

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1089 of 2015

- K. R. Dau S/o Late P.S. Dau Aged About 61 Years Assistant Commissioner (Excise) R/o Sundar Nagar, Raipur Civil & Revenue District Raipur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax (Excise), New Mantralaya, Mahanadi Bhawan, Raipur Distt. Raipur Chhattisgarh
2. The Commissioner (Excise) Raipur Chhattisgarh
3. Mr. G.S. Mishra Aged About 58 Years Principal Secretary And Commissioner Excise Raipur Chhattisgarh

---- Respondents

For Petitioner	Shri Kishore Bhaduri, Advocate
For Respondent/State	Shri S. Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

03/09/2015

Heard finally with the consent of the learned counsel for the parties.

1. The petitioner has preferred this writ petition challenging the order passed by the disciplinary authority imposing punishment of compulsory retirement, in exercise of powers under Rule 10 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules, 1966').

2. Learned State counsel would raise objection regarding maintainability of the writ petition and submit that under Rule 23 of the Rules, 1966, the petitioner has a statutory alternative remedy.
3. Shri Bhaduri, learned counsel for the petitioner would submit that the impugned order has been issued in the name of the Governor, therefore, the petitioner has directly approached this Court, because under Rule 23 of the Rules, 1966, an order passed by the State Government has been made appealable before the Governor.
4. The issue fallen for consideration in this petition has been set at rest by this Court in the matter of **WPS No.102/2012 (G.S. Dewangan v. State of Chhattisgarh and others)**, decided on 30.01.2012, wherein the following has been held:-

“13. The argument raised by the petitioner is otherwise also fallacious when it is examined and considered in the light of the judgment of the Supreme Court in the matter of **Common Cause, A Registered Society Vs. Union of India and others** {(1999) 6 SCC 667}. In the said matter, an argument was raised before the Supreme Court that when a Minister passes an order as Member of the Union Cabinet, it actually performs the function on behalf of the President of India and not merely as a Minister individually. While dealing with the argument and after referring to the provisions contained in Articles 73 to 77 of the Constitution concerning the executive power of the Union as also with respect to executive power of the State contained in Article 166 of the Constitution, it has been held in para-26 of the judgment that ‘though an order is issued in the name of the President, it does not become an order of the President passed by him personally, but remains, basically and essentially, the order of the Minister on whose advice the President had acted and passed that order. It was further held therein that as required by Article 77 (1), all executive actions of the Government of India have to be expressed in the name of the President; but this would not make that order an order passed by the President personally.’

14. In the opinion of this Court, the above judgment of the Supreme Court is complete answer to the argument raised by learned counsel for the petitioner. Accordingly, this Court holds that even if the impugned order of suspension is issued after expressing the same to have been passed

for and on behalf of the Governor of Chhattisgarh, it does not become an order passed by the Governor himself and remedy of filing an appeal before His Excellency, the Governor is available to the petitioner under Rule 23 of the Rules, 1966.”

5. The above referred matter of **G.S. Dewangan** (supra) was approved by the Division Bench in **Writ Appeal No.80 of 2012 (G.S. Dewangan v. State of Chhattisgarh and others)**, decided on 15.02.2012.
6. In view of the above, the petitioner has an alternative remedy of preferring an appeal before the Governor. In the matter of **State of H.P. and others v. Gujarat Ambuja Cement Ltd. and another**¹, the Supreme Court has held that when an statutory remedy is available, the High Court should not entertain a writ petition.
7. For the foregoing, the writ petition is dismissed as not maintainable. The petitioner may avail the alternative remedy within a period of 30 days from today.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala

1 (2005) 6 SCC 499