2026:KER:31138

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 7TH DAY OF APRIL 2026 / 17TH CHAITHRA, 1948

WP(C) NO. 13385 OF 2026

PETITIONERS:

1 THE MANAGER, MAJLIS ENGLISH MEDIUM SCHOOL,
ULIYYIL P.O., KANNUR, KANNUR DISTRICT, PIN – 670 702.

2 MAJILISU NNASHATHI SUNNI-ULIYYIL,
S.NO. 35 OF 1992, ULIYYIL P.O., MATTANOOR, KANNUR,
REPRESENTED BY ITS MANAGER ERAMULLAN, AGED 56 YEARS,
S/O. MOOSA, BAITHUL FALAH, PUNNAD, KEEZHUR, KANNUR,
PIN – 670703.

BY ADVS.
SHRI.T.T.RAKESH
SHRI.JAYACHANDRAN NAIR G.
SHRI.ZAKHEER HUSSAIN

RESPONDENTS:

1 THE DEPUTY LABOUR COMMISSIONER,
THE CONTROLLING AUTHORITY (UNDER THE PAYMENT OF GRATUITY ACT, 1972), OFFICE OF THE DEPUTY LABOUR COMMISSIONER, S.N. PARK ROAD, CIVIL STATION, KANNUR,
PIN – 670001.

2 THAHIRA K.M.,
AGED 45 YEARS,
D/O. K.V. HAMEED, THAMJEED VILLA, PERUMPAZHASSI,
ARALAM POST, KANNUR, PIN – 670704.

SMT. RESMI THOMAS (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.04.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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'C.R'

JUDGMENT

The petitioners are before this Court challenging Ext.P3 order of the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the 1972 Act'). It is the case of the petitioners that the Controlling Authority failed to consider the contentions raised by the petitioners and proceeded to decide the matter in favour of the 2nd respondent, completely ignoring the request of the petitioners for more time to produce further evidence.

2. The learned counsel appearing for the petitioners would contend that the impugned order is illegal and unsustainable in law. It is submitted that since Ext.P3 order is one issued in violation of principles of natural justice, the availability of an alternate remedy will not bar the exercise of writ jurisdiction. He places reliance on the law laid down by the Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1*** and ***Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107,*** in support of his contention. It is submitted that the remedy of appeal is also not an effective remedy, as the petitioners are required to deposit the entire

amount of gratuity as a condition for maintaining an appeal. It is submitted that Ext.P3 order is liable to be set aside and the matter is to be remanded for fresh consideration of the Controlling Authority.

3. Heard the learned Government Pleader also.

4. Having heard the learned counsel for the petitioners and the learned Government Pleader, I am of the opinion that the petitioners are not entitled to maintain this writ petition without exhausting the remedy of appeal under Section 7(7) of the 1972 Act. It is settled law that the availability of an alternate remedy will not always bar the exercise of writ jurisdiction. However, it is equally well settled that the High Court will exercise its jurisdiction under Article 226 (where an effective alternate remedy is available) only in three well-defined situations i.e. (i) The writ petition has been filed for the enforcement of any of the Fundamental Rights protected by Part III of the Constitution of India, (ii) where the order is passed without jurisdiction[1] and (iii) where the order is passed in violation of principles of natural justice. The decisions in ***Whirlpool Corporation*** *(supra)* and ***Harbanslal Sahnia*** *(supra),* relied on by the learned counsel for the petitioner, reiterate this position. In ***Godrej Sara Lee***

1See ***Calcutta Discount Co. Ltd. v. ITO, (1961) 41 ITR 191***

Ltd. v. E&TOCAA, 2023 SCC OnLine SC 95 it was held:-

> *"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of*

an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in [1958] SCR 595 (State of Uttar Pradesh v. Mohammad Nooh) had the occasion to observe as follows :

> *"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and*

> *the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. . . ."*"

In ***Rikhab Chand Jain v. Union of India, (2025) 152 GSTR 809***, it was held:-

> *"10. We may profitably refer, in this context, to the Constitution Bench decision in Thansingh Nathmal v. Superintendent of Taxes. In Thansingh Nathmal v. Superintendent of Taxes, this court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the High Court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows (page 474 in 15 STC):*
>
> *"... The jurisdiction of the High Court under article 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. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or Tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. 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 article 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."

11. ....

12. That apart, the majority view in a previous Constitution Bench in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani reads thus:

> *"14... ., we must express our dissent from the reasoning by which the learned judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the court dealing with his petition under article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in State of U.P. v. Mohammad Nooh with its reference to the right to appeal being lost 'through no fault of his own' emphasizes this aspect of the Rule.""*

On the principles established through the decisions referred to above, I must hold that the petitioners have not made out any case for interference with the impugned order, bypassing the alternate remedy. Though the learned counsel for the petitioners attempted to establish that Ext.P3 order is one issued in violation of principles of natural justice, I am afraid that the said contention cannot be accepted. The non-appreciation of a piece of evidence by the Controlling Authority (even if this is true) or the failure to give further time to produce more evidence cannot be said to be a violation of principles of natural justice. If that be so, every order, where a piece of

evidence has been ignored or where a request or a petition filed for adducing further evidence is rejected, would be amenable to be challenged in a writ petition under Article 226 of the Constitution of India. The fact that the petitioners have to deposit the entire amount for maintaining an appeal under Section 7(7) of the 1972 Act is also no ground to hold that the remedy of appeal is not an effective alternative remedy. There are several statutes which require the payment of the amount or a portion of the amount adjudicated by the Original Authority as a condition for maintaining the appeal. The Courts have not held that any such provision requiring the deposit of the amount as a condition for maintaining the appeal makes the appellate remedy illusory.

5. That apart, in the facts of the present case, it appears that the petitioners had earlier approached this Court challenging a preliminary order issued by the Controlling Authority. While refusing to interfere with the preliminary order, this Court observed as follows:-

> *"4. The Hon'ble Supreme Court and this Court, in numerous decisions, have cautioned against stalling proceedings before industrial adjudicatory authorities based on finding recorded*

> *on preliminary issue. All issues whether preliminary or otherwise have to be decided together and even if a decision is rendered on preliminary issue, the Courts shall not intervene at the interlocutory stage under Article 226 of the Constitution of India. Under Section 7(7) of the Act, an appeal will lie against the final order of the Controlling Authority. The preliminary order of the Controlling Authority is capable of being challenged along with the final order that is to be passed by the Controlling Authority after adjudication of Ext.P1 application.*
>
> ***(emphasis supplied)***

Though Ext.P2 judgment was rendered in a case where the petitioners had challenged the preliminary order, the observations in that judgment, which conclude that the remedy of the petitioners would be to challenge the preliminary order along with the final order before the Appellate Authority, in my view constitutes yet another reason as to why this Court should not consider the validity of Ext.P3 without relegating the petitioners to the remedy of appeal under Section 7(7) of the 1972 Act.

6. The apprehension of the learned counsel appearing for the petitioners that the Appellate Authority may not consider any additional material that they may produce by itself does not compel me to hold that the petitioners must be allowed to challenge Ext.P3,

bypassing the alternate remedy.

Thus, reserving the right of the petitioners to challenge Ext.P3 by filing an appeal, the writ petition is dismissed, *in limine.*

Sd/-
GOPINATH P.
JUDGE

DK

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APPENDIX OF WP(C) NO. 13385 OF 2026

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF THE APPLICATION IN G.C. NO. 116/2022 FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT DATED 12.12.2022**
Exhibit P2	**TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 42520 OF 2024 DATED 03.02.2025**
Exhibit P3	**TRUE COPY OF THE ORDER IN G.C. NO. 116/2022 OF THE 1ST RESPONDENT DATED 06.01.2026**