

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8489 of 2014

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Md. Yunus Son of Late Md. Siddique Resident of village - Chandanpatti, Police Station - Sakara, District - Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar, through its Principal Secretary cum State Transport Commissioner, Transport Department, Bihar, Patna
2. The Deputy Transport Commissioner, Transport Department, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Verma, Sr. Advocate

For the State : Mr. Ravi Kumar, A.C. to G.P.13

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 15-11-2017

Heard Mr. Rajeev Kumar Verma, learned Senior counsel appearing on behalf of the petitioner and Mr. Ravi Kumar, learned A.C. to G.P.13.

2. The petitioner has filed this writ petition for quashing the order dated 31.7.2013 as contained in Memo No.3584 issued by the Principal Secretary-Cum-State Transport Commissioner, Transport Department, Patna whereby the petitioner has been dismissed from service pursuant to a departmental enquiry.

3. Learned counsel for the petitioner submits that the petitioner was served memo of charges (Annexure-4) and called upon to show cause. Petitioner filed his show cause



(Annexure-5). The Enquiry Officer, without holding the enquiry in accordance with the procedure laid down under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, submitted enquiry report and thereupon a second show cause notice was issued, but the Disciplinary Authority, without taking into consideration his second show cause, dismissed him from the service.

4. It is submitted that the enquiry is based on no evidence, but it appears from Annexure-10 itself that the petitioner has filed appeal before the Minister as provided under Rules 23 and 24 of the C.C.A. Rule, 2005 and the same is still pending.

5. Mr. Rajeev Kumar Verma, learned Senior counsel, however, at his best tried to persuade me that the pending of appeal is no bar to entertain the writ petition and he placed his reliance on the judgment reported in **2003(2) Supreme Court Cases 107, Harbanslal Sahnia and another vs. Indian Oil Corporation Limited and others, 2007(4) PLJR 447, Md. Naseem vs. The State of Bihar and others, 2000(1) PLJR 110, Bhagwan Singh vs. Heavy Engineering Corporation Limited and others** and submitted that it has been held in the aforesaid cases that if



the alternative remedy is inefficacious and the order is passed in violation of principle of natural justice, the hands of the Writ Court are not fettered to entertain the writ petition, but on perusal of the aforesaid judgments, I find that in the case of **Harbanslal Sahnia and another (supra)**, there was a provision of arbitration against the order of cancellation of license and in the aforesaid circumstances, it was held that since the order was passed, dealership of the petitioner was terminated on account of irrelevant or non-existent ground. The Supreme Court has held the writ should not have been dismissed on the ground of alternative remedy. Similarly, in the case of **Md. Naseem (supra)**, it was held that there was a case of violation of principle of natural justice and the alternative remedy which was found inefficacious does not come in the way of entertaining writ petition. Similar view has been taken in the case reported in **2000(1)PLJR 110 (supra)**, but in the present case, the petitioner has already availed his alternative remedy as provided under Rules 23 and 24 of the C.C.A. Rule, 2005 and the same is pending. The petitioner has also not pursued the appeal after filing the appeal and filed this writ petition. Therefore, since the appeal is pending, I do not find any reason to entertain the writ



petition. This application stands disposed of with a direction to the Appellate Authority to hear the petitioner and dispose of the appeal of the petitioner within four months from the date of receipt of this order.

6. Accordingly, this writ petition stands disposed of.

(Prabhat Kumar Jha, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22-11-2017
Transmission Date	

