RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Writ Jurisdiction

Lceture Notes by- INDRA BHUSHAN SINGH

Date:- 25/05/2020

Introduction-

The first question arise in our mind while reading the topic is.. Actually, What Is Writ? The answer is here- A Writ is a formal written order issued by a government entity in the name of the sovereign power. In most cases, this government entity is a court. In modern democratic countries, the administrative authorities are vested with vast discretionary powers. The exercise of those powers often becomes subjective in the absence of specific guidelines etc. Hence the need for a control of the discretionary powers is essential to ensure that 'Rule of Law' exist in all governmental actions. The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, just, fair and reasonable. Safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdictions

Birth of Writs-

The origin of writs can be drawn from the English Judicial System and were created with the development of English folk courts to the common law courts. The law of writs has its origin from the orders passed by the King's Bench in England. Writs were issued on a petition presented to the king in council and were considered as a royal order. Writs were a written order issued in the name of the name of the king. However, with different segments writs took various forms and names. The writs were issued by the crown and initially only for the interest of the crown later on it became available for ordinary citizens also. A prescribed fee was charged for it and the filling of these writs were known as Purchase of a Writ.

Origination In India-

The origin of writs in India goes back to the Regulating Act, 1773 under which Supreme Court was established at Calcutta. The charter also established other High Courts and also gave them power to issue writs as successor to Supreme Court. The writ jurisdiction of these courts was limited to their original civil jurisdiction which they enjoyed under Section 45 of the Specific Relief Act, 1877.

Principles of Exercise Writs Jurisdiction

Writs are meant as prerogative remedies. The writ jurisdictions exercised by the Supreme Court under article 32 and by the high courts under article 226, for the enforcement of fundamental rights are mandatory and not discretionary. But the writ jurisdiction of high courts for 'any other purpose' is discretionary. In that sense the writ jurisdiction of high courts are of a very intrinsic nature. Hence high courts have the great responsibility of exercising this jurisdiction strictly in accordance with judicial considerations and well established principles. When ordinary legal remedies seem inadequate, in exceptional cases, writs are applied.

1.Habeas Corpus

The meaning of the Latin phrase Habeas Corpus is 'have the body'. According to Article 21, "no person shall be deprived of his life or personal liberty except according to the procedure established by law". The writ of Habeas corpus is in the nature of an order directing a person who has detained another, to produce the latter before the court in order to examine the legality of the detention and to set him free if there is no legal justification for the detention. It is a process by which an individual who has been deprived of his personal liberty can test the validity of the act before a higher court.

The objective of the writ of habeas corpus is to provide for a speedy judicial review of alleged unlawful restraint on liberty. It aims not at the punishment of the wrongdoer but to resume the release of the retinue. The writ of habeas corpus enables the immediate determination of the right of the appellant's freedom. In the writs of habeas corpus, the merits of the case or the moral justification for the imprisonment or detention are irrelevant. In A.D.M. Jabalpur v. Shivakant Shukla , it was observed that “the writ of Habeas Corpus is a process for securing the liberty of the subject by affording an effective means of immediate

relief from unlawful or unjustifiable detention whether in prison or private custody. If there is no legal justification for that detention, then the party is ordered to be released."

2. Certorari

The writ of Certiorari is generally issued against authorities exercising quasi-judicial functions. The Latin word Certiorari means 'to certify'. Certiorari can be defined as a judicial order of the supreme court or by the high courts to an inferior court or to any other authority that exercise judicial, quasi-judicial or administrative functions, to transmit to the court the records of proceedings pending with them for scrutiny and to decide the legality and validity of the order passed by them. Through this writ, the court quashes or declares invalid a decision taken by the concerned authority. Though it was meant as a supervisory jurisdiction over inferior courts originally, these remedy is extended to all authorities who issue similar functions.

The concept of natural justice and the requirement of fairness in actions, the scope of certiorari have been extended even to administrative decisions. An instance showing the certiorari powers was exercised by the Hon'ble Supreme court in A.K.Kraipak v. Union of India, where the selection was challenged on the ground of bias. The Supreme Court delineated the distinction between quasi judicial and administrative authority. The Supreme Court exercising the powers issued the writ of Certiorari for quashing the action. Certiorari is corrective in nature. This writ can be issued to any constitutional, statutory or non statutory body or any person who exercise powers affecting the rights of citizens.

3.Prohibition-

The grounds for issuing the writs of certiorari and prohibition are generally the same. They have many common features too. The writ of prohibition is a judicial order issued to a constitutional, statutory or non statutory body or person if it exceeds its jurisdiction or it tries to exercise a jurisdiction not vested upon them. It is a general remedy for the control of judicial, quasi judicial and administrative decisions affecting the rights of persons.

The writ of Prohibition is issued by the court exercising the power and authorities from continuing the proceedings as basically such authority has no power or jurisdiction to decide the case. Prohibition is an extra ordinary prerogative writ of a preventive nature. The underlying principle is that 'prevention is better than cure.' In East India Commercial Co. Ltd

v. Collector of Customs, a writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise.

4.Mandamus-

The writ of mandamus is a judicial remedy in the form of an order from the supreme court or high courts to any inferior court, government or any other public authority to carry out a 'public duty' entrusted upon them either by statute or by common law or to refrain from doing a specific act which that authority is bound to refrain from doing under the law. For the grant of the writ of mandamus there must be a public duty. The superior courts command an authority to perform a public duty or to non perform an act which is against the law. The word meaning in Latin is 'we command'. The writ of mandamus is issued to any authority which enjoys judicial, quasi judicial or administrative power. The main objective of this writ is to keep the public authorities within the purview of their jurisdiction while performing public duties. The writ of mandamus can be issued if the public authority vested with power abuses the power or acts mala fide to it. In Halsbury's Laws of England , it is mentioned that, "As a general rule the order will not be granted unless the party complained of has known what it was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

5.Quo Warranto-

The word meaning of 'Quo warranto' is 'by what authority'. It is a judicial order against a person who occupies a substantive public office without any legal authority. The person is asked to show by what authority he occupies the position or office. This writ is meant to oust persons, who are not legally qualified, fro substantive public posts. The writ of Quo warranto is to confirm the right of citizens to hold public offices. In this writ the court or the judiciary reviews the action of the executive with regard to appointments made against statutory provisions, to public offices .It also aims to protect those persons who are deprived of their right to hold a public office.

In University of Mysore v. Govinda Rao,12 the Supreme Court observed that the procedure of quo Warranto confers the jurisdiction and authority on the judiciary to control executive

action in making the appointments to public offices against the relevant statutory provisions; it also protects a citizen being deprived of public office to which he may have a right.

Constitutional Provisions

Article 32 and 226 of the constitution of India has designed for the enforcement of fundamental rights and for a judicial review of administrative actions, in the form of writs. It is a constitutional remedy available to a person to bring his complaint or grievance against any administrative action to the notice of the court. Safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdictions.

Writ jurisdiction is exercised by the Supreme Court and the High courts only. This power is conferred to Supreme Court by article 32 and to high courts by article 226.

•Article 32(1) guarantee a person the right to move the Supreme Court for the enforcement of fundamental rights guaranteed by part III of the constitution.

•Article 32(2) empowers the Supreme Court to issue direction or orders or writs in the nature of Habeas Corpus, Certiorari, Prohibition, mandamus and Quo-warranto for the enforcement of fundamental rights.

•Article 226 empowers the state high courts to issue directions, orders or writs as mentioned above for the enforcement of fundamental rights and for 'any other purpose'. i.e., High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for a 'non fundamental right'

Thus the constitution provides the discretionary remedies on the High Court and the Supreme Court. In the absence of the provisions of such remedies no one can enforce its rights given. Thus wherever there is a right there must be a remedy for it. Thus it should satisfy the maxim, ‘ubi jus ibi remedium.’ One of the principle makers of the constitution, Dr. Ambedkar has given the prime importance to Article 32 among all other articles from the Indian Constitution. He has referred that, “It is the very soul of the Constitution and the very heart of it, “It is the very soul of the Constitution and the very heart of it .”

In **Devilal v. STO** , it has been marked that, “There can be no doubt that the Fundamental

Rights, guaranteed to the citizens are a significant feature of our Constitution and the High Courts under Article 226 are bound to protect these Fundamental Rights." In **Daryao v. State of U.P**. , it was held that the right to obtain a writ must equally be a fundamental right when a petitioner presents the case. Thus, it cannot merely be considered as an individual's right to move the Supreme Court but it is also the duty and responsibility of the Supreme Court to protect the fundamental rights.

Role of Writs In Administration Law-

The administrative law is that branch of law that keeps the government actions within the bounds of law or to put in negatively, it present the enforcement of blatantly bad orders from being derogatory. Administrative law has greatly demarcated the checks, balance and permissible area of an exercise of power, authority and jurisdiction over administrative actions enforced by any State, Government agencies and instrumentalities defined under Article 12 of the Constitution of India. And the judiciary is dynamically carving the principles and exceptions, while making the judicial review of administrative action.

The Courts have constantly tried to protect the liberties of the people and assume powers under the Constitution for judicial review of administrative actions. The discretionary powers have to be curbed, if they are misused or abused, it is the essence of justice. The socio-politics instrument need not cry, if the courts do justice and perform the substantial role. That is the essence of justice. The welfare state has to discharge its duty fairly without any arbitrary and discriminatory treatment of the people in the country. If such powers come to the notice of the Courts, the courts have raised the arms consistently with the Rule Of Law. Today, the Government is the provider of social services, new form of poverty like jobs, quotas, licences etc. The dispenser of special services cannot therefore act arbitrarily. Courts laid the standard of reasonableness in Government act

Role of Writs In Administrative Action-

Now as far as the role of the writs is concerned, let us go by illustration over the cases on discretion. Conferment of discretionary powers has been accepted as necessary phenomena of modern administrative and constitutional machinery. Law making agency legislates the law on any subject to serve the public interest and while making law, it has become indispensable to provide for discretionary powers that are subject to judicial review. The rider is that the Donnie of the discretionary power has to exercise the discretion in good faith and for the

purpose for which it is granted and subject to limitations prescribed under the Act. The Courts have retained their jurisdiction to test the Statute on the ground of reasonableness. Mostly, the courts review on two counts; firstly whether the statute is substantively valid piece of legislation and, secondly whether the statute provides procedural safeguards. If these two tests are not found, the law is declared ultra vires and void of Article 14 of the Constitution.

Beside this, Courts control the discretionary powers of the executive government being exercised after the statutes have come to exist. Once they come into existence, it becomes the duty of the Executive Government to regulate the powers within limitations prescribed to achieve the object of the Statute. The discretionary powers entrusted to the different executives of the Government play substantial role in administrative decision making and immediately the settled principles of administrative law trap the exercise of powers. If these discretionary powers are not properly exercised, or there is abuse and misuse of powers by the executives or they take into account irrelevant consideration for that they are not entitled to take or simply misdirect them in applying the proper provision of law, the discretionary exercise of powers is void. Judicial review is excluded when it is found that executives maintain the standard of reasonableness in their decisions. Errors are often crept in either because they would maintain pure administrative spirit as opposed to judicial flavour or that they influence their decisions by some irrelevant considerations or that sometimes, the authorities may themselves misdirect in law or that they may not apply their mind to the facts and circumstances of the cases. Besides, this aspect, they may act in derogation of fundamental principles of natural justice by not conforming to the standard or reasons and justice or that they do not just truly appreciate the existence or non existence of circumstances that may entitle them to exercise the discretion.

“The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account considerations that are wholly irrelevant or extraneous. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters though the propriety adequacy or satisfactory character of these reasons may not be open to judicial scrutiny. Even if the Executive considers it

inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts."

The role of writs is also sensibly laid down in a famous PADFIELD'S CASE
In England in earlier days the Courts usually refused to interfere where the Government or the concerned officer passed what was called a non-speaking order, that is, an order which on the face of it did not specify the reasons for the orders. Where a speaking order was passed the Courts proceeded to consider whether the reasons given for the order or decision were relevant reasons. Where there was a non-speaking order they used to say that it was like the face of the Sphinx in the sense that it was incurable and therefore hold that they could not consider the question of the validity of the order. Even in England the Courts have travelled very far since those days. They no longer find the face of the Sphinx inscrutable.