

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2125 of 2016**

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Suresh Prasad Malakar Son of Late Guru Sahai Mali resident of village - Rani Hatti, P.O. Kadirganj, P.S. Nawadah, District - Nawadah

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Revenue and Land Reforms Department, Bihar, Patna
3. The Additional Secretary, Revenue and Land Reforms Department, Bihar, Patna
4. The Deputy Secretary, Revenue and Land Reforms Department, Bihar, Patna
5. The Under Secretary to the Government, Bihar, Patna
6. The Commissioner, Magadh Division, Gaya
7. The District Magistrate, Gaya
8. The Additional Collector, Department Enquiry - Cum - Conducting Officer, Gaya
9. The Land Reforms Deputy College, Gaya

... .. Respondent/s

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**Appearance :**

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|----------------------|---|--------------------------------|
| For the Petitioner/s | : | Mr. Rajeev Verma, Sr. Advocate |
|                      |   | Mr.Sri Krishna Ranjan          |
| For the Respondent/s | : | Mr.N.K. Singh, GP26            |

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 15-02-2019**

Writ petition has been filed for quashing the order of dismissal dated 07.09.2015 whereby petitioner has been dismissed from service. The punishment has been inflicted after a duly constituted proceedings on the basis of charge memo communicated under communication dated 25.04.2014. The allegations pertain to a period when the petitioner was a Circle Officer at Manpur.

2. Learned senior counsel appearing on behalf of the petitioner has submitted that the proceedings were conducted



against the petitioner in gross violation of the procedure and provisions contained in Rule 17 (4) and Rule 17 (14) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'Bihar CCA Rules, 2005'). It is alleged that the charge memo was not in accordance with law and also that no witnesses were adduced in the course of proceedings on behalf of the department by the Presenting Officer.

3. The issues raised on behalf of the petitioner are such that can be verified from the record of the proceedings. The petitioner has attained the age of superannuation on 31.01.2018. In view of the nature of submissions advanced on behalf of the petitioner, and having regard to the remedy by way of review available to the petitioner under Rule 24 (2) of the Bihar CCA Rules, 2005, this Court would observe that the petitioner should avail of the remedy of review by filing his memorial before the competent authority.

4. When adequate alternative remedy of review is available where all the issues raised by the petitioner can be considered with reference to the records of the proceedings conducted against the petitioner, this Court is of the opinion that the petitioner should not have rushed directly to this Court without exhausting such alternative efficacious statutory



remedy. The facts and circumstances which are relevant and to be considered before exercising of jurisdiction under Article 226 have been reiterated time and again by the Hon'ble Apex Court. One such judgment in the case of **City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and Others** reported in **(2009) 1 SCC 168** contains the fact as to be take into consideration. Relevant extract of para 30 of the said judgment is being reproduced here in below :

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether :

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved ;

(b) the petition reveals all material facts ;

(c) the petition has any alternative or effective remedy for the resolution of the dispute ;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches ;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law ; and host of other factors.....”



5. In view of the availability of statutory alternative remedy, and the law in this regard as considered herein above, writ petition is dismissed. If the petitioner chooses to avail of the remedy of review provided under Rule 24(2) of the Bihar CCA Rules, 2005, he should do so within a period of four weeks from today. In the event the same is done the authority should consider the petitioner’s memorial on its own merit without raising the objection of the same being filed by any delay.

**(Madhuresh Prasad, J)**

Prakash/-

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