

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 2447 OF 2017

Banshilal Patel, S/o Late Shri G.R. Patel, aged about 65 years, retired as Area Assistant, Janjgir, District Janjgir-Champa (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Cooperative Societies, Manatralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Managing Director, Chhattisgarh State Marketing Federation- 880, Civil Lines, Head Office, Raipur, District- Raipur (C.G.)
3. Secretary, Chhattisgarh State Marketing Federation-880, Civil Lines, Head Office, Raipur, District Raipur (C.G.)
4. Manager (Establishment), Chhattisgarh State Marketing Federation-880, Civil Lines, Head Office, Raipur, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. A.K. Kesharwani, Advocate.
For Respondents	:	Mr. Prasun Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order on Board

26/05/2017

1. Heard.
2. The petitioner has filed this petition raising serious grievance that departmental enquiry has been initiated and penalty imposed, holding the officers responsible for shortage.
3. Learned counsel for the petitioner 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 enquiry is being initiated and penalty imposed. It is stated that the appeal has already been filed by the petitioner and is pending.
4. Learned counsel for the petitioner would further submit that in case of the petitioner, the respondents have imposed a penalty of recovery after applying the formula of permissible average dryness throughout the State, whereas, in the cases of two similarly placed employees namely

Ashrafuddin and Baldev Singh Thakur, the dryness has been alleged by calculating the average dryness at the district level. He would also submit that the petitioner is claiming applicability of a single formula of dryness to all the employees uniformly on the principle of Article 14 of the Constitution of India and the authorities should also look into this ground raised in the appeal.

5. The grounds which have been raised before this Court are essentially a matter of merit consideration in the departmental appeal. 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 petitioner may have some merit in his submission, is essentially a matter for consideration by the Appellate Authority.

6. 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 principle of natural justice, absence of jurisdiction or malafides.

7. 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.

8. 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.

9. If the aforesaid legal position is applied to the present case, it is found that the basis of challenge by the petitioner 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 principle of natural justice or malafides i.e. malice in fact. Therefore, leaving the petitioner to work out his remedy, this petition is disposed of.

10. Since the petitioner has already preferred a departmental appeal vide Annexure P/7, against the impugned order, the writ petition is finally disposed of with a direction to the concerned authorities to consider and decide the pending departmental appeal with full attention.

Sd/-

Vacation Judge
(Prashant Kumar Mishra)