

07.01.2025
sayandeep
Sl. No. 38
Ct. No. 08

FMA 947 of 2024

With
CAN 1 of 2024

Shri Kapil Shaw
-Versus-
The State of West Bengal & ors.

Mr. Debdutta Raha
Mr. Suvam Dutta

.... For the appellant

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee

.... For the State

The writ petition filed by the appellant was dismissed by the Court on the ground that the petitioner is guilty of suppression of material fact and such litigant should not be permitted to adopt the forum shopping.

The counsel for the appellant submits that such findings recorded by the Single Bench is factually incorrect as an approach to the West Bengal Administrative Tribunal at the behest of the appellant was disclosed in the writ petition, more particularly, in paragraph 21 thereof.

We had an occasion to peruse the contents of the writ petition including paragraph 21 and find that the petitioner has disclosed the factum of approaching the West Bengal Administrative Tribunal for regular payment of the salary. The moment, the Tribunal entertained the application filed by the petitioner

treating the dispute within the ambit of the service dispute as defined in the West Bengal Administrative Tribunal Act, 1997, the reliefs claimed in the writ petition comes within the peripheral thereof. The moment, the Tribunal is set up for redressal of the specified grievance, it is not open to the litigant to jump such forum and approach the Court directly.

Even the constitution Bench of the Apex Court in **L. Chandra Kumar vs. Union of India** reported in **AIR 1997 SC 1125** held that the approach to the Single Bench under Article 226 of the Constitution of India directly, is not permitted but since the powers exercised by the High Court under Article 226 comes within the peripheral of the basic structure theory, it cannot be taken away through the legislative fiat. However, it was held that the approach can be made under Article 226 of the Constitution before the Division Bench after the order is passed by the Tribunal.

The cumulative effect of the said constitution Bench Judgment has conveyed the manifest intention that though the litigant can approach the High Court under Article 226 of the Constitution of India but after approaching the Tribunal and the Single Bench was denuded to entertain the writ petition filed directly before it.

We, thus, do not find the ultimate decision taken by the Single Bench to be infirmed or illegal.

The appeal is, thus, dismissed.

The dismissal of the appeal shall not prevent the appellant to approach the appropriate forum, is available, in accordance with law.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)