IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE M. SATYANARAYANA MURTHY

Writ Appeal Nos.615 & 617 of 2021

COMMON JUDGMENT:

(Prashant Kumar Mishra, CJ)

Dt.22.03.2022

These two writ appeals would arise out of the common order dated 28.12.2018 passed by the learned single Judge in two separate writ petitions, one being W.P.No.2955 of 2021 preferred by the appellant (management) and the other – W.P.No.5271 of 2009 preferred by the 1st respondent-workman. While the writ petition preferred by the appellant has been dismissed, that preferred by the workman has been allowed by the learned single Judge. W.P.No.2955 of 2001 was preferred challenging the award passed by the Labour Court, Visakhapatnam on 23.10.2000 in I.D.No.219 of 1998, whereas W.P.No.5271 of 2009 was preferred challenging the order dated 16.12.2008 passed by the Labour Court, Visakhapatnam, in M.P.No.43 of 2005.

2. Both the writ appeals were heard analogously on the issue of maintainability. However, to understand and appreciate the nature of proceedings before the Labour Court, it is deemed expedient to state the factual matrix, though succinctly.

3. The workman preferred an application under Section 2A(2) of the Industrial Disputes Act, 1947 (in short, "the 1947 Act") before the Labour Court, Visakhapatnam for reinstatement with back-wages, continuity of

service and attendant benefits. Based on the claim and the defence put forth by the parties, the Labour Court, by its award dated 23.10.2000, held that the petitioner (before the Labour Court) has been doing manual work of tracking samples and testing them, weighment, accounting of the articles and boxing the material and noting the size of the material, therefore, he is a workman as defined under Section 2(S) of the 1947 Act. On appreciation of the evidence adduced before the Labour Court, it was also found that dismissal of an employee for disobedience of a transfer order on health grounds was shockingly disproportionate, therefore, under the circumstances, dismissal of the workman is liable to be set aside. Allowing the application, the Labour Court modified the order of dismissal to one of the punishment of stoppage of one increment with cumulative effect. However, if he fails to report at his new station at Jharsuguda within one month, he will not be entitled to back-wages or continuity of service.

4. The management challenged the order of reinstatement and modification of punishment/reduction of punishment. On the other hand, the workman allegedly joined duty on 09.02.2001 at Jharsuguda, but he was not allowed to join. Therefore, he preferred a petition before the Labour Court seeking execution of the award. However, when the same was returned, he preferred M.P.No.43 of 2005 under Section 33(c)(2) of the 1947 Act for recovery of wages from 01.01.1998 to 30.04.2005. Upon dismissal of the petition by the Labour Court, he preferred W.P.No.5271 of 2009. The learned single Judge has dismissed the writ petition preferred by the management while allowing the writ petition preferred by the workman.

5. In the course of hearing, the issue that had fallen for consideration was about the maintainability of the writ appeals. Referring to various judgments of Hon'ble the Supreme Court and different High Courts in ***State of Maharashtra v. Labour Law Practitioners' Assn.***[1], ***Management of Hindustan Times Ltd. v. Aita Ram***[2], ***Shailendra Kumar v. Divisional Forest Officer***[3], ***Gurushanth Pattedar v. Mahaboob Shahi Kulburga Mills and another***[4], ***Caparo Engineering India Ltd. v. Ummed Singh Lodhi and another*** (Civil Appeal Nos.5829-5830 of 2021), ***Vishnu Ganapathi Naik v. The Management of NWKRTC***[5] and ***Ghanshyam Sharma v. Regional Manager, Rajasthan State Road Transport Corporation***[6], Mr. N. Ashwani Kumar, learned counsel for the workman, argued that the award passed by the Labour Court being essentially an adjudication of a civil dispute by a judicial forum, the learned single Judge could have exercised power only under Article 227 of the Constitution of India and that being so, writ appeals are not maintainable against an order passed in exercise of powers under Article 227 of the Constitution of India.

6. Per contra, Mr. Ch. Dhanamjaya, learned counsel for the management, relied on the law laid down by Hon'ble the Supreme Court in ***Surya Dev Rai v. Ram Chander Rai and others***[7], ***Ramesh Chandra Sankla Etc. v. Vikram Cement Etc.***[8] and ***State of Madhya Pradesh and others v. Visan Kumar Shiv Charan Lal***[9], to argue that the appellant having prayed for issuance of a Writ of Certiorari, the writ petition was under Article 226 of the

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[1] **(1998) 2 SCC 688**
[2] **(2018) SCC Online Del 11914**
[3] **AIR 2018 MP 120**
[4] **ILR 2005 KAR 2503**
[5] **2006 (3) KarLJ 356**
[6] **2008 (87) FLR 779**
[7] **(2003) 6 SCC 675**
[8] **(2008) 14 SCC 58**
[9] **(2008) 15 SCC 233**

Constitution of India and not under Article 227 of the Constitution of India, therefore, these writ appeals would be maintainable.

7. In both the writ petitions, the management as well as the workman have not only prayed for a Writ of Certiorari, but also to pass such other relief or reliefs as the High Court deems it fit, just and proper in the circumstances of the case.

8. Thus, while praying for issuance of a Writ of Certiorari, it can be treated as one under Article 226 of the Constitution of India, but when prayer for passing further order and reliefs has been made, the same can only be made under Article 227 of the Constitution of India.

9. In a catena of decisions, Hon'ble the Supreme Court culled out the principles governing difference between Writ of Certiorari under Article 226 of the Constitution of India and supervisory jurisdiction under Article 227 of the Constitution of India. Without burdening this judgment by referring to various judgments of Hon'ble the Supreme Court, suffice it would be to refer only a few.

10. In ***Surya Dev Rai v. Ram Chander Rai and other*** (supra), Hon'ble the Supreme Court observed thus in paragraphs 24 and 25:

> ***"Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227***
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> *24. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Radhikabai [1986 Supp SCC 401]. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but*

only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction"

"25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense

> *it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."*

11. It is no longer *res integra* that it is open to the court while dealing with the petition filed under Articles 226 and/or 227 of the Constitution or a Letters Patent Appeal under Clause 15 of the Letters Patent arising from the judgment in such a petition to determine whether the facts justify the party in filing the petition under Article 226 and/or 227 and, further, that nomenclature is of no consequence and it is the nature of relief sought and controversy involved which determine as to which Article, whether 226 or 227, is applicable.

12. Whether a Labour Court is only a Court Subordinate to the High Court or it is treated as a Civil Court, is a germane issue to be dealt with in this case, so as to find out whether the petition filed before the learned single Judge can be treated to be one under Article 227 or Article 226 of the Constitution of India.

13. In ***State of Maharashtra v. Labour Law Practitioners' Assn.***[10], Hon'ble the Supreme Court held in paragraph 5 that there is not much difficulty in holding that the Labour Court performs judicial functions and is a court. The Labour Court adjudicates upon disputes that, had it not been for the Industrial Disputes Act, the Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, would have been within the jurisdiction of the ordinary civil courts to decide, although the ordinary civil courts may not be able to grant all the reliefs that are contemplated by these Acts. The Labour Courts are, therefore, courts and decide disputes that are civil in nature. While discussing further with reference to Articles 235 and 236 of the Constitution of India, it is observed thus in paragraphs 18, 19 and 20:

> *"18. In the case of Shri Kumar Padma Prasad v. Union of India [(1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239] this Court had to consider qualifications for the purpose of appointment as a Judge of the High Court under Article 217 of the Constitution. While interpreting the expression "judicial office" under Article 217(2)(a), this Court held that the expression "judicial office" must be interpreted in consonance with the scheme of Chapters V and VI of Part VI of the Constitution. So construed it means a*

[10] **(1998) 2 SCC 688**

judicial office which belongs to the judicial service as defined under Article 236(b). Therefore, in order to qualify for appointment as a Judge of a High Court, a person must hold a judicial office which must be a part of the judicial service of the State. After referring to the cases of Chandra Mohan [AIR 1966 SC 1987: (1967) 1 LLJ 412] and Statesman (P) Ltd. [AIR 1968 SC 1495: 1968 Lab IC 1525: 18 FLR 100] this Court said that the term "judicial office" in its generic sense may include a wide variety of offices which are connected with the administration of justice in one way or the other. Officers holding various posts under the executive are often vested with magisterial power to meet a particular situation. The Court said: (SCC pp. 445-46, para 22)

"Did the framers of the Constitution have this type of 'offices' in mind when they provided a source of appointment to the high office of a judge of the High Court from amongst the holders of a 'judicial office'? The answer has to be in the negative. We are of the view that holder of 'judicial office' under Article 217(2)(a) means the person who exercises only judicial functions, determines causes inter partes and renders decisions in a judicial capacity. He must belong to the judicial service which as a class is free from executive control and is disciplined to uphold the dignity, integrity and independence of the judiciary."

Going by these tests laid down as to what constitutes judicial service under Article 236 of the Constitution, the Labour Court judges and the judges of the Industrial Court can be held to belong to judicial service. The hierarchy contemplated in the case of Labour Court judges is the hierarchy of Labour Court judges and Industrial Court judges with the Industrial Court judges holding the superior position of District Judges. The Labour Courts have also been held as subject to the High Court's power of superintendence under Article 227."

"19. The decision in the case of Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] is also cited before us. It deals, inter alia, with the interrelationship of jurisdiction of Labour and Industrial Courts as dispute-resolving forums with the jurisdiction of civil courts. It is not directly concerned with the question which is before us."

"20. The constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate courts shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. Thus Article 233 which deals with appointment of District Judges requires that such appointments shall be made by the Governor of the State in consultation with the High Court. Article 233(2) has been interpreted as prescribing that "a person in the service of the Union or the State" can refer only to a person in the judicial service of the Union or the State. Article 234 which deals with recruitment of persons other than District Judges to the judicial service requires that their appointments can be made only in accordance with the Rules framed by the Governor of the State after consultation with the State Public Service Commission and with the High Court. Article 235 provides that the control over district courts and courts subordinate thereto shall be vested in the High Court; and Article 236 defines the expression "District Judge" extensively as covering judges of a City Civil Court etc. as earlier set out, and the expression "judicial service" as meaning a service consisting exclusively of persons intended to fill the post of the District Judge and other civil judicial posts inferior to the post of District Judge. Therefore, bearing in mind the principle of separation of powers and independence of the judiciary, judicial service contemplates a

> *service exclusively of judicial posts in which there will be a hierarchy headed by a District Judge. The High Court has rightly come to the conclusion that the persons presiding over Industrial and Labour Courts would constitute a judicial service so defined. Therefore, the recruitment of Labour Court judges is required to be made in accordance with Article 234 of the Constitution."*

14. The issue as to the nature of power exercised by the Labour Court while hearing an execution petition arising out of an award passed by the Labour Court, has been dealt with by a Full Bench of the Delhi Court in ***Management of Hindustan Times Ltd. v. Aita ram & Ors.***[11] and in paragraphs 22, 24, 27 and 28, it is held as under:

> *"22. It is clear that after the introduction of the aforegoing sub-sections, the award passed by the Industrial Tribunal shall be executed by a Civil Court under Order XXI of the Code of Civil Procedure treating it to be a decree passed by such Civil Court. There is no doubt in our minds that any order passed by the executing court under the said provisions would be a judicial order passed by a civil court and thus, unamenable to challenge in writ proceedings."*
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> *"24. The analogy drawn with Section 33C of the Act also does not impress upon us. The procedure prescribed under Section 33C is completely different from the one under Section 11. Under Section 33C, it is for the Government to certify the dues and then the same is enforced by the Collector. Sub-Section (2) provides for adjudication of disputes in respect of computation to be decided by the Labour Court. Neither of the provisions contemplate any proceedings before a Civil Court."*

[11] **2018 SCC OnLine Del 11914**

> *"27. From the aforegoing discussion, it is clear that though the Court should not be influenced by nomenclature or provision invoked while ascertaining whether the proceedings before the Single Judge were under Article 226 or 227 and should look into the controversy involved and the reliefs sought, however, such an enquiry is not permissible in cases arising out of an order of a civil court as the same must be understood as one under Article 227."*
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> *"28. Accordingly, the writ petition before the learned Single Judge must be held as one under Article 227 being a challenge to the judicial order of the executing court, which we have already held to be a civil court. Hence, the order of the learned Single Judge cannot be challenged by way of a Letters Patent Appeal in view of the express prohibition under Clause 10 of the Letters Patent applicable to this Court."*

15. While taking the above view that a challenge to the judicial order of the executing court arising out of the award passed by the Labour Court, which is a Civil Court, writ petition can only be filed under Article 227 of the Constitution of India and Letters Patent Appeal against such order is not maintainable, the Delhi High Court has referred to the judgment of Hon'ble the Supreme Court in ***Radhey Shyam* v. *Chhabi Nath***[12], wherein the following has been held by Hon'ble the Supreme Court in paragraphs 1, 26, 27 and 29:

> *"1. This matter has been placed before the Bench of three Judges in pursuance of an order dated 15-4-2009 [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] passed by the Bench of two Hon'ble Judges to consider the correctness of the law laid down by this Court in Surya Dev Rai v. Ram*

[12] **(2015) 5 SCC 423**

Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] that an order of the civil court was amenable to writ jurisdiction under Article 226 of the Constitution. The reference order, inter alia, reads: (Radhey Shyam case [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] , SCC p. 624, paras 30-33)

> *"30. ... Therefore, this Court unfortunately is in disagreement with the view which has been expressed in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.*
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> *31. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.*
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> *32. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and with that we have no disagreement. But we are unable to agree with the legal proposition laid down in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the*

aforesaid proposition laid down in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , is contrary to the ratio in Mirajkar [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] and the ratio in Mirajkar [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] has not been overruled in Rupa Ashok Hurra [Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388] .

33. In view of our difference of opinion with the views expressed in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a larger Bench, to consider the correctness or otherwise of the law laid down in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] on the question discussed above."

"26. The Bench in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh v. Amarnath [AIR 1954 SC 215 :

1954 SCR 565] , Ouseph Mathai v. M. Abdul Khadir [(2002) 1 SCC 319] , Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] and Sameer Suresh Gupta v. Rahul Kumar Agarwal [(2013) 9 SCC 374 : (2013) 4 SCC (Civ) 345] . In Shalini Shyam Shetty [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] this Court observed: (SCC p. 352, paras 64-67)

> *"64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.*
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> *65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.*
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> *66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code*

by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time-honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

(emphasis supplied)

"27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226."

"29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled."

16. In ***Ram Kishan Fauji v. State of Haryana***[13], Hon'ble the Supreme Court has observed thus in paragraphs 40 to 42:

"40. As the controversy in Jogendrasinhji Vijaysinghji case [Jogendrasinhji Vijaysinghji v. State of Gujarat, (2015) 9 SCC 1 : (2015) 4 SCC (Civ) 275] related to further two aspects, namely, whether the nomenclature of the article is sufficient enough and further, whether a tribunal is a necessary party to the litigation, the two-Judge Bench proceeded to answer the same. In that context, the Court referred to the authorities in Lokmat Newspapers (P) Ltd. v. Shankarprasad [Lokmat Newspapers (P) Ltd. v. Shankarprasad, (1999) 6 SCC 275 : 1999 SCC (L&S) 1090] , Kishorilal [Kishorilal v. District Land Development Bank, (2006) 7 SCC 496] , Ashok K. Jha [Ashok K. Jha v. Garden Silk Mills Ltd., (2009) 10 SCC 584 : (2010) 1 SCC (L&S) 78] and Ramesh Chandra Sankla [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] and opined that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. It further observed that barring the civil court, from which order as held by the three-Judge

[13] **(2017) 5 SCC 533**

Bench in Radhey Shyam [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, would depend upon various aspects. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. It was reiterated that it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The two-Judge Bench further clarified that the Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. The delineation with regard to necessary party not being relevant in the present case, the said aspect need not be adverted to.

"41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of the civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein."

"42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1. An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2. The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3. A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article 227 of the Constitution and determination by the High Court under the said article and, hence, no intra-court appeal is entertainable.

42.4. The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same."

17. The conclusion based on an understanding of the above-referred judgments would take us to an irresistible conclusion that while challenging an award under the Industrial Disputes Act, 1947, the Labour Court exercises powers and jurisdiction of a Civil Court and that orders passed by a Civil Court can only be challenged before the High Court by way of a Writ Petition under Article 227 of the Constitution of India.

18. While taking the above view, we may profitably refer to a Division Bench judgment of Karnataka High Court in ***Sri Vishnu Ganapathi Naik v. The Management of NWKRTC***[14], wherein speaking through Hon'ble Mr. Justice H.L. Dattu, as he then was, in a proceeding arising out of an

[14] **MANU/KA/0150.2006**

award passed by the Labour Court, the Division Bench held thus in paragraphs 5 and 7:

> *"5. The Full Bench of this Court at paragraph 4 of the judgment has observed that, the writ petitions are filed before this Court both under Articles 226 and 227 of the Constitution of India. When such is the case, the Court has to examine the allegations made in the petition and the relief claimed therein as to whether the petitioner wants the Court to exercise its supervisory power under Article 227 or its original jurisdiction under Article 226 of the Constitution and there can be cases where claim is made seeking to invoke the power of the High Court under both the Articles. The Court has not stopped there. It has given illustration of this type of cases by taking into consideration the awards passed by the Labour Courts and the Industrial Tribunals. In that, the Court has observed, that, if the challenge is limited only to the correctness or otherwise of the award, then the petitioner is obviously invoking the powers of this Court under Article 227 of the Constitution, because the cause has not been initiated for the first time in this Court. Proceeding further, the Court has observed, that, if in addition to the correctness of the award, the petitioner were to challenge the vires of any other provision of the Industrial Disputes Act or of any other provision or the very jurisdiction of the Labour Court to pass the award or on the ground that it suffered from error of law apparent on the face of the record, he is invoking the power of the High Court under Article 226 as well and if such issues are decided by a Learned Single Judge, the decision will be deemed to have been rendered in the exercise of its original jurisdiction under Article 226."*
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> *"7. In the instant case, it is not the case of the appellant that he had questioned the award passed by the Industrial*

Tribunal/Labour Court under any one of the exceptions stated by the Full Bench of this Court in Gurushanth Pattedar's case-ILR 2005 Kar 2503. Therefore, in our opinion, the order passed by the Learned Single Judge necessarily is under Article 227 of the Constitution and therefore, no appeal would lie against the said order before this Court."

19. In the case at hand also, the Labour Court, Visakhapatnam passed an award in favour of the workman, which may only be assailed before the High Court, invoking jurisdiction under Article 227 of the Constitution of India. The application filed by the workman seeking execution of the award could also be challenged under Article 227 of the Constitution of India in the like manner. Even though in both the writ petitions, prayer was made for a Writ of Certiorari, as held by Hon'ble the Supreme Court, nomenclature of the petition or the nature of relief sought for is not the only determining factor, but the nature of power available to be invoked before the High Court is one such important guiding factor, which would determine the jurisdiction exercised by the High Court. We are, thus, satisfied that both the writ petitions being preferred under Article 227 of the Constitution of India, challenging the award or the order passed by the Labour Court, the present writ appeals filed against the common order of the learned single Judge in an intra-court appeal, are not maintainable.

20. Both the writ appeals deserved to be, and are, hereby, dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

Sd/- ***Sd/-***

PRASHANT KUMAR MISHRA, CJ **M. SATYANARAYANA MURTHY, J**

MRR