
(1993) 08 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5147 of 1992

Manoj Kumar Bansal	Vs	APPELLANT
State of Rajasthan and Another		RESPONDENT

Date of Decision : 12-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1994) 1 LLJ 1155 : (1993) 2 WLC 751

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : R.P. Garg and L.L. Gupta, for the Appellant; Sumitra Goyal, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—It is indeed unfortunate that despite a clear verdict given by this Court as early as on October 7, 1991 in S.B. Civil Writ Petition No. 5368/90 *Riyaz Ali v. State of Rajasthan and Ors.*, and 36 connected writ petitions, the petitioner has been compelled to file this writ petition seeking the same relief which had been given by this Court to similarly situated persons who had filed Writ Petitions No. 2281/91, 2293/91, 2294/91, 2403/91, 2404/91, 2619/92 and 2586/91 which were decided on October 7, 1991. It is strange that in cases of those persons who have approached the court the Director of Agriculture Department himself issued order on May 15, 1992 for reinstatement of those petitioners and yet he has failed to give effect to the order of the court in totality leading to the filing of this writ petition which could have been avoided if the departmental authorities had been a bit sympathetic and fair to the petitioner's case.

2. Before I proceed further, I consider it necessary to make mention of few facts.
3. Petitioner, who passed academic qualification of B.A. (Agriculture) with 62% marks, had been registered with the Man Power Department of the Government

of Rajas than. His name was sponsored by the Man Power Department to the Director of Agriculture for appointment as Junior Engineer. Out of the list of candidates whose names were sponsored by the Man Power Department, a merit list was drawn up by the Agriculture Department for appointment on the post of Junior Engineer in the pay- scale of Rs. 1400-2600. A large number of persons, including the petitioner, were appointed by order dated February 25, 1991 (Annexure-2). He was kept in the Department while some others were sent to Jawahar Rozgar Yojna.

4. Services of 32 persons were terminated by the Director, Agriculture on the ground of abolition of posts of Junior Engineers created under Jawahar Rozgar Yojna.

5. A number of persons whose services had been terminated by the Director, Agriculture and by the District Rural Development Agencies, filed writ petitions before this court. These writ petitions were decided by a common order dated October 7, 1991 passed in Riyaz Alt's case (supra). This court rejected writ petitions filed by those Junior Engineers who were employed by the District Rural Development Agencies, Writ Petitions No. 2281/91, 2293/91, 2294/91, 2403/91, 2404/91, 2619/91 and 2586/91 were allowed by the court. Petitioners in all those writ petitions were Agriculture graduates who had been appointed by the Directorate of Agriculture. This court found that termination of the services of all those who were sent to Jawahar Rozgar Yojna on deputation irrespective of their merit in the Directorate of Agriculture, was arbitrary. The court found as a matter of fact that the merit of candidate has been ignored for the purpose of applying the rule of last come first go. The Department had prepared the seniority list on the basis of date of joining of the candidates and the court held that preparation of such seniority list for the purpose of effecting retrenchment was arbitrary and unreasonable. The court held that seniority for such purpose can be determined only on the basis of merit of the candidates determined at the time of appointment and the date of joining of the candidates, which is purely fortuitous, cannot constitute a valid basis for the purpose of seniority. The court observed:

"It has not been disputed by the Respondents that the petitioners in Writ Petitions Nos. 2281/91, 2293/91, 2294/91, 2403/91, 2404/91, 2619/91, and 2586/91 have been appointed in Directorate of Agriculture along with large number of persons. In Maninderjit Singh's case (Writ No. 2294/91), detailed facts have been given that persons who are appointed by common orders issued by the Directorate of Agriculture were posted in the DRDAs as also in the Department. In his writ petition, Maninderjit Singh has categorically asserted that out of one order dated January 11, 1991, twenty-two persons were posted within the Department and twenty were posted in DRDA. By order dated January 8, 1991, 21 persons were posted in the Department and nine were posted in D.R.D.A. By third order dated February 25, 1991 twenty persons were appointed, out of them fifteen senior persons were sent to DRDA while five junior persons were retained in the Department. Thus, it is clear that no specific formula or a

rational criteria was adopted by the Director, Agriculture in sending the persons on deputation to DRDA and retaining some others in the Department. When the Government decided not to extend the tenure of the posts in DRDAs, the persons who were brought on deputation from Directorate of Agriculture had to be sent back to their parent department. After return of all these persons if the Director found that Junior Engineers were excess than the number of posts then he should have prepared seniority list according to the merit assigned to the candidates at the time of issue of the order of appointment and should have then retrenched those who were found to be junior-most irrespective of the fact that some were earlier sent on deputation to DRDA while others were retained in the Department. This has admittedly not been done. The criteria of seniority which has been spelt out in the reply is the date of joining of the candidate. This criteria clearly depended on a purely fortuitous factor, namely, the date of joining of appointed persons. All candidates were appointed according to their merit and all were allowed 15 days* time for joining. The competent authority could even extend the period of joining on the basis of facts of a particular case. A less meritorious candidate residing in Jaipur or near about may have joined earlier than a more meritorious candidate who may have received the order later than former candidate. The place of residence of the candidate is a factum of one having received order earlier qua another candidate who received it late, are purely fortuitous and chance factors. These facts cannot afford or become rational of determination of seniority. Only rational criteria for determination of seniority can be the merit of order of preference determined at the time of appointment. This has admittedly not been done. The criteria adopted by the Director, Agriculture is clearly irrational and is, therefore, violative of Articles 14 and 16 of the Constitution of India. In my opinion, the petitioners in Writ Petitions No. 2281/91, 2293/91, 2294/91, 2403/91, 2404/91, 2619/91 and 2586/91 have not been treated fairly and their right of equal treatment before law has been violated."

6. The departmental authorities realised their mistake and reinstated those petitioners in whose favour order dated October 7, 1991 was passed by the High Court. However, they did not take action in respect of other similarly situated persons. This led to the filing of another Writ Petition No. 3935/92 Narendra Kumar v. State of Rajasthan and Ors. This writ petition was also allowed by the court. In its order dated February 12, 1993 the court clearly observed that directions given in the order dated October 7, 1991 are general in nature and are applicable to all similarly situated persons. The court observed that before issuing order dated May 15, 1992 the Directorate of Agriculture had not prepared a seniority list as per the directions of the court and if that had been done, there could have been little justification for termination of the service of the petitioner.

7. In this writ petition, the petitioner has specifically stated that on the basis of his merit he is senior to a number of other persons who have been retained in service. He has specifically named Shri Sanjay Prakash Bhandu who is junior to him and who has been retained in service in view of the court's order dated

October 7, 1991. He has pleaded that when a person junior to him has been taken back in service, the Director, Agriculture should have reinstated him also on the basis of the directions given in the order dated October 7, 1991 of this court. Respondents have pleaded that termination of the service has been brought about on account of the abolition of posts and the petitioner has no right to be reinstated in service. Another stock plea raised by the respondents is that this court should non-suit the petitioner on account of the availability of alternative remedy.

8. I have heard learned counsel for the parties at length and perused the record of the case.

9. Once it is established from the pleadings of parties that the petitioner was senior to some of those persons who were retained in service on April 8, 1991 or who were reinstated under the directions given by this court on October 7, 1991 there could be little justification for not giving same relief to the petitioner. Once the court gave a direction that the seniority should be prepared on the basis of merits determined at the time of selection and appointment on the posts of Junior Engineers, there could have been little justification for discriminating the petitioner vis-a-vis junior persons. Clearly the respondent Director, Agriculture has acted in disregard not only of the basic principles of determination of seniority but also of the order passed by this Court. Even if for a moment it is assumed that at the time of passing of the order dated April 8, 1991 the departmental authorities were not aware of the legal principles, their failure to give relief to the petitioner even after the passing of the order dated October 7, 1991 is wholly unjustified. It was absolutely imperative for the Director to have redrawn seniority of the Junior Engineers in accordance with the directions given by this Court before passing any further order. Mere omission or failure on the part of Director cannot result in denial of equality before law. Observations made by this Court in its order dated October 7, 1991 in Riyaz Ali's case are unequivocal and clear. Had the Director, Agriculture drawn the seniority according to the merit, there could have been no occasion for not taking the petitioner back in service. I have no hesitation in holding that by bringing about termination of service of the petitioner the respondents have acted in disregard of the constitutional injunction against discrimination contained in Articles 14 & 16. The logical consequence of this finding is that termination of service of the petitioner is liable to be declared as void and unconstitutional and is liable to be quashed with a direction for reinstatement of the petitioner. The petitioner is also entitled to all other consequential benefits as has been directed to be given in the two orders of the court dated October 7, 1991 and February 12, 1993 of which reference has been made hereinabove.

10. Argument of the learned Deputy Government Advocate that the petitioner should be denied relief because of his failure to avail alternative remedy, now deserves to be considered at some length because this stock argument is being raised by the respondents in every case filed before this court irrespective of the

nature of case. In this case the respondents have not specified as to what type of alternative remedy is available to the petitioner and which is the forum where the petitioner can avail the alternative remedy. Perhaps they have in their mind alternative remedy of appeal available to the petitioner under the Rajasthan Civil Service (Service Matters) Appellate Tribunal Act, 1976 or remedy available to the petitioner under the Industrial Disputes Act, 1947 against termination of his service. I will first consider the question whether petitioner can be denied relief on the ground that an alternative remedy is available to him by way of appeal u/s 4 of 1976 Act. For number of years some doubts were expressed on this issue. In some of the decisions of this court it was held that remedy available before the Service Appellate Tribunal is not remedy, much less an effective remedy, because of the strange composition of Tribunal where majority of the Members are other than judicial officers and also because no machinery has been provided for execution and implementation of the orders passed by the Service Appellate Tribunal and those who are successful in persuading the Tribunal to pass orders in their favour, have to file writs before the High Court for issue of mandamus for implementing the order passed by the Tribunal. The question has been examined in *Ved Prakash Khare v. State of Rajasthan*, D.B. Civil Writ Petition No. 2330/86 decided on August 31, 1987. This view has been reiterated in *Bhuramal Jat v. State of Rajasthan* 1991 (1) RLR 755. In view of these decisions it can be said that remedy available by way of appeal before the Tribunal is an alternative remedy. However, neither of these two decisions lay down a proposition of law that because of availability of remedy of appeal before the Tribunal, this court must not give relief to any petitioner. Neither of these two decisions lay down that there is a bar against the maintainability/ entertainability of writ petition because a remedy of appeal is available to a particular petitioner. This very court in *Vivek Prakash Mathur v. State of Rajasthan* 1988(2) RLR 428, examined the same issue at great length and held that this court can entertain writ petition even in cases where alternative remedy of appeal is available before the Service Appellate Tribunal. There are a number of other decided cases wherein the court has held that despite availability of alternative remedy, the court can in appropriate cases issue writ in exercise of its jurisdiction under Article 226 of the Constitution of India,

11. In my opinion when the respondents have acted in clear disregard of the provisions of Constitution, their action is per se arbitrary and unreasonable. It will be wholly unreasonable to reject the petitioner's claim merely because he has not availed remedy of appeal available before the Service Appellate Tribunal. The rule that the court should not entertain writ petition where equally efficacious alternative remedy is available to a party, cannot be invoked in such like matters. Application of that rule in such type of cases would result in grave injustice and it can hardly be denied that jurisdiction of this court must be used to protect the constitutional rights of the citizens and to reach wherever injustice has been done.

12. The second facet of the submission of the learned Deputy Government

Advocate about the availability of remedy under the Act of 1947 may now be examined. It is of course true that persons holding the post of Junior Engineers fall within the definition of term "workman" u/s 2(s) of 1947 Act. It may also be true that Agriculture Department comes within the definition of the term "industry" u/s 2(j) of 1947 Act. In *Viney Kumar Majoo Vs. State and Others*, a learned Single Judge of this Court held that a Junior Engineer is a workman and Public Works Department of the Government is an industry. This part of the decision has been affirmed by a Division Bench in *State of Rajasthan v. Vinay Kumar*, 1978 WLN (UC) 223. In *Mahesh Chandra v. State of Rajasthan* 1974 WLN 564, a learned Single Judge held that Irrigation Department of the Government is an industry and a Junior Engineer is a workman. However, mere fact that the petitioner is a workman and the Department is an industry does not conclude the issue. The moot question which still remains to be decided is as to whether availability of the remedy under the Industrial Disputes Act in the matter of termination of service of a workman by way of retrenchment can by itself be a ground for denying relief to an aggrieved person who has approached this court by way of writ petition under Article 226. In a series of decisions rendered by this court, this question has been examined. In *Mahesh Chandra v. State of Rajasthan* (supra) D.P. Gupta, J. (as he then was) held that availability of alternative remedy cannot be a ground for denying relief in a writ petition filed under Article 226. In *Nagaur Central Co-operative Bank Ltd. v. Kesaram and Ors.*, 1979 WLN 408, G.M. Lodha, CJ (as he then was) and M.C. Jain, J., (as he then was) and in *Tej Bhan Singh v. State of Rajasthan* D.B. Civil Special Appeal No. 234/ 80 decided on April 27, 1983 by N.M. Kasliwal, J. (as he then was) and S.N. Bhargava, J. (as he then was), the court took the view that a petitioner who has approached the court under Article 226 for quashing the order of retrenchment cannot be non-suited on the ground of availability of alternative remedy. In *Om Prakash v. Registrar, Co-operative Societies*, 1980 (4) FLR 38, S.C. Agarwal, J. (as he then was); *Kanhailal v. Union of India*, 1982 (1) AISLJ 42, (M.C. Jain, J.); *S.K. Singh v. Rajasthan Atomic Power Project and Anr.* 1982 RLR 701 (G.M. Lodha, J.) and *Kishan Kumar v. Union of India* 1982 RLR 848, (S.K. M. Lodha, J.) reiterated the same view. In *Union of India v. Solomon Smith*, D.B. Civil Special Appeal No. 285/80 decided on November 21, 1980 another Division Bench of this court expressed the view that availability of alternative remedy by way of reference u/s 10 of the Industrial Disputes Act does not exclude the jurisdiction of this court under Article 226. For almost one decade different Benches of this court took an identical view about the approach which has to be adopted by the court while considering grievance of a petitioner in a writ petition involving challenge to an order of retrenchment. However, when the matter came up before a Larger Bench in *Bhanwarlal and Others Vs. Rajasthan State Road Transport Corporation and Others*, the plea of alternative remedy was again raised on behalf of the respondent RSRTC. A thorough reading of the judgment clearly shows that decision on the issue of alternative remedy really did not arise for consideration because the petitioners had questioned validity of Clause 13 of the Rajasthan State Road Transport Workers and Workshop Employees Standing

Orders, 1965. Nevertheless G.M. Lodha, J., who made reference of the case of larger Bench, formulated this issue as one of the questions. All the three Members of the Full Bench recorded their separate opinions. Perusal of the judgment of Dr. K.S. Sidhu, J., shows that his Lordship did not examine the question of alternative remedy. Para 12 of the judgment shows that his Lordship did not examine even the validity of Clause 13 of the Standing Orders. What he concluded was that termination of services of the workmen was in breach of the rule of last come first go as enacted in Section 25G of the Industrial Disputes Act. It will be profitable to refer to paragraphs 212, 213 and 214 of that decision (p. 161):-

"212. Even otherwise, the argument that Clause 13 of the Standing Orders is invalid does not call for any decision by us. It will be seen that according to Section 25J, Industrial Disputes Act, 1947, the provisions of Chapter V-A of that Act, including Sections 25F and 25G, shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Standing Orders Act. Section 25F lays down that no workman who has been in continuous service for not less than one year shall be retrenched by the employer until he was given one month's notice in writing or paid wages for one month in lieu of notice and is also paid retrenchment compensation equivalent to fifteen days' average pay for every completed year of continuous service. Section 25G prescribes procedure for retrenchment enacting that the employer shall ordinarily retrench the workman who was the last person to be employed in his category. Of course, the employer may deviate from this rule of "last come first go" for reasons to be recorded in writing.

213. The consensus of judicial opinion as it seems to be emerging from some recent cases decided by the Supreme Court is that any termination of service otherwise than as a punishment, is retrenchment unless it is by way of voluntary retirement of the workman, or retirement of the workman on reaching the age of superannuation or termination on the ground of continued ill-health. It has also been held by the Supreme Court in these cases that retrenchment in contravention of the provisions of Section 25F or Section 25G is invalid that in such a case the workman concerned should be treated as still continuing in service.

214. It appears that services of all the 39 workmen involved in these writ petitions were terminated, otherwise than as a punishment, and that none of the terminations falls in the excepted categories mentioned above. The Corporation was therefore required to comply with the provisions of Sections 25F and 25G, if it was intended to validly retrench them. No material has been placed on the record to satisfy us that the rule of last come first go" as enacted in Section 25G was followed by the Corporation. No reason was given in writing why the Corporation did not follow the rule of "last come first go". The retrenchments in question are therefore invalid. In view of this finding, I need not examine whether the provision of Section 25F had been complied with or not."

His Lordship however left the workmen free to approach the Industrial Court for relief of reinstatement and/or compensation. N.M. Kasliwal, J. (as he then was) reiterated his view which he had expressed as a Member of the Division Bench in Tej Bhan Singh's case (supra). It is clear from the perusal of para 202 of the judgment. In Tej Bhan Singh 's case, the Division Bench had reversed a decision of Single Bench (of Dr. K.S. Sidhu, J.) and while doing so it observed:-

"The award of back wages is a question of relief. In case there is undisputed material on record, the Court can decide this question also in favour of either party. However, if the facts of these questions remain disputed for which some evidence is necessary, the Court may refuse to grant relief of back wages on the ground of disputed questions of facts. But this cannot mean that the writ petition itself may be held not maintainable even though the order of retrenchment may be clearly invalid or inoperative being in violation of mandatory provisions of the Act. Thus in our view, learned Single Judge fell in error in holding that if the workman seeks reinstatement with back wages, he must take recourse to the adjudicatory machinery provided by the Act for the creation and subsequent enforcement of such a right by the authorities appointed under the Act. In our view, the rule of exhaustion of statutory remedies before a writ is granted, is a rule of self imposed law and this court can issue a writ notwithstanding the fact that the statutory remedies have not been exhausted, if the facts of the case so demand."

13. G.M. Lodha, J., undertook a survey of the various cases and modified his earlier view in the following words:-

"170. I would, therefore, like to modify my views as expressed in Soloman Smith's case (supra) and further to modify the view taken by this Court so far in Single Bench and the Division Bench, by laying down the following principles:

(i) If the right which is sought to be enforced is right created under the I.D. Act, such as Chapter VA, then the remedy for its enforcement is either u/s 33C or raising of an industrial dispute, as the case may be;

(ii) If the industrial dispute arises under the I.D. Act then, normally, the remedy available to the suitor is to get an adjudication under the Act;

(iii) Further, in above two categories of cases, if the Government refuses to make a reference either by not passing an order in a reasonable time, normally two months in individual cases and fifteen days notice in cases involving several employees together, or refuses to refer by an express order, then this Court can always interfere under Article 226 of the Constitution.

(iv) Again, in case the validity of any statutory provisions or rules, regulations having force of statute is challenged or an order is challenged on the ground of violation of constitutional provision, then the applicants can file a writ directly without insistence of reference.

(v) In all the above cases, in those of the particular cases, where involved

disputed questions of fact arise for adjudication, then this would not interfere under Article 226 of the Constitution, irrespective of the implications of bar of Section 10 of the Act being available or not.

171. In my view, the cumulative effect of Section 10 and Section 11A of the Industrial Disputes Act, 1947 creates a bar normally to entertainment of writ petitions for contravention of provisions of Chapter VA of the I.D. Act. But that bar or prohibition is subject to the above exceptions mentioned in para 170 of this judgment."

However, even before entering into discussion on the subject, Lodha, J. expressed himself in the following words:-

"142. I must preface my discussion and judgment with the first and foremost finding that so far as the present cases are concerned, since the validity of Standing Orders" Clause 13 has been challenged as being violative of Articles 14 and 16 of the Constitution, the Labour Court or the Industrial Tribunal cannot adjudicate the constitutional validity and, therefore, irrespective of the answer to the questions posed above, these writ petitions deserve to be entertained for deciding the validity of Clause 13 atleast."

14. After decision of Bhanwar Lal's case, (supra) a number of judgments have been rendered by this Court holding that even though an alternative remedy is available u/s 10 of the Industrial Disputes Act, where there is a clear breach of the statutory provisions contained in Section 25F, writ petitions cannot be dismissed merely on the ground of availability of alternative remedy. This trend appears from the following decisions:-

Mahesh Choudhary v. State of Rajasthan (1987) 2 RLR 690 , S.T. Reddiar and Sons Vs. Regional Director, and Hanuman Singh v. Municipal Council Jaipur (1988) 2 RLR 931.

However a learned Single Judge again considered this very issue in Mahendra Nath Shar-ma v. Co-operative Societies and Anr. 1989 (2) RLR 18, and after making reference to a number of decisions he observed:-

".....remedy of reference u/s 10 of the Industrial Disputes Act is an effective alternative remedy. He concluded that the Full Bench decision in Bhanwar Lal's case (supra) is binding on the Single Benches and Division Benches and therefore, the decisions of the Division Benches as well as Single Benches taking a contrary view are not correct and they are based on misreading of the decision of the Full Bench."

Another learned Single Judge of this Court in Smt. Indu v. Municipal Council, Jodhpur and Anr., S.B. Civil Writ Petition No. 1606/86, thought that the issue again deserves to be decided by a Full Bench. He therefore, made a reference of four questions for adjudication by a larger Bench. Full Bench consisting of K.C. Agarwal, JJ, A.K. Mathur and Milap Chand, JJ. examined the questions referred by the learned Single Judge and held that Sections 10 and 11A of the Industrial

Disputes Act do not create a bar against the entertainability of the writ petition under Article 226. The Full Bench in *Smt. Indu v. Municipal Council, Jodhpur and Ors.* 1992 (3) WLC 646, observed:-

"By and large the Courts should employ a pragmatic approach while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. As pointed out above, apart from the five conventional English writs the Article 226 of the Constitution of India has been couched in a very liberal manner. The Court is guardian of the democratic set up and has a very important role to play in the democratic set up so as to maintain a check and balance on the powers of the Executive and the Legislature and, therefore, it would not be proper to lay down as a sweeping proposition that wherever a statutory remedy is available then the entertainment of the writ petition is barred. The scope of Article 226 of the Constitution of India cannot be put in a strait jacket or cannot be exhaustively described that in what circumstances the Court should interfere notwithstanding the statutory alternative remedy and in what circumstances it should not interfere. There are no fixed parameters for exercise of the extraordinary jurisdiction."

The Full Bench also held that in *Bhan-warlal's* case, views expressed by Lodha, J. were not shared by the two other judges of the Full Bench. The Full Bench held that learned Single Judge who decided *Mahendra Nath's* case, had not drawn correct inference and has erred in applying the observations made by the Supreme Court in relation to civil courts to the proceedings under Article 226. The Full Bench further observed:-

"As already mentioned above, the exercise of power conferred by Article 226 of the Constitution of India is a solitary power conferred on the High Court for enforcement of fundamental rights conferred by Part III of the Constitution and for any other purpose. Most of the time, the expression "for any other purpose" is lost sight of and we fall in error of the conventional approach that the Court should not interfere wherever a statutory remedy is provided for. It depends upon case to case and some times even the statutory alternative remedy may exist for granting a relief to the incumbent but it may prove such onerous that the resort thereof may cause great hardship than the relief. Therefore, a sweeping proposition cannot be laid down for exercise of the extraordinary power under Article 226 of the Constitution of India but a viable and pragmatic approach has to be taken for imparting justice. The parameters of justice cannot be put in a strait jacket formula."

The Full Bench adverted to the provisional aspect of the remedy available under the Industrial Disputes Act, 1947 and proceeded to observe:

"In fact, if strictly construed, whether this remedy is efficacious or not much can be said against it because efficacy has to be seen in point of time also. At times the references are being delayed for years together which does not benefit the incumbent nor does it benefit the public exchequer also. In case the dispute

terminates through the process of conciliation and reference by the Labour Court it takes years together and by that time it terminates against the labour then he reaches at the brink of starvation and if it terminates against the public authority then the public exchequer has to pay a huge amount for no work done by the labour and this unnecessarily burdens the public exchequer. As a matter of fact, by passage of time Section 10 becomes redundant and it ceases to serve any useful purpose. However, so long as Section 10 of the Industrial Disputes Act exists then of course it can be argued that the incumbent has a statutory alternative remedy. It is true that Chapters V-A, V-B and V-C can be enforced through the remedy of the Labour Court, but in what circumstance the incumbent should be directed to avail that remedy first before approaching the High Court under Article 226 of the Constitution of India will depend upon case to case. Some times when the matter is clear and violation of the provisions of the Industrial Disputes Act are apparent and it does not call for any further probe of facts then in that case situation to direct the incumbent to undergo through the process of Labour Court will not be fair exercise of discretion under Article 226 of the Constitution of India. In this class of cases where the incumbent has completed 240 days and compliance of Section 25F has not been made for such matters to direct the incumbent to go through the labour court is unfair and unjust to the workman. In case it is pointed out that there is a dispute whether the incumbent had completed 240 days or not then such dispute should be better left to be resolved by the Labour Court. But in case where violation is apparent then it will not be fair exercise of discretion to deny the incumbent the relief on account of existence of statutory alternative remedy. Likewise, in a case where it is apparent that the provisions of the Act and the conditions precedent required thereunder have not been followed and it does not involve any disputed question of fact to be decided then such matters can conveniently be disposed of under the extraordinary jurisdiction and to direct in that situation to the incumbent to resort to the alternative statutory remedy first is also not a proper exercise of the discretion under Article 226 of the Constitution of India."

(Underlined by me)

15. In *Rajas than Pul Nigam Workers Union and Anr. v. Rajasthan State Bridge Construction Corporation Ltd. and Anr.* 1991 (2) RLR 188, a judgment rendered by the same Single Bench which had decided Mahendra Nath's case, came up for examination. The Division Bench reversed the decision of Single Bench and while doing so, the Division Bench held that availability of remedy under the Industrial Disputes Act cannot be a bar against the entertain-ability of the writ petition under Article 226. The Division Bench held that since no question relating to alternative remedy really arose for consideration before the Full Bench in Bhanwar Lal's case, the conclusion drawn by Lodha,J. must be treated as obiter. The Division Bench also clarified that provisions of Section 11A of the Industrial Disputes Act cannot be applied in the cases of retrenchment under the Act. The Division Bench further observed:-

"In addition to what has been observed by the Full Bench in Smt. Indu's case, we would like to observe that even in cases where remedy is available in respect of the violation of the provisions of the Industrial Disputes Act, the Court cannot ignore the fact that the process of conciliation for making reference is extremely tardy and dilatory. The information which has been furnished by the Labour Department under the directions of the Court disclose that the Govt. takes about six months to one year's time in taking a decision to make or not to make reference of the disputes after the receipt of the failure report from the conciliation officer. We do not have the statistics about the time period taken in the conciliation proceedings but from the various cases which have come before the Court, it can safely be concluded that few months' time is spent in the process of conciliation proceedings. After reference it usually takes a period of at least one year before a dispute is decided by the competent adjudicating authority. There are many cases when time period taken in deciding the disputes is much more. It is not possible to ignore the consequences of this delay. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, the Supreme Court had pronounced that termination of service which has been effected in violation of the mandatory provisions of Section 25F has the effect of rendering the order as invalid and inoperative. This view has been reiterated in *The State Bank of India Vs. Shri N. Sundara Money*, *Santosh Gupta Vs. State Bank of Patiala*, *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, and *Gammon India Ltd. v. Niranjana Das* (1984-I-LU-233). When the Labour Court and the other adjudicating authority records a finding that the termination of the service of the workman is in breach of the mandatory provisions, normally it has to award reinstatement with back wages. The delay in the adjudication of the disputes in such cases not only causes injury to the individual employee but also inflicts avoidable loss to the employer and in large number of cases the employer is either the Government or other public authorities. Public exchequer has to bear the burden of back wages which is required to be paid to the employee despite the fact that for the entire period he may not have worked. It is, therefore, in public interest also that the Court must invoke its extraordinary jurisdiction and entertain the writ petition where violation of Section 25F or Section 25G of 1947 Act is apparent from the record of the case and no useful purpose is served by asking the party to avail an alternative remedy. Even in cases where the employer raises a plea to question of fact, the Court must always remain on its guard in deciding this issue and unless there is a real disputed question of fact, specious plea of disputed questions of fact must not be used as a subterfuge to non-suit a bonafide and genuine claim involving breach of the provisions contained in Sections 25F and 25G of 1947 Act. We would also like to make it clear that when a question of violation of Sections 25G or 25H is raised in a writ petition, the Court has always to bear in mind that the basic principle on which these two provisions have been enacted are nothing but the principles which form part of the equality clause

contained in Articles 14 and 16 of the Constitution. In the cases of termination of employees the rule of last come first go has to be followed unless there is an agreement to the contrary or good and sufficient reasons are recorded for making a departure. The same very principle has to be followed in the termination of services of employees of the State and an employee can always complain of the breach of the equality clause and assail the action of the employer regarding termination of this service by stating that the termination has been brought about in violation of Articles 14 and 16 of the Constitution. He can also show to the Court that after termination of his service other persons have been employed without any consideration of his case. Therefore, except in extremely rare cases, where there is a serious controversy on the question of fact, the Court cannot throw a writ petition involving violation of Sections 25G and 25H of the Act."

(underlined by me)

16. Despite these decisions learned Government Advocate wanted this court to re-examine the issue. She submitted that when the Supreme Court has in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, taken the view that remedy available under the Industrial Disputes Act, 1947 is an alternative remedy and such remedy excludes the jurisdiction of civil courts u/s 9, the same principle should be applied to the cases arising under Article 226 of the Constitution of India. She further submitted that this court must not interfere in such trivial matters involving workmen, by invoking its extra-ordinary jurisdiction under Article 226 of the Constitution.

17. In my view the basic premise on which learned Dy. Govt. Advocate has advanced this argument is misconceived. Firstly, it is to be emphasised that decision of the Supreme Court in *Premier Automobile's* case has nothing to do with the question of exercise of jurisdiction by the High Court under Article 226 of the Constitution. The question which their Lordships were considering in that case related to the exclusion of the jurisdiction of the Civil Courts. In that context the Supreme Court held that when workman had a remedy available to him under the Industrial Disputes Act for vindication of rights created by the Industrial Disputes Act itself, jurisdiction of the Civil Court stands excluded. It would be wholly unjust to apply those principles to the exercise of jurisdiction under Article 226 without being mindful of the fact as to in what context the observations have been made by the Supreme Court. The Supreme Court neither laid down nor can it be said that by implication it did lay down a principle of law which is contrary to the established canon that jurisdiction under Article 226 of the Constitution cannot be curtailed except in accordance with the constitutional provisions. The wide and pervasive reach of the extra-ordinary jurisdiction of the High Court can neither be confined nor cabined nor crippled nor limited or abridged by any judgment or even statutes. The only exception is to be found in Article 323A and 323B which confer power on the Parliament to enact laws having the effect of excluding the jurisdiction of the High Court under Article 226.

Therefore, except when the Parliament enacts a law excluding the jurisdiction of High Court, the High Court's power to issue writs, orders or directions cannot in any manner be throttled by implication on the basis of some or the other decision of the High Court or the Apex Court.

18. That apart, I am of the view that sitting in a Single Bench I have no jurisdiction whatsoever to ignore the decision of Division Bench or Full Bench and to decide a case on a principle which is contrary or is inconsistent with the decision of the Division Bench or Full Bench. I cannot shut my eyes from the well established conventions of the judicial system of this country that a Bench is bound by a decision of another co-ordinate Bench or a Larger Bench. Even though there is no provision in the Constitution or any other law to the effect that a Single Bench is bound by a decision of Division Bench or a larger Bench, a practice which has grown over for last more than four decades cannot be ignored. This well established practice is that a Bench of smaller number of judges is bound by the decision of larger Bench. Such Bench is even bound by decision of a co-ordinate Bench. The theory of binding nature of the decisions of larger Bench and the co-ordinate Bench has been evolved by the courts in order to guard against the possibility of inconsistent decisions on a particular point of law by different Benches. Therefore, even though the law may not remain static and the judgments rendered decades ago cannot be applied and followed blind-folded irrespective of the realities of life and that the law will continue to develop with the passage of time, nevertheless if co-ordinate Benches of a court render inconsistent decisions, that will be worst. Predictability and certainty of decision are hall-mark of the present judicial system and are matters of great public importance. If the Judge-made law is inconsistent or uncertain, the very existence of the system becomes questionable. It has to be remembered that public faith and confidence in the system of dispensation of justice is absolutely essential and imperative for the very survival of that system. This is the reason for development of the well established practice that a Single Bench of the Court is bound by a decision of Co-ordinate Bench. If a Judge deciding a particular matter feels that a decision rendered earlier by a Co-ordinate Bench requires reconsideration, the only course open to the Judge subsequently deciding the case is to refer the case to a larger Bench. So far as the decisions of larger Benches are concerned, they are binding on the Judge. It will create a great element of uncertainty if sitting in a Single Bench I were to ignore the law laid down by the Full Bench or to accept the statements of learned Dy.Govt. Advocate that I should categorise the decision of Full Bench as erroneous and make an examination for reconsideration of that decision. In *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, the Supreme Court had an occasion to deal with a case where Co-ordinate Benches expressed divergent views. Their Lordships observed as under:-

" We have noticed with some regret that when the earlier decision of two Judges of the same High Court in *Deorajin* case was cited before the learned Judges who heard the present appeal they took on themselves to say that previous decision

was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decision."

19. In *Lala Shri Bhagwan v. Ram Chand* AIR 1967 SC 1767, Gajendra Gadkar C.J. said:-

"It is hardly necessary to emphasise that consideration of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

20. In *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., Pathak C.J.*, reiterated the doctrine of precedent in the following words:

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily consistent enunciation of legal principle in the decisions of a court."

21. Benjamin N. Cardozo in his work "The Nature of Judicial Process" emphasised the need of certainty in judicial pronouncements in the following words:-

"I am not to mar the symmetry of the legal structure by the introduction of inconsistencies and irrelevancies and artificial exceptions unless for some sufficient reason, which will commonly be some consideration of history or custom or policy or justice. Lacking such a reason, I must be logical just as I must be impartial, and upon like grounds. It will not do to decide the same question one way between one set of litigants and the opposite way between another."

22. Judge Learned Hand referred to the tendency of some judges "who win the game by sweeping all the chessmen off the table."

23. In *Ram Krishna Verma and Others Vs. State of U.P. and Others*, their Lordships of the Supreme Court held that a Bench of two Judges cannot overlook the decision of three Judges Bench.

24. In the light of principles laid down by the Supreme Court I have no hesitation in holding that sitting in a Single Bench I have no option but to follow the principles laid down by the Full Bench in *Indu Mathur's case* (supra) as well as by the Division Bench in *Rajasthan Pul Nigam Workers' Union v. Rajasthan State Bridge Construction Corporation Ltd.* (supra). Once the Division Bench and the Full Bench have held that this Court cannot throw out a petition filed under Article 226 of the Constitution of India merely because an alternative remedy is available, I find no justification to overlook the decision of the Full Bench and non-suit the petitioner on the specious plea of availability of alternative remedy

25. In this context another important aspect of the matter which deserves to be remembered is that right to livelihood has been recognised as a part of right to life guaranteed by Article 21 of the Constitution of India. Upto 1991 stray observations were made by the courts but in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, a Constitution Bench of the Supreme Court has in no uncertain terms recognised the wider parameters of the concept of life used in Article 21. P.B. Sawant, J. observed in his judgment (p. 459):-

"The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired. The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them."

K. Ramaswamy, J. expressed himself in these words (p. 471):-

"The right to life, a basic human right assured by Article 21 of the Constitution, comprehends something more than mere animal existence i.e. dignity of individual. Field, J. in *Munn, v. Illinois* 94 US 113, 154 (1876), held that by the term "life" as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The deprivation not only of life but of...if it is efficacy be not fettered away by judicial decision. In *Kharak Singh v. State of U.P* AIR 3963 SC 1295, this Court approved the definition of life given by Field, J. in his dissenting opinion. In *Olga Tellis v. Bombay Municipal Corporation*, this Court further laid that an equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of

livelihood to the point of abrogation.....That, which alone can make it possible to live, leave aside which makes life liveable, must be deemed to be an integral component of the right to life....The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is the struggle for life. So unimpeachable is the nexus between life and the means of livelihood. Right to life does not only mean physical existence but includes basic human dignity, vide *Menaka Gandhi v. Union of India*...."

26. In *D.K. Yadav Vs. J.M.A. Industries Ltd.*, the Apex Court again declared that right to live includes right to livelihood. The Court observed (p. 701-702):-

"Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence p. 702. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice."

27. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, a Constitution Bench gave a new meaning to the word "life" used in Article 21 and recognised rights of the pavement dwellers. Their Lordships held:-

"The right to life includes the right to livelihood. The sweep of the right of life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaning fulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life."

It is significant to remember that in *State of Maharashtra Vs. Chandrabhan Tale*, their Lordships of the Supreme Court had declared (Varadarajan, J.) that public

employment is property of the nation which has to be shared equally. In that very judgment, Chinnappa Reddy, J. held that public employment opportunity is a national wealth in which all citizens are equally entitled to share.

28. Having given wider meaning to the term "life", the courts cannot now shirk from their responsibility to protect the right to livelihood of the individuals. The Court cannot shut its eyes from the reality that public employment in all country is an important source of livelihood of individuals and the service jurisprudence which has developed in this country during last three decades is unique in the world. It has perhaps no parallel. If the courts have safeguarded the right to speech and expression, right to business, right to property, right to form association, it cannot be oblivious and ignorant of the rights of millions who are deprived of the source of livelihood by arbitrary, capricious and whimsical actions of State and its agencies. The Court cannot throw out a petition merely because it has been filed by a small man by declaring that he has an alternative remedy. So-called sacrosanct rights which are treated as basic rights even by Universal Declaration of Human Rights of 1948, will remain mere paper rights if the man is not in a position to sustain himself and his family. It is, therefore, of vital importance for the court as well as to the citizens that right to livelihood has to be protected. In the words of Chinnappa Reddy, J. *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, the courts will have to devote more time and attention to the little citizens of this country. His Lordships started the decision in that case with the following words:-

"Problems of high finance and broad fiscal policy which truly are not and cannot be the province of the court for the very simple reason that we lack the necessary expertise and, which, in any case, are none of our business are sought to be transformed into questions involving broad legal principles in order to make them the concern of the court. Similarly what may be called the "political" process of "corporate democracy" are sought to be subjected to investigation by us by invoking the principle of the Rule of Law, with emphasis on the rule against arbitrary State action. An expose of the facts of the present case will reveal how much legal ingenuity may achieve by way of persuading court, ingenuously, to treat the variegated problems of the world of finance, as litigable public right questions. Courts of Justice are well-tuned to distress signals against arbitrary action. So corporate giants do not hesitate to rush to us with cries for justice. The court room becomes their battle ground and corporate battles are fought under the attractive banners of justice, fair play and the public interest. We do not deny the right of corporate giants to seek our aid as well as any Lilliputian farm labourer or pavement dweller though we certainly would prefer to devote more of our time and attention to the latter. We recognise that out of the dust of the battles of giants occasionally emerge some new principles, worth the while. That is how the law has been progressing until recently. But not so now. Public interest litigation and public assisted litigation are today taking over many unexplored fields and the dumb are finding their voice."

The Courts have to guard themselves against the allegation of being treated as protectors of the haves in the society. If the Court declines relief to the poor and small man on the ground of availability of alternative remedy, only persons like Mr. P. Shiv Shankar will again gather courage to criticize the courts by saying:- P.N. Dua Vs. P. Shiv Shanker and Others,

"Madadhipatis like Keshvananda and Zamindars like Golaknath evoked a sympathetic chord nowhere in the whole country except the Supreme Court of India. And the bank magnates, the representatives of the elitist culture of this country ably supported by industrialists, the beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Rustom Cavasjee Cooper Vs. Union of India (UOI), Anti-social elements i.e. FERA violators, bridge burners and a whole horde of reactionaries have found their haven in the Supreme Court."

29. Even on the general principles, the Court has to remember that the rule of not entertaining the writ petition or not exercising the extraordinary jurisdiction under Article 226 of the Constitution in a case where alternative remedy is available is a ruling of self-imposed restraint, rule of caution and not of rule of law. Therefore, in all cases where the Court finds that there is a patent violation of the legal or constitutional rights of an individual or where action of the State or its agency is wholly arbitrary or any subordinate court or authority has acted without jurisdiction, the Court must do justice by invoking its extra-ordinary jurisdiction. That is the approach which the Court has to adopt in order to fulfil its constitutional obligation towards the citizens of this country. When people of this country feel that they have been let down by the Legislature and the Executive and the only hope is the intervention of Judiciary against the invasion of fundamental and legal rights and when citizens approach the Court complaining against the arbitrary State action, the High Court will have to be liberal in exercising its jurisdiction and unless there are very sound reasons like bad conduct of the party or where seriously controversial questions of fact are required to be determined, the claim of aggrieved party will not be thrown out. The Court has to be more vigilant in safe-guarding the rights of individuals affecting their life and livelihood. The degree of anxiousness shown by the Court to protect the right to property, right to freedom of speech and expression, right to business, will have to be reflected in guarding and protecting the right to life and livelihood and other constitutional and legal rights of the individuals. The proliferation of the State activities during last four decades has affected the life of individuals and citizens in a larger volume than it used to be in the pre-independent era or just after the independence. Arbitrariness of the State action has also increased during last few years. The administrative authorities have become insensitive to the needs of the people and, therefore, the people look upon the courts for solace and remedy of their grievances. This has led to the increase of volume of litigation but mere increase in litigation must not overawe or threaten the courts and there is no need or justification for evolving methodologies to avoid dispensation of justice. The courts cannot ignore their

constitutional obligation reaching injustices perpetuated on the people. We shall have always to remember that as early as in the year 1961 their Lordships of the Supreme Court had in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another*, laid emphasis on the fact that rule of alternative remedy is only a rule for guidance of the court in invoking their discretionary jurisdiction. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, the wide and pervasive reach and amplitude of jurisdiction of the High Court under Article 226 has been explained in the following words:-

"This Article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself."

30. In *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, their Lordships clearly declared that action of the State is patently contrary to the principles of natural justice or is arbitrary or where action has been taken under an invalid statute, alternative remedy cannot be a ground for declining relief to the aggrieved party. In *Ram and Shyam Company Vs. State of Haryana and Others*, , their Lordships declared:

"....Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court In fact in the very decision relied upon by the High Court in *State of U.P. v. Mohammad Nook* AIR 1958 SC 86 it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy." It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance

of person adversely affected by it, would lie to the High Court under Article 226 and such petition cannot be rejected on the ground that appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits."

(underlining is mine)

31. These decisions of the Supreme Court are sufficient to guide the courts in exercise of their jurisdiction under Article 226 even though aggrieved party may have not availed the alternative remedy available to him.

32. For the reasons mentioned above, the writ petition succeeds and it is hereby allowed. The Order dated April 8, 1991 is quashed. The petitioner shall be entitled to all consequential benefits. Costs made easy.