



**IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI**  
**THE HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**  
**WRIT PETITION No. 15735 of 2023**

**ORDER:**

Heard Sri Javvaji Sarath Chandra, Ld. Counsel for the Writ Petitioner and Sri V.Maheswar Reddy, Ld. Government Pleader for General Administration Department appearing for Respondent Nos.1 to 3.

2. In view of the detailed Order passed by this Court in I.A.Nos.2 and 3 of 2023 in this Writ Petition on 06.07.2023, this Court is of the opinion that the elementary facts which are recorded in the said Order are not required to be repeated herein. Therefore, shorn of such details as adverted in the Order dated 06.07.2023, the issue that is to be now decided is with regard to the maintainability of the Writ Petition and also whether the Impugned Memo bearing No.GAD01-PERSOIPS(LEAV)/10/2023-SC-C, dated 30.06.2023 (Ex.P1) is legally sustainable or not.

**Maintainability of Writ Petition:**

3. Though this Court has dealt with this issue in some detail in the Interim Order dated 06.07.2023, in view of the sustained objection of Sri V.Maheswar Reddy, Ld. Government Pleader for General Administration Department appearing for the Respondent Nos.1 to 3 on the issue of maintainability of the Writ Petition, this Court deems it appropriate to deal with the maintainability of this Writ Petition once again.

4. Ld. Counsel for the Writ Petitioner has submitted that in an appropriate case, in spite of availability of alternative remedy, the High Court may still exercise its writ jurisdiction and the same is purely discretionary. In support of his submission, the Ld. Counsel for the Writ Petitioner has referred to ***Harbanslal Sahnia and another vs. Indian Oil Corporation Limited***<sup>1</sup>. The Ld. Counsel for the Writ Petitioner would refer to Paragraph No.7 of the said Order which is usefully extracted hereunder:

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<sup>1</sup> (2003) 2 Supreme Court Cases 107



“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corporation v. Registrar of Trade marks ((1998) 8 SCC 1)). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellant should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

5. The Ld. Counsel for the Writ Petitioner has also submitted that during the second round of suspension of the Writ Petitioner by Order dated 28.06.2023, it was specifically stated that during the subsistence of the suspension, the Writ Petitioner herein is directed to remain only in the Head Quarter i.e. at Vijayawada and not to move out of the Head Quarter without prior permission of the Respondents. Ld. Counsel for the Writ Petitioner would submit that without prejudice to his right of entitlement to approach this Court under Article 226 of Constitution of



India, that the very factum of imposing restriction to move out of Head Quarter without the permission of the Respondents, is a ground that would entitle the Petitioner to approach this Hon'ble Court under Article 226 for seeking complete justice. He would also submit that under the present circumstances, his attempt to approach the Central Administrative Tribunal which is situated in Hyderabad, would have been a futile exercise since there is no hope that the Authority would permit the Writ Petitioner to travel to Hyderabad for the purpose of challenging the Impugned Order of rejection dated 30.06.2023. He further submits that this should be construed in the backdrop of the executive sitting-over his Applications seeking permission to travel abroad and grant of earned-leave. He further submitted that the inaction on the part of the executive even in that regard was dealt with by this Court in W.P.No.15455 of 2023 (by Order dated 28.06.2023).

6. Ld. Counsel for the Writ Petitioner would also rely on Paragraph No.100 in ***L.Chandra Kumar vs. Union***



**of India (UOI) and others**<sup>2</sup>. The Ld. Counsel for the Writ Petitioner would refer to Paragraph No.100 of the said Order which is usefully extracted hereunder:

“100. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution.

While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

7. On the contrary, Sri V.Maheswar Reddy, Ld. Government Pleader appearing for Respondent Nos.1 to 3

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<sup>2</sup> (1997) 3 SCC 261



would refer to extracts of the Report of the Arrears Committee (1989-90) which is popularly known as the Malimath Committee Report. The Hon'ble Supreme Court, in ***L.Chandra Kumar's case (2 cited supra)*** in Paragraph No.88, had referred to Chapter VIII of the second volume of the Malimath Committee Report titled as "*Alternative Modes and Forums for Dispute Resolution*". The Ld. Counsel for the Respondents would rely on the Paragraph Nos.8.65 and 8.66 of the Malimath Committee Report. Reference to the portions of the Malimath Committee Report by the Hon'ble Apex Court is only for the purpose of discussion, but they do not form the ratio decidendi. Hence, no reliance can be placed by this Court on such references.

8. The Ld. Counsel would also place his reliance on Paragraph No.94 of ***L.Chandra Kumar's case (2 cited supra)***, which is usefully extracted hereunder:

"94. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot



act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to the important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”

**Discussion:**

9. For the purpose of answering the issue of maintainability of Writ Petition under Article 226, the said Article 226 is usefully extracted hereunder:

**“ 226. Power of High Courts to issue certain writs:**



(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III **and for any other purpose. (emphasis supplied)**

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without---

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as





the case may be, the expiry of the aid next day, stand vacated.

[\(4\)](#) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”

10. Much water has flown down under the bridge in construing in wide power conferred to the High Court under Article 226.

11. For this purpose, this Court is reminded of a dictum of the Hon’ble Supreme Court in ***Shangrila Food Products Limited and Another vs. Life Insurance Corporation of India and Another***<sup>3</sup>. The Hon’ble Supreme Court, while dealing with the scope of Article 226, has categorically held at Paragraph No.11, and the same is usefully extracted hereunder:

“11. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can

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<sup>3</sup> (1996) 5 Supreme Court Cases 54



take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.”

12. This Court is not required to re-invent the wheel, inasmuch as, the Hon’ble Apex Court has settled the law as regards the power of High Court under Article 226 to be wider than the power of Hon’ble Supreme Court under Article 32. The Clause (1) of Article 226, while conferring the High Court with the power to issue to any person or authority the Writs mentioned therein, also, explicitly state “*or for any other purpose*”. The Hon’ble Supreme Court, in ***State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others***<sup>4</sup> had dealt with the phrase “*for any other purpose*” occurring in clause (1) of Article 226 at Paragraph Nos.57 & 59. The said Paragraph Nos.57 & 59 are usefully extracted hereunder:

“57. As regards the powers of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any

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<sup>4</sup> (2010) 3 Supreme Court Cases 571



Government to enforce fundamental rights and, **“for any other purpose”**. It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but “for any other purpose” as well i.e. for enforcement of any legal right conferred by a statute, etc. (emphasis supplied)

59. In *Dwarka Nath vs. ITO (AIR 1966 SC 81)* case this Court had said that Article 226 of the Constitution is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. This article enables the High Courts to mould the reliefs to meet the peculiar and extraordinary circumstances of the case. Therefore, what we have said above in regard to the exercise of jurisdiction by this Court under Article 32, must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226 of the Constitution.”

13. This apart, both the Ld. Counsel have placed reliance on ***L.Chandra Kumar’s case (2 cited supra)***. The Ld. Counsel for the Writ Petitioner has placed reliance on Paragraph No.100 of ***L.Chandra Kumar’s case (2 cited supra)***, wherein it has been held: **“the jurisdiction conferred upon the High Courts under Article 226/227 and upon the Hon’ble Supreme Court under Article 32 of the Constitution is part of the inviolable basic**



***structure of our Constitution.***” In the same paragraph, the Hon’ble Apex Court also held: ***“while this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules.”***

14. There is also one other factual aspect which the Ld. Counsel for the Writ Petitioner has put forth, that is, the condition imposed by the Respondents in the second Suspension Order dated 28.06.2022 is to the effect that the Writ Petitioner shall, during the suspension period, remain in the Head Quarters and shall not move out of the Head Quarter without permission of the Competent Authority. Ld. Counsel has also placed reliance on the said condition to state that there is a restriction by an Executive Order on the Writ Petitioner in accessing and approaching the Central Administrative Tribunal, which is also a valid



ground for approaching this Hon'ble Court under Article 226.

15. In view of the above discussion, this Court is in agreement with the submissions made by the Ld. Counsel for the Writ Petitioner and holds that the present Writ Petition is maintainable.

16. Insofar as the right of the Writ Petitioner to travel abroad during the period of suspension, the Ld. Counsel for the Writ Petitioner would rely on **Satish Chandra Verma vs. Union of India and others**<sup>5</sup>, wherein the Hon'ble Apex Court, by Order dated 09.04.2019, had categorically held that pendency of Departmental Proceedings cannot be a ground to prevent Appellant to travel abroad. It was conceived by the Hon'ble Apex Court that the right to travel abroad is the basic human right which cannot be abrogated. In the backdrop of **Satish Chandra Varma's Case (3 cited supra)**, this Court has already dealt with the importance of this basic human right in the Interim Order passed on 06.07.2023. Ld. Counsel

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<sup>5</sup> Civil Appeal No.3802 of 2019



for the Writ Petitioner would also place his reliance on ***Maneka Gandhi vs. Union of India and another***<sup>6</sup> to submit that right to travel under Article 19 (1) (d) would encompass the inviolable fundamental right to travel abroad.

17. Ld. Counsel for the Respondents would submit that Fundamental Rule 55 provides discretion on the part of the Authority for grant of leave. Ld. Counsel for the Respondents would submit that grant of leave is an incidence of employment, and therefore, there is no vested right for an employee to seek Earned Leave and that the authority is not obligated to grant leave on mere asking. He would further submit that in view of the serious allegations, which the Writ Petitioner is facing and also in view of the pendency of the enquiry, the Impugned Order dated 30.06.2023 is very much valid and legal in the eye of law.

18. This Court has dealt in detail in the Interim Order dated 06.07.2023, as regards the nature of

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<sup>6</sup> (1978) 1 SCC 248



fundamental right available even to an employee under suspension by referring to the Order passed by the Hon'ble Apex Court in **Satish Chandra Verma's case (3 cited supra)**. This Court does not find any reason to deviate from the opinion expressed in the Interim Order.

19. Insofar as the Fundamental Rule 55 is concerned, the subsequent Regulations which are brought about by the Union of India, namely, The All India Services (Leave) Rules 1955 would prevail over the Fundamental Rules of 1922. The said Rules of 1955 would prevail on the premise that those Rules are not only the special Rules related to The All India Services but also that they are the latest rules when compared to Rule 55 of the Fundamental Rules of 1922.

**Conclusion:**

20. In the above premise, the Writ Petitioner succeeds. The Impugned Memo bearing No.GAD01-PERSOIPS(LEAV)/10/ 2023-SC-C, dated 30.06.2023 (Ex.P1) is hereby quashed. The Interim Order dated 06.07.2023 is made absolute. The conditions imposed in



the Interim Order dated 06.07.2023 shall be adhered to by the Writ Petitioner.

21 Accordingly, the Writ Petition is allowed. No order as to costs.

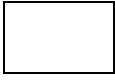
22. Interlocutory Applications, if any, stand closed in terms of this Order.

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**G. RAMAKRISHNA PRASAD, J**

Dt: 08.08.2023.  
SDP





**THE HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**

**WRIT PETITION No. 15735 OF 2023**

**08.08.2023**

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