

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.22020/2005**

% **Date of decision : 05.05.2008**

Ramesh Vimal Petitioner
Through: Mr. Deepak Vohra, Advocate.

Versus

District & Sessions Judge, Delhi & Another Respondents
Through : Ms.Avnish Ahlawat with Ms.Latika
Chaudhary, Advocates.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. This is a petition challenging the order dated 9th September, 2005 passed by the respondent holding that the petitioner was negligent in his duties and was not properly doing work nor he performed his duties as per High Court Rules and, therefore, imposing a penalty of withholding two increments with cumulative effect subsequent to this order.

2. The petitioner has challenged the order contending inter alia that the Disciplinary Authority had completely ignored the defense version and the fact that the petitioner is a physically handicapped person and the penalty imposed upon him is not a minor penalty and is too harsh.

3. The petition is contested by the respondent contending inter alia that the petitioner failed to complete the peshi register despite two memos issued to him by the Metropolitan Magistrate and it had also been reported that the petitioner had not forwarded the case on peshi register for the last seven years. The petitioner is also alleged to have two memos issued to him on 27th September, 2003 and 6th December, 2003 by the Administrative Branch for joining the duties immediately and to complete the peshi register as per the rules laid down by the High Court. It is contended that the memo of 6th December, 2003 was issued for non-completion of peshi register despite issuance of memos dated 27th August, 2003; 27th September, 2003 and 18th October, 2003. It is also asserted by the respondent that the petition for judicial review of order dated 9th September, 2005 is based on evidence and for the judicial review the Court is not to exercise jurisdiction as an appellate Court and therefore the writ petition is not maintainable and in any case it is contended that the petitioner has an alternative remedy available to him to file an appeal against the order dated 9th September,

2005 and therefore, this Court should not exercise its jurisdiction under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner has not disputed that the order dated 9th September, 2005 is appealable. Learned counsel for the respondent has also relied on Rule 24 of CCS Rules to contend that the order dated 9th September, 2005 is appealable.

5. Learned counsel for the petitioner has contended that though the appeal is maintainable but since the writ petition had been filed in 2005, it will be too harsh on the petitioner in case the writ petition against the order dated 9th September, 2005 is not considered on the ground that the alternative remedy is available to the petitioner.

6. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court is not interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, Government of A.P. and Ors. v. Mohd. Nasrullah Khan reported as (2006) 2 SCC 373. Writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of

natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

7. The principal question which arises for consideration is as to whether a discretionary jurisdiction should be refused to be exercised on the ground of existence of an alternative remedy. Ordinarily, when a dispute between the parties requires adjudication of disputed question of facts based on evidence led by the parties both oral and documentary which is to be re-appreciated, the Court may not entertain a writ petition. However, access to justice by way of public law remedy should not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief. The present petition does not involve a lis of public law character. It can also be not said that the appellate authority against the impugned order dated 9th September, 2005 would not be in position to grant an appropriate relief. This also cannot be disputed that 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.

8. In the case of the petitioner it is apparent that he is not seeking enforcement of his fundamental rights nor there is alleged failure of principles of natural justice nor the order is wholly without jurisdiction considering the scope of interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. Consequently, though this Court will have jurisdiction under Article 226 of the Constitution of India, however, the petitioner must exhaust the alternative remedy available to him to approach the appellate authority against the order dated 9th September, 2005 and this Court is not exercising its jurisdiction under Article 226 of the Constitution of India for the relief claimed by the petitioner. It is for the petitioner to exhaust his alternative remedy. The petitioner has impugned the order dated 9th September, 2005 mainly on the evidence led by the parties. The petitioner has been contending that he had not failed to discharge his duties for the various reasons disclosed by him and has also relied on the statement of the witness of the respondent.

In the circumstances, it will be appropriate for the petitioner to avail an alternative remedy available to him and this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

10. In the circumstances, this Court declines to exercise its jurisdiction under Article 226 of the Constitution of India and the writ petition is disposed of with liberty to the petitioner to avail the alternative remedy of appeal against the order dated 9th September, 2005. The learned counsel for the petitioner has also prayed that delay in filing the appeal against the order dated 9th September, 2005 be condoned. Considering the facts and circumstances, it will be for the appellate authority to decide whether the petitioner is entitled for condonation of delay in filing the appeal in accordance with rules and regulations in case the appeal is filed by the petitioner against the order dated 9th September, 2005. Therefore the delay in filing the appeal, if any, in case an appeal is filed by the petitioner against the order dated 9th September, 2005 cannot be condoned and it will be decided by the Appellate Authority. With these directions and observations the writ petition is disposed of. Parties are left to bear their own costs.

May 05th, 2008
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ANIL KUMAR, J.