



2024 : DHC : 2145



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

% **Reserved on : 18th December, 2023**
Pronounced on: 15th March , 2024

+ W.P.(C) 8529/2017 and CM APPL.Nos.35084/2017, 32772/2018,
10712/2020, 31829/2020, 31873/2020, 1827/2021

OM PRAKASH AND ORS Petitioners
Through: Mr.Rajat Aneja and Mr. Saurabh Jha,
Advocates
versus

GURU NANAK INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY AND ORS Respondents
Through: Mr.Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 7881/2018 and CM APPL.Nos. 30201/2018, 10686/2020,
31828/2020, 31874/2020 and 1820/2021

KAWALJEET SINGH & ORS Petitioners
Through: Appearance not given

versus

GURU NANAK INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY & ORS Respondents
Through: Mr.Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 3104/2020 and CM APPL.Nos.10783/2020, 13489/2020,
31810/2020, 31933/2020, 1396/2021, 2112/2021, 18960/2023,
21562/2023, 26673/2023

SURINDER SINGH & ORS Petitioners
Through: Appearance not given.

versus



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GURU NANAK INSTITUTE OF MANAGEMENT & ORS

..... Respondents

Through: Mr.Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 5857/2019 and CM APPL.Nos. 25505/2019, CM
APPL.36951/2019, CM APPL. 13396/2020, CM APPL.
31824/2020, CM APPL. 31936/2020, CM APPL.
1819/2021, CM APPL. 18966/2023, CM APPL.
21456/2023 & CM APPL. 26735/2023

BALBIR SINGH & ORS

..... Petitioners

Through: Appearance not given.

versus

GURU HARGOBIND INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY & ORS Respondents

Through: Mr.Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 3569/2020 and CM APPL. 12700/2020, CM
APPL.13608/2020, CM APPL. 31934/2020, CM APPL.
31935/2020 & CM APPL. 1376/2021

DARSHAN SINGH AND ORS

..... Petitioners

Through: Appearance not given.

versus

GURU NANAK INSTITUTE OF MANAGEMENT AND ORS

..... Respondents

Through: Mr.Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 3854/2020 & CM APPL. 13795/2020, CM
APPL.29870/2020, CM APPL. 31825/2020, CM APPL.

W.P.(C) 8529/2017 & 9 other connected matters

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1373/2021, CM APPL.1817/2021, CM APPL.18967/2023, CM APPL. 21469/2023 & CM APPL. 26745/2023

KAWALJEET SINGH & ORS. Petitioners
Through: Appearance not given.

versus

GURU NANAK INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY & ORS. Respondents
Through: Mr. Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 4058/2020 CM APPL. 14553/2020, CM
APPL.31820/2020, CM APPL. 31938/2020, CM APPL.
1415/2021 & CM APPL. 1829/2021

BALBIR SINGH & ORS. Petitioners
Through: Appearance not given

versus

GURU HARGOBIND INSTITUTE OF MANAGEMENT &
ORS. Respondents
Through: Mr. Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 12591/2022 & CM APPL. 19185/2023 & CM APPL.
30211/2023

MANJEET SINGH Petitioner
Through: Appearance not given

versus

GURU NANAK INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY AND ORS Respondent



2024 : DHC : 2145



Through: Mr.Anil Soni, Standing Counsel
for AICTE
+ W.P.(C) 12592/2022 & CM APPL. 19189/2023 & CM APPL.
30401/2023

GURVINDER SINGH Petitioner
Through: Appearance not given

versus

GURU NANAK INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY AND ORS Respondents
Through: Mr.Anil Soni, Standing Counsel
for AICTE

+ W.P.(C) 3034/2023 & CM APPL Nos. 11795/2023 & 21468/2023

KULJIT SINGH & ANR. Petitioners
Through: Appearance not given

versus

GURU NANAK INSTITUTE OF MANAGEMENT AND
INFORMATION TECHNOLOGY & ORS.
..... Respondent
Through: Mr.Anil Soni, Standing Counsel
for AICTE

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.



1. The batch of petitions pertains to employees of respondent- Guru Nanak Institute of Management and Information Technology and the grievances of the employees alongwith their relief has been tabulated herein below:

<u>S.No</u>	<u>Writ Petition No.</u>	<u>Title of the writ petition</u>	<u>Petitioner's prayer</u>	<u>Petitioner's position</u>
1.	W.P.(C) No. 3034 OF 2023	<i>Kuljit Singh and Another Vs Guru Nanak Institute of Management and Information Technology and others</i>	• Writ Petition under article 226 for the issue of mandamus, directing the respondents to pay the arrears of salary to the tune of 40% from May 2020 to May 2021 • to further direct the Respondents to pay the arrears of salary pending for the last 9 months to the Petitioners, i.e. from June 2022 till February 2023, and to continue to timely and regularly release the salaries of the Petitioners, to	Petitioner No. 1, Mr.Kuljit Singh, has been appointed as a Accounts Clerk by Guru Hargobind Institute of Management and Information Technology (hereinafter referred to as GHIMIT). Petitioner no. 2, Mrs. Ramanpreet Kaur has been appointed as a Receptionist by the Respondent No. I, the Guru Nanak Institute of Management and Information Technology (hereinafter referred to as GNIMIT), both the Petitioners were subsequently transferred by the



			further direct the Respondents are to pay the salaries in terms of the Pay Commission recommendations along with the respective benefits such as annual increments, dearness allowance, etc., without any break in service	Respondent No. 2 (being the parent body, i.e. the DSGMC), and are now working with GNIMIT. Respondent no. 1, GNIMIT Respondent No. 2, DSGMC Respondent No. 3, AICTE
2.	W.P.(C) No. 3104 OF 2020	<i>Surinder Singh and Others Vs Guru Nanak Institute of Management and Information Technology and others</i>	Writ petition filed by petitioner nos.1 to 27, working for respondent no. 1. Managed by respondent no.2 and approgved b y respondent no.3. Petitioners permanent employee of respondent 2, working with respondent 1, continue to stay at the same position and remuneration for years, the respondents have been unlawfully	Petitioner no. 1. Surinder Singh Lab Attendant 2. Anurag Mittal Associate Professor 3.Shubhra Saggar Assistant Professor 4. Shipra Jain Assistant Professor 5.Seema Girdhar Assistant Professor 6.Archana Deshpande Assistant Professor 7. Ekata Gupta



			and illegally withholding the salaries of the petitioners for the last more than 4 months, while the petitioners are providing the services.	Assistant Professor 8.Nilesh Kumar Assistant Professor 9. Himmat Kaur Computer Lab Assistant 10.Satwinder Kaur Receptionist 11.Sunita Kalra , LDC 12.Inderpreet Kaur, LDC 13.Kulvinder Singh, UDC 14.Rajvinder Singh, Assistant Caretaker 15.Devender KUMAR, LDC 16.Krishna Kumar, Sweeper 17. Saraswati Sweeper 18.Gyanendra Kumar Rai Watchman 19.Bhupinder Singh,
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				Daftari 20. Avtar Singh Electrician 21. Attinder Pal Singh, Library Attendant 22. Davinder Singh, Watchman 23. Bavleen Singh, Watchman 24. Naveen Daftari, 25. Raminder Kaur, UDC 26. Gurinderpal Singh, Store keeper 27. Dalvinder Kaur, Library Assistant
3.	W.P.(C) No. 3569 OF 2020	<i>Darshan Singh and Others Vs Guru Nanak Institute of Management and Information Technology and others</i>	All the Petitioners herein are working with the Respondent No.1 Institute for the past more than 20-25 years; however, many of them continue to languish on the same post with the	1. Mr. Darshan Singh, Field Work 2. Dr. Mamta Shah Assistant Professor 3. Ms. Avninder Kaur Sodhi, LDC 4. Mrs. Jagjeet Kaur Assistant Placement



			same remuneration on which they were initially appointed. Respondents herein, who have no regard to the rule of law have been illegally and unlawfully withholding the salaries of the Petitioners for several months, and at present, for the last more than 7 months (i.e. since December 2019).	5. Ms. Babneet Kaur LDC 6. Ms. Neetu, LDC 7. Mr. Malvinder Singh, Librarian 8. Mr. Harminder Singh, Computer Lab Assistant 9. Mr. Satjeet Singh Jolly, Admission Incharge 10. Mr. Tajinder Singh, Administrative Officer 11. Mr. Kanwaljeet Accounts Assistant
4.	W.P.(C) NO. 3854 OF 2020	<i>Kawaljeet Singh and Others Vs Guru Nanak Institute of Management and Information Technology and others</i>	Petitioners herein who are working with Respondent No.I Institute since past about 15-16 years are however languishing on the same post with the same remuneration on which they were initially	1. Kawaljeet Singh Library Assistant 2. Shweta Shukla, Assistant Accountant 3. Om Prakash Lab Attendant 4. Gurjit Singh Peon



			appointed; the Respondents, so as to overburden the Petitioners with work, promoted the Petitioners only on papers but deprived them of any financial benefits of promotion. The Respondents have been disbursing the monthly salaries of the Petitioners erratically, after a gap of 5-6 months, and sometimes stop disbursing the salaries at all.	5. Pradeep Yadav Attendant 6. Riya Khera Lecturer 7. Prabhjot Kaur Lecturer 8. Renu Sharma Lower Division Clerk 9. Manjit S. Bhatia, Peon
5.	W.P.(C) NO. 4058 OF 2020	<i>Balbir Singh and Others Vs Guru Nanak Institute of Management and Information Technology and others</i>	Petitioners herein who are working with Respondent No. 1 Institute since past about 15 years however languishing on the same post with the same remuneration on which they were initially appointed;	1. Balbir Singh Lecturer 2. Mandeep Singh Office Superintendent 3. Gursharan Kaur Librarian 4. Jagtar Singh Driver



			Respondents No. 1 and 2 have been disbursing the monthly salaries of the Petitioners erratically, after a gap of 5-6 months, and sometimes stop disbursing the salaries at all.	5. Jasbir Singh Daftri 6. Sukhvinder Singh Electrician 7. Satnam Singh Watchman 8. Mangu Watchman 9. S. Jaspal Singh Peon
6.	W.P. (C) No. 5857 OF 2019	<i>Balbir Singh and Others Vs Guru Nanak Institute of Management and Information Technology and others</i>	Despite discharging their duties with utmost integrity, diligence, honesty and sincerity, and without giving any cause of complaint for the last more than 10 years, the Respondents herein who have no regard to the rule of law have been illegally and unlawfully withholding the salaries of the Petitioners for the	1. Balbir Singh Lecturer 2. Mandeep Singh Office Superintendent 3. Gursharan Kaur Librarian 4. Jagtar Singh Driver 5. Simrath Kaur Daftri 6. Jasbir Singh Daftri



			last more than 11 months, notwithstanding the fact that all the Petitioners herein are working and providing their services as per the duties assigned to them by the Respondent No. 1 Institute.	7. Sukhvinder Singh Electrician 8. Neetu Peon 9. Satnam Singh Watchman 10. Mangu Watchman
7.	W.P. (C). NO. 7881 OF 2018	<i>Kawaljeet Singh and Others Vs Guru Nanak Institute of Management and Information Technology and others</i>	Despite discharging their duties with utmost integrity, diligently, honestly and sincerely, and without giving any cause of complaint for the last more than 10 years, the Respondents herein who have no regard to the rule of law have been illegally and unlawfully withholding the salaries of the Petitioners for the last more than 8 months, notwithstanding	1. Kawaljeet Singh Library Assistant 2. Shweta Shukla Assistant Accountant 3. Maninder Singh Assistant Caretaker 4. Renu Sharma Lower Division Clerk 5. Riya Khera Lecturer 6. Pradeep Yadav



			the fact that all the Petitioners herein are working and providing their services as per the duties.	Attendant 7. Gurpreet Kaur Lecturer
8.	W.P. (C) NO. 8529 OF 2017	<i>Om Prakash and Others vs Guru Nanak Institute of Management and Information Technology and others</i>	Apart from the lack of payment of lawful salary, the Petitioners are also highly aggrieved on account of their promotions being withheld by Respondent No.1. Moreover, the Petitioners are not being paid their salaries on time, and Respondent No. 1 withholds the Salaries of the Petitioners by at least 3 to 4 months.	1. Om Prakash Laboratory Attendant 2. Gurjeet Singh Peon 3. Pradeep Yadav Attendant 4. Manjit S. Bhatia Peon
9.	W.P. (C) NO. 12591 OF 2022	<i>Manjeet Singh vs Guru Nanak Institute of Management and Information Technology</i>	Writ petition for issuance of <i>certiorari</i> , quashing the letter by the respondent no.1, directing "temporary lay-off" of petitioner	Manjeet Singh- Permanent employee



		<i>and others</i>	from the institute and issuance of <i>mandamus</i> , directing the respondent to continue to release salaries of the petitioner.	
10.	W.P. (C) NO. 12592 OF 2022	<i>Gurvinder Singh vs Guru Nanak Institute of Management and Information Technology and others</i>	Writ petition for issuance of <i>certiorari</i> , quashing the letter by the respondent no.1, directing “temporary lay-off” of petitioner from the institute and issuance of <i>mandamus</i> , directing the respondent to continue to release salaries of the petitioner.	Gurvinder Singh- Permanent employee

FACTUAL MATRIX

2. The instant batch of petitions have been filed by the petitioners seeking relief such as quashing the orders of temporary lay- off, directions for payment of salaries, reinstatement ,etc.

3. The respondent- Delhi Sikh Gurudwara Management Committee (hereinafter "DSGMC") is a statutory body created under the provisions of Delhi Sikh Gurdwara Act, 1971(hereinafter " the Act"). All the educational institutes function through the Governing Bodies created and nominated by DSGMC.



4. The respondent Guru Nanak Institute of Management and Information Technology (hereinafter "GNIMIT"), is engaged in imparting technical education, i.e., diploma, degree and postgraduate courses and is controlled, managed and administered by the respondent DSGMC.

5. The respondent-All India Council for Technical Education (hereinafter "AICTE") is a statutory body, and a national-level council for technical education, under the Department of Higher Education, responsible for proper planning and coordinated development of the technical and management education system in India . It was established in the year 1945 primarily as an advisory body and was given statutory status by an Act of Parliament in 1987 .

6. During the course of the proceedings of the present writ petition and other connected matters, the learned counsel appearing on behalf of the respondents- GNIMIT and DSGMC have raised the issue of maintainability of the instant batch of petitions on the ground that the petitioners have not exhausted the alternative remedy available with the petitioners. Hence, the limited question at the instance is whether the instant batch of petitions is maintainable and whether this Court has the jurisdiction to entertain the reliefs as sought by the petitioners.

SUBMISSIONS

(on behalf of the respondent)

7. Learned counsel appearing on behalf of the respondent –DSGMC as well as GHIMIT and GNIMIT submitted that the instant batch of petitions is not maintainable the petitioners have not exhausted the only alternative remedy available to them under section 32 of the Act.



8. It is submitted that the instant batch of petitions is not maintainable in law since there is also an alternative and efficacious remedy available under the provisions of Section 32 of the Act, which enunciates that the learned District Court has the original jurisdiction to entertain disputes between the respondents as well its employees.

9. It is further submitted that under section 33 of the Act, the High Court is vested with appellate jurisdiction in this regard. It is submitted that it is settled principle of law that writ Courts would ordinarily not exercise jurisdiction under Article 226 when there is an alternative and efficacious remedy available.

10. It is submitted that after the MOU with Jamia Milia Islamia was terminated in the academic year 2019-2020, there is no scope of getting students through the said MOU. Thus, there is no students enrolled either in GHIMIT or in GNIMIT and the respondents have been left with no income whatsoever for paying to the petitioners.

11. It is submitted that the financial position of both the Institutes is in an extremely bad hence, the management of the institutes had to lay-off their staff.

12. It is submitted that the reliefs sought by the petitioners pertains to the personal service contracts and hence, there is no element of “public function” involved in the same. Therefore, the instant batch of petition is not amenable to the writ jurisdiction.

13. In view of the aforesaid submissions, learned counsel for the petitioner submitted that the instant petition is liable to be dismissed on the ground that there is an alternative remedy available with the petitioner.



14. Learned counsel appearing on behalf of AICTE submitted that it promulgated Redressal of Grievance of Faculty/Staff Member Regulations, 2021 vide F.no. 1- 1 03/ AICTE/PGR/Regulation/2021 on 25th March 2021, wherein it is mandated that technical Institutions shall address the grievance of staff members including service matters at the institution level itself. Hence, there shall be a Grievance Redressal Committee (GRC) constituted to look into the grievance of the faculty/staff members.

15. It is further submitted that the Grievance Redressal Cell established by the University or DTE shall address such grievances and settle the matter at State/University level.

16. It is contended that for redressal of the grievances of the faculty and the staff of the technical institutions, they can approach their own Grievances Redressal System established either at the Institute level or at the level of the University/Directorate of Technical Board of the concerned State/Union Territory Administration.

17. In view of the aforesaid submissions, learned counsel for the respondent AICTE, no relief as sought by the petitioner can be granted by AICTE. The redressal of disputes is within the exclusive domain of Institute/State/Directorate of Technical Board because all appointments are either made by the Institute itself or with the approval of the University.

(on behalf of the petitioner)



18. Learned counsel appearing on behalf of the petitioners submitted that the instant petition is maintainable despite there being, availability of an alternative remedy is no bar. The petitioners have the right to approach this Court without exhausting the alternative remedy.

19. It is submitted that the grievances of the petitioners are of serious nature and the respondents have violated the legal rights of the petitioners. Hence, the petitioners have rightly approached this Court.

20. It is contended that the petitioners' are being denied salary and other benefits to which they are duly entitled by the respondents. Hence, the aforesaid action of the respondent violates the legal rights of the petitioner and amounts to miscarriage of justice by the respondent.

21. It is further contended that the aforesaid batch of writ petitions shall be entertained by this Court since there is gross violation of the petitioner's legal right which merits interference of this Court under its writ jurisdiction.

22. It is submitted that the dispute between the petitioner and the respondents involves public law element and is not contractual in nature.

23. In view of the submissions made above, it is submitted that the instant petition has merit and the same may be allowed by this Court.

ANALYSIS AND FINDINGS

24. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties and pleadings presented by the learned counsel of the parties.



25. It is the case of the respondent that the instant batch of writ petitions is not maintainable mainly on two grounds, *firstly*, the petitioners have approached the writ court before exhausting the alternative remedy as prescribed under law and *secondly*, the instant batch of petitions pertain to personal service contract of the petitioner(s) and no public element is involved in the same, hence, the instant batch of petitions is not maintainable.

26. In rival submissions, the learned counsel for the petitioners has submitted that existence of an alternative remedy is not a bar to approach the writ Courts under Article 226 of the Constitution of India. It is further submitted that the instant batch of petitions is not merely a dispute of contractual nature rather involves public law element and, hence, the instant batch of petitions are amenable to the writ jurisdiction.

27. The issue which falls for adjudication before this Court is that whether the instant batch of petition is maintainable despite the fact that the petitioners have not exhausted the alternative remedy available to the petitioners under the Act.

28. In this regard, this Court will examine the contention of the respondent wherein the learned counsel of the respondent has pleaded before this Court that the dispute between the parties in the instant writ petition can be adjudicated by the learned District Judge under Section 32 of the Act

29. Now this Court will peruse the Section 32 as well as Section 33 of the Act. The aforesaid provisions have been reproduced herein below:

32. Jurisdiction of District Court in other matters.—

The Court of the District Judge in Delhi shall also have



jurisdiction in respect of the following matters, namely:—

[Clauses (a) and (b) omitted by Act 46 of 1974, s. 5

(w.e.f. 23-9-1974).]

(c) Petitions regarding complaints, irregularities, breach of trust, mismanagement in any Gurdwara, educational or other institutions against any member, office-bearer or officer or other employee of the Committee.

(d) Petitions arising out of any type of disputes between the Committee and its employees including past employees.

(e) Applications regarding the failure of publication of, or non-implementation or non-clearance of the objections raised in, any annual report of the auditors of the Committee.

33. Appeals-

(1) Any person aggrieved by an order passed by the District Judge may, within sixty days of the order, prefer an appeal to the High Court at Delhi and the orders of the High Court on such appeal shall be final and conclusive.

(2) The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963), shall, so far as may be, apply to appeals under this section....”

30. Upon perusal of the aforesaid sections, it can be ascertained that the disputes between the respondent GHIMIT as well as GNIMIT and the employees including past employees can be adjudicated by the District Judge, Delhi only. Moreover, the employees of the respondent can file an appeal against the order of the learned District Judge within 60 days from the order.

31. This Court by way of various judgments has expressed its view that since the employees of educational institutes governed by the Act shall first exhaust the alternative remedy i.e., available under Section 32 and 33 of the Act before approaching this Court under its writ jurisdiction.



32. The Coordinate Bench of this Court in the judgment of *Satpal Singh v. Delhi Sikh Gurdwara Management Committee & Anr*¹ delved on the existence of an alternative remedy under Section 32 and Section 33 of the Act and dismissed the writ petition as non- maintainable. The relevant portion of the judgment is reproduced herein below:

“10. It would thus be seen that the jurisdiction over disputes between DSGMC and its employees including past employees, as the disputes subject matter of the present petitions are, is first of the District Judge, Delhi and the Act also provides for a remedy to this Court against the orders of the District Judge.

11. The Act, on the basis of which writ remedy is invoked against the respondent DSGMC, having itself provided a remedy for the disputes as subject matter of these writ petitions, in my view, the writ petitions would not be maintainable on this ground alone. The remedy of the petitioners is before the District Judge. The Act having provided a complete machinery for adjudication of the disputes as raised by way of present writ petitions, the writ petitions would not be maintainable. It is the settled principle of law that this Court would ordinarily not exercise jurisdiction under Article 226 when alternative, efficacious remedy is available. The present petitions in any case raise disputed questions of fact and which can be appropriately adjudicated in proceedings before the District Judge rather than in the present jurisdiction. I have already in Sh. Gurdeep Singh Vs. President, Delhi Sikh Gurdwara Management Committee MANU/DE/2013/2011 taken a view that owing to the said Section 32 of the Act, the writ remedy is barred.

12. Though I have not found any case law qua Sections 32 & 33 (supra) of the Gurdwaras Act but I find that the Division Bench of this Court in Gurdeep Singh Dua Vs. Delhi Sikh

¹ W.P (C) 236/2010 dated 4th July 2011 (Delhi High Court)



Gurdwara Prabandhak Committee 59 (1995) DLT 115 in relation to Section 31 of the Act providing for the jurisdiction of the District Judge qua election disputes, held that ordinarily the writ remedy would not be available in the face of the alternative remedy having been provided in the Statute itself. The Supreme Court in Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee (2006) 8 SCC 487 in relation to Section 31 has also held that the appropriate remedy is to prefer an election petition and unless exceptional or extraordinary circumstances are disclosed justifying recourse to extraordinary remedy under Article 226, the same would not be maintainable. 13. I do not find any reason to take a contrary view qua Section 32.

14. I also find that the Employees Services Regulations (supra) of DSGMC provide for appeal against all penalties imposed. Thus the remedy of the petitioners is first by preferring the departmental appeal provided for under the Employees Service Regulations and if still remain aggrieved, to approach the District Judge under Section 32 (supra) of the Act and not by way of these writ petitions.

15. The writ petitions are accordingly dismissed as not maintainable. However, having not found any earlier judgment on the aforesaid aspect, it is directed that subject to the petitioners approaching the Departmental Appellate Authority within 30 days of today or if do not deem Departmental Appellate Authority to be appropriate, the District Judge within 45 days of today, the Departmental Appellate Authority and / or the District Judge, as the case may be, shall entertain the appeal / petition notwithstanding the same being barred by time / delay.”



33. The Hon'ble Division Bench of this Court² in the letter patent appeal filed of the aforesaid judgment, upheld the view taken by the Single- Judge Bench and opined its view as follows:

“In our considered opinion, when the District Judge has been conferred the jurisdiction, it is not only an alternative but an efficacious remedy because it is a statutory authority, which can enter into factual disputes, whereas while exercising the power of judicial review under Article 226 of the Constitution of India, there would be a different approach.”

34. The Coordinate Bench of this Court in the judgment of ***Baidya Nath Yadav & Ors. V. Guru Tegh Bahadur Polytechnic Institute & Anr.***³ dealt with the issue regarding maintainability of a writ petition against Guru Tegh Bahadur Polytechnic Institute, an educational institute which performs functions similar to that of respondent- GNIMIT. The relevant portion of the aforesaid judgment is reproduced herein below:

“5. On the aspect of maintainability of the writ petition various judgments have been passed by learned Single Judges of this Court including Hon'ble Mr. Justice Rajiv Sahai Endlaw and one such judgment is the judgment in the case of Satpal Singh Vs. Delhi Sikh Gurudwara Management Committee & Anr. 181 (2011) DLT 455. In this judgment Hon'ble Judge by referring to Section 32 of the Delhi Sikh Gurudwara Act has held the writ petition not to be maintainable when the disputes are those covered under Section 32(d).

5. It is therefore clear that petitioners have approached the Court although there is an alternative efficacious remedy of

² *Satpal Singh v. Delhi Sikh Gurdwara Management Committee & Anr*, LPA 619/2011 dated 2nd August 2011 (Delhi High Court)

³



approaching the concerned District Judge before whom all the issues which are raised in the writ petition can be heard and decided. I have failed to understand as to why litigants and counsels without even reading basic aspects of law, and the repeated judgments passed by this Court, should at all file non-maintainable petitions in this Court. It is high time that the litigants and lawyers are well advised to at least read the basic law before approaching courts of law.

7. In view of the fact that there is an alternative efficacious remedy, it is held that this writ petition is not maintainable, and thus this Court refuses to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. Dismissed.”

35. The Hon’ble Division Bench while adjudicating upon the letter patent appeal⁴ of the aforesaid writ petition upheld the judgment passed by the Single Bench of this Court and dismissed the appeal.

36. The Division Bench of this Court has opined the similar view as expressed in the judgment of **Surjeet Singh Saini v. Guru Teg Bahadur Institute of Technology & ors**⁵ and **Gurdev Singh & ors. v. Guru Teg Bahadur Institute of Technology & ors**⁶.

37. In the judgment of **Arshpreet Kaur vs Guru Teg Bahadur Polytechnic**⁷, the Coordinate Bench of this Court held that Section 32 of the Act vests power with the District Court of Delhi to adjudicate upon the matters between institutes governed by the Act and the employees including pastemployees of such institutes. Moreover, the Courts

⁴ Baidya Nath Yadav & Ors. v. Guru Tegh Bahadur Polytechnic Institute & Anr, LPA 95/2017 dated 21st February 2018

⁵ LPA 121/2017 dated 21st February 2018 (Delhi High Court)

⁶ LPA 122/2017 dated 21st February 2018 (Delhi High Court)

⁷ W.P.(C) No.811/2017 dated 30th January 2017



emphasized the fact that an alternative efficacious remedy is available under Section 32 of the Act and before exhausting the aforesaid remedy, the petitioner shall not approach this Court. The relevant extract of the aforesaid judgment is reproduced herein below:

“3. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of Satwati Deswal Vs. State of Haryana and Ors. (2010) 1 SCC 126 to argue that a writ petition is entertained in spite of existence of an alternative efficacious remedy once the principles of natural justice are violated, however, each case as regards existence of alternative efficacious remedy depends upon facts of its case and no doubt writ petitions are maintainable once there is violation of principles of natural justice, however, I fail to see as to why once there is a designated court like in the present case of the District Judge under Section 32(d) of the Act, and which court is barely 400/500 meters away from this Court, that counsels and parties must insist that writ jurisdiction must be invoked although identical reliefs and prayers can be granted by the designated court of the District Judge and which is a completely efficacious alternative remedy.

4. The facts in the case of Satwati Deswal (supra) were not under the Act and the said judgment only laid down a general proposition of law and considering the issue of existence of alternative remedy in the present case and which is a completely alternative efficacious remedy, even in terms of the distance with the alternative forum which has to be approached, hence, in view of the consistent judgments of this Court, this Court refuses to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Dismissed.”



38. The Coordinate Bench of this Court in the judgment of ***Bhupinder Singh & Anr v. Lt. Governor of Delhi & Ors.***⁸ held that when there is a specific statute applicable to a particular dispute, then the party shall not choose any alternative forum for addressal (**redressal**) of its grievances. The relevant portion of the judgment is reproduced herein below:

“8. Moreover, in view of Section 32(c) of the DSG Act the petitioners are estopped from raising any grievances by way of the present PIL before us as they are amenable only to the jurisdiction of the District Court. When there is a specific remedy provided under a Statute (DSG Act herein) governing the disputes raised before a Court of Law (this Court herein), no party (petitioners herein) can be allowed to choose an alternative forum of convenience for agitating grievance(s). Both, Committee and the GHPS Society, are specialized organization formed under a special, DSG Act. Petitioners cannot choose to create an alternate route when there is already an existing prescribed route.”

39. The Coordinate Bench of this Court has reiterated the same rationale in the judgments of ***Harinder Pal Singh And Ors vs Guru Teg Bahadur Polytechnic***⁹.

40. In view of the aforesaid judgments, it is a settled position of law that in case there is an alternative remedy available, the petitioners shall exhaust the alternative remedy before approaching the writ Court.

41. This Court finds its apposite to discuss exceptions carved out to the general rules that availability of an alternative remedy is not an exception to filing the writ petition. Under Article 226 of the Constitution of India, the High Courts are vested with the discretion to entertain the matter in

⁸ W.P (C) 573/2018 dated 20th February 2023(Delhi High Court)

⁹ W.P.(C) No. 11316/2015 dated 16th February 2017 (Delhi High Court)



case there is an alternative remedy available with the petitioner in certain circumstances such as the writ petition seeks enforcement of fundamental rights, in case there is violation of principles of natural justice, any order or the proceedings are wholly without jurisdiction or the vires of any statutory provision is challenged in the writ petition.

42. The position of law in this regards, is settled in the judgment by the Hon'ble Supreme Court in *M/s Godrej Sara Lee Ltd. V. The Excise and Taxation Officer-Cum-Assessing Authority & Ors* ¹⁰. The relevant extract of the judgment is reproduced herein below:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of

¹⁰ 2023 SCC OnLine SC 95



each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR



595 (*State of Uttar Pradesh v. Mohd. Nooh*) had the occasion to observe as follows:

*“10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***”*

6. At the end of the last century, this Court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (*Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;



(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.”

43. Hence, the alternative remedy is not a bar only in certain circumstances such as writ petition seeks enforcement of fundamental rights, in case there is violation of principles of natural justice, any order or the proceedings are wholly without jurisdiction or the vires of any statutory provision is challenged in the writ petition, as reiterated by the Hon’ble Supreme Court in the aforesaid judgment.

44. In the instant case, there are no such circumstances that the instant batch of petitions may be entertained by this Court despite existence of an alternative remedy with the petitioners.

45. In view of the aforesaid discussion, this Court is of the view that the Section 32(d) of the Act, 1971, disputes which are subject matter of the instant batch of petitions shall be decided by the concerned District Judge. Hence, the petitioner shall approach the concerned District Court before knocking the doors of the writ Court.

46. It is pertinent to note that the Hon’ble Supreme Court in the case of ***St. Mary’s Education Society v. Rajendra Prasad Bhargava***,¹¹ held that a contract of personal service including matters relating to service of an employee cannot be entertained in writ petitions. The relevant portion of the judgment is reproduced herein below:

¹¹ 2022 SCC OnLine SC 1091



“35. It needs no elaboration to state that a school affiliated to the CBSE which is unaided is not a State within Article 12 of the Constitution of India [See : Satimbla Sharma v. St. Pauls Senior Secondary School [(2011) 13 SCC 760]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [See : K. Krishnamacharyulu v. Sri. Venkateshwara Hindu College of Engineering, (1997) 3 SCC 571]. The school affiliated to the CBSE is therefore an “authority” amenable to the jurisdiction under Article 226 of the Constitution of India [See : Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee - confirmation, suspension, transfer, termination, etc. [See : Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360]

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69. We may sum up our final conclusions as under:—

(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

(b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without



having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.”

47. It is a settled position of law that under Article 226, that despite the fact that the educational institutes are discharging public function, however the contractual dispute between the educational institutes and its employees does not involve any element of public function. Hence, the writ Court shall not entertain any disputes between the educational institutes and its employees pertaining to employment of contractual nature since there is no element of public interest involved in such disputes.

48. In the instant batch of petitions, the dispute pertains to contractual employment of the petitioners, hence, there is no element of public element involved in the dispute between the petitioners and the respondent. Therefore, the instant batch of petitions is not amenable to writ jurisdiction.

CONCLUSION

49. As discussed above, an alternative remedy is available to the petitioners and the learned District Court is vested with the jurisdiction to entertain the disputes between the petitioners and respondents. Hence, there is no reason why the alternative remedy shall not be exhausted before approaching this Court under Article 226.



50. This Court is of the view that the concerned District Judge has been conferred with the jurisdiction under Section 33 of the Act and the same is not only an alternative but an efficacious remedy. Moreover, under Section 33 of the Act, this Court is vested with the appellate jurisdiction to adjudicate upon the appeals which arise from the judgment/order passed by the District Judge in exercising its power under Section 32 of the Act.

51. In view of the aforesaid discussion, the instant batch of petitions is not maintainable hence, they are dismissed. The petitioners are granted liberty to approach the concerned District Court for redressal of their grievances.

52. Accordingly, the instant batch of petitions is disposed of.

53. The judgment to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MARCH 15, 2024
SV/DB/AV