

Court No. - 5**1. Case :- WRIT - A No. - 11509 of 2024****Petitioner :-** Mahendra Singh Kanwal**Respondent :-** State Of U.P. Thru. Prin. Secy. Agriculture Lko. U.P. And 2 Others**Counsel for Petitioner :-** Rajendra Singh Kushwaha**Counsel for Respondent :-** C.S.C.,Rajeeva Kumar Sinha**2. Case :- WRIT - A No. - 11511 of 2024****Petitioner :-** Rajeev Sharma**Respondent :-** State Of U.P. Thru. Prin. Secy. Agriculture Lko. And 2 Others**Counsel for Petitioner :-** Rajendra Singh Kushwaha**Counsel for Respondent :-** C.S.C.,Rajeeva Kumar Sinha**3. Case :- WRIT - A No. - 11526 of 2024****Petitioner :-** Abdul Aziz**Respondent :-** State Of U.P. Thru. Prin. Secy. Agriculture Civil Sectt. Lko And 2 Others**Counsel for Petitioner :-** Rajendra Singh Kushwaha**Counsel for Respondent :-** C.S.C.,Rajeeva Kumar Sinha**And****4. Case :- WRIT - A No. - 11538 of 2024****Petitioner :-** Krishan Kumar Rastogi**Respondent :-** State Of U.P. Thru. Prin. Secy. Agriculture Lko. U.P. And 2 Others**Counsel for Petitioner :-** Rajendra Singh Kushwaha**Counsel for Respondent :-** C.S.C.,Rajeeva Kumar Sinha**Hon'ble Abdul Moin,J.**

1. Heard learned counsel for the petitioners, learned Standing Counsel for the State-respondent and Shri Rajeeva Kumar Sinha, learned counsel appearing for respondents No.2 and 3.

2. Learned counsels for the parties contend that the issue involved in all the four writ petitions are same. As such, the Court proceeds to hear all the writ petitions together and they are being decided by way of a common judgement. For convenience, facts of WRIT - A No. - 11509 of 2024 are being taken.

3. Under challenge is the order dated 20.09.2024, a copy of which is

Annexure-1 to the petition, whereby the claim of the petitioner for gratuity on the basis of entire length of service rendered as Daily Wager has been rejected.

4. Contention of the learned counsel for the petitioner is that the petitioner was appointed in the year 1984 as a Daily Wager and has been regularized vide order dated 01.02.2014 and retired on 29.09.2019. Contention is that although the respondents have paid the gratuity to the petitioner but it is only the period of his regular service which has been counted by the respondents for payment of gratuity while the period of his services rendered as daily wager which has not been counted.

5. Despite the petitioner having approached this Court earlier and the Court having required the respondents to decide a representation of the petitioner in this regard said representation has been rejected vide impugned order dated 20.09.2024 and hence the instant petition.

6. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case ***Netram Sahu vs State of Chhattisgarh & Anr : (2018) 3 SCR 682*** to argue that the Hon'ble Supreme Court has held that entire period of service as rendered by the petitioner would fall within the ambit of being 'continuous service' as provided under Section 2A of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act, 1972'), consequently the respondents have patently erred in not counting the entire period of service rendered by the petitioner right from the year 1984 till his regularization in the year 2014.

7. On the other hand, Shri Rajeeva Kumar Sinha, learned counsel appearing for respondents No.2 and 3 has taken a preliminary objection that the petitioner has statutory remedy of approaching the controlling authority under the provisions of Section 7(4)(b) of the Act, 1972 inasmuch as considering Section 7(4)(a) of the Act, 1972 as the petitioner is disputing the amount of gratuity payable to him under the Act, 1972 consequently he should approach the controlling

authority in this regard.

8. Perusal of Section 7 of the Act, 1972 would indicate that sub Section 4(a) of Section 7 of the Act, 1972 categorically provides that if there is any dispute as to the amount of gratuity payable to an employee under the Act, 1972 or as to the admissibility of any claim etc., then the employer or the employee or any other person raising a dispute may give an application to the controlling authority for deciding the dispute.

9. In the instant case, the dispute is that although the service rendered by the petitioner as daily wager is covered under the provisions of Section 2A of the Act, 1972 yet the respondents have not considered the said service while giving the gratuity to the petitioner by treating his service only for the period between 2014 to 2019 i.e. the period of service rendered by the petitioner after his regularization till his retirement. Thus, it is apparent that there is a dispute as to the amount of gratuity payable to the petitioner which can validly be raised before the controlling authority under the provisions of the Act, 1972.

10. At this stage, learned counsel for the petitioner contends that as it is clearly apparent from perusal of Section 2A of the Act, 1972 read with the judgment of the Hon'ble Supreme Court in the case of **Netram (supra)** that his entire period of service would fall within the ambit of being continuous service and consequently the period of service from 1984 till 2014 would also be counted towards is gratuity as such this Court may entertain the instant petition.

11. Entertaining of a writ petition despite availability of a statutory remedy is no longer *res integra*. The Hon'ble Supreme Court in the case of **The Assistant Commissioner of State Tax & Ors vs M/S Commercial Steel Limited : (2022) 16 SCC 447** has held as under:-

"10. The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternative remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition

can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

11. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent."

12. Likewise, recently the Hon'ble Supreme Court in the case of ***PHR Invent Educational Society v. UCO Bank, (2024) 6 SCC 579*** has held as under:-

22. The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled. In Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260 : 2010 INSC 428] , this Court observed thus : (SCC p. 123, paras 43-45)

"43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226

of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason

why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

23. *It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.*

24. *The view taken by this Court has been followed in Agarwal Tracom (P) Ltd. v. Punjab National Bank [Agarwal Tracom (P) Ltd. v. Punjab National Bank, (2018) 1 SCC 626 : (2018) 1 SCC (Civ) 425 : 2017 INSC 1146] .*

25. *In State Bank of Travancore v. Mathew K.C. [State Bank of*

Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41 : 2018 INSC 71] , this Court was considering an appeal against an interim order passed by the High Court in a writ petition under Article 226 of the Constitution staying further proceedings at the stage of Section 13(4) of the SARFAESI Act. After considering various judgments rendered by this Court, the Court observed thus : (SCC p. 94, para 16)

“16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.”

26. The same position was again reiterated by this Court in *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir* [*Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*, (2022) 5 SCC 345 : (2022) 3 SCC (Civ) 153 : 2022 INSC 44] .

27. Again, in *Varimadugu Obi Reddy v. B. Sreenivasulu* [*Varimadugu Obi Reddy v. B. Sreenivasulu*, (2023) 2 SCC 168 : (2023) 1 SCC (Civ) 58 : 2022 INSC 1207] , after referring to earlier judgments, this Court observed thus : (SCC pp. 181-82, para 34)

“34. The order of the Tribunal dated 1-8-2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002. In the

absence of efficacious alternative remedy being availed, there was no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1-8-2019 under its jurisdiction under Article 226 of the Constitution without exhausting the statutory right of appeal available at its command.”

28. *It could thus be seen that this Court has strongly deprecated the practice of entertaining writ petitions in such matters.*

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30. *It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should not entertain a petition under Article 226 of the Constitution particularly when an alternative statutory remedy is available.*

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37. *It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

*(iii) it has resorted to invoke the provisions which are repealed;
and*

(iv) when an order has been passed in total violation of the principles of natural justice.

38. *It has however been clarified 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."

13. From perusal of the judgments of the Hon'ble Supreme Court in the cases of ***The Assistant Commissioner of State Tax (supra)*** and ***PHR Invent Educational Society (supra)***, it clearly emerges that the Hon'ble Supreme Court has carved out certain exceptions when a petition under Article 226 of the Constitution of India could be entertained inspite of availability of an alternate remedy. Some of the exceptions are: (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question; (ii) it has acted in defiance of the fundamental principles of judicial procedure; (iii) it has resorted to invoke the provisions which are repealed; and (iv) when an order has been passed in total violation of the principles of natural justice.

14. When the facts of the instant case along with the arguments of the learned counsel for the petitioner are seen in the context of the law laid down by the Hon'ble Supreme Court, it clearly emerges that none of the aforesaid exceptions are attracted in the facts of the instant case so as to entertain the instant petition.

15. Considering the aforesaid i.e. statutory remedy being available under the provisions of Act, 1972 as such the writ petition is ***disposed of*** leaving it open to the petitioner to pursue the remedy as available to him under the Act, 1972. As the petitioner is a retired employee, it is provided that in case an application is filed by the petitioner under the Act, 1972, the same would be considered and decided in accordance with law and the provisions of the Act, 1972, which the authority would make an endeavour to decide within a period of 3 months from the date the application is filed along with a certified copy of this order.

Order Date :- 3.12.2024
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