

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8970 of 2023

=====

Tara Nand Mahto Viyogi Son of Late Badri Mahto Resident of Village-
Mahishi, P.O and P.S.- Mahishi, District- Saharsha.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.
3. The Secretary, Social Welfare Department, Government of Bihar, Patna.
4. The Chairman cum Managing Director, Women and Child Development Corporation, Bihar.
5. The District Magistrate, Kaimur, Bhabua.
6. The District Program Officer, Kaimur (Bhabua), Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Adv., Mr. Akash Keshav, Adv., Ms. Akanksha Malviya, Adv., Mr. Girish Pandey, Adv., Ms. Shuchi Bharti, Adv.
For the State	:	Mr. Raisul Haque (Sc10)

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

C.A.V. JUDGMENT

Date : 25-07-2024

The petitioner has approached this Court under Constitutional writ jurisdiction under Article 226 of the Constitution of India praying for issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction, for quashing the order dated 28th April, 2023, issued vide letter no. 8152, dated 28th April, 2024, whereby minor punishment of censure and withholding of two increments of pay without



cumulative effect has been imposed upon him for the alleged irregularity, which occurred between 2013-2017 in the Shelter Home in Bhabhua without considering the fact that at the relevant point of time the petitioner was not posted at Kaimur at Bhabhua and for any alleged act or omission he cannot be held liable.

2. At the outset, it is necessary to state the background of the case. Tata Institute of Social Sciences (T.I.S.S.), Mumbai conducted an inspection and survey of the condition of Shelter Homes situated in the State of Bihar in the year 2016-2017. In its report, it was stated by the Tata Institute of Social Sciences (T.I.S.S.), Mumbai that the inmates of the Shelter Homes were sexually abused, harassed and exploited. Annexing the said report, a *Special Leave to Appeal (C) No. 24978 of 2018 (Nivedita Jha Vrs. The State of Bihar & Ors.)* was instituted. The Hon'ble Supreme Court passed an order in the aforesaid Special Leave to Appeal on 28th November, 2018, directing the Central Bureau of Investigation (C.B.I.) to investigate into the matter.

3. The petitioner was posted on transfer as Senior Deputy Collector, Bhabhua with an additional charge of D.P.O. (I.C.D.S.), Bhabhua by an order dated 30th July, 2011. He delivered charge of his office on being transferred to Araria on 13th October, 2012. During the period between 30th July, 2011 and 13th October,



2012 the petitioner discharged his duty diligently, fulfilling all his responsibility and subsequently also he has been discharging his official duty with due diligence and utmost sincerity. Therefore, vide letter no. 7817, dated 7th September, 2020 his name was recommended for promotion to Indian Administrative Services. While the petitioner has been waiting for approval of his consideration, he received a letter no. 5194, dated 30th April, 2021 issued by the Joint Secretary, Government of Bihar, whereby a recommendation of C.B.I. vide letter no. 4437, dated 30th December, 2019 was forwarded to him and he was directed to submit his reaction with regard to the recommendation/enquiry report of the C.B.I. in connection with C.B.I. Case No. RC-0922019S0010, dated 16th January, 2019. The petitioner came to know after going through the said letter issued by the Joint Secretary, that the C.B.I. was directed to investigate into the alleged incident of sexual abuse, harassment and assault allegedly committed upon the inmates of the Shelter Homes during the period between 2013 to 31st October, 2017. The petitioner submitted his reply on 4th June, 2021 stating, inter alia, that he discharged additional charge of D.P.O. (I.C.D.S.), Bhabhua from 30th July, 2011 to 13th October, 2012. Therefore, he does not have any knowledge about what had happened in the Shelter Home at



Bhabhua during the period between 2013 to 2017. During 2011-2012 he conducted inspection of the Shelter Home at Bhabhua and submitted his inspection reports. He also requested the District Magistrate, Kaimur to handover the copies of the inspection reports conducted by him in respect of the said Shelter Home during 2011-2012. Subsequently, the petitioner came to know that a 03 men Committee was formed for consideration of the explanations submitted by the officer against the charges for which departmental enquiry was proposed by the C.B.I. vide letter dated 30th December, 2019. The explanation submitted by the petitioner was, however, not considered and a Memorandum of charge dated 22nd April, 2022 was issued to the petitioner vide a forwarding letter dated 25th April, 2022.

4. Charge against the petitioner was as follows:-

“The petitioner while posted as District Programme Officer, Kaimur from 30th July, 2011 to 13th October, 2012, did not inspect the Shelter Home at Kaimur even for a single time for which may irregularities cropped up in the said Shelter Home, which did not come to surface for taking necessary action.”

5. The petitioner repeatedly demanded the documents and evidences vide letter dated 14th June, 2021 and again on 29th



April, 2022. But no document or copy of evidence was supplied to him. In reply to the charge-sheet, he submitted that during his tenure, holding additional charge of D.P.O. he inspected the Shelter Home at Bhabhua several times. Thereafter the under Secretary, Government of Bihar directed the District Magistrate, Kaimur by a letter dated 6th July, 2022 to provide relevant documents to the petitioner relating to the charges as demanded by him, the District Programme Officer, Kaimur provided certain documents to the petitioner on 27th April, 2022. Since the documents were illegible, the petitioner again demanded legible copies of the said documents. Vide letter dated 1st August, 2022, the then District Programme Officer, Kaimur, Bhabhua provided certain relevant documents to the petitioner on 17th August, 2022. Perusal of those documents would show that during his term he conducted all necessary verification. There was no evidence with regard to his dereliction of duty or negligence. The petitioner submitted his reply to the charges on 26th August, 2022 to the Principal Secretary, General Administration Department, Government of Bihar stating the fact that during the period under consideration he was not posted at Kaimur and not in-charge of Bhabhua Shelter Home. That on 28th April, 2023 an order was passed by the General Administration Department imposing upon



the petitioner minor punishment of censure and withholding two increments of pay without cumulative effect with holding any enquiry as per the Rules.

6. It is submitted by the petitioner that the Inquiry Authority did not take into consideration the clarification of the petitioner. The opinion of the Social Welfare Department was however considered and he was awarded punishment.

7. The respondents have filed as many as three counter affidavits. Counter affidavit on behalf of respondent no. 2 was filed on 31st July, 2023, thereafter counter affidavit on behalf of respondent nos. 5 and 6 was filed on 2nd February, 2024.

8. The petitioner has filed rejoinder to the counter affidavit.

9. In the counter affidavit filed by the under Secretary, General Administration Department on 31st July, 2023, it is admitted on behalf of the respondent that the petitioner was posted as District Programme Officer, Kaimur during the period between 30th July, 2011 to 13th October, 2012. It is also alleged that during his tenure as District Programme Officer he never visited the Shelter Home situated at Bhabhua. No report was submitted by him stating any irregularity of function in the said Shelter Home. Form the enquiry report submitted by the C.B.I., in respect of the



irregularities in Shelter Home, the Government constituted three men Committee. The Committee took a resolution on 1st April, 2022 recommending to initiate departmental proceeding against the petitioner. On the basis of the said recommendation, Memorandum of Charges were framed by the Social Welfare Department and after enquiry the charge against the petitioner was found true and accordingly he was punished.

10. In paragraph-6 of counter affidavit filed on behalf of the respondent nos. 5 and 6, it is stated that the petitioner was rightly punished as several irregularities were found in his inspection and supervision. The said statement runs contrary to the counter affidavit which was filed by the Under Secretary on 31st July, 2023. As per the counter affidavit filed on 31st July, 2023, the petitioner never inspected the Shelter Home at Bhabhua, but in the second counter affidavit it is stated that series of irregularities were found in the inspection report of the Shelter Home at Bhabhua conducted by the petitioner.

11. Learned Senior counsel on behalf of the petitioner submits that no departmental enquiry was held to prove the charge against the petitioner. The petitioner was not served with any document.



12. On the contrary, in the report submitted by the C.B.I., it is clearly stated that the petitioner had conducted inspection of the Shelter Home at Bhabhua and during his tenure no irregularity was found by him. It is also submitted by the learned Senior Advocate on behalf of the petitioner that the petitioner was not examined during the so called departmental proceeding.

13. Referring to a decision of the Hon'ble Supreme Court in the case of *P.V. Mahadevan Vrs. MD, T.N. Housing Board*, reported in *(2005) 6 SCC 636*, it is submitted by the learned Senior counsel on behalf of the petitioner that as per the direction of the Hon'ble Supreme Court in the case of *Nivedita Jha (supra)*, the C.B.I. was directed to enquire into the irregularities allegedly committed upon the inmates of the Shelter Home during the period between 2013-2017. The petitioner was In-charge of the Shelter Home at Bhabhua till 13.10.2012. Therefore, during the check period the petitioner cannot be held responsible for any irregularities in the said Shelter Home. Moreover, on the allegation that the petitioner did not conduct any inspection during his tenure, as District Programme Officer, Kaimur in the year 2011-12, the departmental enquiry was initiated after expiry of 10 years in the year 2022. It is held by the



Hon'ble Supreme Court in the above mentioned decision that there is inordinate delay of 10 years in initiating departmental enquiry against the appellant and no convincing explanation was given by the respondent employer in respect of such delay, in such circumstances, allowing respondent to proceed further with departmental proceedings would be very prejudicial to the appellant.

14. On the issue of maintainability of the instant writ petition against the order of minor punishment, passed by the disciplinary authority, it was contended on behalf of the respondents that the petitioner had alternative efficacious relief by filing an appeal under Rule 23 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The petitioner did not avail the said remedy.

15. In reply thereto, the learned Senior counsel on behalf of the petitioner refers to the decision of the Hon'ble Apex Court delivered in *Whirlpool Corporation Vrs. Registrar of trade Marks, Mumbai & Ors.*, reported in (1998) 8 SCC 1. It is held by the Hon'ble Supreme Court that the power to issue prerogative writ under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not



only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the fundamental rights contained in part-III of the Constitution of India, but also for “any other purpose”.

16. Under Article 226 of the Constitution, the High Court having regard to the facts of the case has a discretion to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if, an effective and efficacious remedy is available the Writ Court would not generally exercise its jurisdiction. But the alternative remedy has been constantly held by this Court not to operate as a bar in at least 3 contingencies, namely, where the writ petition has been filed for the enforcement of any fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the violation of the act is challenged.

17. In the instant case, the petitioner was recommended for promotion in Indian Administrative Service, but for the disciplinary proceeding and minor punishment imposed upon him, he is apprehending to be ignored for promotion.

18. Considering such circumstances of the case, the petitioner has approached this Court for appropriate relief.



Existence of alternative relief under the facts and circumstances of the case can not dis-entitle the petitioner from filing the instant writ petition before this Court.

19. On High Court's power to entertain a writ petition under Article 226 of the Constitution of India, the Hon'ble Supreme Court in ***M/s. Godrej Sara Lee Lit. Vrs. Excise and Taxation Officer-Cum-Assessing Authority*** reported in ***AIR 2023 SC 781*** was pleased to held as hereunder:-

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner; yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy



available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under [Article 226](#) that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under [Article 226](#) has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even



be refused to the petitioner; despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. *A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 ([State of Uttar Pradesh vs. Mohd. Nooh](#)) had the occasion to observe as follows: “10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury’s Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.*



6. At the end of the last century, this Court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (*Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice; (iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (*Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited*) has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (*State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.*) and (2000) 10 SCC 482 (*Union of India vs. State of Haryana*). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring



determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.”

20. Learned Advocate on behalf of the respondent at the outset submits that under Rule 19 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 fulfilled disciplinary enquiry as contemplated in Rule 17 is not necessary, where the disciplinary authority proposes to impose minor penalty on a Government servant.

21. Rule 19 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 runs thus:-

“19. Procedure for imposing minor penalties.- (1) *Subject to the provisions of sub-rule (3) of Rule 18, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (v) of Rule 14 shall be made except after-*

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;



(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation if any;

(iv) the evidence produced during the inquiry; (v) the advice of the Commission, if any;

(vi) the findings of each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.”

22. This Court is not in a position to accept the above submissions made by the learned Advocate for the respondent.

23. Rule 19 (1) (b) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 says that no order imposing on a Government Servant any of the penalties specified



in Clauses (i) to (iv) of Rule 14 shall be made except after holding an enquiry in the manner laid down in Sub Rule (3) to (23) of Rule, 17, in every case in which the disciplinary authority is of the opinion that such enquiry is necessary.

24. When the Memorandum of charge was submitted against the delinquent Officer, his reply was obtained in the form of written statement of defence, it was absolutely necessary to give liberty to the petitioner of hearing as contemplated under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The petitioner was imposed minor punishment only on the basis of the recommendation of the three Members Committee by the Social Welfare Department. It was not considered that the petitioner cannot be held responsible for any act of irregularity committed after his transfer from the post of District Programme Officer, Kaimur w.e.f. 13.10.2012.

25. On the objection raised on behalf of the represents that the petitioner has not approached the appellate authority against the order of punishment, this Court already records the reason with supporting decision of the Hon'ble Supreme Court which permits the Court to accept the instant writ petition as maintainable. When this Court finds that the petitioner's valuable opportunity of being considered for promotion to All India Service



is going to suffer due to imposition of minor punishment on the allegation that he did not visit and inspect the Shelter Home at Bhabhua, Kaimur, in spite of the fact that no allegation of any irregularity was made to him on the functioning of the said Shelter Home, this Court is not in a position to throw away the writ petition on the ground that he did not avail of the alternative remedy of appeal.

26. On careful perusal of the entire material on record, this Court finds that no regular disciplinary proceedings was initiated against the petitioner. As such the principles of natural justice was blatantly violated by the Department.

27. The petitioner was not given an opportunity of hearing in any stage of disciplinary proceeding. On the other hand, he was put under disciplinary proceeding, though, there is no allegation of irregularity in the Shelter Home in the year 2011-2012.

28. On perusal of the documents annexed with the instant writ petition, I find that first complaint with regard to sexual abuse was made against one Pintu Pal, a Security Guard of the Shelter Home at Bhabhua, committed in the year 2015. Admittedly, the petitioner was not posted as District Programme



Officer, Kaimur on the date of lodging complaint against the said Pintu Pal.

29. For the reasons stated above, I have no other alternative but to hold that the order of imposition of punishment cannot be sustained. Accordingly, the order of punishment dated 28th April, 2023 against the petitioner is quashed and set aside.

30. The instant writ petition is accordingly allowed on contest.

31. There shall be however, no order as to costs.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	20.07.2024
Uploading Date	
Transmission Date	

