
(2014) 02 AP CK 0145
In the Andhra Pradesh High Court
Case No : W.P. No. 33045 of 2010

First Flight Couriers (P) Ltd.	Vs	APPELLANT
Assistant Commissioner of Labour-III		RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 2(5), 2(8), 47, 48, 48(1)
Constitution of India, 1950 — Article 226, 227, 32

Citation : (2014) 5 ALD 252 : (2014) 4 ALT 559 : (2014) 2 LLJ 691

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : G. Sudha, Advocate for the Appellant; V. Narasimha Gaud, Government Pleader, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dama Seshadri Naidu, J.—The petitioner is a private limited company carrying on courier services with branches at various places. The second respondent, since deceased, on his termination from service approached the authorities under the provisions of the A.P. Shops and Establishments Act, 1988 seeking redressal of his grievance. Being a rollercoaster of litigation, it has eventually come to this Court in the form of a challenge laid by the company on the ground that the authorities under the Act do not have the necessary jurisdiction to entertain the plea of the employee, since he does not fall within the purview of employee as defined in Section 2(8) of the Act. The facts, as pleaded by the petitioner, to the extent relevant, are that the deceased employee joined the service of the petitioner on 01.12.1992 as branch operation assistant. Eventually by 10.08.1998, the employee, having been promoted as the area operations executive, had been looking after five branches in the city of Hyderabad.

2. Holding that the employee committed serious misconduct taking advantage of his official position, on 28.02.2001 the company issued a preliminary show cause

notice to the employee. Since the explanation submitted by the employee was not satisfactory, the company issued on 13.03.2001 another charge sheet-cum-suspension order detailing all the charges. Though the employee rendered an unconditional apology on 14.03.2001, as a matter of abundant caution, the company initiated disciplinary action, which resulted in the dismissal of the employee through an order, dated 23.10.2001, passed by the disciplinary authority of the company.

3. Aggrieved by the order of dismissal, dated 23.10.2001, the employee approached the appropriate authority u/s 48(1) of the Act, i.e., the Assistant Commissioner of Labour Court-III, Hyderabad, the first respondent in the writ petition by filing S.E. No. 45 of 2001. The said first appellate authority allowed the application of the employee through an order, dated 31.04.2004, and directed the company to reinstate the employee. The company, in turn, aggrieved by the order of the primary authority, approached the second appellate authority under the Act, i.e., the Deputy Commissioner of Labour, Hyderabad (T.Cs.) by filing S.A. No. 16 of 2004. When the matter was pending before the second appellate authority, the employee filed an application in I.A. No. 03 of 2004 seeking permission from the said authority to withdraw the back wages of Rs. 1,87,788/- which had been deposited by the company at the time of filing the second appeal. When it was denied through an order dated 27.01.2005, the employee approached this Court by filing W.P. No. 25125 of 2006.

4. Pending the writ petition, on appreciation of the rival contentions, the second appellate authority, through an order dated 17.02.2007, set aside the order of the first appellate authority and remanded the matter for fresh adjudication. On remand, the first appellate authority, on re-appreciation of the issue, once again allowed the application of the employee through an order, dated 18.01.2010.

5. As a result, even W.P. No. 25125 of 2007 filed by the employee seeking the leave of the second appellate authority to withdraw the back wages was rendered infructuous. Accordingly, the said writ petition came to be closed through an order dated 11.10.2007 holding that no orders need be passed in view of the disposal of the main application itself before the second appellate authority. It is brought on record that pending the second appeal, the employee died on 17.07.2008. Consequently, his wife and minor daughter, being the legal heirs and successors, were brought on record.

6. At that stage, the company approached this court by filing the present writ petition holding that the first appellate authority does not have the necessary inherent jurisdiction to entertain the plea of the employee, who does not fall within the provisions of the Act.

7. Based on the above facts, Ms. G. Sudha, the learned counsel for the petitioner company, has made submissions very exhaustively covering myriad aspects on the maintainability of the writ petition as well as on the merits of the matter. Since the respondents have raised a strong objection as to the maintainability of

the writ petition, the submissions of the learned counsel for the petitioner initially may be appreciated on the aspect of the maintainability of the writ petition. If this court, on such appreciation, comes to a conclusion that the writ is maintainable, then the submissions on the merits of the matter shall also be considered.

8. The learned counsel for the petitioner has submitted that the employee was discharging managerial functions having supervisory control over three branches of the petitioner company. The employee, in fact, is a "manager" but not an "employee" in terms of Section 2(8) of the Act. It is further contended that the first appellate authority, being a quasi judicial authority, ought to have functioned strictly within the precinct of the statute and ought not to have arrogated to himself the power and jurisdiction which he has not been vested with. It is a case of inherent lack of jurisdiction and, as such this court is the appropriate forum for adjudicating the issue of lack of jurisdiction. It is further contended that, despite the observations of the second appellate authority, while remanding the matter, as to the nature of functions discharged by the employee, the first appellate authority has once again mechanically reiterated its earlier findings.

9. The learned counsel has strenuously contended that when the entire scope of remand was to determine the jurisdiction of the first appellate authority in entertaining the application of the employee, once again the impugned order, dated 18.01.2010, had no discussion on the issue of maintainability.

10. The learned counsel has also contended that the order of the first appellate authority has been vitiated on the ground of bias as well. On the said submission, the learned counsel has drawn the attention of this court to Paras-6 & 8 of the impugned order to underline the fact of bias. In those paragraphs, as could be seen, the first appellate authority has referred to the numerous adjournments taken by the learned counsel for the company. Summing up her submissions, the learned counsel for the petitioner has submitted that as it is a case of inherent lack of jurisdiction, the bar of alternative remedy does not apply. It is the further contention of the learned counsel that there is error apparent on the face of the record inasmuch as the first appellate authority has not taken into account very vital material evidence produced by the company, but on the contrary has rendered the decision based on non-existing pleas and evidence on the part of the employee.

11. The learned counsel, in support of her submissions, placed reliance on the following decisions:

1. Surya Dev Rai Vs. Ram Chander Rai and Others, .
2. Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, .
3. Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, .

4. Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, ,
5. The State of Rajasthan and Another Vs. Karamchand Thappar and Bros., .
6. Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, .
7. M.G. Abrol Vs. Shantilal Chhotlal and Co., .
8. Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others, .

12. Per contra, Sri V. Narasimha Goud, the learned counsel for the respondents 3 & 4, the legal representatives of the deceased employee, the second respondent, has strenuously opposed the claims and contentions of the petitioner company. The learned counsel has substantially made submissions concerning the alternative remedy said to have been available to the petitioner and the non-maintainability of the writ petition on that count.

13. The learned counsel for the respondents has contended that before the first appellate authority no evidence was adduced and no separate documents were marked by the petitioner company. Only on remand did the petitioner examine a witness, said to be one of its managers.

14. The learned counsel has submitted that when initially the first appellate authority allowed the application of the employee and directed the company to reinstate the employee, on its own accord the petitioner company went before the second appellate authority and laid challenge against the order of the first appellate authority. Even then, the company took the plea of lack of jurisdiction in the first appellate authority to entertain the application at the behest of the employee. When the matter was remanded, the company did participate in the proceedings and lead evidence as well. When once again an order was rendered by the first appellate authority adverse to the claim of the company, inexplicably it abandoned the route to the second appeal and approached this court. According to the learned counsel, the company is estopped from approaching this court in its second attempt, having already submitted itself to the jurisdiction of the authorities under the Act.

15. Laying emphasis on the order of appointment and also the letter of promotion, which were marked as Ex. W1 & W2 before the authorities, the learned counsel for the respondents has vehemently denied the allegation that the employee had been discharging supervisory or managerial functions. Adverting to Ex.R. 1 marked by the petitioner before the first appellate authority on remand, the learned counsel has contended that the said documents saw the light of the day only after remand and it had not been adverted to either in the pleadings or in the evidence of the company during domestic enquiry. According to the learned counsel, it is a fabricated documents brought into existence to tide over the difficulty concerning the nature of employment of the deceased employee.

16. In support of his contentions, the learned counsel has placed reliance on the following decisions:

1) Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, .

2) AIR 1979 745 (SC) .

3) The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, .

17. In reply, the learned counsel for the petitioner has vehemently contended that merely because the petitioner approached in the first instance the second appellate authority, it cannot be held that the petitioner is estopped from approaching this court, for there can be no estoppel again statute.

18. Heard the learned counsel for the petitioner and the learned counsel for the respondents 3 & 4, apart from perusing the record.

19. Before appreciating the rival contentions, it is may be apposite to advert to the statutory scheme of the Act, 1988 to the extent of termination of services of an employee. Section 47 of the Act lays down the conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension. In fact, Section 48 provides the remedial mechanism for the aggrieved persons. It is profitable to extract the said section to see whether the First Appellate Authority inherently lacks jurisdiction in this regard. Section 48 reads:

48. Appointment of authority to hear and decide appeals arising out of termination of services : (1)(a) The Chief Inspector may, by notification, appoint for any area as may be specified therein, any authority to hear and decide appeals arising out of the termination of service of employees under Sec. 47:

Provided that the Chief Inspector may on administrative grounds transfer any appeal arising in the territorial jurisdiction of any authority to the file of another authority for disposal, and such authority to whom the appeal is transferred by the Chief Inspector shall dispose of the appeal so transferred.

(b) Any employee whose services have been terminated may, appeal to the authority concerned within such time and in such manner as may be prescribed.

(2) The appellate authority may, after inquiry in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case:

Provided that the authority concerned shall, without delay, hear such appeal and pass such orders within a period of three months from the date of receipt of such

appeal:

Provided further that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such farther period as it may think fit:

Provided also that no proceedings before such authority shall lapse merely on the grounds that any period specified in this sub section had expired without such proceedings being completed.

(3) Against any decision of the authority under Sub-section (2), a second appeal shall lie to such authority as may be notified by the Government within thirty days from the date of communication of the decision and the decision of such authority on such appeal shall be final and binding on both the employer and the employee and shall be given effect to within such time as may be specified in the order of that authority:

Provided that the second appeal shall not be entertained unless the employer deposits the entire amount of back wages as ordered by the appellate authority under Sub-section (2) or the amount of compensation ordered as the case may be:

Provided further that if the second appeal is against the order of reinstatement given by the appellate authority under Sub-section (2), the employee shall be entitled to wages last drawn by him during the pendency of the proceedings before appellate authority.

(4) Where in any case, an appellate authority by its award directs reinstatement of any employee and the employer challenges such award in any Court of Law, the employer shall be liable to pay such employee during the pendency of such proceedings, full wages last drawn by him, if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the Court that such employee has been employed and has been receiving remuneration during any such period or part thereof the Court shall order that no wage shall be payable under this section for such period or part, as the case may be.

(5) Any amount directed to be paid under this section may be recovered:

(a) if the authority appointed under Sub-section (1) is a Magistrate, by the authority, as if it were a fine imposed by him as Magistrate; and

(b) If the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf as if it were a fine imposed by such Magistrate.

20. Though the matter has been pending since 2010, a perusal of the record indicates that no rule nisi has been given. Thus, the matter is taken up for consideration before admission. Most of the pleadings and substantive part of the

submissions made by the learned counsel for the petitioner concern themselves about the manner of adjudication undertaken by the first appellate authority and also about non-consideration of certain vital documents. There is an allegation even with regard to the alleged missing documents and also the bias of the adjudicating authority.

21. In fact, the petitioner has shown an accusing finger is shown towards the first appellate authority contending that he has deliberately disregarded the directions of the second appellate authority. The first appellate authority is said to have "lost even the judicial discipline and restraint which ought to have been shown by him."

22. An appeal is the right of entering the superior court and invoking its aid and another interposition to redress the error of the Court below. In other words, a right of appeal, where it exists, is a matter of substance and not of procedure (see: *Sita Ram and Others v. State of U.P. (supra)* case).

It is the principal contention of the learned counsel for the petitioner that the employee had been discharging supervisory and managerial functions by controlling three branches of the petitioner company at different locations. As many as 48 employees were said to have been working under the employee, who had leave sanctioning power, as well as the power to finalise contracts.

23. Going by the contents of Paras 5 to 11 of the impugned order, there is much controversy about whether any evidence was recorded before the first appellate authority in the first instance, the days prior to remand, and whether any documents were marked. The learned counsel with the petitioner alleges that by the time the file reached the second appellate authority certain documents went missing; on the contrary, the learned counsel for the respondents counter the said allegation by stating that before the first appellate authority the company only presented its arguments in the first instance, relying on the evidence and material gathered during the domestic enquiry. Be that as it may it is, indeed, in the realm of severely disputed questions of fact. Even the contention of the learned counsel for the respondents that exhibit R 1, dated 05-01-1998 was fabricated and produced for the first time before the first appellate authority only after remand is yet another instance of disputed question of fact.

24. Illustratively one of the objections raised by the petitioner can be seen in ground "k" of the writ affidavit, which is as follows:

It may be noticed that all the important documents filed by this petitioner and marked as exhibits on which this petitioner is relying and also the docket orders are stated to be missing from the file, as observed by the second appellate authority.

25. In para 5 of the impugned order, one of the observations of the first appellate authority is:

Surprisingly on 09.02.2009 the counsel for the respondent filed a memo praying

this authority to furnish a copy of the statement of his witness Sri Srinvas Chawali, H.R. Manager of the respondent company and few original documents filed in support of the evidence by the said witness." In the next paragraph, the first appellate authority has observed: "In reply to this memo, the learned counsel for the petitioners submitted that the respondent was misleading this authority and also casting aspersions against the authority since no such witness was examined by the respondent during the trial before this authority (on 06.06.2008 the respondent right to file counter was forfeited for his continuous absence). In fact, the instances of disputed facts are legion.

26. As this court has proposed to examine the rival contentions about the maintainability of the writ petition, or, in other words, about the availability of an efficacious alternative remedy, it does not propose to examine the statutory position in relation to AP Shops and Establishments Act, 1988, unless the court comes to a conclusion that it can as well entertain the matter on merits.

27. In *Surya Dev Rai v. Ram Chander Rai* (supra), a celebrated judgment rendered by the Supreme Court in the wake of amendments effected to the Section 115 thereof. In the said case what fell for consideration was the supervisory jurisdiction of the High Courts under Art. 227 of the Constitution. In that contexts the Supreme Court has held that so long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where, but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded. (para 26 of the judgment).

28. In *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, , the issue is that after dismissing a principal of a college, the order was sent to the Vice Chancellor for his approval. Having initially disapproved and ordered reinstatement, later reviewing his own order, the Vice Chancellor approved dismissal order. In that context, the Supreme Court has held that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. It is further observed that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority is acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under article 226 of the Constitution on the ground of existence of an alternative remedy. It is in fact specifically observed that the Vice Chancellor had no power of review and the exercise of such power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under article 226 of the Constitution.

29. In *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras* (supra), a Constitutional Bench of the Supreme Court has examined the issue of invoking Art. 32 of the Constitution in the face of statutory remedy. Their Lordships have held that the ruling recognizes the existence of a right to move the Supreme Court under Article 32 where the action is taken under an ultra vires statute, or where, although the statute is intra vires, the action is without jurisdiction or the principles of natural justice are violated. Errors of law or fact committed in the exercise of jurisdiction founded on a valid law do not entitle a person to have them corrected by way of petitions under Article 32. It is also pointed out that the proper way to correct them is to proceed under the provisions for appeal, etc. or by way of proceedings under Article 226 before the High Court. Before proceeding further, it is to be stated that observation of the Supreme Court in *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras* (supra) cannot be taken as an absolute proposition that wherever a party cannot take recourse to Art. 32, to correct errors of law or fact committed in the exercise of jurisdiction founded on a valid law, invariably the said party can approach the High Court notwithstanding the alternative efficacious statutory remedies. The observation concerning Art. 226 is sub silentio and concerns itself with Art. 32 of the Constitution.

30. In *Tata Engineering and Locomotive Company Ltd. v. Asst. Commissioner of Commercial Taxes* (supra), the Supreme Court has held:

8. The power and jurisdiction of the High Court under Article 226 of the Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked. In our judgment the present is an example of the exceptional situation above contemplated just as *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, was another instance which came before this Court.

(emphasis supplied)

31. In any event, in the present instance, it is not a case of jurisdictional error but, at best, an adjudicatory error, if any. Further, the order of the first appellate authority cannot be treated as a nullity. The adjudicatory authority lacking the inherent jurisdiction is one thing and the applicant not fitting into the framework

of a statute under which the authority does have power is another thing. In this case it cannot be stated that the petitioner company is not covered by the provisions of the Act, which in section 2(5) defines "commercial establishment", which the petitioner is. In the same breath, it cannot be further said that the first appellate authority is not the proper authority under the said Act to exercise his quasi judicial jurisdiction over the petitioner company. The entire issue hinges on the categorisation of the deceased employee - whether he was an employee in terms of section 2(8). Even otherwise, in my considered view, there are disputed questions of fact to be adjudicated as has already been indicated.

32. In *Rajasthan v. Karamchand Thappar & Bros.* (supra), the petitioner challenged the authority of the state government to enact a law whereby tax on the sale of goods outside the state could be levied. The petitioner has further averred in the writ petition that he has a fundamental right of trade and any such imposition infringes that right of his. In that context, the Supreme Court has held that there is nothing wrong in the High Court exercising its powers under article 226 of the Constitution.

33. In *Calcutta Discount Co. Ltd. v. I.T.O.* (supra) a Constitutional Bench of the Hon"ble Supreme Court has held that the existence of an alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. It is further observed, in the facts of the case, that there is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons.

34. In *M.G. Abrol, Additional Collector of Customs, Bombay v. Shantilal Chhotelal & Company* (supra), the three-Judge Bench of the Supreme Court has held that remedy by way of an appeal against the order of confiscation and imposition of a huge penalty under the sea Customs act is not an effective remedy, when no appeal can be filed unless the huge penalty imposed upon the petitioner has first been deposited. In that context, their Lordships have held that the aggrieved person approaching the High Court invoking article 226 of the Constitution cannot be found fault with. Factually, in that case, the High Court exercise the jurisdiction, and on such exercise, the department went in appeal before the Supreme Court. Since the High Court chose to exercised its discretion, the Supreme Court refused to interfere holding that the remedy said to have been available to the aggrieved person is not an effective remedy.

35. In *Carl Still G.M.B.H. v. State of Bihar* (supra) a Constitutional Bench of the Supreme Court has observed:

15. (I)t is true that if a statute set up a Tribunal and confides to it jurisdiction over certain matters and if a proceeding is properly taken before it in respect of such matters, the High Court will not, in the exercise of its extraordinary

jurisdiction under Article 226, issue a prerogative writ so as to remove the proceedings out of the hands of the Tribunal or interfere with their course before it. But it is equally well settled that, when proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course... The position that emerges is that, if the proceedings before the Sales Tax Officer are founded on the provisions of the Act, which authorizes the levy of the tax on the supply of materials in construction contracts, then they must in view of the decision in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, be held to be incompetent and quashed. But if the proceedings relate to any extent to sales otherwise than under the contract, then the enquiry with respect to them must proceed before the authorities under the Act and the application under Article 226 must fail.

(emphasis supplied)

36. In the above judgment it is very clearly held that when proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the court under Article 226. A fortiori, if the issue is not that vires, either of the Tribunal or of the provision of law, proceedings under Art. 226 must fail.

37. It is a truism to state that a decision is an authority to what it actually decides, more particularly, in the factual setting of the said case. The constitutional courts have always leaned towards the common man when he has come to the court with a grievance that he has been a victim of executive excesses or administrative vagaries. Under those circumstances the benefit of public law remedy cannot be thwarted on technicalities. Under a writ of certiorari the jurisdiction of the High Court is extremely restricted, for it looks at the decision making process rather than the decision itself. It is averse to converting itself into an appellate court, especially a court of fact. In the present instance, the petitioner company wants this Court to don the role of a second appellate authority and adjudicate the disputed questions of fact, including that of the missing documents and the status of the deceased employee, which requires appreciation of evidence based on records, as well as oral testimony, if necessary. Of course, the petitioner, as a lagniappe, also asks for determination of the jurisdictional question, but confined again to the status of the deceased employee but not the adjudicatory authority. Going by the settled principles of law as to the writ of certiorari, it is difficult to see any error in the decision making process. It is only in the interest of Justice that this court desires to provide ample scope for the respective parties to agitate their issues, compendiously and comprehensively involving disputed questions of fact as well as the status of the parties, before a statutory authority, that is the second appellate authority.

38. Now, I may examine the decisions relied on by the learned counsel for the petitioner. In *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar* (supra), a three-Judge Bench of the Supreme Court has held that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. Further, placing reliance on *Rashid Ahmed Vs. The Municipal Board, Kairana*, , the Court has held that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefore.

39. Their Lordships have reiterated that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted. In fact, placing reliance on the commentary in *Halsbury's Laws of England*, 3rd Edn., as well as certain English decisions, apart from its own, the Hon"ble Supreme Court has further held:

There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well-settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course... In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice.

(emphasis supplied)

40. On a close scrutiny of the case, I regret my inability to see either of those exceptions as set out above applying to the facts of the present case. In a recent judgment, *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.* (supra), the Supreme Court has held that writ does not lie merely because it is lawful to do so. A person may be asked to exhaust the statutory/alternative remedy available to him in law.

41. Taking into account the totality of circumstances, this Court is of the considered opinion that it is not a case of inherent lack of jurisdiction on the part of the first appellate authority, nor is it a case of laying challenge against statutory provisions as ultra vires. No infraction of principles of natural Justice has been pleaded, either. It is a simple case of determining whether the deceased employee is an employee in terms of section 2(8) of the Act. Leaving

aside all these technical nuances and niceties, it is to be seen that it is the petitioner who approached the second appellate authority in the first instance when it was aggrieved by the order of the first appellate authority. It secured a remand, after having the initial order of reinstatement set aside, from the second appellate authority. Inexplicably, when the first appellate authority once again reiterated its earlier order, though after adjudicating afresh, the petitioner company did not choose to go before the second appellate authority. Even on circumspect consideration of the case, I do not see any valid reason why the petitioner should not approach the second appellate authority u/s 48(3) of the Act impugning the order, dated 18.01.2010 passed by the first appellate authority. For the foregoing reasons, the writ petition is required to be held as devoid of merit and is accordingly held. As a consequence, the writ petition is dismissed and no order as to costs. Pending miscellaneous petitions, if any pending in this writ petition, shall stand closed.