(2014) 06 GAU CK 0019

In the Gauhati High Court

Case No : Appeal No. 100 of 2014

Pravanjan Kishore Dev Varman APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1)(b)(ii), 19
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 06 GAU CK 0019

Hon'ble Judges : Abhay Manohar Sapre, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Judgement

Abhay Manohar Sapre, C.J.—Heard Mr. S. Banik, learned counsel for the appellant and Ms. J. Huda, learned Central Govt. Counsel, appearing for the respondents.

2. This is an intra-court appeal under Rule 2(3) of Chapter VA of the Gauhati High Court Rules filed by the writ petitioner of WP(C) No. 2905 of 2011 against the order dated 29.11.2013 passed by learned Single Judge.

3. By the impugned order, the learned Single Judge dismissed the appellant''s writ petition and declined to entertain the same on merits on the ground that remedy of the appellant (writ petitioner) lies in approaching the Central Administrative Tribunal (CAT) and file an application u/s 19 of the Administrative Tribunal Act for raising his grievance before the CAT rather than to file a writ petition under Article 226 of the Constitution of India.

4. So the short question which arises for consideration is whether the learned Single Judge was justified in declining to entertain the writ petition filed by the appellant under Article 226 of the Constitution of India and furthermore justified in holding that subject matter of the writ petition need to be decided by the CAT under the provision of Administrative Tribunal Act (for short hereinafter called "The Act") and writ may not be therefore appropriate remedy for want of availability of the alternative statutory remedy under the Act.

5. It is apposite to quote in verbatim the order passed by the learned Single Judge :

Heard Mr. I. Choudhury, the learned counsel for the petitioner. Also heard Ms. J. Huda, the learned Central Govt. Counsel.

The learned C.G.C. has raised objection against the maintainability of this writ petition on the ground that the case is exclusively triable by the Central Administrative Tribunal at Guwahati and not by this Court. In this case, the petitioner is seeking the intervention of this Court directing the respondent-authorities to release the regular pension of the petitioner and to pay gratuity, commutation, leave encashment etc. in terms of the order passed by this Court in WP(C) No. 5005/2008 and Contempt Case (C) No. 254/2009.

As the matter pertains to the India service, I find force in the contention of the learned CGC. Consequently, this Court has no jurisdiction to entertain this writ petition. However, exchange of pleadings has been completed in this case, which is now ready for hearing.

Let the case be transmitted to the Central Administrative Tribunal at Guwahati forthwith for disposal in accordance with law. I hope and trust that the Tribunal will make an endeavour to dispose of the writ petition within a period of three months.

6. Having heard the learned counsel for the parties and on perusal of the record of the case, we respectfully concur with the view taken by the learned Single Judge when he declined to entertain the writ petition and permitted the appellant to file a petition u/s 19 of the Administrative Tribunal Act before the CAT.

7. It is not in dispute that the appellant (writ petitioner) is a member of Indian Revenue Service and at all relevant point of time was working as "Commissioner of Income Tax". It is also not in dispute that cases of member of Indian Revenue Service would fall u/s 14(1)(b)(ii) of the Act and therefore cognizable by the CAT. It is not in dispute that the grievance in relation to his service conditions against the Union, which he raised in the writ petition is cognizable by CAT.

8. In the light of these admitted facts emanating from the pleading/records of the case, we have no hesitation in upholding the order of learned Single Judge when he rightly declined to entertain the writ petition under Article 226/227 of the Constitution of India and directed the appellant to approach CAT for raising his grievance.

9. In the light of the foregoing discussions, we uphold the impugned order and dismiss the appeal as being devoid of merit.

10. We, instead of directing transfer of the writ petition to CAT as was done by the writ court, allow the petitioner to withdraw the petition and grant liberty to file a petition u/s 19 of the Act before the CAT in accordance with law.

11. We accordingly grant liberty to the appellant to file an original application u/s

19 of the Act before the CAT in accordance with law.

12. Needless to observe, in case any such application is filed by the appellant in accordance with the requirement of the Act then such application would be decided strictly in accordance with law by the CAT.

13. No cost.

