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**(2019) 08 MP CK 0078**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Appeal No. 628 Of 2019**

Ptps Tubing And Products Pvt. Ltd.

APPELLANT

Vs

Kailash Bise And Another

RESPONDENT

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**Date of Decision :** 19-08-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227

**Citation :** (2019) 08 MP CK 0078

**Hon'ble Judges :** S.C. Sharma, J;Shailendra Shukla, J

**Bench :** Division Bench

**Advocate :** G.S. Patwardhan, A.S. Bahrawat

**Final Decision :** Dismissed

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## Judgement

Heard.

The present writ appeal is arising out of an order dated 07.03.2019 passed by the learned Single Judge in the writ petition preferred under Article 227 of the Constitution of India.

The writ petition was preferred against the award dated 23.07.2003 passed by the Labour Court, Dewas directing reinstatement of respondent No.1 - Kailash Bise with full back-wages.

Learned Single Judge has dismissed the writ petition and allowed the writ petition filed by the respondent No.1. Learned Single Judge has also observed that the petition was filed under Article 227 of the Constitution of India and he has declined to interfere with the concurrent finding recorded by the Labour Court as well as by the Industrial Court.

The Full Bench of this Court in the case of Shailendra Kumar vs. Divisional Forest Officer & another reported in 2017 (3) JLJ 282 in paras-14, 15, 16, 17 and 18 has held as under :-

14. We find that the Division Bench has not applied the principles laid down in

the case of *Jogendrasinhji Vijay Singhji* (supra) in a correct perspective. The Supreme Court held in Paragraph No.30, that maintainability of Letters Patent Appeal would depend upon pleadings in the writ petition nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. The only exclusive bar was in respect of an order passed by the Judicial Court which could be challenged only under Article 227 of the Constitution of India. Therefore, in terms of *Jogendrasinhji Vijay Singhji*'s case, it is a question of fact in each case as to whether intra Court appeal would be maintainable in respect of the orders passed by the judicial or quasi judicial Tribunals constituted under any Act could be challenged under and/or under Article 227 or both.

15. A writ of certiorari is maintainable against any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court. The writ of certiorari as delineated in *Surya Dev Rai's* case (supra) can be said to be exercised in the following instances:-

- (1) Certiorari will be issued for correcting errors of jurisdiction;
- (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;
- (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.
- (4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.
- (5) The certiorari may be and is generally granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings or from the absence of some preliminary proceedings or the court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances.
- (6) Certiorari may also issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed.
- (7) An error in the decision or determination itself may also be amenable to a writ of certiorari subject to the following factors being available if the error is

manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari."

16. Therefore, we find that an order of the Labour Court or an Industrial Tribunal is amenable to the writ of certiorari under Article 226 of the Constitution. In exercise of writ of certiorari, the High Court demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The Constitutional Bench judgment of the Hon'ble Supreme Court reported as T.C. Basappa v. T. Nagappa, AIR 1954 SC 440, held as under:-

"7.....The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person [Vide Per Lord Cairns in *Walshall's Overseers v. London and North Western Railway Co.*, (1879) 4 AC 30, 39.]"

17. But issuance of the directions after setting aside an order passed in exercise of powers conferred under Article 226, is only under Article 227 of the Constitution. Therefore, the Court exercises composite jurisdiction which will make intra Court appeal maintainable. Thus the order passed by the Division Bench in Superintendent, Rajmata Vijaya Raje Scindia Regional Agricultural Research Station, Ujjain's Case (Supra) does not lay down correct principal of law and is thus overruled.

18. We may clarify that the orders passed by the Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before the High Courts are only under Article 227 of the Constitution of India. Thus no intra court appeal would be maintainable against an order passed by the Learned Single Judge in proceedings arising out of an order passed by Judicial Courts, may be civil or criminal proceedings.

In light of the aforesaid judgement, as it was purely a writ petition under Article 227 of the Constitution of India, present intra-court appeal is certainly not at all maintainable. Resultantly, present writ appeal stands dismissed with a liberty to take appropriate steps in accordance with law.