Prabhash Chandra Mishra Vs Union of India (UOI) and Others

Court: Allahabad High Court

Date of Decision: May 23, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226
Railway Protection Force Rules, 1987 â€" Rule 219

Citation: (2003) 3 UPLBEC 2348

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Advocate: V.K. Singh, G.K. Singh, H.S. Mishra, R.P. Mishra and A.P. Sahi, for the Appellant; Govind Saran, Laljee Sinha and Anand Kumar, for the Respondent

Final Decision: Dismissed

Judgement

R.B. Misra, J.
In this writ petition prayer has been made to quash the order dated 31.10.95 (Annexure-6 to the writ petition) passed by

Senior Divisional Security Commissioner, Railway Protection Force, Northern Railway, Allahabad and order dated 2.2.98 (Annexure-8 to the

writ petition) passed by Chief Security Commissioner, Railway Protection Force, Northern Railway, Headquarters Office, Baroda House, New

Delhi and further prayer has been made for commanding the respondents to pay the petitioner his salary and other emoluments with arrears.

2. Heard Sri V.K. Singh and Sri G.K. Singh learned Counsel for the petitioner as well as Sri Govind Saran learned Counsel for the respondents.

3. As contended on behalf of the petitioner, the petitioner was appointed as a Constable in Railway Protection Force on 5.9,1977 and was

transferred to Electric Loco Shed, Ghaziabad from Kanpur on 30.7.1995 and the petitioner was given ten days joining time till 8.8.1995. It

appears that on 9.8.1995 the petitioner had fallen ill and was under treatment of Senior Divisional Medical Officer, Eastern Railway Hospital,

Mughalsarai for a period of four weeks. Sickness certificate was also issued by the Senior Divisional Medical Officer, however when the condition

of the petitioner did not improve he again went under treatment from 5.10.1995 to 29.1.1996 for which sickness certificate was issued by Senior

Divisional Medical Officer, Northern Railway, Rai Bareli. Thereafter also he was under treatment from 30.1.1996 to 3.2.1996 and fitness

certificate was issued by Senior Divisional Medical Officer, Northern Railway, Ghaziabad. The petitioner when reported for duty on 3.2.1996, he

was informed about the dismissal order already passed on 31.10.1995. The petitioner preferred an appeal before Chief Security Commissioner

which too was dismissed on 2.2.1998. These two orders dated 31.10.95 and 2.2.1998 are under challenge in the present writ petition.

4. According to the petitioner the points for consideration are :

(i) The petitioner was not associated with any inquiry by the respondents. No notice or opportunity was even afforded to the petitioner nor

petitioner was informed about any inquiry being conducted by the respondents.

(ii) The petitioner has submitted sickness certificate issued by the Doctors of the Railway Department.

(iii) Respondents have not taken any steps to inform the petitioner about any inquiry'' being conducted against him (as per Paras 16 of the writ

petition and as replied in Paragraph 30 of the counter-affidavit.

(iv) The copy of the inquiry report was also not given to the petitioner before passing the order of dismissal (as averred in Paragraph 25 of the writ

petition and replied in Paragraph 36 of the counter-affidavit.

(v) The order of termination on the charges of over staying is highly disproportionate.

(vi) The respondents have not taken any steps to serve the show cause notice, charge-sheet, inquiry report as well as the order of dismissal on the

petitioner at his permanent home address as averred in Para 31 of the writ petition and replied in Paragraph 42 of the counter-affidavit.

(vii) The Rule 156 of the R.P.F. Rule, 1987 provides for imposition for punishment of dismissal only on certain conditions. None of the conditions

provide the order of dismissal can be passed on account of over staying the Rule 156 is quoted as below :

The dismissal of removal from service of any member of the Force shall be in the following cases, namely :-

(a) Dismissal.-(i) conviction by a Criminal Court;

(ii) serious misconduct or indulging in committing or attempting or abetting offence against Railway property;

(iii) discreditable conduct affecting the image and reputation of force;

(iv) neglect of duty resulting or likely to result in loss to the Railway or damage to the lives of persons using the Railways;

(v) insolvency or habitual indebtedness; and

(vi) obtaining employment by concealment of his antecedents which would ordinarily debar him from such employment.

On the other hand learned Counsel for the respondents in reference to the assertions made in the counter-affidavit has submitted as below :

(a) The writ petition is liable to be dismissed on the ground that the petitioner has got alternate remedy under Rule 219 of R.P.F. Rules, 1987. The

petitioner has not filed revision. Under Rule 219 R.P.F. Rules, 1987 before the Revisional Authority against the order dated 2.2.1998 passed by

the Appellate Authority.

(b) The petitioner is a member of Railway Protection Force which is a Discipline/Armed Force of Union of India. He absented himself without any

authority for a long period which is against the conduct of the disciplined Armed Force which regards to maintain discipline. But the petitioner has

failed to do so by absenting himself for long period without any authority.

(c) The petitioner was transferred from Kanpur Juhi to Electric Loco Shed, Ghaziabad due to his nefarious activities and close links with local

criminals of Kanpur. He was spared on 10 days joining leave w.e.f, 30.7.1995 to 8.8.1995 and was due to report for duty at Electric Loco Shed,

Ghaizabad on 9.8.1995, but he failed and absented from duty unauthorisedly and without information to his Controlling Officers.

(d) The petitioner"s sickness certificated dated 9.8.1995 of Senior Divisional Medical Officer (E.R.), Mugal Sarai was received in the Officer of

Sub-Inspector R.P.F./Electric Loco Shed, Ghaziabad on 19.8.1995. The petitioner was issued charge-sheet dated 14.9.95 and Sri Syed Noor

Ahmad, Inspector/RPF was Appointed Enquiry" Officer to conduct enquiry against the petitioner. The Enquiry Officer found in his Enquiry Report

the charges against the petitioner proved. The copy of the enquiry was supplied on 12.10.1995 to the petitioner through special messenger with an

indication to conduct the defence within 15 days but the petitioner did not accept the notice nor submitted any representation for his defence.

Taking into the facts and circumstances, the punishment order was passed and the appeal too was dismissed by the Chief Security Commissioner,

however, the petitioner did not avail the remedy under Rule 219 of R.P.F. Rules, 1987. According to the respondents Rule 272 of R.P.F. Rules,

1987 contemplates that in the said rules no member of force shall be taken on sick list by any of the Railway Officers unless such member comes

with a written reference known as sick memo from his Controlling Officer. After completing every sickness period the petitioner did not report to

the duty. Even on 17.9.1995 when Head Constable Gopi Ram of Electric Loco Shed, Ghaziabad was directed to serve the charge-sheet to the

petitioner but he refused to acknowledge the charge-sheet in presence of witnesses. On 18.9.1995 when Sri Gopi Ram Sharma, Head Constable

went to the petitioner along with other staff for serving the charge-sheet, the petitioner again refused to acknowledge the charge-sheet. In these

circumstances, the charge-sheet was pasted on the door of his Railway Quarter No. 61/A Tejab Mills Colony, Kanpur in his presence.

5. The copy of the Enquiry Report was sent to the petitioner on 12.10.1995 and also on 29.10.1995 through Head Constable Sone Lal,

Constable Hari Om Sharma and Constable Audhesh Kumar Mishra who visited the Railway Quarter No. 61/A, Tejab Mills Colony, Kanpur of

the petitioner in order to serve the Enquiry Report where the petitioner refused to acknowledge the notice and to receive the Enquiry Report.

Similarly the penalty notice dated 31.10.1995 and 3.11.1995 was also sent though Head Constable Gopi Ram Sharma but despite the efforts

made the notice was not received, therefore, the same was pasted at the door of the residence of the petitioner.

6. Learned Counsel for the respondents has placed reliance on the order dated 1,7.2002 passed by this Court in Writ Petition No. 22507 of

2002, Digamber Singh v. The Chief Secretary, N.R., New Delhi and Ors., where the writ petition was dismissed against the punishment awarded

to the writ petitioner as the revision under Rule 219 of the R.P.F. Rules, 1957 was not availed by the writ petitioner and the writ petition was

dismissed on the ground of alternative remedy.

7. The Supreme Court in the case of Chanan Singh and Sons Vs. Collector Central Excise and Others, , has held that instead of challenging the

order of the Tribunal by filing the statutory alternative remedy of reference the writ petition was filed and the Apex Court has held as follows :-

The High Court simply said that the appellant had a statutory alternative remedy and the appellant had to avail that statutory remedy instead of

filing writ petition. Accordingly, the High Court dismissed the writ petition. The appellant instead of challenging the order of the Tribunal by availing

the statutory alternative remedy has filed this appeal by special leave challenging, the order of the High Court. We are of the view that the High

Court right in dismissing the writ petition directing the appellant to avail the statutory alternative remedy.

8. In the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , the Supreme Court has held in Para 11 at Page 607

as follows :-

If the petitioners arc dissatisfied with the decision in appeal they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of

the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24 of the Act.....Act provides for

a complete measure to challenge an order of assessment .....by mode prescribed by the Act and not by a petition under Article 226 of the

Constitution.

9. The decision has been followed in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ,

Para 3 as follows:-

In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , A.P. Sen, E.S. Venkataramiah, and R.B. Misra, JJ., held that

where the statute if self provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second

appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary

jurisdiction under Article 226 of the Constitution ignoring as it were .....become necessary, even now, for us to repeat this admonition is indeed a

matter of tragic concern to us. Article 226 is not meant to short circuit or circumvent statutory rocedures.....We can also take judicial notice

of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and

thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

As mentioned earlier, reference u/s 256 of the Income Tax Act is maintainable against the order of the Income Tax Appellate Tribunal, like a

Reference against the order of the CEGAT u/s 35-H of the Act.

10. The Supreme Court has depicted the practice of filing a writ petition under Article 226 of the Constitution instead of filing a reference u/s 256

of the Income Tax Act in the case of The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, , which is reproduced below-

5. Instead of following the procedure prescribed by the Act by way of a reference u/s 256 of the Income Tax Act, the respondent chose to file

three writ petitions in the Allahabad High Court challenging the orders of the Tribunal in respect to the Assessment years 1977-78 and 1980-81

and order of the Assessing Authority for assessment year 1984-85 which had been made by it. These writ petitions were entertained by the High

Court which allowed the same by coming to the conclusion that the respondent was a local authority and therefore, its income was exempt from

tax.

Taking note of the aforesaid fact in Para 5 quoted above, the Supreme Court has observed as follows in Para 14 at Pages 539 and 540 :-

Before concluding, we would like to observe that the High Court ought not to have entertained the writ petitions when adequate alternative

remedy was available to the respondent.....We, however, emphasise that the petitioners should not normally short-circuit the procedure provided

by the taxing statute and seek redress by filing a petition under Article 226 of the Constitution of India.

11. Admittedly the petitioners have filed recently Excise Reference Application No. 13 of 2002 on 16.5.2002 u/s 35-H of the Act, hence he is

pursuing a parallel proceedings in respect of the same subject-matter arising out of the same order of the Tribunal in view of the judgment of the

Supreme Court in the case of Jai Singh Vs. Union of India and Others, , Para 4 in which the Supreme Court has held as follows :

.....the appellant has filed a writ, in which he has agitated the same question which is the subject matter of the writ petition. In our

opinion the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.

12. In the case of C.L. Jain Woolen Mills (1996) 84 ELT 17, the Supreme Court has observed as follows :

While we agree with Mr. A. Subba Rao, the learned Counsel for the petitioner, that when the appeal before the Tribunal, preferred by the

assessce himself, was pending, the High Court ought not to have interfered in the matter by way of a writ petition, in the facts and circumstances of

the case, we are not inclined to interfere in the matter.

13. A Division Bench of the Andhra Pradesh High Court in the case of P. Vasu Babu Vs. CEGAT, Chennai, has dismissed the writ petition under

Article 226 of the Constitution only on the question that the petitioner has remedy of Reference under Sections 35-G and 35-H of the Act.

14. A Constitution Bench of the Supreme Court in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , held that as the Motor Vehicles Act

is a self contained code and itself provides for appcalable/revisable forum, the writ jurisdiction should not be invoked in matters relating to its

provision.

15. Similar view has been reiterated in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ;

Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, and Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others,

16. In C.A. Ibraham v. I.T.O. AIR 1961 and H.B. Gandhi v. M/s. Gopinath and Sons 1992 (Suppl.) 2 SCC 312, the Supreme Court held that

where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

17. The Constitution Bench of the Supreme Court in K.S. Venkataraman and Co. Vs. State of Madras, , considered the Privy Council AIR 1947

PC 78 and held that the Writ Court can entertain the petition provided the order is alleged to be without jurisdiction or has been passed in flagrant

violation of the principles of natural justice, or the provisions of the Act/Rules is under challenge.

18."In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , the Supreme Court refused to extend the ratio of its earlier

judgment in State of U.P. v. Mohammed Noor, AIR 1958 SC 86, wherein the Court had held that prerogative writ can be issued to correct the

error of the Court or Tribunal below even if an appeal is provided under the statute under certain circumstances, i.e. the order is without

jurisdiction, or principles of natural justice have not been followed, and held that in case of assessment under the Taxing Statute, the principle laid

down by the Privy Council in Raleigh Investment Co. Ltd (supra) would be applicable for the reason that ""the use of the machinery provided by

the Act, not the result of that us, is the test.

19. While deciding the said case, the Supreme Court placed reliance on large number of judgments, particularly New Water Works Co. v.

Hawkes Ford (1859) 6 CBNS 336; Neville v. London Express Newspapers Ltd 1919 AC 368, the Attorney General of Trinidad and Taboco v.

Gordon Grant and Co. 1935 ApCas 532; and Secretary of State v. Mask and Co. AIR 1949 PC 105, wherein it had consistently been

emphasised that the remedy provided by the statute must be followed and writ should not generally be entertained unless the statutory remedies are

exhausted.

20. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; and Tin Plate Co. of India Ltd. Vs. State of Bihar and Others,

, the Supreme Court came to the conclusion that writ should not generally be entertained if statute provide for remedy of appeal and even if it has

been admitted, parties should be relegated to the Appellate Forum.

21. In Sheela Devi Vs. Jaspal Singh, , the Hon''ble Supreme Court has held that if the statute itself provides for a remedy of revision, writ

jurisdiction cannot be invoked.

22. In Punjab National Bank v. O.C. Krishnan and Ors. AIR 2001 2993, the Supreme Court while considering the issue of alternative remedy

observed as under :-

The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is

hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast tract procedure cannot be allowed to be derailed either by

taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a

provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there

is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional

provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have

directed the respondent to take recourse to the appeal mechanism provided by the Act.

23. A Constitution Bench of the Supreme Court in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , held that Article

226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. The Said power is limited. However, the

remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the

aggrieved party can have an adequate or suitable relief elsewhere. Similar view has been reiterated by the Supreme Court in Sangram Singh Vs.

Election Tribunal, Kotah, Bhurey Lal Baya, , holding that the power of issuing writs are purely discretionary and no limit can be placed upon that

discretion. However, the power can be exercised alone with recognised line and not arbitrarily and the Court must keep in mind that the power

shall not be exercised unless substantial injustice has ensured or is likely to ensure and in other cases the parties must be relegated to the Courts of

Appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense.

24. Again a Constitution Bench of the Supreme Court in Union of India (UOI) Vs. T.R. Varma, , held that it is well settled that when an alternative

and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High

Court to issue a prerogative writ. The Supreme Court held that existence of an another remedy does not affect the jurisdiction of the Court to issue

a writ; but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such remedy

is exhausted, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there arc good

grounds therefor.

25. Yet another Constitution Bench of the Supreme Court in State of U.P. and Ors. v. Mohammed Nooh AIR 1958 SC 86, considered the scope

of exercise of writ jurisdiction when remedy of appeal was there and held that writ would like provided there is no other equally effective remedy.

The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of fundamental

principles of justice. Therefore, in a proper case, powers of writ can be exercised, but should not be exercised generally where other adequate

legal remedy is available through it may not be, per se, a bar to issue a writ of prerogative. The Supreme Court held that the remedy, being

discretionary, cannot be asked as a matter of right, even if the order is a nullity, on the ground that it was passed by disregarding the rules of natural

justice. The Court held as under:

.....save in exceptional cases, the Courts will not interfere under article 226 until all normal remedies available to a petitioner have been exhausted.

The normal remedies in a case of this kind are appeal or revision. It is true that on a matter of jurisdiction or on a question that goes to the root of

the case, the High Courts can entertain a petition at an early stage but they are not bound to do so and a petition would not be thrown out because

the petitioner had done that which the Courts usually ask him to do, namely, to exhaust his normal remedies before invoking an extraordinary

jurisdiction.....The petitioner would have been expected to pursue the remedies of appeal or revision and could not have come to the High Court

in the ordinary way until he had exhausted them.

26. In N.T. Veluswami Thevar v. C. Raja Nainar and Ors. AIR 1959 SC 442, the Supreme Court held that the jurisdiction of the High Court to

issue writs against the orders of the Tribunal is undoubted; but then, it is well settled that where there is another remedy provided, the Court must

properly exercise its discretion in declining to interfere under Article 226 of the Constitution.

27. Another Constitution Bench of the Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , held that the remedy provided in

a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately

open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in

Municipal Council, Khurai and Another Vs. Kamal Kumar and Another,

28. In Siliguri Municipality and Others Vs. Amalendu Das and Others, the Supreme Court held that the High Court must exercise its. power under

Article 226 with circumspection and while considering the matter of recovery of tax etc., it should not interfere save under very exceptional

circumstances.

29. In S.T. Muthusami Vs. K. Natarajan and Others, , the Supreme Court held that the High Court cannot be justified to exercise the power in

writ jurisdiction if an effective alternative remedy is available to the party.

30. In Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , while dealing with a similar issue, the Supreme Court held

that the writ petition should not be entertained unless the party exhausted the alternative/statutory efficacious remedy.

31. In A. Venkatasubbiah Naidu Vs. S. Challappan and Others, , the Supreme Court deprecated the practice of exercising the writ jurisdiction

when efficacious alternative remedy is available. The Court observed as under :-

Though no hurdle can be put against the exercise of Constitutional powers of the High Court, it is a well recognised principle which gives judicial

recognition that the High Court should direct the party to avail himself of such remedy, one or other, before he resorts to a Constitutional remedy.

32. Similar view has been reiterated in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, ; L.L. Sudhakar

Reddy and Others Vs. State of A.P. and Others, ; Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha

and Another Vs. State of Maharashtra and Others, ; G.K.N. Driveeshafts (India) Ltd. v. Income Tax Officer and Ors. (2003) 1 SCC 72 and

Pratap Singh and Anr. v. State of Haryana (2002) 7 SCC 481.

33. In the State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, , while dealing with a similar issue the Supreme Court has held as under

:-

It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature and can be invoked for

the enforcement of any fundamental right or legal right. The Constitutional Court should insist upon the party (to avail of the efficacious alternative

remedy) instead of invoking the extraordinary writ jurisdiction of the Court. This does not however debar the Court from granting the appropriate

relief to a citizen in peculiar and special facts notwithstanding the existence of alternative efficacious remedy, the existence of special circumstances

are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article.

34. In Govt. of A.P. and Others Vs. J. Sridevi and Others, , the Supreme Court held that where a authority is competent to determine the issue,

the High Court in a writ jurisdiction should have directed the authority only to take an appropriate decision. When the statutory authority is vested

with the power to determine the question as to the applicability of the provisions of the Act, it is ordinarily desirable to leave the question to be

decided by such authority. The aggrieved party can file appeal against the decision within the framework provided under the statute and the

ultimate decision also could be challenged under judicial review, if permitted in law.

35. In the State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., , the Supreme Court held that existence of alternative remedy does not

affect the jurisdiction of the Writ Court but it could be a good ground for not entertaining the petition.

36. In Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , the Supreme Court held that the rule of exclusion of writ

jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and com of

the case and then may interfere if it comes to the conclusion that the writ seeks enforcement of any of the fundamental rights; where there is failure

of principle of natural justice or where the orders or proceedings are wholly without jurisdiction or the virus of an Act is challenged. While deciding

the said case, the Supreme Court placed reliance upon its earlier judgment in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and

Ors., AIR 1998 SC 22.

37. This Court in (2002) 1 UPLBEC 705 (Hon''blc S.K. Sen, C.J. and Hon''ble R.K. Agarwal, J.), Pradeep Kumar Singh v. U.P. State Sugar

Corporation and Anr., has referred in its judgment, the following cases (1991) 2 UPLBEC 898 , L. Hirday Narain Vs. Income Tax Officer,

Bareilly, ; Hridya Narain v. Income Tax Officer, Bareilly 1995 ALJ 454; Dr. Bal Krishna Agrawal v. State of U.P. and Ors. (1990) 1 UPLBEC

699; Ambika Singh v. State Sugar Corporation Ltd. and Ors. (1998) 8 SCC; Whirlpool, Corporation v. Registrar of Trade Marks, Mumbai and

Ors. 2000 (1) ESC 504 ; Satya Ram Yadav v. Deputy Managing Director, U.P. State Ware Housing Corporation Lucknow (2001) 2 ESC 619 ;

Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, ; (Dr.) (Smt.) Kamta Gupta v.

Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Ors. 2000 (89) FLR 1112; Sunil Kumar Pathak v. Chairman, Indian Oil

Corporation, New Delhi and Ors. 1997 (76) FLR 372 ; Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, ; The Cooper Engineering

Limited Vs. Shri P.P. Mundhe, ; Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ; Rajasthan State Road Transport Corporation and

Another Vs. Krishna Kant and Others, ; Rajasthan State Transport Corporation v. Krishna Kant, and has arrived at the conclusion as below:-

Thus, from the various decisions referred to above the following principles emerge regarding maintainability of a petition under Article 226 of the

Constitution of India:

(I) While exercising its writ jurisdiction under Article 226 of the Constitution of India, the High Court may decline to grant relief until such statutory

remedy is exhausted. However, this rule is a rule of policy, convenience and discretion and not a rule of law nor it bars the jurisdiction of the High

Court under Article 226 of the Constitution in granting relief in appropriate case and exceptional circumstances;

(II) Alternative remedy is not a bar where a writ petition has been filed for enforcement of any fundamental rights; or where there is violation of

principles of natural justice, or where the order of the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

38. In my respectful consideration since in Pradeep Kumar Singh (supra) the question of violation of principal of natural justice was being tested in

writ petition and, therefore, in reference to the maintainability of the writ petition without resorting to alternative remedy available in the Industrial

Disputes Act, therefore, this Court has taken above view. However, the present petitioner Union of India can not take protection of the decision of

this Court (D.B.) in Pradeep Kumar Singh (supra) more so in view of the law laid down by the Supreme Court in reference to the alternative

remedy.

39. Since this Court has taken a view in Pradeep Kumar Singh (supra) that the writ petition is maintainable in the case of the termination of the writ

petitioner for violation of principles of natural justice whereas in the present case the only question is not involved about the violation of principles

of natural justice. The petitioner has also challenged the procedure of the enquiry and the dismissal on the basis of the enquiry report as well as the

appellate order which has been opposed by the respondents on the ground of alternative remedy.

40. In view of the above observations, this Court find that this writ petition cannot be entertained on the ground of alternative remedy as the

petitioner was to file revision under Rule 219 of R.P.F. Rules, 1957.

41. The writ petition is dismissed on the ground of alternative remedy. Therefore, the cases referred by the petitioner on the ground that the

punishment is disproportionate cannot be considered.