

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6141 of 2018

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Amarnath Roy Son of Late Bhagya Narayan Roy, Resident of Village- Balua,
P.O.- Raini, P.S.- Sakra, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department,
Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government,
of Bihar, Patna.
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur.
5. The Additional Collector, Muzaffarpur-cum-Enquiry Officer, District-
Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Ms. Anita Kumari, Advocate Ms. Aradhna Kamal, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25 Mr. W.A. Khan, AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 21-02-2024

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The present writ petition has been filed for quashing the order dated 15.03.2018 passed by respondent No.4 contained in Memo No.443 dated 15.03.2018, by which the petitioner was dismissed from service on the ground of his negligency, due to which Bihar State Food and Civil Supplies Corporation has sustained a loss of about Rs.21,00000/- and



also directed for recovery of the aforesaid amount from the petitioner through a certificate proceeding.

3. Learned counsel for the petitioner submits that the petitioner was working as Revenue Karmchari in Bandra Block and he was made Incharge Circle Inspector in the same block immediately after his posting in the Circle. Counsel further submits that under the procurement policy of paddy purchase through the Primary Agriculture Credit Cooperative Societies, the Circle Officer, Bandra, was made enforcement Officer of the Circle and the petitioner in the capacity of Incharge Circle Inspector was given the charge of Procurement Purchase Centre No.1 of Banadra Block. Counsel submits that petitioner was the Incharge of P.P.C-1 and P.P.C.-2. Counsel further submits that during the process of procurement of *Kharif*, the petitioner has received paddy for both PPC-1 and PPC-2. But with the span of time, the petitioner was issued a charge memo vide letter No.1660 dated 08.07.2016, in which allegation of loss of 46.20 and 1481.58 quintals of paddy (grain) has been alleged to be destroyed due to which the allegation of loss of Rs. 21,05,325.58 has been alleged. Counsel for the petitioner has taken specific plea that in the departmental proceeding the gross error of procedural lapses and violation of



natural justice has been made. He submits that the departmental proceeding initiated against him is resulted into a major penalty but all the things have been done in gross violation of CCA Rules, 2005.

4. Learned counsel further submits that in the charge sheet not a single evidence in support of the charge was adduced nor evidence which the department was intended to produce before the conducting officer in support of charge has been mentioned. Counsel further submits that the disciplinary authority, at least in absence of the petitioner, without supplying a copy of evidence in support of the charge has conducted the enquiry and submitted its report. Counsel further submits that upon submission of the report second show cause has been issued. The petitioner has replied on the second show cause, thereafter the conducting officer has not taken any action, rather he has handed over the said enquiry to other official at the level of Additional Collector and directed him to inquire and upon his enquiry for the second time then he has passed the punishment order. Counsel submits that the method adopted by the disciplinary authority is basically unknown to law. Under law, the disciplinary authority has to take action on the basis of the enquiry report after demanding second show cause. But



here, in the present case, the disciplinary authority upon receiving the second show-cause has directed for another enquiry and upon receiving the enquiry report, he has not provided the copy of the report to the delinquent petitioner and passed punishment order. In this way, he has adopted a method which is unknown to CCA Rules, 2005 as well as there is gross violation of natural justice by way of not providing the said second report to the petitioner. Counsel also submits that there is gross violation of Rule 17(3) of the CCA Rules, 2005 due to the reason that the charge memo does not contain any imputation and the evidence, oral or documentary, by which the conducting officer alleged to prove those charges against the delinquent petitioner.

5. Learned counsel for the petitioner has relied on a judgment in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others** reported in **(1998) 8 SCC 1**, paragraph 14 to 20 which reads as under:-

“14. The power to issue prerogative writs under Article 226 of the Constitution 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 but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not 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 High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional



law as they still hold the field.

16. *Rashid Ahmed v. Municipal Board, Kairana [AIR 1950 SC 163] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207 : (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “unless there are good grounds therefor”, which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.*

17. *A specific and clear rule was laid down in State of U.P. Vs. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595] as under:*

“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.”

18. This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:

“The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular



case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.”

19. *Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:*

“Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section



34, Income Tax Act.”

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

6. Counsel for the State, on the other hand, submits that enquiry proceeding has been conducted completely in accordance with law, charge memo has been issued, defence reply has been demanded, on the reply after serving the charge memo in presence of the presenting officer have passed the reasoned order after consideration of all the defences of the delinquent petitioner. Counsel further submits that upon submission of the enquiry report, second show-cause has also been issued. Upon receiving the second show-cause, the disciplinary authority has to pass order directly, but with a view



to do justice with the petitioner he has at his on level verified the same with a responsible officer and, thereafter passed order only after taking extra precaution for the purpose of passing the punishment order is nowhere mentioned in the proceeding. But also nowhere restrained in the proceeding, as per the established law every opportunity was granted to him and this action of the official has been taken by way of extra precaution so that injustice may not take place.

7. Upon perusal of the judgment it is well defined by this Court that Court ought to interfere under Article 226 of the Constitution of India when there is violation of enforcement of any fundamental rights, there has been violation of principles of natural justice or where the order or proceeding are wholly without jurisdiction or the vires of the Act is challenged. Here in the present case, this Court is of the view that principles of violation of natural justice is not attracted and, therefore, petitioner has only to avail the statutory remedy at all.

8. After going through the pleadings of the parties and after hearing the parties, this Court is of the opinion that it is true that the disciplinary authority has adopted a method of deciding this case which has not been described in CCA Rules, 2005. The Disciplinary Authority supposed to pass order after



receiving the second show cause and considering the enquiry report that was enough but the disciplinary authority has taken this action to make further enquiry on the enquiry report and the second show-cause with a view to take an extra precaution, which is not expressly mentioned in the CCA Rules, 2005. Since, those provision has not been mentioned in the CCA Rules, 2005, therefore, in view of this Court it cannot be said that it is violation of natural justice due to the reason that the disciplinary authority has to pass final order just after receiving show-cause, but he has taken one additional step. In this light, this Court is of the view that it is not a case of violation of natural justice but at this juncture this Court without entering and giving finding on the merit of the case realized that petitioner has not followed the statutory remedy available to him under law i.e., he ought to prefer appeal under Rule 24 of the CCA Rules, 2005, but he has directly filed writ before this Hon'ble Court and, therefore, this Court hereby directs the petitioner to avail remedy first of all before the appellate forum and then come to this Court.

9. It is made clear that it is an old case and if the petitioner files appeal within 30 days from the date of receipt of a copy of this order and the appellate authority shall pass final



order within three months from the date of receipt/production of a copy of order after granting opportunity of hearing. It is made clear that petitioner shall be at liberty to raise all the points which he has raised here in the present writ petition.

10. With this direction, this writ petition is disposed off.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2024
Transmission Date	NA

