
(2015) 05 AHC CK 0137
In the Allahabad High Court
Case No : Service Single No. 2200 of 2015

Madhu Lata Gaur

APPELLANT

Vs

Armed Forces Tribunal Regional Bench, Lko. and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14, 15, 30, 31
Constitution of India, 1950 — Article 136, 136(2), 141, 226

Citation : (2015) 5 ADJ 196 : (2015) 4 ALJ 748

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : P.N. Chaturvedi and Vinay Pandey, for the Appellant

Final Decision : Dismissed

Judgement

Dr. Devendra Kumar Arora, J—By means of present writ petition, the petitioner has questioned the correctness and validity of the judgment and order dated 16.2.2015 passed by the Armed Forces Tribunal, Regional Bench, Lucknow, (in short referred to as "Tribunal") in O.A. No. 274 of 2015 as also the order dated 13.3.2015 passed in Review Application No. 1 of 2015. The petitioner, who was granted commission in Military Nursing Service was served with a show-cause notice dated 30.9.2014 by the competent authority which was assailed by the petitioner be-fore the Tribunal by filing Original Application No. 274 of 2014. The said Original Application was dismissed by the Tribunal vide its judgment and order dated 16.2.2015 being premature.

2. Hence this writ petition.

3. A preliminary objection has been raised by Shri S.B. Pandey, Assistant Solicitor General of India regarding maintainability of the writ petition. According to him, the instant writ petition has been filed challenging the order of the Tribunal, which is not maintainable in view of the recent judgment of the Apex Court rendered in Civil Appeal No. 7400 of 2013; Union of India and others v.

Major General Srikant Sharma and another, decided on 11.3.2015.

4. Elaborating his argument, learned counsel for the respondents submitted that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and cannot be permitted to 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.

5. It has further been argued on behalf of Union of India that the High Court cannot entertain writ petitions under Article 226 of the Constitution of India contrary to the law enacted by the Parliament being the Armed Forces Tribunal 2007 which is a special enactment exclusively provided for an appellate remedy by way of leave before the Court.

6. Refuting the allegation of the respondents, learned counsel for the petitioner on the strength of Full Bench judgment of this Court in Mahesh Chandra Ex-LNK/CI v. Union of India and others, (2004) 3 UPLBEC 2389, vehemently argued that the instant writ petition cannot be thrown away on the ground of availability of alternative remedy. In an attempt to substantiate his assertions, Learned counsel for the petitioner has drawn attention of the Court towards conclusion Nos. iv, v, vi and vii drawn in the aforesaid judgment, which read as under:

"(iv) Having said this, it needs to be emphasised that the existence of jurisdiction and the nature of its exercise have distinct connotations in constitutional law. The Armed Forces Tribunal is constituted by legislation which provides for a specialized and efficacious administration of justice in matters falling within its jurisdiction under the provisions of the Act. This is coupled with the need to maintain discipline in the Armed Forces;

(v) The Armed Forces Tribunal is a Court of first instance and ordinarily, matters which fall within the purview of its jurisdiction have to proceed for adjudication before the Tribunal and the Tribunal alone. Against the decision of the Tribunal, there is a statutory remedy of an appeal which is provided under Sections 30 and 31 to the Supreme Court;

(vi) Since a statutory remedy of an appeal is provided, the principles which are well established for the exercise of the jurisdiction under Article 226, would warrant that the High Court should be circumspect and careful while determining as to whether any case for the exercise of jurisdiction under Article 226 of the Constitution is made out;

(vii) The jurisdiction under Article 226 has not been abrogated as it could not have been, being a basic and essential feature of the Constitution." Thus this Court is required to first answer the question regarding maintainability of the writ petition against the order passed by the Armed Forces Tribunal, Regional Bench, Lucknow.

7. With regard to maintainability of the writ petition and availing alternative

remedy, it would be apt to reproduce the law propounded by the Apex Court in *United Bank of India Vs. Satyawati Tondon and Others*, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 , 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."

8. In *Shri Kant Sharma's case* [supra] which has been relied by the Union of India, the question raised before the Apex Court was whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of Armed Forces Tribunal with the leave of the Tribunal under Section 31 of the Act on leave granted by the Supreme Court, or bar of leave to appeal before the Supreme Court under Article 136(2) of the Constitution of India, will bar the jurisdiction of the High Court under Article 226 of the Constitution of India regarding matters related to Armed Forces.

9. The Apex Court after examining various case laws rendered on the subject and provisions of the Armed Forces Tribunal Act, 2007 summarized the conclusions as under:

"37. Likelihood of anomalous situation

If the High Court entertains a petition under Article 226 of the Constitution of India against order passed by Armed Forces Tribunal under Section 14 or Section 15 of the Act bypassing the machinery of statute i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from this Court. Section 30 provides for an appeal to this Court subject to leave granted under Section 31 of the Act. By clause (2) of Article 136 of the Constitution of India, the appellate jurisdiction of this Court under Article 136 has been excluded in relation to any judgment, determination, sentence or order passed or made by any Court or Tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the Tribunal, moves before the High Court under Article 226 and the High Court entertains the petition and passes a judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the

matter, the person who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition under Article 226 of the Constitution bypassed the machinery created under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions under Article 226 and directed the writ petitioners to seek resort under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition under Article 226 of the Constitution of India."

10. It would be relevant to add that in the case of L. Chandra Kumar Vs. Union of India and others, AIR 1997 SC 1125 : (1997) 83 CLT 815 : (1997) 92 ELT 318 : (1997) 228 ITR 725 : (1997) 3 JT 589 : (1997) 3 SCALE 40 : (1997) 3 SCC 261 : (1997) SCC(L&S) 577 : (1997) 2 SCR 1186 : (1997) 105 STC 618 : (1997) AIRSCW 1345 : (1997) 3 Supreme 147 , on which reliance has been placed by the petitioner, a seven Judges Constitution Bench of Hon"ble Supreme Court held as under:

"Though judicial review in the basic feature of the Constitution, the vesting of power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court."

11. In the case of Central Coalfields Ltd. Vs. State of Jharkhand and Others, AIR 2005 SC 3425 : (2005) 8 JT 77 : (2005) 7 SCC 492 : (2005) 2 SCR 1128 Supp , it has been held that:

"If there is statutory alternative remedy available to a person under an statute itself, in that case the writ petition should not be entertained under Article 226 of the Constitution of India and the petitioner is directed to avail the alternative statutory remedy."

12. In Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, (2012) 4 RCR(Civil) 850 : (2011) 13 SCALE 584 , the Apex Court noticed that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

13. In *Cicily Kallarackal Vs. Vehicle Factory*, (2012) 6 CTC 217 : (2012) 7 JT 426 : (2013) 169 PLR 571 : (2012) 4 RCR(Civil) 901 : (2012) 7 SCALE 328 : (2012) 8 SCC 524 , the Apex Court issued a direction of caution that it will not be proper exercise of the jurisdiction by the High Court to entertain a writ petition against such orders against which statutory appeal lies before the Apex Court.

14. Before parting, it may be pointed out that the law declared by Hon''ble Supreme Court is binding on all Courts, including High Courts, and High Courts cannot ignore it on the ground that relevant provisions were not brought to the notice of the Apex Court or that the Apex Court laid down the legal position without considering all the points, and therefore its decision is not binding. See: [*Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur*, AIR 1970 SC 1002 : (1970) 2 SCC 267 .

15. In view of the aforesaid legal proposition, it is imminently clear that the writ petition filed by the petitioner assailing the order of the Tribunal is not maintainable and as such this Court is not inclined to exercise discretionary writ jurisdiction under Article 226 of the Constitution and the writ petition is liable to be dismissed. For the reasons aforesaid, the writ petition is dismissed being not maintainable. It is clarified that this Court has not delve into the merits of the case.

Costs easy.