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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

BANARSI PRASAD AND OTHERS — Appellant

Vs.

STATE OF U.P.AND OTHERS — Respondent

(Before : Shri Narayan Shukla, J)

Writ Petition No.2657 (S/S) of 2006

Decided on : 22-08-2006

- Constitution of India, 1950 - Article 226
- Seniority Rules, 1991 - Rule 8(2), Rule 8(3)(1)
- Uttar Pradesh Public Services (Tribunal) Act, 1976 - Section 4

A. Writ Petition — Maintainability — Against seniority list — Existence of alternative remedy — U.P. Public Services Tribunal Act, 1976, Section 4 — High Court's jurisdiction under Article 226 of the Constitution of India — Alternative remedy is a rule of self-imposed limitation, not a jurisdictional bar — High Court may interfere in extraordinary circumstances, such as breach of natural justice or if a strong case is made out — Earlier writ petition dismissed on grounds of disputed questions of fact and availability of alternative remedy before tribunal, but no law was pronounced and no issue was decided on merits — Present petition challenges the same seniority list, alleging violation of specific rules (Rules 8(2) and 8(3)(1) of Seniority Rules, 1991) as per previous High Court directions, making it a purely legal question — Objections to maintainability overruled. (Paras 3, 5, 11, 12, 15, 17, 22, 23, 24, 25)

B. Judicial Precedent — Coordinate Benches — Requirement to refer to a larger Bench — Applicability — If a coordinate bench disagrees with another on a question of law, it should refer the matter to a larger bench to maintain judicial discipline and certainty of law — However, this principle applies when

an issue has been decided and law has been laid down by the coordinate bench — If a previous writ petition was dismissed solely on the ground of alternative remedy due to disputed facts, without deciding any issue or pronouncing any law, then the principle of referring to a larger bench does not apply to a subsequent writ petition raising legal questions on the same subject. (Paras 8, 9, 16, 17, 23, 24)

C. Jurisdiction of High Court — Article 226 of Constitution of India — Alternative remedy not a complete bar — High Court can exercise its extraordinary jurisdiction despite the existence of an alternative remedy, particularly if no disputed questions of fact remain and only questions of law, needing interpretation of rules based on a previous High Court order, are involved — Where the earlier dismissal was for 'disputed questions of fact' but the present matter involves application of established rules based on prior High Court directions, High Court's intervention is warranted. (Paras 12, 13, 15, 17, 20, 21, 24)

D. Per Incuriam — Judicial Pronouncements — A decision can be treated as per incuriam if given in ignorance of statutory provisions or rules having the force of a statute, or without argument or citation of authority; such pronouncements are not binding as they are not part of ratio decidendi. (Para 18)

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. Umesh Chandra, Senior Advocate assisted by Mr. Rakesh Srivastava, learned counsel for the petitioners and Mr. S.C. Yadav, learned Additional Chief Standing Counsel, Mr. I.P. Singh, Mr. Anil Kumar Tiwari, Mr. Hari Shankar Jain, learned counsels for the respondents.

2. The petitioners have preferred the instant writ petition against the seniority list dated 21.10.2005 as well as the amended seniority list dated 23.2.2006.

3. The respondents have raised the objections on the maintainability of the writ petition on the ground that the petitioners have efficacious alternative remedy under Section 4 of U.P. Public Services Tribunal Act 1976 and as such they cannot be allowed to seek the indulgence of this Hon'ble Court under Article 226 of the Constitution of India and it has been submitted by them that the impugned seniority list was challenged in the writ petition No.7284 (SS) of 2005. This Court was pleased to observe that the writ petition contained disputed questions of fact and as such interference could not be made under Article 226 of the Constitution of India and the writ petition was dismissed.

4. It has also been submitted that though against the aforesaid order Special Appeal No.46 of 2005 has been preferred but till date no interim order has been granted by this Court. They have also submitted that against the judgment and order dated 6.8.2004 passed in writ petition No.6012 (SS) of 2000 on the basis of which the petitioners are claiming their right of placement in the seniority list is itself under challenge in the Special Appeal. However, there is no dispute that no interim order has been granted against the aforesaid judgment and order till date.

5. The learned counsel for the respondents also submitted that some of the petitioners have already filed a Claim Petition No.1063/2005, in which on 24th October, 2005 the Public Service Tribunal issued direction to the opposite parties to prepare seniority list strictly in accordance with the directions of the Hon'ble High Court and they have submitted that since they have already approached the Tribunal for the same cause of action, the instant writ petition deserves to be dismissed.

6. The learned counsel for the respondents, Mr. Anil Kumar Tiwari submits that the writ petition involving the same questions has already been dismissed by this Court. The law propriety demands that this Court may not interfere further in the matter and if to some extent this Court arrives at conclusion that interference of this Court is needed in the matter, the matter has to be referred to a larger Bench for a proper decision as the law of propriety demands.

7. In support of his contention, the learned counsel for the respondents has relied upon some judgments of the Hon'ble Supreme Court which are referred hereunder:

8. (2001) 2 SCC 247, Dr. Vijay Laxmi Sadho v. Jagdish, paragraph 33 of which is reproduced hereunder:

As the learned Single Judge was not in agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is wellsettled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of 'different arguments' or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

9. AIR 1960 SC 936, Mahadeolal Kanodia v. The Administrator General of West Bengal, relevant paragraph 19 of which is reproduced hereunder:

Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two Judges of the same

High Court in Deorajin's Case, 58 Cal WN 64: was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, if referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in 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 decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all Courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

10. 2000(6) SCC 224, Lily Thomas and others v. Union of India and others, which is on the point of power of review for correction of mistake and that is not applicable in the instant case.

11. AIR 2002 SC 1187, Jawahar Lal Sazawal and others v. State of J. & K. and others, the relevant paragraph 16 is reproduced hereunder:

The impugned decision directly conflict with the earlier decision of the same High Court in Ghulam Quadir's case on the issue as to the status of Government employees like the Ghulam Quadir has remained unchallenged by the State respondents till today and was binding on the Court. In the absence of some distinguishing feature it should have been followed. It was not even referred to. We could have allowed the appeal before us on this short ground, but since the issue raised affects a large number of employees, it is necessary to decide the issue on merits.

12. The petitioners have filed the reply of the objections raised by the respondents submitting therein that before the Public Services Tribunal, the impugned seniority lists are not under challenge. Vide order dated 24.10.2005, the Tribunal issued directions to prepare the seniority list in accordance with the directions of this Court whereas the seniority list had already been published on 21.10.2005 which is impugned in the present writ petition. The petitioners further submit that the earlier writ petition No.7284 (S/S) of 2005 has been dismissed by this Court on 18.1.2000 on the ground that several disputed questions of fact regarding date of initial appointment, substantive appointment of the employees and the places assigned for various seniority lists, applicability of the Rules etc. are involved in the petition and points raised in the petition can be adjudicated by the U.P. Public Services Tribunal which has jurisdiction to deal with such matter and efficacious speedy remedy is

available to the petitioners, they can approach the U.P. Public Services Tribunal under Section 4 of the U.P. Public Services Tribunal Act, 1976, however, no disputed questions of law are involved in the matter. The disputed facts have already been settled by this Court through the judgment and order dated 6th August, 2004 passed in writ petition No.6012 (S/S) of 2000 and finally this Court has issued directions to the respondents to prepare inter se seniority list of direct recruits and promotees or regularize promotees on the post of L.D.A. (Assistant Review Officer) by applying Rules 8(2) and 8(3)(I) of Seniority Rules, 1991 and providing prescribed quota for each selection year in light of the observations made above and to promote the directly recruited candidates on the post of U.D.A. (Review Officer) from the date their juniors have so promoted with all consequential benefits and on the strength of the aforesaid orders, the learned counsel for the petitioners submits that this Court has to adjudicate the merit of the seniority list in light of Rules 8(2) and 8(3)(I) of Seniority Rules, 1991 which is purely a legal question and the petitioners have challenged the impugned seniority list also on the ground that the same is not in accordance with the aforesaid Rules and thus, the learned counsel for the petitioners submits that the matter is such as it requires the interference of this Court without sending it to the Tribunal for adjudication as on the point involved the petitioner has no other adequate and efficacious remedy except before this Court.

13. The learned counsel for the petitioners submits that the Hon'ble Supreme Court has held in several decisions that the alternative remedy is not a complete bar. In support of his submission, the learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court which is referred hereunder:

14. 1987 (Supp) SCC 705, Pritpal Singh and others v. State of Punjab and others, the relevant paragraph 1 of which is reproduced hereunder:

This application for directions appears to be wholly misconceived. It purports to challenge the final seniority list of Punjab Superior Judicial Service Cadre as published by the State of Punjab in Gazette Notification dated February 27, 1982 on the ground that there is noncompliance of the directions made by this Court in B.S. Yadav v. State of Haryana. If that be so, the remedy of the petitioner is by way of a petition under Article 226 of the Constitution in the High Court and not by this application for directions.

15. (2005) 8 SCC 264, U.P. State Spinning Co. Ltd. v. R.S.Pandey and another, relevant paragraphs 11 and 12 are reproduced hereunder:

11. Except for a period when Article 226 was amended by the Constitution Act, 1976, the power relating to alternative remedy has been considered to be a rule of selfimposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, if cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there

is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good ground to invoke the extraordinary jurisdiction.

12. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

16. Relying upon the aforesaid judgments, the learned counsel for the petitioners submits that in the instant matter, the respondents were under obligation to follow the rules as per directions of this Court but they have not adopted so, on account of which this matter requires the interference of this Court. On the arguments of the learned counsel for the respondents that the law of precedent demands that a coordinate Bench has to follow the judgment of another coordinate Bench and if it feels to distinguish the same it is under obligation to refer the matter to a larger Bench for its proper decision, he submits that this law will apply only where the coordinate Bench has pronounced the law not otherwise as in the case of *Mahadeolal Kanodia* (supra) and *Dr. Vijay Laxmi Sadho* (supra), it has been held that where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong. It is appropriate that matter be referred to a larger Bench for resolution of issue.

17. Here, in the instant matter no issue has been decided nor any law has been laid down by this Court in the earlier judgment rather the writ petition has been dismissed on the ground of alternative remedy as several disputed questions of fact are involved and he further submits that if this Court entertains the instant writ petition, there will be no conflict in the decision as no issue has been decided by this Court in the earlier judgment.

18. In support of his contention, the learned counsel for the petitioners further relied upon a judgment of the Hon'ble Supreme Court rendered in the case of *Municipal Corporation of Delhi v. Gurnam Kaur*, AIR 1989 SC 38, the relevant portion of paragraph 11 of the judgment is reproduced hereunder:

11. Pronouncements of law, which are not part of the ratio decidendi classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das* case and to the learned Judge who agreed with him we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute.

19. He has also relied upon the judgment of this Court rendered in the case of Akhilesh Kumar Saxena v. Director of Education (Secondary), U.P. Lucknow and others, (1999 (17) LCD 904), the relevant paragraph 5 of which is reproduced hereunder:

We have considered the submissions and we find that once the Court has entertained the petition and interfered with the impugned order staying its operation, after exchange of the affidavit. The Court could have disposed of the matter finally instead of dismissing the writ petition on the ground of alternative remedy. In view of this, we allow the Special Appeal and set aside the order dated 27.5.99 with the observation that the writ petition be disposed of finally after hearing on merits the parties. Status quo available as on the date of filing the writ petition shall be maintained till the order of status quo is modified by the learned Single Judge.

20. In light of the aforesaid judgments, he submits that this Court entertained the earlier writ petition, passed an interim order and the counter affidavit along with Application for vacation of stay order was also filed on behalf of the respondents, but finally this Hon'ble Court dismissed the writ petition on the ground of alternative remedy. However, the matter could have been disposed of finally after exchange of affidavits instead of dismissing the writ petition on the ground of alternative remedy.

21. In light of the aforesaid facts and law established, the learned counsel for the petitioners submits that the writ petition is well maintainable and justice demands the interference of this Court in the present matter and the same be heard on merits.

22. From perusal of the order dated 18.1.2000 passed by this Court in writ petition No.7284 (S/S) of 2005, it is obvious that the same was dismissed on the ground of alternative remedy as several disputed questions of fact regarding date of initial appointment, substantive appointment of the employees and the places assigned for various seniority lists, applicability of the Rules etc. are involved in the matter.

23. In the aforesaid writ petition also, the seniority list dated 21.10.2005 was under challenge and in this writ petition also the same seniority list as well as the amended seniority list issued subsequently on 23.2.2006 is under challenge. However, from perusal of the record, I find that the petitioners are seeking the application of Rules 8(2) and 8(3) (1) of Seniority Rules, 1991 for which the direction was already issued by this Court in writ petition No.6012 (S/S) of 2000, but the respondents still violated the said Rules in preparation of the aforesaid seniority list. So far as the law of precedent is concerned in light of the judgment discussed referred hereinabove, the same is applicable only on the law pronounced by the Court as the object to follow the judgment of coordinate Bench is to maintain the certainty of law.

24. Here in this matter, neither any issue has been decided nor any law has been pronounced but the writ petition has been dismissed on the ground of alternative remedy since it involves the disputed questions of fact. However, in my view, no such dispute is

there but only the validity of the seniority list has to be judged by this Court in light of the Rules 8(2) and 8(3)(1) of Seniority Rules, 1991.

25. Under the circumstances, I overrule the objections raised by the learned counsel for the respondents on the maintainability of the writ petition and reject their application for dismissal of the writ petition on the ground of alternative remedy.

(Objection overruled)