before the Labour Court was clearly untenable and the Labour Court had no jurisdiction in the matter.

9. In view of the above, I quash the impugned award and allow the petition with no order as to costs.

H. S. B.

Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.

N. C. MAHENDRA,—*Petitioner*

versus

THE HARYANA STATE ELECTRICITY BOARD AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4088 *of* 1978.

May 9, 1983.

Constitution of India 1950—*Articles* 226 *and* 227—*Code of Civil Procedure (V of* 1908)—*Order* 41—*Writ Jurisdiction—Exercise of—Whether appellate in nature—Writ Petition—Admission of—Whether could be limited to a particular question.*

Held, that the writ jurisdiction is not *stricto sensu* appellate in nature. It needs no great erudition to see that a number of well-known writs are not even remotely appellate in essence. The celebrated writ of habeas corpus, for instance may not be directed against any specific order at all and may claim relief only against the fact of unauthorised detention. Similarly, the writs of prohibition and *quo warranto* may equally be not invariably directed against any judicial or quasi-judicial order as such. The position is analogous if not identical in the case of a writ of *mandamus* as well. Even in the case of a writ of *certiorari*, it cannot be said inflexibly that it partakes the nature of an appeal. In fact, the law on the point is hallowed with the reiteration of the principle that the writ jurisdiction is not an appellate jurisdiction.

(Para 6).

Held, that Order 41 of the Code of Civil Procedure 1908 as its very heading indicates, pertains to appeals from original decrees. Without doing violence to the language, one cannot easily imagine a writ petition as being an appeal from an original decree. Consequently the provisions of this order *prima*

facie may not be attracted. It is open to limit the admission to a part of the lis and not necessarily to the whole of it. Indeed, it would seem to appear that other things apart, this may flow even from the inherent power of a court of Record. Moreover, the high prerogative writs enumerated in Article 226 of the Constitution of India 1950 are not to be confined to the procrustean bed of absolute procedural limitations. It is well settled that the general principles of English Law applicable to the high prerogative writs have been incorporated and continued by virtue of Articles 32, 139 and 226 of the Constitution of India. It seems to follow therefrom that a Court of Record, empowered to issue these writs would have inherent power to limit or modulate the relief. The strongest, if not conclusive, support to this view is received from the settled law that the power to grant relief in the writ jurisdiction is discretionary and cannot be claimed as a matter of absolute right. The writ court, admittedly in its discretion (even though it has to be necessarily judicial) can decline to issue a writ for a wide variety of reasons. Indeed that is the point of sharp distinction between the remedy by way of a writ and that by way of a suit whilst the relief in the latter can be claimed *ex debito justitiae*. It is only discretionary in the former. Now if in a writ petition relief may be refused as a whole for a number of considerations, it would follow that the same may be refused in part. It is axiomatic that the whole includes the part, and if relief can be denied entirely, it can obviously be denied in part. To put it in the converse, the prayer of relief may be limited to a part of the whole claim only. This larger perspective seems to be common both in the earlier English Law as also to what is now settled within this jurisdiction as well.

(Paras 9, 10 and 11).

Case referred by a Single Bench consisting of Hon'ble Mr. Justice I. S. Tiwana on 16th February, 1982 *to a larger Bench for the decision of the important question of law involved in this case. The Larger Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia and the Hon'ble Mr. Justice I. S. Tiwana finally decided the case.*

Writ Petition under Articles 226/227 *of the Constitution of India praying that* :—

(*i*) *a writ in the nature of* Certiorari *quashing the orders, annexure P-9 and annexure P-10, be issued.*

(*ii*) *a writ in the nature of* Mandamus *directing the respondents Nos.* 1 *and* 2 *to consider the petitioner for promotion to the post of Superintending Engineer with effect from a date earlier than* 16th *May,* 1974 *when persons junior to the petitioner were promoted, be issued.*

(iii) *a writ in the nature of* Mandamus *that the seniority of the petitioner be fixed in accordance with the rules and he be declared senior to Respondents Nos.* 3 *to* 16 *who are admittedly junior to the petitioner in the rank of the Executive Engineer, be issued.*

(iv) *record of the case be sent for.*

(v) *costs of the petition be awarded to the petitioner.*

Kuldip Singh, Sr. Advocate *for the Petitioner.* Gopi Chand and

S. S. Shergill with him.

A. S. Nehra, Advocate *for Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the writ Court is empowered to limit the scope of the *lis* in a petition under Article 226 of the Constitution of India to one or more specific grounds only, at the threshold stage of its admission, is the significant question which necessitated this reference to the Division Bench.

2. N. C. Mahendra petitioner was working as an Executive Engineer under the Haryana State Electricity Board when on 4th of November, 1974, he was placed under suspension in view of the departmental proceedings against him. A charge-sheet was duly served on him on the 13th of January, 1975 and after the completion of the enquiry, that followed, he was served with a show-cause notice as to why his three increments be not stopped with cumulative effect. On 11th of July, 1977, he submitted a reply thereto. As averred by him, no punishment was inflicted on him and later he was promoted to the post of the Superintending Engineer,—*vide* order, annexure P. 2, dated the 13th of September, 1977. He was to remain on probation for a period of one year therefrom.

3. Later on the 2nd of December, 1977, the petitioner submitted a detailed representation annexure P. 8, to the respondent-authorities claiming that he should be promoted with retrospective effect from a back date when persons junior to him were promoted and as a consequential relief his seniority vis-a-vis his colleagues be altered accordingly and the benefits regarding pay and allowances again with retrospective effect be given to him. According to the petitioner, the date from which he claimed all these benefits retrospectively worked to be the 16th of May, 1974. In reply to this representation he was informed by respondent No. 1,—*vide* annexure

P. 9, dated the 7th of July, 1978 that his claim for pay and allowances with retrospective effect was ill-founded as he had not worked during that period in the promoted rank. However, his request for promotion with retrospective effect and seniority were kept under consideration. It would appear that the petitioner's case was duly considered by the Haryana State Electricity Board at its meeting on the 9th of September, 1977 which resolved as under :—

> "His having been ignored from promotion for the last three years, was enough of a penalty to meet the ends of justice. It was decided that subject to above observations, the case against Shri Mahendra may be closed and that the proceedings so far taken against him should not stand in the way of his promotion on the next occasion."

In accordance with the aforesaid Board's decision, the petitioner was informed,—*vide* annexure P-10, dated the 31st of August, 1978 that the question of allowing any benefit whatsoever with retrospective effect did not arise and his representation, dated the 2nd of December, 1977 was rejected *in toto.*

4. The writ petitioner challenged the aforesaid order on a wide variety of grounds. The Motion Bench issued a notice of motion. In reply thereto a return was filed on behalf of respondents 1 and 2 on the 9th of November, 1978 and the case was adjourned for arguments. Patently on the basis of the pleadings and after hearing the counsel the Motion Bench recorded the following order :—

> "Admitted only in regard to seniority and pertaining to salary for the period of suspension. Very early."

When the case first came up before my learned brother I. S. Tiwana, J., sitting singly as many as six specific contentions on behalf of the petitioner were sought to be raised. However, a preliminary objection at the very threshold was advanced on behalf of the respondents that the writ petitioner could not be permitted to do so and the matter must be confined only to seniority and salary for the period of suspension because of the order of the Motion Bench. This preliminary objection was controverted on behalf of the writ petitioner on the ground that in view of the provisions of Order 41, Rules 11 and 12 of the Civil Procedure Code, the scope of the challenge could not be restricted or limited in spite of the afore-quoted order

of the Motion Bench. Noticing some intricacy in the issue involved the matter had been referred for decision by the Division Bench.

5. As before the Single Bench, so before us, the primary argument of Mr. Kuldip Singh on behalf of the petitioner was that the writ jurisdiction is, in essence, appellate in nature or in the alternative in akin thereto. On this basic premise the provisions of Order 41, Rules 11 and 12 of the Code of Civil Procedure were invoked (by virtue of rule 32 of the Writ Jurisdiction (Punjab ond Haryana) Rules, 1976, to contend that the writ petition having been admitted, it has to be entertained as a whole and the *lis* could not have been confined or limited by the Motion Bench. Precedentially, reliance was placed on *Vattipalle Eswariah* v. *Vattipalle Rameswarayya and seven others* (1), which in terms has been followed in *Kasi Viswanathan Chettiar and others* v. *C. M. Chinnaiah Chettiar*, (2).

6. It is obvious from the above that the foundational question herein is whether the writ jurisdiction is *stricto sensu* appellate in nature. For the reasons that follow, there seems to be no option but to answer this question in the negative. I believe it needs no great erudition to see that a number of well-known writs are not even remotely appellate in essence. The celebrated writ of *habeas corpus*, for instance, may not be directed against any specific order at all and may claim relief only against the fact of unauthorised detention. Similarly, the writs of prohibition and *quo warranto* may equally be not invariably directed against any judicial or *quasi*-judicial order as such. The position is analogous if not identical in the case of a writ of *mandamus* as well. Even in the case of a writ of *certiorari*, it cannot be said inflexibly that it partakes the nature of an appeal. In fact, the law on the point is hallowed with the reiteration of the principle that the writ jurisdiction is not an appellate jurisdiction.

7. Now apart from principle, the matter seems to be equally covered by the binding precedent. It is unnecessary to multiply the same. In the landmark case, *Hari Vishnu Kamath* v. *Ahmad Ishaque and others* (3), it has been expressly observed as follows :—

"..........The Court issuing a writ of 'certiorari' *acts in exercise of a supervisory and not appellate jurisdiction*. One

(1)ILR (1940) Madras 785.
(2) 1977 (2) Mad. L.J. 524.
(3) AIR 1955 S.C. 233.

consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in *certiorari* These propositions are well settled and are not in dispute."

In view of the above, the blanket submission that the writ jurisdiction is in strictitude an appellate jurisdiction, necessarily attracting Order 41 of the Code of Civil Procedure, must be rejected.

8. Again the mellowed stand in the alternative that in any case the writ jurisdiction is akin to the apellate forum also does not seem to hold water. In *M. R. Channarayapa* v. *The Tehsildar and Returning Officer, Malur and another* (4) a somewhat similar question had arisen in the context of the Rule 39 of the Karnataka High Court Writ Proceedings Rules, 1977 (which appeared to be in *pari materia* with Rule 32 of the writ jurisdiction (Punjab and Haryana) Rules, 1976), it was held as follows:—

"....................By R. 39 of the Rules, the provisions of the Civil P. C. in matters not specifically dealt by the Rules and to the extent they are necessary, are made applicable to proceedings under Article 226 of the Constitution. In matters of procedure, it is permissible to rely on the provisions made in the Code with such modifications as are necessary in the context. I am, therefore, of the opinion that 0.27 of the C. P. C. is applicable to writ proceedings before this Court. *In 0.27 of the C.P.C. we have to read the words 'writ petition' wherever the word 'suit' occurs.*"

The aforesaid observations were quoted with approval and affirmed by the Full Bench in *Teja Singh* v. *The Union Territory of Chandigarh and others* (5).

(4) AIR 1980 Karnatka 72.

(5) 1981(1) S. L. R. 274.

9. It then deserves highlighting that 0.41 of the Code, as its very heading indicates, pertains to appeals from original decrees. Without doing violence to the language, one cannot easily imagine a writ petition as being an appeal from an original decree. Consequently the provisions of this Order *prima facie* may not be attracted. Even assuming it to be so (however, entirely for argument's sake), I am inclined to hold that even placing the case of the writ petitioner at the highest, the matter again does not seem to be entirely in his favour on precedent as well, even in the strictitude of this appellate froum. Undoubtedly, the observations in *Vaitipalle Eswariah's case* (supra) and the view therein do go in aid of the stand taken on behalf of the writ petitioner. However, an equally distinguished Bench presided over by Sir John Beaumont, C.J. in *Karishnaji Shrinivas Jalvadi and other* v. *Madhusa Appansa Ladaba* (6) has observed as follows: —

> "........................We are not prepared to go quite as far as Mr. Murdeshwar and to hold that an appeal must be admitted in whole or rejected in whole. It seems to us that if an appeal is severable it is open to the Judge, hearing the appeal under rule 11, to dismiss it in part and admit it in part; just as at the final hearing the Court may dismiss the appeal in part and allow it in part. For instance, if an appeal relates to two survey numbers which are held under distinct titles, we do not see any objection to the court dismissing the appeal as to one of the numbers, and directing notice to issue as to the other survey number."

Again Fazal Ali, speaking for the Division Bench in *Rekha Thakur* v. *Ramnandan Rai* (7) held as under: —

> "* * *. At the same time it appears to me that if at the time when the appeal is heard under Order 41, Rule 11, the appellate Court is informed that the appeal will be confined to certain specified grounds only and that the other grounds are abandoned or if it is conceded on behalf of the appellant that the grounds other than those specified are not fit to be urged in appeal, there is nothing to prevent the Court before which the appeal is placed under Order 41, rule 11, from making a note of this fact."

(6) (1933) 58 I.L.R. Bom. 406.
(7) (1936) 15 I. L. R. Patna 96.

It would thus appear that even within the strict parametres of Order 41 of the Civil Procedure Code, there appears to be distrinct discordance and authority is not lacking that the admission of an appeal may be confined to one or more clear-cut severable issues. Precedent is thus divided on the point even in the context of appeals from original decrees preferred under the Code and I do not feel compelled to adjudicate on the issue in view of my earlier finding that the writ jurisdiction is in essence not an appellate jurisdiction at all.

10. In this context, it seems equally necessary to notice that the final Court even in the specified forum of the appellate jurisdiction, under Article 136 of the Constitution of India, has by practice confined the admitted appeals to a limited point alone. This is not in dispute though the learned counsel for the writ petitionner had vaguely attempted to argue that this might be warranted by the rules framed by the Supreme Court though no specific provisions therefrom warranting the admission of an appeal on limited grounds alone could be brought to our notice. As at present advised I am inclined to take support from the fact that even in the final hiearchy of appeals by Special Leave to the Supreme Court, it is open to limit the admission to a part of the *lis* and not necessarily to the whole of it. Indeed, it would seem to appear that other things apart, this may flow even from the inherent power of a court of Record.

11. Altogether *de hors* the aforementioned considerations I would particularly wish to rest myself on the larger principle that the high prerogative writs enumerated in Article 226 of the Constitution of India are not to be confined to the procrustean bed of absolute procedural limitations. It is well-settled that the general prinicples of English law applicable to the high prerogative writs have been incorporated and continued by virtue of Articles 32, 139 and 226 of the Constitution of India. It seems to follow therefrom that a Court of Record, empowered to issue these writs would have inherent power to limit or modulate the relief. The strongest, if not conclusive, support to this view is received from the settled law that the power to grant relief in the writ jurisdiction is discretionary and cannot be claimed as a matter of absolute right. The writ court, admittedly in its discretion (even though it has to be necessarily judicial) can decline to issue a writ for a wide variety of reasons. Indeed that is the point of sharp distinction

between the remedy by way of a writ and that by way of a suit whilst the relief in the latter can be claimed *ex debito justitia*. It is only discretionary in the former. Now if in a writ petition relief may be refused as a whole for a number of considerations, it would follow that the same may be refused in part. It is axiomatic that the whole includes the part, and if relief can be denied entirely, it can obviously be denied in part. To put it in the converse, the prayer of relief may be limited to a part of the whole claim only. This larger perspective seems to be common both in the earlier English law as also to what is now settled within this jurisdiction as well. One need not go further back then recalling the following observations of the House of Lords in The Queen *v.* The Chuchwardens of All Saints Wigan and others (7-A) as under:—

> "Now there appears to me to have been some little confusion upon this subject, which can easily be removed. A writ of *mandamus* is a prerogative writ and not a writ of right, and it is in this sense in the discretion of the Court whether it shall be granted or not. The Court may refuse to grant the writ not only upon the merits, but upon some delay, or other matter, personal to the party applying for it; in this the Court exercises a discretion which cannot be questioned. So in cases where the righ,t in respect of which a rule for a *mandamus* has been granted, upon showing cause appears to be doubtful, the court frequently grants a *mandamus* in order that the right may be tried upon the return; this also is a matter of discretion————".

It would be wasteful to further quote extensively in support of the aforesaid basic proposition and reference may instructively be made to *The Queen* v. *Garland*. (8) and *Regina* v. *Grentwood Supdt. Registrar of Marriages Ex. P. Arias* (9).

(12) An identical legal position enures within this country and High Courts have repeatedly held that the exercise of jurisdiction

(7-A) (1876) App. Case 611.

(8) (1870) 5 Q. B. 269 (272).

(9) (1968) 2 Q. B. 956 (970).

under Article 226 of the Constitution is discretionary and not obligatory. Without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and, (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extraordinary remedy from the ordinary one by way of a civil suit.

(13) Now once it is settled, as inevitably it must be, that the right to claim the relief is subject to the discretion of the Court *a fortiori*, if instead of declining the relief altogether, it is limited or confined by the Court, there cannot possibly be any quarrel therewith. The answer to the question posed at the out-set has, therefore, to be rendered in the affirmative, and it is held, that the Motion Bench is empowered to limit the admission of a writ petition to one or more specific grounds only.

(14) Once it is held as above, the learned counsel for the petitioner had been fair enough to say that on the limited issues to which the admission stood confined, he had little or indeed nothing to urge. Admittedly, the highest body of the Haryana State Electricity Board had fully considered the matter and for good reasons declined the petitioner's claim for benefits with retrospective effect. Obviously enough, the petitioner has no inflexible right to claim promotion from a deemed date with retrospective effect and the consequential benefits of pay and seniority therefrom. He could, at best, claim a consideration of the matter which has been admittedly done. Clearly enough, no *mandamus* can issue that a fictional deemed date of promotion must be accorded to the petitioner when, in fact, such promotion took place much later on September 13, 1977. The writ petition is consequently dismissed without any order as to costs.

S. C. K.