
(2012) 08 AHC CK 0202
In the Allahabad High Court
Case No : Writ Petition No. 1034 (S/B) of 2012

Amitabh Thakur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

All India Services Act, 1951 — Section 3
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 8 ADJ 372 : (2013) 3 ALJ 387

Hon'ble Judges : Surendra Vikram Singh Rathore, J; Rajiv Sharma, J

Bench : Division Bench

Advocate : Ashok Panda, for the Appellant;

Final Decision : Dismissed

Judgement

1. The instant writ petition has been filed in the Registry on 13.7.2012, under the heading "Miscellaneous Bench" but the Stamp Reporter on the basis of relief claimed by the petitioner opined that the matter is cognizable by the Bench dealing with "Service Bench" matter. Accordingly, the instant writ petition was placed by the Registry before this Court having jurisdiction of "Service Bench" on 17.7.2012. On 17.7.2012, Sri Asok Pande, learned Counsel for the petitioner has submitted that though he had filed the instant writ petition under the heading "Miscellaneous Bench" but the Stamp Reporter has marked the instant writ petition as "Service Bench" and sent it to this Court. In order to verify the facts, we summoned the Stamp Reporter, who submitted before us that on account of the relief so claimed by the petitioner in the instant writ petition, it has been marked as a matter of "Service Bench" and as such Counsel for the petitioner was requested in writing to correct the heading, who declined to do so and, as such, the Stamp Reporter sent the matter to the Computer Section for listing the same before the Service Bench, He submits that the report so submitted on 13.7.2012 is also on record. Consequently, Sri Asok Pande, learned Counsel for the petitioner prayed that he may be granted time to file objection to the report

submitted by the Stamp Reporter and as such, this Court, vide order dated 17.7.2012, granted time to Sri Asok Pande to file objection to the report of the Stamp Reporter.

2. In compliance of the order dated 17.7.2012, Sri Asok Pande, learned Counsel for the petitioner has filed an objection to the report of the Stamp Reporter on 19.7.2012. Thereafter, this Court, vide order dated 19.7.2012, directed the Stamp Reporter to submit his reply to the objection, so filed by the petitioner's Counsel.

3. Pursuant to the order dated 19.7.2012, the Stamp Reporter has submitted a report dated 23.7.2012, which is reproduced as under:

In compliance with the order dated 19.7.2012 passed in the above noted writ petition, it is respectfully submitted that while passing the writ petitions preferred under Article 226/ 227 of the Constitution of India, the provisions of Chapter XXII of High Court Rules and the orders passed by the Hon"ble the Chief Justice, time to time, are followed to decide the forum etc. in question. The last order dated 30.3.2010 passed by the Hon"ble Acting Chief Justice in his regard is enclosed herewith for the kind perusal of Hon"ble the Court, as per directions the service matters of Class III and Class IV employees are heard by Hon"ble the Single Judge and of the officers of Class I and Class II are to be heard by the Division Bench of this Hon"ble Court.

Further, it is respectfully submitted that different Benches are constituted to decide such matters, as allotted by Hon"ble the Chief Justice, time to time. The instant writ petition has been filed showing the group as Misc. Bench, whereas the contents of the petition as well as the prayer clause clearly shows that the matter relates to the framing of promotion rules and promotion etc. of the officers of the All India Services, i.e. Indian Administrative Services, Indian Police Services and Indian Forest Services, e.g., in para 1 of the petition, it has been categorically been stated that the petitioner is filing the present writ petition for the writ of mandamus against the respondents to frame proper rules or regulations with regard to the promotion matters of officers of the All India Services including the Police Services to which the petitioner belong. The prayer clause of the writ petition also shows that the relief has been claimed for (i) to frame proper rules and/or regulations with regard to promotion matters of officers of the All India Services including Indian Police Services, and (ii) to quash all promotion of the officers made so far.

Keeping in view the contents of the writ petition and the prayer clause the petition has been passed as Service Bench matter and the Learned Counsel for the petitioner was requested and informed on phone to correct the group of the case. The said fact is mentioned in the office report dated 13.7.2012.

So far as the objection of the Learned Counsel for the petitioner is concerned as mentioned in para 4 of his objection dated 19.7.2012, it is respectfully submitted that the said objection appears to be misconceived keeping in view the Standing

Orders of Hon''ble the Chief Justice.

Submitted for the kind perusal and suitable orders/directions.

4. For proper adjudication of the matter, we think it appropriate to reproduce the reliefs claimed by the petitioner in the instant writ petition as well as the Standing Order dated 30.3.2010 of the Hon''ble Chief Justice, which are as under :

PRAYER

Wherefore, it is most respectfully prayed that this Hon''ble Court may be pleased to-

(a) Issue a writ of Mandamus directing the concerned respondents to immediately frame proper Rules and/or Regulations as regards promotion related matters of the officers of the All India Services (including the Indian Police Service) in accordance with the provisions contained in section 3 of the All India Services Act 1951.

(b) Issue a writ of Mandamus directing the concerned respondents to cancel/quash all the promotions of the officers of the All India Services (including the Indian Police Service) made so far in the absence of such proper Rules and/or Regulations.

Standing Order dated 30.3.2010

ORDER

In modification of earlier orders in this regard, passed in exercise of the powers under proviso (a) to Rule 2-Chapter V of the Rules of the Court, 1952, Volume-I and all other powers enabling in this behalf, I hereby order and direct that with immediate effect:

A. Writ petitions relating to services of the following categories shall also be heard and disposed of by an Hon''ble Judge sitting singly :

i. Teachers upto Intermediate College

ii. Employees of Class-III and IV, including those of educational institutions, armed forces and employees of the High Court.

Provided that if the relief claimed in the writ petition relates to a service which matter is cognizable by Division Bench, then that writ petition shall also be heard and disposed of by a Bench of two Hon''ble Judges.

and all other unit petitions relating to services shall be heard and disposed of by a Bench of two Hon''ble Judges.

B. Writ Petition challenging the orders of the Chancellor relating to service or otherwise shall be heard and disposed of by a Bench of two Hon''ble Judges.

5. From the perusal of the reliefs, reproduced hereinabove, claimed by the petitioner through the instant writ petition and the report of the Stamp Reporter dated 23.7.2012 as well as Standing Order dated 30.3.2010 of Hon''ble Chief Justice, we are of the view that the Stamp Reporter has rightly placed the matter before this Bench having jurisdiction of "Service Bench" matter. Therefore, the plea of the petitioner's Counsel that the instant writ petition is cognizable by a Bench dealing with "Miscellaneous Bench", is hereby rejected.

6. Now, we have heard Sri Asok Pande, learned Counsel for the petitioner and Sri Neeraj Chaturvanshi, learned Counsel for the Union of India on merit.

7. Sri Neeraj Chaturvanshi, learned Counsel for the Union of India has raised a preliminary objection that the petitioner has got equally efficacious alternative remedy by filing Original Application before the Central Administrative Tribunal, to which learned counsel for the petitioner instead of advancing any submission on the ground of alternative remedy has started arguing the matter on merit, saying that through the instant writ petition, the petitioner did not seek any relief for himself but it has been filed in the nature of Public Interest Litigation so as to frame proper rules/regulations as regards promotion related matters of the officers of the All India Services including the Indian Police Service in accordance with the provisions contained in Section 3 of the All India Services Act, 1951. Moreso, the Central Administrative Tribunal is not a competent authority to issue a writ in the nature of Mandamus directing the Union of India to frame such Rules/Regulations.

8. The Apex Court in the case of L. Chandra Kumar v. Union of India and others, 1997 SCC (L&S) 577, has held that the Tribunals are competent to hear the matters where the vires of statutory provisions are questioned and also have power to test the vires of subordinate legislations and rules and as such, the Tribunal would very well look into the illegality of the Government Orders, which are being assailed in the instant writ petition.

9. The Apex Court in the case of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , has held that when the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a Government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to bypass the said Tribunal. It was also held that in an appropriate case after entertaining the petitions by an aggrieved party, if the Tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution but that is no ground to bypass the said Tribunal in the first instance itself.

10. Recently, the Apex Court in United Bank of India Vs. Satyawati Tondon and Others, , observed as under :

It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but there can be no 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 that the particular legislation contains a detailed mechanism for redressal of his grievance.

11. Thus by a series of decisions it has been settled that the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ, if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

12. It may be noted that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the extraordinary jurisdiction of the High Court to issue a prerogative writ as the writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.

13. During the course of arguments, learned Counsel for the petitioner submitted that the instant matter may be treated as Public Interest litigation for the reason petitioner is not seeking relief for himself alone but for the cadre. In this regard, we would like to point out that in service matters Public Interest Litigation is not maintainable [Dr. B. Singh Vs. Union of India (UOI) and Others, , Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others,]. In Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, , the Apex Court propounded that except for a writ of quo warranto, public interest litigation is not maintainable in service matters. Thus the request of the petitioner is refused.

14. For the reasons aforesaid, the writ petition is dismissed on the ground of availability of alternative remedy before the Tribunal. Lastly, learned Counsel for the petitioner also requested for granting permission to approach the Apex Court, which is refused as there is no substantial question of law involved in the matter. The issue raised in the writ petition is already settled by number of decisions.