PETITIONER:
STATE OF U.P. AND ANR.

Vs.

RESPONDENT:
LABH CHAND

DATE OF JUDGMENT09/02/1993

BENCH:
VENKATACHALA N. (J)
BENCH:
VENKATACHALA N. (J)
SHARMA, L.M. (CJ)

CITATION:
1994 AIR 754 1993 SCR (1) 878
1993 SCC (2) 495 JT 1993 (2) 298
1993 SCALE (1)470

ACT:
Constitution of India, 1950 : Article 226-Availability of alternative remedy-Admissibility of Writ Petition without exhausting legal remedy available-Order of Single Judge bye-passing findings of the Division Bench not sustainable.

HEADNOTE:
The respondent served a notice on the Secretary U.P. Government, for settling his outstanding claims to enable him to seek voluntary retirement. But the Governor by his order, compulsorily retired him from service with immediate effect. Aggrieved by the order of the Governor, the respondent directly riled a writ petition in the High Court. The same was dismissed on the ground that the respondent bye-passed the alternate remedy available to him. The respondent riled another writ petition in the High Court which was heard by the Single Judge, was, bye-passing the order of the Division Bench allowed the writ petition and quashed the impugned order the directed the U.P. Government to treat the respondent as having retired voluntarily.
Challenging the said order, the appellants have contended that the Single Judge could not have over-ruled the preliminary objections raised on behalf of the appellants; that since the Division Bench of the same High Court dismissed the Petition of the respondent for not exhausting the alternate remedy available, the Single Judge had no jurisdiction to entertain that writ petition; that respondent's issuance of a notice to the Government seeking permission for the voluntary retirement in the meantime was untenable; and that the view of the Single Judge that a departmental disciplinary enquiry pending against the respondent inhibited the Government from compulsorily retiring him was also untenable.
Allowing the appeal this Court,
HELD : 1.1. That when a Judge of a Single Judge Bench of a High
879
Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already

by another Single Bench or Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy. [889D]
1.2. This judgment should not be understood as coming in the way of the respondent in approaching the U.P. Public Service Tribunal for necessary relief in the matter, if he is so entitled. [890F]
This Singh Nathmal & Ors. v. Mazid, Superintendent of Taxes, [1964] 655 SCR, relied.
B. Prabhakar Rao & Ors. v. State of Andhra Pradesh and Ors. etc., AIR 1986 SC 219,227; Danjagu & Ors. v. State of U.P. & Ors., AIR 1961 SC 1457, 1466 and L. Hirday Narain v. Income Tax Officer, Bareilly AIR 1971 SC 33, 36, referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 498 of 1993.
From the Judgment and order dated 19.2.92 of the Allahabad High Court in W.P. No. 7498/90.
A.K Goel for the Appellants.
Labh Chand (In-person) for the Respondent.
The Judgment of the Court was delivered by
VENKATACHALA, J. Leave granted.
Respondent who was in the service of the U.P. Government as an Executive Engineer, Minor irrigation, Banda, served a notice dated December 19, 1989 on the Secretary Area Development-2, U.P. Government, Lucknow seeking from the Government, settlement of his outstanding claims by March 31, 1990 and grant of permission to him to retire from service voluntarily from that date. It was stated in that notice that the respondent's outstanding claims remaining unsettled by the Government before March 31, 1990, shall be settled before June 30, 1990 and he shall
880
then be allowed to retire voluntarily. However, changing his stance, the respondent wrote a letter dated December 20, 1989 to the self-same Secretary seeking grant of the Government's permission to retire voluntarily from March 31, 1990 even if his outstanding claims with it were not settled by that date. But, the Government, did not grant permission to the respondent to voluntarily retire from its service with effect from March 31, 1990 as had been sought by him. Instead, the Governor of U.P. purporting to exercise his powers under F.R. 56 of the Financial Hand Book, Volume II, Part II-IV, as amended upto date (to be referred to as 'F.R. 56'), issued an Order dated January 6, 1990 compulsorily retiring the respondent from the, Government service with effect from 6.1.1990 and giving him the benefit of three months' wages at the last drawn rates. No doubt, that order of compulsory retirement of the respondent was challenged by him in a Writ Petition, W.P. No. 1980 of 1990 filed before the High Court of Judicature at Allahabad. But, a Division Bench of that Court, refused to entertain that Writ Petition and dismissed it by its Order dated March 29, 1990, which read :

> "Learned Counsel for the State has produced the record and has also filed counter affidavit to which rejoinder affidavit has been filed. However, after looking into the record we are of the opinion that it is not a fit case in which the petitioner should be allowed to bye-pass the alternative remedy available to him before the U.P. Public

> Services Tribunal. On account of this alternative remedy being available to the petitioner this petition is dismissed in limine. Interim order if any to vacate."

The validity of the said order of dismissal of the Writ Petition made by the Division Bench of the High Court was not questioned by the respondent in any appeal or any other legal proceeding. The respondent did not also choose to approach the U.P. Public Services Tribunal, to seek reliefs respecting the order of his compulsory retirement although the Division Bench of the High Court had dismissed his Writ Petition for not availing of the alternative remedy before that Tribunal.

Curiously, the respondent resorted to the course of filing a second Writ Petition before the same High Court challenging over again the very Order of the U.P. Government by which he had been compulsorily retired

881

and sought reliefs thereto. That second Writ Petition registered as W.P. No. 7498 of 1990, it appears, did not come up for hearing before a Division Bench of the High Court as had happened with the earlier dismissed Writ Petition. Instead, it has come up for hearing before a single Judge Bench of the High Court. By his Order dated February 19, 1992 the learned single Judge constituting that single Judge Bench allowed the Writ Petition, quashed the impugned order by which the respondent (the Writ Petitioner) had been compulsorily retired under F.R. 56 and directed the U.P. Government to treat the respondent as having retired voluntarily from March 31, 1990 and to pay his salary for the period elapsed between the date of his compulsory retirement and the date from which he wished to voluntary retire. It is the sustainability of this Order of the learned single Judge made in the second Writ Petition of the respondent which is challenged by the State of U.P. and its Chief Engineer in the present appeal by the Special Leave.

Mr. A.K. Goel, the learned counsel for the appellants assailed the Order under appeal on diverse grounds. First, he urged that the learned single Judge of the High Court could not have overruled the preliminary objection raised on behalf of the appellants that the second Writ Petition of the respondent impugning the Order by which he had been compulsorily retired was liable to the rejected in limine when his first Writ Petition by which he had impugned the self-same Order, had been dismissed by a Division Bench of the same Court for having sought to invoke the writ jurisdiction of the High Court without availing of the alternate remedy before the U.P. Public Services Tribunal. Secondly, he urged that the view of the learned single Judge of the High Court that the respondent's issuance of a notice to the Government seeking permission for his voluntary retirement from a future date made the Government loose its power to compulsorily retire him in the meantime, was untenable. Thirdly, he urged that the view of the learned single Judge of the High Court that a departmental disciplinary enquiry pending against the respondent inhibited the Government from compulsorily retiring him under F.R. 56, was again untenable. The respondent who appeared in person could not meet the grounds on which the Order under appeal was assailed. Nor does his written submissions could be regarded as helpful in meeting those grounds.

The first ground urged in support of the appeal if merits our

882

acceptance that that ground by itself would be sufficient for disposal of this appeal, cannot be disputed. However, we are not oblivious to the fact that that ground, to merit our acceptance, has to be necessarily founded on valid reasons. Hence our endeavour here would be to find whether the said ground is founded on reasons and if so, whether they are valid.

There are two reasons on which the first ground is founded. They are

(i) The learned Judge of the High Court, as a High Court even if assumed to have had discretionary power to entertain a second Writ Petition under Article 226 of the Constitution notwithstanding the fact that an earlier similar Writ Petition had not been entertained by the sat= Court because of the non-exhaustion of an alternate statutory remedy available to the petitioner in the matter, he could not have entertained the second Writ Petition unless it was found that the discretion already exercised by the High Court in refusing to entertain the earlier Writ Petition was either arbitrary or otherwise unwarranted.

(ii) The learned single Judge of the High Court, by entertaining a second Writ Petition under Article 226 of the Constitution on the subject matter which was covered by an earlier Writ Petition dismissed by the Division Bench of the same Court had given a go-bye to the well-established salutary rule of judicial practice and procedure that an order of a single Judge Bench much less of Judges of larger Bench of a High Court refusing to entertain the earlier Writ Petition in limine even on the ground of laches. or on the ground of non-availing of alternate remedy ought not to be interfered with by an other single Judge or Judges of larger Benches, except in review or appeal, if permitted.

As the first ground urged in the support of the appeal is founded on the said two reasons, our endeavour here would be to find whether they are valid enough to sustain the same.

883

Reason (i) :- Entertaining by the High Court of a second Writ Petition under Article 226 of the Constitution, filed by a person whose earlier Writ Petition on the same subject-matter is dismissed for non-exhaustion of alternate remedy.

When a Statutory Forum or Tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters, the High Court should not normally permit such persons to ventilate their specified grievances before it by entertaining petitions under Article 226 of the Constitution is a legal position which is too well-settled. A Constitution Bench of this Court in Thansigh Nathmal and Ors. v. A. Mazid, Superintendent of Taxes, [1964] 6 SCR, 655, when had the occasion to deal with the question as to how the discretionary jurisdiction of a High Court under Article 226 of the Constitution, was required to be exercised respecting a petition filed there-under by a person coming before it bye-passing a statutory alternate remedy available to him for obtaining redressal of his

grievance ventilated in the petition, has given expression to the said well settle legal position, speaking through Shah, J., as he then was, thus

> "The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. They very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations..... Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created under the Statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up." (Pages 661-662)

The order of a Division Bench of the High Court refusing to entertain the earlier Writ Petition of the respondent here filed under Article 226

884

of the Constitution had been made in exercise of its discretionary jurisdiction on its view that the petitioner therein had for redressal of his grievance in that petition an alternate statutory remedy before the U.P.' Public Services Tribunal, an adjudicatory machinery specially created for redressal of such grievances, cannot be disputed. What remains, therefore, to be seen is whether the discretion exercised by the Division Bench in refusing to entertain the earlier Writ Petition for non-availing of alternate remedy and dismissing it, could be said to be an unwarranted exercise of discretion in the light of the said well-settled legal position governing such matters. As the alternate remedy which according to the Division Bench was not availed of by the respondent here before the filing of his earlier Writ Petition, being that available before the the Forum of the U.P. Public Services Tribunal, it becomes necessary for us to see whether that Forum did provide to the respondent here a remedy which was both adequate and efficacious. We shall now look into the relevant provisions of the U.P. Public Services (Tribunals) Act, 1976 (for short 'the Act') creating the U.P. Public Services Tribunal and the rules made thereunder as they would the needed light on the exact nature of the Tribunal, and the adequacy and efficaciousness of the remedy available with it.

Preamble to the Act, declares that it is enacted to provide for the constitution of tribunals to adjudicate upon disputes in respect of matters relating to employment of all public servants of the State of Uttar Pradesh. Sub-section (1) of Section 3 of the Act provides for constitution by the State Government two or more State Public Service Tribunals, each called a State Public Service Tribunal. Sub-section (2) thereof requires that each Tribunal shall consist of a Judicial Member and an Administrative Member. Sub-section (3) thereof requires that the Judicial Member shall be a serving Judge of the High Court or a person qualified to be appointed as a High Court Judge while the Administrative Member shall be a person who holds or has held the post of,

or any post equivalent to, Commissioner of a Division. Section 4 of the Act, which provides for reference of claims to Tribunal for their adjudication reads:

> "4. Reference of claims to Tribunal If any person who is or has been a public servant claims that in any matter relating to employment as such public servant his employer or any officer or authority subordinate to the employer has dealt with him in a manner which is not in conformity with
> 885
> any contract, or
> (a) in the case of a Government servant, with the provisions of Article 16 or Article 311 of the Constitution or with any rules or law having force under Article 309 or Article 313 of the Constitution;
> (b) in the case of a servant of a local authority or a statutory corporation, with Article 16 of the Constitution or with any rules or regulations having force under any Act or Legislature constituting such authority or corporation;
> he shall refer such claim to the Tribunal, and the decision of the Tribunal thereon shall, subject to the provisions of Articles 226 and 227 of the Constitution, be final
> Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant :
> Provided further that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him.
> Explanation. For the purposes of this proviso, it shall no be necessary to require the claimant (in the case of a Government servant) to avail also of the remedy of memorial to the Governor before referring his claim to the Tribunal."

Section 5 of the Act requires the Tribunal to be guided by principles of natural justice in the matter of consideration of the references, making it clear that it is not bound by the procedure laid down in the Code in Civil Procedure, 1908 or the rules of evidence contained in the Indian Evidence Act, 1872.

Section 6 of the Act expressly bars the filing of suits respecting matters to be referred for adjudication under Section 4 of the Act. Section 7 of the Act empowers the State Government to make rules for carrying
886
all the purposes of the Act.

The U.P. Public Services (Tribunals) Rules, 1975 (to be referred to as 'the Rules') which are made by the State Government contain elaborate procedural rules, needed for effective adjudication of matters by the Tribunal.

As is seen from the said Preamble, the provisions in the Act and the Rules, the U.P. Public Services Tribunal is intended to be an exclusive and and exhaustive machinery or forum for adjudication of claims of all public servants including the persons in the service or pay of the State Government, in matters of their employment, inasmuch as, suits in such matters are specifically barred by the provisions in Section

6 of the Act. That Tribunal since composes of a Judicial Member who is a serving Judge of the High Court or is qualified to become such Judge and an Administrative Member who holds or has held the post of, or any post equivalent to, Commissioner of a Division, it is a statutory Tribunal of the State possessed of expertise to adjudicate claims of public servants in matters of their employment. That the Tribunal in its enquiries being not bound by the technical rules of procedure under the Civil Procedure Code and the technical rules of evidence under the Evidence Act, it could avail of its vast powers of enquiry to redress grievances of public servants concerning matters of their employment adequately and efficaciously. The fact that Section 4 of the Act declares that the decision of the Tribunal is final subject to the provisions of Articles 226 and 227 of the Constitution itself shows the nature of high judicial sanctity attached by statute to such decision.

The respondent had, since filed in the High Court of Judicature at Allahabad, his first Writ Petition, W.P. No. 1980 of 1990, challenging the validity of the Order of the State Government by which he had been compulsorily retired from Government service and claimed several relief thereto against the State Government, we have to find whether the U.P. Public Service Tribunal if had been approached by the respondent here, could not have, if warranted, invalidated the Order challenged in the Writ Petition and given the reliefs sought for therein. If we have regard to the high status of the members constituting the Tribunal, expertise possessed by such members to consider the claims of employees in matters of their employment, vast powers invested in them to hold exhaustive enquiries and

887

to grant full reliefs in matters relating to their employment, we cannot but hold that that Tribunal is the highest forum created by the Act to give full and complete relief to public servants in matters of their employment, that too, with expedition. The claims in the Writ Petition since related purely to matters relating to employment of the respondent under the State Government, the Division Bench of the High Court refused to entertain the Writ Petition on its view that it had been filed by the respondent here bye-passing the U.P. Public Services Tribunal. When the Division Bench had refused to entertain the Writ Petition of the respondent, in exercise of its discretionary jurisdiction under Article 226 of the Constitution on its view that the respondent could not have invoked its extraordinary jurisdiction under Article 226 of the Constitution for the redressal of his grievances, bye-passing the special forum created specifically by a statute for redressal of such grievances, efficaciously and adequately, it is not possible for us to think that such exercise of discretion was unwarranted, particularly when we have due regard to the settled legal position governing such matters, to which we have already adverted.

When the second Writ Petition, W.P. No. 7498 of 1990 filed by the respondent before the said High Court challenging over again the very Order of the State Government by which he was compulsorily retired came up for hearing before a learned single Judge, that learned single Judge notwithstanding the dismissal by a Division Bench of the same High Court of his similar Writ Petition filed earlier on the ground of non-exhaustion of alternate statutory remedy, the appellants who were respondents in the second Writ Petition, as was rightly expected of them, raised a preliminary objection as to its maintainability relying on

the dismissal Order of the said earlier Writ Petition by a Division Bench of the same Court. But, the learned single Judge who overruled that preliminary objection in the course of his Order now under appeal, entertained the second Writ Petition on his view that the earlier Writ Petition dismissed on the ground of non-availing of alternate remedy by a person was no bar to entertain a subsequent Writ Petition filed by such person, and sought to derive support therefore from the decisions of this Court in (i) Daryao and Others v. State of U.P. and Others, AIR 1.961 SC 1457, 1466; (ii) B. Prabhakar Rao and Others etc. v. State of Andhra Pradesh and Others etc. etc., AIR 1986 SC 210, 227 and (iii) L. Hirday Narain v. Income-tax Office Bareilly AIR 1971 Sc 33, 36

It is true that the decisions to which the learned single Judge has

888

referred, have ruled that the dismissal of a Writ Petition in limine on the alternate remedy being available to a petitioner, does not bar the jurisdiction of the High Court under Article 226 of the Constitution or the Supreme Court under Article 32 of the Constitution to entertain subsequent Writ Petition of the same party in relation to the same subject matter. But, what has escaped the notice of the learned single Judge is that they do not Jay down that the discretion of the High Court to refuse to entertain the first Writ Petition on the ground of non-exhaustion by him of a statutory remedy, when had been rightly and properly exercised, the same could be ignored by the same high Court when the party whose Writ Petition was dismissed on the ground of non-exhaustion of a statutory remedy files a second Writ petition respecting the same subject-matter and such second Writ Petition could be entertained. Hence, this reason is quite valid and fully supports the first ground urged in support of the appeal.

(ii) : Entertaining by the High Court of a second Writ Petition under Article 226 of the Constitution, filed by a person notwithstanding the order of dismissal of his earlier Writ Petition, on the same matter.

This is one of the two reasons on which the first ground urged in support of the appeal, is founded. This reason is not concerned with the discretionary power of the Judge or Judges of the High Court under Article 226 of the Constitution to entertain a second Writ Petition of a person, whose earlier Writ Petition was dismissed on the ground of non-exhaustion of alternate remedy but of such Judge or Judges having not followed the well-established salutary rule of judicial practice and procedure that an order of a single Judge Bench or of a larger Bench of the same High Court dismissing the Writ Petition either on the ground of laches or non-exhaustion of alternate remedy, as well, shall not be bye-passed by a single Judge Bench or Judges of a larger Bench except in exercise of review or appellate powers possessed by it. In the case on hand, a Division Bench of the High Court of Allahabad dismissed the respondent’s Writ Petition challenging the sustainability of the order of his compulsory retirement from the U.P. Government service, while exercising its discretionary jurisdiction under Article 226 of the Constitution in that it took the view that the respondent had the alternate remedy in the matter before the forum of U.P. Police Services Tribunal constituted under the Act. There cannot be any doubt that Order of dismissal of the Writ Petition could have been reviewed

889
by the same Division Bench, in exercise of the recognised power of review possessed by it. But, as a learned single Judge constituting a single Judge Bench of the same Court, who has, in the purported exercise of his jurisdiction under Article 226 of the Constitution bye-passed the Order of dismissal of the Writ Petition made by a Division Bench by entertaining a second Writ Petition filed by the respondent in respect of the subject-matter which was the subject-matter of earlier Writ Petition, the question is, whether the well-established salutary rule of judicial practice and procedure governing such matters permitted the learned single Judge to bye-pass the Order of the Division Bench on the excuse that High Court has jurisdiction under Article 226 of the Constitution to entertain a second Writ Petition since the earlier Writ Petition of the fame person had been dismissed on the ground of non-availing of alternate remedy and not on merits.

When a Judge of single Judge Bench of a High Court is required to entertain a second Writ Petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier Writ Petition of the same person on the same matter had been dismissed already by another single Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy. Second Writ Petition cannot be, so entertained not because the learned single Judge has no jurisdiction to entertain the same, but because entertaining of such a second Writ Petition would render the order of the same Court dismissing the earlier Writ Petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a learned single Judge could entertain a second Writ Petition of a person respecting a matter on which his first Writ Petition was dismissed in limine by another learned single Judge or a Division Bench of the same Court, it would encourage an unsuccessful Writ Petitioner to go on filing Writ Petition after Writ Petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such Court refusing to entertain a Writ Petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh Writ Petition. This would only lead to introduction of disorder, confusion and chaos relating to

890
exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the Court refusing to entertain a Writ Petition. It is why, the Rule of judicial practice and procedure that a second Writ Petition shall not be entertained by the High Court on the subject-matter respecting which the first Writ Petition of the same person was dismissed by the same Court even if the Order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary Rule in exercise of writ jurisdiction of Courts.

Hence, we are of the view that this reason which supports the first ground urged in support of the appeal, to wit, that the learned single Judge ought not have entertained a second Writ Petition in respect of the Order of compulsory

retirement of the respondent, when a Division Bench of the same Court had refused to entertain a Writ Petition of the same respondent filed respecting the same subject-matter for non-availing of the alternate remedy before the forum of U.P. Public Services Tribunal, is also a valid reason.

As the said valid reasons fully support the first ground urged in support of the appeal by which the order of a learned single Judge of the High court is assailed, that order is liable to be interfered with and set aside.

In the result, we allow this appeal and set aside the Order of the learned single Judge under appeal and dismiss the Writ Petition. However, in the facts and circumstances of the case, this judgment shall not be understood as coming in the way of the respondent in approaching the U.P. Public Services Tribunal for necessary relief in the matter, if he is so entitled in law. No costs.

J.R.J. Appeal allowed.

391