

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4398 of 2016**

1. Umashankar Shukla S/o Late Shree Shivdulare Shukla, Aged About 59 Years Posted As Field Assistant (At Present Suspended), Chhattisgarh Marketing Federation, District Office Bilaspur, District Bilaspur (Chhattisgarh)
2. Nehru Das Padwar, S/o Late Shree Mahettar Das Padwar, Aged About 55 Years Posted As Field Assistant, Chhattisgarh Marketing Federation, At Kasdol, District Raipur (Chhattisgarh)
3. Shivram Yadav, S/o Shree Firanta Yadav, Aged About 59 Years Posted As Field Assistant (At Present Suspended), Chhattisgarh Marketing Federation, District Office Ambikapur, District Sarguja (Chhattisgarh)
4. Mahajan Prasad Nishad, S/o Late Shree Heera Singh Nishad, Aged About 58 Years Posted As Field Assistant, Chhattisgarh Marketing Federation, At Bhatapara, District Baloda Bazar Bhatapara (Chhattisgarh)
5. Koshiram Nayak S/o Shree Guniram Nayak, Aged About 57 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Abhanpur, District Raipur (Chhattisgarh)
6. Pannalal Kashyap, S/o Shree Bharatlal, Aged About 58 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Bhatapara, District Balodabazar Bhatapara (Chhattisgarh)
7. Baldev Singh Thakur S/o Late Shree Chandrabhan Singh Thakur, Aged About 61 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Kargiroad Kota, District Bilaspur (Chhattisgarh)
8. Suresh Panta, S/o Late Shree Ranmal Das Panta, Aged About 56 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Pendra Road, District Bilaspur (Chhattisgarh)
9. Shyam Digrahasa, S/o Late Shree Laxman Rao Digrahasa, Aged About 56 Years Posted As Senior Assistant, Chhattisgarh Marketing Federation, District Office Raigarh, District Raigarh (Chhattisgarh)
10. Holkar Prasad Sahu, S/o Late Shree Ajori Ram Sahu, Aged About 58 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Mandir Hasaud (Kurudbhatha), District Raipur (Chhattisgarh)
11. Gajanand Sahu, S/o Late Shree Nathuram Sahu, Aged About 61 Years Posted As Senior Assistant, Chhattisgarh Marketing Federation, District Office Nayapara Rajim (Patewa), District Gariaband (Chhattisgarh)
12. Jagdish Prasad Shrivastava, S/o Shree Radheshyam Shrivastava, Aged About 56 Years Posted As Senior Assistant, Chhattisgarh Marketing Federation, District Office Balodabazar, District Balodabazar Bhatapara (Chhattisgarh)

13. Santosh Gupta, S/o Late Shree Ramsharan Gupta, Aged About 58 Years Posted As Field Assistant (At Present Suspended), Chhattisgarh Marketing Federation, District Office Bilaspur, District Bilaspur (Chhattisgarh)
14. Khemsingh Dhruv, S/o Shree Brijlal Dhruv, Aged About 40 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Dharsiwa, District Raipur (Chhattisgarh)
15. Hriday Kumar Verma, S/o Late Shree Narottam Singh Verma, Aged About 61 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Hathband (Simga), District Raipur (Chhattisgarh)
16. Yatendra Kumar Pipriha, S/o Shree Shatruhan Pipriha, Aged About 49 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Baktara, District Raipur (Chhattisgarh)
17. Rameshwar Prasad Pathak, S/o Late Shree Ratanlal Pathak, Aged About 57 Years Posted As Senior Assistant, Chhattisgarh Marketing Federation At Surajpur, District Surajpur (Chhattisgarh)
18. Mahendra Kumar Saap, S/o Shree Budharu Ram Saap, Aged About 42 Years Posted As Field Assistant, Chhattisgarh Marketing Federation At Tilda, District Raipur (Chhattisgarh)
19. Devi Prasad Sahu, S/o Shree Laltaram Sahu, Aged About 60 Years Posted As Senior Assistant, Chhattisgarh Marketing Federation At Jaundhabhatha, District Raipur (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Cooperative Societies, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. Managing Director, Chhattisgarh State Marketing Federation 880, Civil Lines, Head Office, Raipur, District Raipur (Chhattisgarh)
3. Secretary, Chhattisgarh State Marketing Federation 880, Civil Lines, Head Office, Raipur, District Raipur (Chhattisgarh)
4. Manager (Establishment), Chhattisgarh State Marketing Federation 880, Civil Lines, Head Office, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioners	:	Mr. V.R. Tiwari, Advocate
For State	:	Mr. R.K. Gupta, Dy. A.G.
For Respondents-Federation	:	Mr. Prafull N. Bharat, Advocate, on advance copy

Hon'ble Shri Manindra Mohan Shrivastava, J.

Order on Board

05/09/2016

Heard on admission.

1. The petitioners have filed this petition jointly raising serious grievance that department enquiries have been initiated and penalty imposed holding the officers responsible for shortage.
2. Learned counsel for the petitioners submits that in order to come to the conclusion that there has been a shortage, the respondents are adopting an averaging formula of dryness which has no rational basis. It is submitted that without there being any definite technical formula of dryness and shortage based there upon, departmental enquiries are being initiated and penalty imposed. It is stated that the appeal has already been filed by the petitioners No.1 & 2 and is pending.
3. I find that the petitioners nineteen in number, have filed this petition. Some of them are those against whom penalty orders have been passed holding them liable for recovery on account of the finding of shortage. Some are those against whom only a charge-sheet has been issued and departmental enquiry is pending.
4. The grounds which have been raised before this Court are essentially a matter of merit consideration in the departmental enquiry and in appeal, as the case may be. Whether or not, the method of adopting average dryness formula is right or wrong is essentially an issue unconnected with jurisdiction, violation of principle of natural justice or malafide. Even if the petitioners may have some merit in his submission, is essentially a matter for consideration by the Appellate Authority in cases where the penalty order has been passed and for disciplinary authority in cases pending before them.
5. Rule of self-restraint imposed upon itself by the writ Court to refuse to entertain matters where there exists an alternative remedy or where final decision has not been taken is well settled. It needs no authority for the

proposition, it being a well settled legal position, that in case, where there exists an alternative remedy of appeal, revision etc. this Court would be loath in interfering with the orders. This general rule is departed from in rare cases of violation of fundamental right, violation of principal of natural justice, absence of jurisdiction or malafides.

6. That does not mean that in other kind of cases, this Court does not have jurisdiction. However even in aforesaid situation, the writ Court in appropriate matter, may refuse to exercise its discretion and even in those cases, it may insist on exhaustion of alternative remedy.
7. In a case where certain proceedings are pending, notices have been issued and final decision is yet to be taken, there also the writ Court, ordinarily, does not interfere in the midst of the proceedings before final decision has been taken unless the challenge to the very institution of proceeding is based on extraordinary ground, referred to herein above. This Court presumes that all public authorities and statutory authorities shall act in accordance with law. In such cases, where final decision has not been taken and the matter has remained pending, which may also include the disciplinary proceeding, the scope of interference is also well settled that in the absence of any ground of challenge to the jurisdiction and competence or where the authority has prejudged the issue or any other analogous ground, ordinarily, the writ Court would not interdict and usurp the jurisdiction of the authority to decide the matter itself.
8. If the aforesaid legal position is applied to the present case, it is found that the basis of challenge by the petitioners is that the respondents are adopting certain averaging formula of dryness to arrive at the finding of shortage. There could be more than one view on the aspect but it can certainly be said that it has nothing to do with the aspect of jurisdiction, competence, violation of principal of natural justice or malafides i.e. malice in fact. Therefore, leaving the petitioners to work out their remedy, this petition is disposed off. Those petitioners, who have suffered the order of penalty would be at liberty to prefer departmental appeal before the competent authority and it would be open for them to take all such grounds as may be available to them under the law including the grounds which have been raised in this petition, which shall receive full attention and

consideration of the Appellate Authority, in the event of appeal being raised.

9. In case of other petitioners, who are presently facing departmental enquiry after issuance of charge-sheet, the ground which have been raised in this petition can always be raised by them in reply and rebuttal of the charges leveled against them in the departmental enquiry and it is presumed that the disciplinary authority shall give due advertence and consideration to all the aspect of the matter including the submissions which are being made by the petitioners before this Court.

10. With the aforesaid observations, the petition is disposed off.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**