

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6373 of 2007**

Garibaram Kulhara, aged about 57 years, S/o late A.R. Kulhara, R/o village Chluhapathra Tehail Gurur, Distt. Durg, CG Present Address Tahsildar, Pakhanjor, Distt. Kanker.

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Revenue Department, DKS Bhawan, Raipur (CG).
2. Avar Secretary, Revenue Department D.K.S. Bhawan, District - Raipur (C.G.)
3. The Collector, Dantewada District - Dantewada (C.G.)
4. District Registrar And Collector Of Stamps Bastar, Jagdalpur (C.G.)

---- **Respondents**

For Petitioners	Shri Parag Kotecha, Advocate.
For Respondent/State	Shri Bhupendra Singh, Panel Lawyer

Hon'ble Shri Justice P.Sam Koshy.**Order On Board****24/08/2015**

1. The present petition has been preferred challenging the order dated 08.06.2006 (Annexure P/4) whereby the disciplinary authority of Petitioner had imposed punishment of withholding two annual increments with non-cumulative effect.
2. The Petitioner, immediately after passing of said order had rushed to this court and filed this writ petition on 15.10.2007. The Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, the Rules, 1966) categorically provides for appeal against the impugned order.

Rule 23 of 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-

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

3. Learned counsel for the Petitioner submits that Respondents have arbitrarily, illegally and in violation of principles of natural justice has imposed the above punishment upon the Petitioner and the authorities concerned have not verified the records nor have considered the aspect as to what misconduct had been played by the Petitioner while discharging his duties.
4. Learned counsel appearing for the State opposing the petition submits as the Petitioner has not availed the statutory alternative remedy of filing of Appeal, this petition is not maintainable.
5. 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.
6. The Supreme Court in the matter of State of H.P. and others v. Gujrat

Ambuja Cement and another¹ 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."

7. 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 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 or 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*."

8. In another decision on the concept of maintainability of writ petition vis-à-vis availability of alternative remedy, the Supreme Court in the matter of

1 (2005) 6 SCC 499

2 (2005) 8 SCC 264

Sec. U.P. High School & Intermediate Education, Allahabad & another v.

H.K. Lal³, 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."

9. 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.
10. 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 withholding two annual increments without cumulative effect, 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 order of punishment.
11. If such an appeal is filed by the Petitioner, the same shall be decided as expeditiously as possible considering the fact that Petitioner has superannuated some time ago.

Sd/-

(P.Sam Koshy)
Judge

inder

³ 2007 (2) SCC 216