

**(2003) 04 AHC CK 0117**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 10966 of 2003**

Dr. Subhash Chandra Agarwal

APPELLANT

Vs

Vice Chancellor, Chhatrapati Shahuji Maharaj University and  
Another

RESPONDENT

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**Date of Decision :** 22-04-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Uttar Pradesh State Universities Act, 1973 — Section 68

**Citation :** (2003) 3 AWC 2375

**Hon'ble Judges :** Ghanshyam Dass, J;B.S. Chauhan, J

**Bench :** Division Bench

**Advocate :** V.C. Mishra and Vikrant Pandey, for the Appellant; V.P. Varshney and U.N. Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 16.2.2003 (Annexure-1), passed by the respondent No. 1, by which the representation of the petitioner has been rejected.

2. Facts and circumstances of the case giving rise to this case are that the petitioner and the respondent No. 2 have been working in the respondent University and the selection of the respondent No. 2 has been in dispute. However, the matter is still pending for consideration before the Lucknow Bench of this Court wherein operation of the order passed by the respondent No. 1 University has also been stayed. The respondent No. 1 issued a tentative seniority list on 20th June, 1998, wherein, the respondent No. 2 has been shown senior to the petitioner. Petitioner being aggrieved made representation to correct the seniority list contending that he was senior to the respondent No. 2. As it was not done, he filed Writ Petition No. 50567 of 2002 before this Court which was disposed of vide order dated 26.11.2002 directing the respondent No. 1 to decide the representation of the petitioner. The respondent No. 1 has

rejected the representation by the impugned order dated 16.2.2003 (Annexure-1). Hence, this petition.

3. Shri Varshney and Shri U.N. Sharma, learned counsel appearing for the respondents have raised a preliminary objection regarding maintainability of the writ petition, contending that petitioner has approached this Court without exhausting the statutory remedy provided u/s 68 of the U. P. State Universities Act, 1973 (hereinafter called the Act, 1973). Hence, the petition is liable to be dismissed and petitioner may approach the learned Chancellor to decide the controversy.

4. The provisions of Section 68 of the Act, 1973 provide for a reference to the learned Chancellor of the University in case any question arises regarding the selection or appointment or entitlement to be member of any authority or other Board of the University or as to whether any decision of any authority or officer of the University is in conformity with the provisions of the Act or the statutes or the ordinance made thereunder. The order passed by the Chancellor shall be final. The reference can be made within the period of three months from the date the question arises or order is passed by the authority concerned. However, in exceptional circumstances the Chancellor has been given power to entertain a reference after expiry of the period or even to act suo motu.

5. A Constitution Bench of the Hon''ble Supreme Court, in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , held that as the Motor Vehicles Act is a self-contained code and itself provides for appealable/revisable forum, the writ jurisdiction should not be invoked in matters relating to its provision.

6. Similar view has been reiterated in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ; Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, and Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others, .

7. In C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, and H.B. Gandhi v. Gopinath and Sons, 1992 (Suppl) 2 SCC 312, the Hon''ble Apex Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

8. The Constitution Bench of the Hon''ble Supreme Court, in K.S. Venkataraman and Co. Vs. State of Madras, , considered the Privy Council judgment in Releigh Investment Co. Ltd. v. Governor General in Council AIR 1947 PC 78 and held that the writ court can entertain the petition provided the order is alleged to be without jurisdiction or has been passed in flagrant violation of the principles of natural justice, or the provisions of the Act/Rules is under challenge.

9. In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , the Hon''ble Supreme Court refused to extend the ratio of its earlier judgment in State of V. P. v. Mohammed Noor AIR 1958 SC 86, wherein the Court had held

that prerogative writ can be issued to correct the error of the Court or Tribunal below even if an appeal is provided under the statute under certain circumstances, i.e., the order is without jurisdiction, or principles of natural justice have not been followed, and held that in case of assessment under the Taxing Statute, the principle laid down by the Privy Council in *Raleigh Investment Co. Ltd*, (supra) would be applicable for the reason that "the use of the machinery provided by the Act, not the result of that use, is the test."

While deciding the said case, the Hon"ble Supreme Court placed reliance on large number of judgments, particularly *New Water Works Co. v. Hawkes Ford* (1859) 6 CBNS 336; *Neville v. London Express Newspapers Ltd*. 1919 AC 368 and *Attorney General of Trinidad and Taboco v. Gordon Grant and Co*. 1935 AC 532 and *Secretary of State v. Mask and Co*. AIR 1949 PC 105, wherein it had consistently been emphasised that the remedy provided by the statute must be followed and writ should not generally be entertained unless the statutory remedies are exhausted.

10. In *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and Tin Plate Co. of India Ltd. Vs. State of Bihar and Others*, , the Apex Court came to the conclusion that writ should not generally be entertained if statute provides for remedy of appeal and even if it has been admitted, parties should be relegated to the appellate forum.

11. In *Sheela Devi Vs. Jaspal Singh*, , the Hon"ble Apex Court has held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

12. In *Punjab National Bank v. O.C. Krishnan and Ors*. 2001 (4) AWC 2589 : AIR 2001 SCW 2993, the Hon"ble Supreme Court while considering the issue of alternative remedy observed as under :

"The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

13. A Constitution Bench of the Hon"ble Supreme Court, in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, , held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of

issuing writs. The said power is limited. However, 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. Similar view has been reiterated by the Apex Court in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, holding that the power of issuing writs are purely discretionary and no limit can be placed upon that discretion. However, the power can be exercised alone with recognised line and not arbitrarily and the Court must keep in mind that the power shall not be exercised unless substantial injustice has ensued or is likely to ensue and in other cases the parties must be relegated to the courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense.

14. Again a Constitution Bench of the Hon<sup>ble</sup> Supreme Court, in *Union of India (UOI) Vs. T.R. Varma*, , held that it is well-settled 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 special jurisdiction of the High Court to issue a prerogative writ. The Apex Court held that existence of another remedy does not affect the jurisdiction of the Court to issue a writ ; but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such remedy is exhausted, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds therefor.

15. Yet another Constitution Bench of the Hon<sup>ble</sup> Supreme Court, in *State of U. P. and Ors. v. Mohammed Nooh* AIR 1958 SC 86, considered the scope of exercise of writ jurisdiction when remedy of appeal was there and held that writ would be provided there is no other equally effective remedy. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of fundamental principles of natural justice. Therefore, in a proper case, powers of writ can be exercised, but should not be exercised generally where other adequate legal remedy is available though it may not be, per se, a bar to issue a writ of prerogative. The Apex Court held that the remedy, being discretionary, cannot be asked as a matter of right, even if the order is a nullity, on the ground that it was passed by disregarding the rules of natural justice. The Court held as under :

"..... save in exceptional cases, the courts will not interfere under Article 226 until all normal remedies available to a petitioner have been exhausted. The normal remedies in a case of this kind are appeal or revision. It is true that on a matter of jurisdiction or on a question that goes to the root of the case, the High Courts can entertain a petition at an early stage but they are not bound to do so and a petition would not be thrown out because the petitioner had done that which the courts usually ask him to do, namely, to exhaust his normal remedies before invoking an extraordinary jurisdiction ..... The petitioner would have been expected to pursue the remedies of appeal or revision and could not have

come to the High Court in the ordinary way until he had exhausted them."

16. In *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, the Hon"ble Apex Court held that the jurisdiction of the High Court to issue writs against the orders of the Tribunal is undoubted ; but then, it is well-settled that where there is another remedy provided, the Court must properly exercise its discretion in declining to interfere under Article 226 of the Constitution.

17. Another Constitution Bench of the Hon"ble Supreme Court, in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, , held that the remedy provided in a writ jurisdiction is not intended to supersede completely the mode of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in *Municipal Council, Khurai and Another Vs. Kamal Kumar and Another*, .

18. In *Siliguri Municipality and Others Vs. Amalendu Das and Others*, , the Apex Court held that the High Court must exercise its power under Article 226 with circumspection and while considering the matter of recovery of tax etc., it should not interfere save under very exceptional circumstances.

19. In *S.T. Muthusami Vs. K. Natarajan and Others*, , the Hon"ble Supreme Court held that the High Court cannot be justified to exercise the power in writ jurisdiction if an effective alternative remedy is available to the party.

20. In *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, , while dealing with a similar issue, the Apex Court held that the writ petition should not be entertained unless the party exhausted the alternative/statutory efficacious remedy.

21. In *A. Venkatasubbiah Naidu Vs. S. Challappan and Others*, , the Hon"ble Supreme Court deprecated the practice of exercising the writ jurisdiction when efficacious alternative remedy is available. The Court observed as under :

"Though no hurdle can be put against the exercise of constitutional powers of the High Court, it is a well recognised principle which gives judicial recognition that the High Court should direct the party to avail himself of such remedy, one or other, before he resorts to a constitutional remedy."

Similar view has been reiterated in *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, ; *L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others*, ; *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, ; *G. K. N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors.* (2003) 1 SCC 72 and *Pratap Singh and Anr. v. State of Haryana* (2002) 7 SCC 481.

22. In *State of Himachal Pradesh Vs. Raja Mahendra Pal and Others*, , while dealing with a similar issue, the Hon"ble Apex Court has held as under :

"It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature and can be invoked for the enforcement of any fundamental right or legal right ..... The constitutional court should insist upon the party (to avail of the efficacious alternative remedy) instead of invoking the extraordinary writ jurisdiction of the Court. This does not however debar the Court from granting the appropriate relief to a citizen in peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article."

23. In *Govt. of A.P. and Others Vs. J. Sridevi and Others*, , the Apex Court held that where an authority is competent to determine the issue, "the High Court in a writ jurisdiction should have directed the authority only to take an appropriate decision. When the statutory authority is vested with the power to determine the question as to the applicability of the provisions of the Act, it is ordinarily desirable to leave the question to be decided by such authority. The aggrieved party can file appeal against the decision within the framework provided under the statute and the ultimate decision also could be challenged under judicial review, if permitted in law."

24. In *State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd.*, , the Apex Court held that existence of alternative remedy does not affect the jurisdiction of the writ court but it could be a good ground for not entertaining the petition.

25. In *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, , the Hon"ble Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the writ seeks enforcement of any of the fundamental rights ; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. While deciding the said case, the Apex Court placed reliance upon its earlier judgment in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.* 1999 (2) AWC 254 ; AIR 1998 SC 22.

26. Thus, the law can be summarised that rule of exclusion of the writ jurisdiction is not a law but discretion to be exercised by the Court considering the facts and circumstances of the case, and if the case requires any kind of evidence, etc., the writ court may not exercise its extraordinary jurisdiction at all.

27. In the instant case admittedly, the learned Chancellor has all the powers to decide the issue and petitioner has approached this Court without exhausting the statutory remedy provided under the Act, 1973. The case does not present special features warranting any interference in this case making it as an exception to the general rule that a party must exhaust the statutory remedy before approaching this Court.

28. Petition is, therefore, dismissed with the liberty to the petitioner to make a reference before the learned Chancellor u/s 68 of the Act, 1973.