

SATWATI DESWAL

v.

STATE OF HARYANA AND ORS.
(Civil Appeal No. 7397 of 2009)

NOVEMBER 6, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Writ jurisdiction: Writ petition – Maintainability of – Termination order passed without issuing show cause notice; without initiating disciplinary proceedings by authorities and without affording opportunity of hearing – Writ petition:— Held: Maintainable in such case even if there was alternative remedy since there was violation of principle of natural justice – Natural justice.

The question which arose for consideration in the present appeal was whether High Court was justified in dismissing the writ petition filed by appellant challenging her termination order.

Allowing the appeal, the Court

HELD: 1. High Court fell in grave error in rejecting the writ petition. The order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the act were in question. [Para 5] [780-A-C]

A.V. Venkateswaran, Collector of Customs, Bombay v.

A *Ramchand Sobhraj Wadhvani & Anr. AIR 1961 SC 1506; L.K. Verma v. H.M.T. Ltd. & Anr. AIR 2006 SC 975; M.P. State Agro Industries Development Corporation & Anr. v. Jahan Khan AIR 2007 SC 3153, relied on.*

B 2. A cursory look of the statutory provision of the
 C Constitution of the Parishad Working Committees shows
 D that before imposing any major penalty against an
 E employee, namely, an order of termination of service, an
 F inquiry must be held in the manner specified in the
 G statutory rules by which the disciplinary authority is
 H required to frame definite charges on the basis of
 I allegations on which an inquiry should be proposed and
 J opportunity must be given to the employee to submit a
 K written statement stating therein whether he/she desires
 L to be heard in person and no order of termination also
 M can be passed without the approval of the Managing
 N Committee. On this count alone, therefore, the High Court
 O was in grave error in dismissing the writ petition. [Para
 P 8] [700-G-H; 701-A-C]

Case Law Reference :

E	AIR 1961 SC 1506	relied on	Para 6
	AIR 2006 SC 975	relied on	Para 6
F	AIR 2007 SC 3153	relied on	Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7397 of 2009.

G From the Judgment & Order dated 17.05.2007 of the High
 H Court of Punjab & Haryana at Chandigarh in Civil Writ Petition
 I No. 7460 of 2007.

Sanjay Sharawat, for the Appellant.

H Rutwik Panda, Anil Hooda, Dr. Sushil Balwada for the

Respondents.

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The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

2. This appeal by special leave has been filed against the judgment and final order dated 17th of May, 2007 passed by the High Court of Punjab & Haryana at Chandigarh in CWP No. 7460 of 2007. By the impugned judgment, the High Court had dismissed the writ petition filed by the appellant on the ground of maintainability and relegated the appellant to take statutory remedy of appeal.

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3. Heard the learned counsel appearing for the parties and examined the impugned judgment as well as the other materials on record.

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4. In our view, this appeal must succeed on a very short point. Before we take up the ground on which this appeal should be allowed, we may state the relevant facts leading to the filing of this appeal, which are as follows :-

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The appellant [M.A. B.Ed. M.Sc (Computer)] was appointed as a lecturer in 2003 in a recognized school in the State of Haryana and was subsequently promoted to the post of Principal on account of her seniority. Her appointment and promotion were duly approved by the concerned authorities, but by a non-speaking and unreasoned order dated 11th of September, 2006, her services were terminated by the Manager of the School, namely, the respondent No.5 herein. Admittedly, in this case, no show-cause notice was issued to her nor the order of termination was passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.

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A 5. In our view, the High Court had fallen in grave error in
rejecting the writ petition on the aforesaid ground. First, such
an order of termination was passed without issuing any show
cause notice to the appellant and without initiating any
disciplinary proceedings by the authorities and without affording
B any opportunity of hearing. It is well settled that a writ petition
can be held to be maintainable even if an alternative remedy
available to an aggrieved party where the court or the tribunal
lacks inherent jurisdiction or for enforcement of a fundamental
right; or if there had been a violation of a principle of natural
justice; or where vices of the act were in question.

C 6. The aforesaid exceptions recognized by this Court were
taken note of by this Court in the case of *A.V. Venkateswaran,*
Collector of Customs, Bombay v. Ramchand Sobhraj
Wadhvani & Anr. (AIR 1961 SC 1506), in which the Constitution
D Bench laid down the principles of the above exceptions when
writ application could be entertained even if an alternative
remedy was available to an aggrieved party. The same view
was expressed by this Court in the case of *L.K. Verma v.*
H.M.T. Ltd. & Anr. (AIR 2006 SC 975) and *M.P. State Agro*
Industries Development Corporation & Anr. v. Jahan Khan
E (AIR 2007 SC 3153).

7. Such being the position and in view of the admitted fact
in this case that before termination of the services of the
appellant, no disciplinary proceeding was initiated nor any
opportunity of hearing was given to the appellant. It is clear from
F the record that the order of termination was passed without
initiating any disciplinary proceedings and without affording any
opportunity of hearing to the appellant. In that view of the matter,
we are of the view that the writ petition was maintainable in law
and the High Court was in error in holding that in view of
G availability of alternative remedy to challenge the order of
termination, the writ petition was not maintainable in law.

8. Apart from that, on a cursory look of the statutory
provision of the Constitution of the Parishad Working
H Committees, it would be clear that before imposing any major

penalty against an employee, namely, an order of termination of service, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written statement stating therein whether he/she desires to be heard in person and no order of termination also can be passed without the approval of the Managing Committee. On this count alone, therefore, the High Court was, in our view, in grave error in dismissing the writ petition of the writ petitioner.

9. Accordingly, the impugned judgment of the High Court is set aside and the order of termination passed against the appellant is quashed and the writ petition stands allowed. However, it would be open to the authorities, if so desire, to initiate disciplinary proceedings against the appellant for her termination from service and if such disciplinary proceedings are initiated, the authorities shall give proper opportunity of hearing and permit the parties to adduce evidence in support of their respective stands and after giving such opportunity, the disciplinary authorities thereafter shall give hearing to the appellant and then pass a final order on the question of termination of service of the appellant in compliance with the concerned statutory rules applicable to the appellant.

10. For the reasons aforesaid, the impugned order is set aside and the order of termination passed against the appellant is quashed. The appeal is allowed. There will be no order as to costs.

D.G.

Appeal allowed.