest;

h) Rule 3(1)(xix) of the Conduct Rules - failure to maintain discipline in the discharge of his duties;

i) Rule 3(1)(xxi) of the Conduct Rules inasmuch as he, failed to perform and discharge his duties with the highest degree of professionalism and dedication to the best of his abilities;

ii. The conduct of Sh. Sanjay Sharma subsequent to the events of the morning of 03 May, 2019 i.e. his role in the orchestration of the retraction affidavit by the Lady Passenger i.e., by being a willing participant in a blatant attempt to interfere with the Committee's investigation and having been aware of the same, in failing to report it, violates:-

a) Rule 3(1)(i) of the Conduct Rules - failure to maintain absolute integrity;
b) Rule 3(1)(iii) of the Conduct Rules - conduct unbecoming of a Government servant;
c) Rule 3(1)(v) of the Conduct Rules - failure to defend and uphold decency and morality;
d) 3(1)(vi) of the Conduct Rules - failure to maintain high ethical standards and honesty;
e) Rule 3(1)(ix) of the Conduct Rules - failure to maintain accountability and transparency;
f) 3(1)(xviii) of the Conduct Rules inasmuch as he, failed to refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices;

III. In respect of Other Officers present on Shift Duty –

The Committee has examined the matter referred to it with respect to the allegations of sexual harassment of a lady passenger. During the course of the investigation, several statements have been recorded, CCTV footage obtained and other evidences collected which have been brought out in the body of the report and its accompanying Annexures.

The Committee is of the view that there is evidence to indicate that Shri Devender Kumar (Hooda), perpetrated sexual assault on the Lady Passenger. Further, even though S. Sanjay Sharma was not directly involved in the perpetration of the sexual assault, there is ample evidence to indicate that he had prior knowledge of the motives of Shri Devender Kumar (Hooda). He also failed to either prevent the sexual assault or report it to supervisory officers.

However, as regards the other officers on duty on that day, there is no evidence to indicate that they were either involved in the perpetration of the sexual assault or had any prior knowledge thereof.

Nevertheless, the Vigilance branch may take a view on any misconduct that may be seen on closer scrutiny of the evidence made available in and with this report.

IV. The Committee's conclusions and recommendations are based on its central finding that the evidence and materials on record indicate, that the alleged incident of sexual harassment of the Lady Passenger indeed occurred. This incident also amounts to one or more cognizable offences under the relevant provisions of the Indian Penal Code, 1860. Therefore, keeping in mind the obligation cast by Section 19(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Committee strongly recommends that the matter may be referred to Delhi Police for further investigation and necessary action in this regard."

6. Disciplinary Proceedings were subsequently initiated against the Petitioner, and the Petitioner, thereafter, approached this Court by filing the instant writ petition with the following prayers:

"a. quash the "finding of fact", / report of internal complaints committee / respondent no. 3 dated 19.08.2019, whereby the petitioner has been falsely implicated primarily on charges of sexual harassment vide communication dated 04.10.19 by Respondent no.2, proceeded by constitution of internal complaint committee, and consequential charge-memo dated 04.10.2019, arbitrarily and malafidely;

b. Issue Writ of Certiorarified Mandamus calling for the records of the Respondent no.2 and 3 in connection with the Internal Complaint Committee dated 19.08.2019 including preliminary Vigilance enquiry F.No.l VIII(AirCus)Vig/B-Shift/61/2019, minutes of meeting of the Committee dated 28.05.2019, 07.06.2019, 17.06.2019, 08.07.2019, 19.07.2019 and 19.08.2019, *Standard Operating Procedure of the shift describing the role / procedure of baggage, AIU & Preventive Wing working at the Airport;*

c. Direct Respondent no.1 and 3 to produce email dated 05.05.2019 and 08.05.2019 with reply of the concerned with certificate U/s 65B before this Hon'ble Court to unearth the truth;

d. Direct Respondent no.2 or 3 to produce the video recording dated 14.05.2019 and 07.06.2019 while recording the statement of Ms. X and Respondent no.6 respectively;

e. Pass any other or further order, which this Hon'ble Court deem fit and proper under the facts and circumstances of the case."

7. Notice was issued in the writ petition on 01.02.2021. Pleadings are complete.

8. The short contention of the learned Counsel for the Petitioner is that the ICC has exceeded its jurisdiction in recommending initiation of disciplinary action against the Petitioner. He draws attention of this Court to Section 13 of the 2013 Act which is being reproduced as under:

> ***"13. Inquiry report****.—(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.*
>
> *(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the*

District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt

by him."

9. Learned Counsel for the Petitioner submits that before recommending any action against a person, who is accused of having committed sexual misconduct, it is necessary for the ICC to come to the conclusion that such person has indeed committed sexual misconduct in accordance with the 2013 Act. He submits that without there being any finding of any misconduct against the Petitioner, the ICC could not have recommended the initiation of disciplinary proceedings. He further draws attention of this Court to the Articles of Charge to contend that the disciplinary proceedings have been initiated only because of the recommendations given by the ICC.

10. Learned Counsel for the Petitioner places reliance upon the Judgment dated 18.12.2020 passed by a Co-ordinate Bench of this Court in "Bibha Pandey vs. Punjab National Bank & Ors." in **W.P.(C) 3249/2017** in support of his proposition.

11. *Per contra*, learned Counsel appearing for the Respondents contends that the disciplinary proceedings have been initiated against the Petitioner on two grounds, namely (i) misconduct that was indeed committed by the Petitioner and not because of the simple recommendations made by the ICC and (ii) not on account of any sexual harassment *per se* committed by the Petitioner. He submits that the Articles of Charge against the Petitioner concerns his acts of omission and commission prior and post the allegations of sexual harassment and also his dubious role in abetting clearance of the contraband goods, which constitute a violation under the CCS (Conduct) Rules, 1964. It is further contended that it was not correct on the part of the Petitioner to submit that the disciplinary proceedings have been initiated only as a consequence of the recommendations made by the ICC.

12. Heard learned Counsel appearing for the Parties and perused the

material on record.

13. Section 18 of the 2013 Act provides for an appeal against any recommendations made by the ICC. Section 18 of the 2013 Act reads as under:

> ***"18. Appeal.***—*(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.*
>
> *(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."*

14. In view of the above alternate efficacious remedy is available to the Petitioner, the Petitioner ought to have approached the concerned authorities under Section 18 of the 2013 Act. The aforesaid Judgment Bibha Pandey (supra) relied upon by the Petitioner also does not apply to the facts and circumstances of this case for the reason that the findings of the ICC in that case were that the relationship between the delinquent and the complainant was based on personal grounds and mutual consent which is not the case here in the present case.

15. The Apex Court has repeatedly held that the High Courts should not normally entertain writs where an equally alternate efficacious remedy is available to the aggrieved party and the aggrieved party approaches the High Court without availing the said alternate remedy. The Apex Court in

"Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal", **(2014) 1 SCC 603** has observed as under:

> *"**11.** Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499])*
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> ***12.** The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission [AIR 1954 SC 207] , Sangram Singh v. Election Tribunal [AIR 1955 SC 425] , Union of India v. T.R. Varma [AIR 1957 SC 882] , State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its*

jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See N.T. Veluswami Thevar v. G. Raja Nainar [AIR 1959 SC 422] , MunicipalCouncil, Khurai v. Kamal Kumar [AIR 1965 SC 1321 : (1965) 2 SCR 653] , Siliguri Municipality v. Amalendu Das [(1984) 2 SCC 436 : 1984 SCC (Tax) 133] , S.T. Muthusami v. K. Natarajan [(1988) 1 SCC 572] , Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] , Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293] , A. Venkatasubbiah Naidu v. S. Chellappan [(2000) 7 SCC 695] , L.L. Sudhakar Reddy v. State of A.P. [(2001) 6 SCC 634] , Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 SCC 509] , Pratap Singh v. State of Haryana [(2002) 7 SCC 484 : 2002 SCC (L&S) 1075] and GKN Driveshafts (India) Ltd. v. ITO [(2003) 1 SCC 72] .]

***13.** In Nivedita Sharma v. Cellular Operators Assn. of India [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14)*

"12. In Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)

'7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an

alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)

'11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

"… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and

Co. Ltd. [1935 AC 532 (PC)] and Secy. of State v. Mask and Co. [(1939-40) 67 IA 222 : (1940) 52 LW 1 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.'

14. In Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

'77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'"

(See G. Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : AIR 1952 SC 192] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Ramendra Kishore Biswas v. State of Tripura [(1999) 1 SCC 472 : 1999 SCC (L&S) 295] , Shivgonda Anna Patil v. State of Maharashtra [(1999) 3 SCC 5] , C.A. Abraham v. ITO [AIR 1961 SC 609 : (1961) 2 SCR 765] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons [1992 Supp (2) SCC 312] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] , Tin Plate Co. of India Ltd. v. State of Bihar [(1998) 8

SCC 272] , Sheela Devi v. Jaspal Singh [(1999) 1 SCC 209] and Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569] .)

14. *In Union of India v. Guwahati Carbon Ltd. [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed: (SCC p. 653, para 8)*

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)

'23. … [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.'"

15. *Thus, 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 [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] 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 should not be entertained ignoring the statutory dispensation."*

16. In view of the above settled principles, this Court is not inclined to entertain the writ petition. It is always open for the Petitioner to approach the Appellate Authorities under Section 18 of the 2013 Act.

17. Material on record indicates that during the pendency of the writ petition, the disciplinary proceedings initiated against the Petitioner has culminated in an Order of punishment wherein it is directed that the Pay of the Petitioner be reduced by three stages in the time scale of Pay Level-8 for a period of three years and the Petitioner will not earn increments of pay during the period of reduction and this reduction will have effect of postponing his future increments.

18. Any challenge to the disciplinary proceedings is maintainable only before the Central Administrative Tribunal (CAT) as the Petitioner is a Customs Officer and all matters pertaining to service of the Customs Department has to be filed before the Central Administrative Tribunal (CAT).

19. This Court is, therefore, not inclined to entertain the challenge either to the ICC report or to the initiation of disciplinary proceedings as alternate efficacious remedies are available to the Petitioner.

20. In view of the fact that the present writ petition has been filed by the Petitioner, the Petitioner is entitled to get the benefit of Section 14 of the Limitation Act. The time period between filing of the writ petition till the disposal of the writ petition has to be excluded while calculating the period of limitation for approaching the Appellate Authority under Section 18 of

the 2013 Act or under the Administrative Tribunals Act, 1985.

21. With these observations, the writ petition is disposed of, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.

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22. The instant contempt petition has been filed by the Petitioner alleging violation of the Order dated 14.07.2021 passed by this Court in W.P.(C) 1282/2021.

23. This Court *vide* Order dated 14.07.2021 has directed as under:

> *"6. It is made clear that the disciplinary proceedings may continue but the result thereof will be subject to the decision taken in this writ petition."*

24. It is the contention of the Petitioner that the Respondents ought not to have proceeded with the disciplinary proceedings and ought not to have passed the final Order of punishment during the pendency of the writ petition.

25. A perusal of the aforesaid paragraph No.6 of the Order dated 14.07.2021 indicates that this Court had permitted the disciplinary proceedings to continue but result thereof was subject to the final outcome of the writ petition.

26. This Court is of the opinion that there is no violation of the Order dated 14.07.2021 passed by this Court. The punishment has yet not been imposed upon the Petitioner. In view of this, the contempt petition is being disposed of with a direction to the Respondents not to implement the Order of Punishment dated 08.06.2023 passed by the Disciplinary Authority till the Petitioner approaches the appropriate authority and his application of stay is not decided.

27. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

APRIL 24, 2024
S. Zakir