

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 2057 of 2009**

Govind Ram Bareth S/o Shri Gangaram Bareth, Occupation- Peon at
Civil Court, Janjgir, Distt. Janjgir Champa, R/o Janjgir, Distt. Janjgir
Champa (CG)

---- Petitioner

Versus

1. District and Sessions Judge, District Janjgir-Champa
2. Superintendent of Court, Distt. Janjgir Champa (CG)

---- Respondents

For Petitioner : Shri Awadh Tripathi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24.08.2015**

Challenge in the present writ petition is the impugned order dated 22.01.2009 Annexure P-1 whereby the petitioner has been imposed a punishment of compulsory retirement invoking the provisions of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, the Rules, 1966).

2. A perusal of the record would show that the petitioner after passing of the said order has straight way rushed to this court and filed this writ petition on 13.04.2009 without availing the alternative remedy available to him under Rule 23 of the Rules 1966. The Rules, 1966 categorically provides for appeal against the impugned order. Rule 23 of the Rules, 1966 provides as under :

“23. Order against which appeal lies.- Subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely-

- an order imposing any of the penalties specified in Rule 10 whether made by the disciplinary authority or by any appellate or reviewing authority;
- an order enhancing any penalty, imposed under Rule 10;
- an order of suspension made or deemed to have been made under Rule 9.”

3. Admittedly, adequate efficacious statutory alternative remedy is available to the petitioner under the provisions of Rule 23 of the Rules, 1966. The petitioner has directly approached to this court without availing the remedy available to him. The Supreme Court in catena of decisions has held that where there is efficacious statutory alternative remedy, the writ court should not as a matter of right entertain the writ petition.

4. The Supreme Court in the matter of *State of H.P. and others v. Gujrat Ambuja Cement and another*¹ observed as under:

"17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of alternative remedy, it is within the jurisdiction of description of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should not ensure that he has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.

21. In *G.Verappa Pillai v. Raman & Raman Ltd., CCE v. Dunlop India Ltd., Ramendra Kishore Biswas v. State of Tripura, Shiv Gonda Anna Patil v. State of Maharashtra, C.A. Abraham v. I.T.O, Titaghur Paper Mills Co. Ltd. v. State of Orissa, H.B.Gandhi v. Gopinath & Sons, Whirlpool Corpn. V. Registrar of Trademarks, Tin Plate Co. of India Ltd. v. State of Bihar, Sheela Devi v. Jaspal Singh, and Punjab National Bank v. O.C.Krishnan*, this Court had held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction."

5. Further applying the said ratio in the matter of *U.P. State Spinning Co. Ltd. v. R. S. Pandey and another*², the Hon'ble Supreme Court observed as under:

"21. In *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karmachari Sangh*, it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under

1 (2005) 6 SCC 499

2 (2005) 8 SCC 264

the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To the same effect are the decisions in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, *Rajasthan SRTC v. Krishna Kant*, *Chandrakant Tukaram Nikam v. Municipal Corpn. Of Ahmedabad* and in *Scooters India v. Vijai E. V. Eldred*."

6. In another decision on the concept of maintainability of writ petition vis-a-vis availability of alternative remedy, the Supreme Court in the matter of *Sec. U.P. High School & Intermediate Education, Allahabad & another v. H.K. Lal*³, observed as under :

"4. From the records it is borne out that the question as to whether the respondent has a legal right to alter his date of birth recorded in the certificate granted by the Board was pending consideration before the appellate Court. The writ petition filed by the respondent should, therefore, not have been entertained particularly in view of the fact that the appeal thereagainst was pending. Writ jurisdiction is discretionary jurisdiction and should not ordinarily be exercised if there is an alternative remedy."

7. A common thread running into the dicta laid down by the Supreme Court in the aforementioned cases is that, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. Where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction, except when a very strong case is made out for making a departure.

8. Applying the well settled dicta laid down by the Supreme Court on the issue of availability of alternative remedy to the facts of the case, wherein, the petitioner challenges an order of punishment of compulsory retirement, no case is made out for making out a departure from normal rule. Thus, this petition is dismissed as not maintainable, in view of the availability of statutory alternative remedy. However, liberty is left open to the Petitioner, if so desires, to prefer an Appeal before the Appellate Authority against the impugned order.

9. If such an appeal is filed by the Petitioner, the same shall be decided by the Appellate Authority as expeditiously as possible in accordance with the Rules.

**Sd/-
P. Sam Koshy
Judge**

Bhola