

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6961 of 2018

Basudeo Prasad Mandal Son of Mohan Lal Mandal, resident of House No. 524, Shitala Sthan Road, Tilkamajhi, P.S.- Tilkamajhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Building Construction Department, Govt. of Bihar, Patna.
4. The Officer on Special Duty-cum-Chief Vigilance Officer, Building Construction Department, Govt. of
5. The Deputy Secretary Building Construction Department, Govt. of Bihar Patna.
6. The Additional Secretary, Building Construction Department, Govt. of Bihar Patna.
7. The Superintending Engineer, Building Division, Purnea, Building Construction Department, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv Mr.Sumit Kumar Jha, Adv Ms. Riya Giri, Adv
For the Respondent/s	:	Mr.Raj Ballabh Pd.Yadav Aag11

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 02-07-2024

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

2. The present writ petition has been filed for the
following reliefs:-

i) To issue a writ/order/ direction in the nature of
certiorari for quashing of letter no. 2609(g) dated 20.03.2018
issued by the State Government under the signature of Deputy



Secretary, Building Construction Department, Patna by which the petitioner has been reverted back to the post of Assistant Engineer under the Bihar Government Servant (Classification, Control & Appeal) Rule, 2005 (Annexure 13).

ii) To issue a writ/order/ direction in the nature of certiorari for quashing report dated 19.09.2014 by which the Presiding Officer on basis of the inquiry report has held the charges leveled against the petitioner to be true.

iii) For a direction to the respondent authorities to restore the service of the petitioner immediately on the post of Superintending Engineer-cum Execution Engineer, Building Circle, Purnea with continuity in service and all consequential benefits.

iv) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

3. Learned Senior counsel for the petitioner submits that in the present writ petition, the original order has been challenged which has been passed by the Government and there is provision of Statutory Appeal available in the form of the review, which has been mentioned in Section 24(2) Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (Hereinafter referred to as the “CCA Rules of



2005”) but in the present case, there is gross violation of the Rule of Law as well as violation of Principles of Natural Justice and therefore, direct entertainment of the writ petition is permissible within the preview of law under Article 226 of the Constitution of India.

4. In support of his argument, learned Senior counsel relied on a judgment rendered in case of *Godrej Sara Lee Ltd Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.* reported in *2023 SCC OnLine SC 95* whose paragraphs 4, 5, 8 are relevant in which it has been held that in 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 but the principles for entertainment of writ petition under Article 226 is basically plenary in nature and any limitation on the exercise of such power must be traceable in the Constitution itself. Article 226 of the constitution of India does not impose any limitation or restrain on the exercise of power to issue writs.

5. He relied one another Judgments rendered in the case



of *Commissioner of Income Tax and Ors. Vs. Chabbil Dass Agarwal* reported in *2014 (1) SCC 603* whose paragraph 10, 11, 12, and 15 are relevant in which it has been held that wherever there is violation of principle of natural justice and not following the Rule of Law, then writ petition may be directly entertained.

6. Learned counsel for the petitioners further relied on another judgement of *Ram And Shyam Company Vs. State of Haryana and Ors.* reported in *1985 (3) SCC 267* and *Lily Thomas and Ors. Vs Union of India and Ors.* reported in *2000 (6) SCC 224*. In addition to that he relied on one more judgment decided by this Hon'ble Court in the case of *Harihar Prasad and Ors. Vs. Union of India and Ors.* reported in *2009 (4) PLJR 892* and submits that availability of alternative remedy is not absolute bar in entertaining the writ petition especially when matter is pending for six year before this Court, and particularly, when no objection has been raised in the counter affidavit by the respondents. He further submits on merit that both the points available to the petitioner that Rule of Law has not been followed in imposing the punishment against the petitioner as well as there is a gross violation of principle of natural justice against the petitioner.



7. Learned Senior counsel further submits that Annexure-11 is the enquiry report. He submits that the CCA Rules of 2005 categorically indicate that enquiry authority shall have to prepare the enquiry report completely in accordance with Rule 17(23) CCA Rules of 2005. Here in the present case, there is gross violation of the same and none of the ingredients of Rule 17(23) has been followed. He further submits that second show cause has been issued and in response thereof, the petitioner has submitted his reply to the same but none of the points have been considered in the final order which is impugned order. Learned Senior Counsel further submits that final order has been passed in this regard and specific guideline has been issued under Rule 18(3) and Rule 18(4) of the CCA Rules of 2005 and in passing the order the disciplinary authority has made gross violation of these Rules. Authorities concerned have not given their own findings neither they have considered the reply to the show-cause submitted by the petitioner.

8. In support of his argument, counsel relied on the judgment rendered in the case of ***Oryx Fisheries Pvt. Ltd. Vs. Union of India and Ors.*** reported in 2010 (13) SCC 427 in which he specifically relied on the paragraphs 27, 39, 40 and 41 and submits that disciplinary proceeding has been conducted in



the unique manner which is completely unknown to law and there is gross violation of principle of natural justice and Rule of Law particularly 17 (23) and 18 (3)(4) of CCA Rules, 2005 have not been followed. Therefore, he submits that both the enquiry report as well as the disciplinary order may be set aside.

9. Learned counsel for the State opposes the prayers made in the writ petition and submits that there is no procedural lacuna in this case. Charge-memo has been issued as per law and ample opportunity was given to the petitioner. The petitioner has submitted reply before the enquiry Officer. Enquiry was conducted, enquiry report was prepared, second show cause notice was issued, reply of the same has been filed, and thereafter, the disciplinary authority has passed the order. Therefore, according to him neither there is any procedural lacuna nor any violation of principle of natural justice. In addition to that learned counsel for the State further submits that Rule 24(2) of CCA Rules of 2005 states that there is alternative remedy available to the petitioner by way of filing review petition and by preparing the memorials but instead of exhausting his remedy by way of filing memorial, he has directly filed the writ petition before this Hon'ble Court. Therefore, he submits that either on merit or on maintainability,



this writ petition is not maintainable and fit to be dismissed.

10. In this light of the submissions made by the parties, it is necessary to quote the provisions of law and the case laws first then to apply the opinion and view of the Court.

11. The provision of law on which this case has to be decided is Rule 17(23)(i) of the CCA Rules of 2005 and Rule 18(3) and Rule 18 (4) of the CCA Rules of 2005 which are as follows:

23)(i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government Servant in respect of each article of charge.

(c) an assessment of the evidence in respect of each article of charge,

(d) the findings on each article of charge and the reasons thereof.

18(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

18(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6).

12. The first Judgment on which learned Senior counsel for the petitioner relied on ***Godrej Sara Lee Ltd Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.*** reported in ***2023 SCC OnLine SC 95*** whose relevant paragraphs are 4, 5



and 8 are as follows:

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 v. 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.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. 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.

13. The second judgment on which learned Senior counsel for the petitioner relied on is ***Commissioner of Income Tax and Ors. Vs. Chabbil Dass Agarwal*** reported in **2014 (1) SCC 603** whose relevant paragraphs are 10, 11, 12 and 15 which are as follows:

10. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However against the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he



has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd Nooh, Titaghur Paper Mills Co. Ltd. v. State of Orissa³, Harbanslal Sahnia v. Indian Oil Corp. Ltd. and State of H.P. v. Gujarat Ambuja Cement Ltd.)

12. The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission, Sangram Singh v. Election Tribunal, Union of India v. T.R. Varma, State of U.P. v. Mohd. Nooh and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted [See N.T. Veluswami Thevar v. G. Raja Nainario, Municipal Council, Khurai v. Kamal Kumar, Siliguri Municipality v. Amalendu Das, ST. Muthusami Kurier Natarajan, Rajasthan Kerala SEB v. Kurien E. Kalathil's, A. Venkatasubbiah Naidu v. S. Chellappan 16. L.L. Sudhakar Reddy v. State of A.P. 17. Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanst Sanstha v. State of Maharashtra 18, Pratap Singh v. State of Haryana and GKN State Driveshafts (India) Ltd. v. ITO 20.]

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case²². Titaghur Paper Mills case and other similar judgments that the High Court will not entertain petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for dressal of grievance still holds the field. Therefore, when a



statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

14. The third judgment on which learned Senior counsel for petitioner relied on is ***Ram And Shyam Company Vs. State of Haryana and Ors.*** reported in ***1985 (3) SCC 267*** whose relevant Paragraph No. 9 is as follows:

9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries rejected the writ petition observing that "the petitioner who invokes the extraordinary Jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him", We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective adequate alternative remedies there often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law at any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in State of U.P. v. Mohammad Nooh it is observed "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 should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal



in a State administration against the decision of the Chief Minister? The clitch of appeal from Ceasar to Ceasar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court.

15. The Fourth judgment on which learned Senior counsel for the petitioner relied on is Lily ***Thomas and Ors. Vs Union of India and Ors.*** reported in **2000 (6) SCC 224** whose relevant paragraphs are 56, 57 and 58 are as follows:

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

57. In the light of the legal position as enumerated hereinabove, let us examine the grievances of the petitioners in the instant case. In review petition the notice issued was limited to the question of Article 20(1) of the Constitution. It was contended that the judgment of the Court entailed on a convert to Islam



the liability of prosecution for the offence of bigamy under Section 494 of the Indian Penal Code which would, otherwise not be an offence under the law applicable to him. Section 494 forms part of a substantive law and is applicable to all unless specifically excluded. As no notice has been issued for review of the main judgment which interpreted Section 494 IPC in the manner as narrated hereinabove, it cannot be said that any person was likely to be convicted for an offence except for violation of law in force at the time of commission of the act charged as an offence.

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal case. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words "any other sufficient reason appearing in Order 47 Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa this Court held that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Ahmad Ishaque it was held:



"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in 'Batuk K. Vyas v. Surat Borough Municipality that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in Sarla Mudgal case. The petition is misconceived and bereft of any substance.

16. The Fifth Judgments on which learned Senior counsel for the petitioner is relying on the judgment rendered by this Hon'ble Court in the case of ***Harihar Prasad and Ors. Vs. Union of India and Ors.*** reported in **2009 (4) PLJR 892** whose relevant paragraph 5 is quoted us under:-

5. Now coming to the question of appellate remedies. It is well settled principle that availability of alternative remedy is not an absolute bar in



entertaining the writ petition especially when this objection is being raised after more than 6 years of the filing of the writ petition. Merely stating the objection in the counter affidavit is of no avail unless the objections are pressed into service. It was never so pressed. It is well settled that such a belated objection should not be entertained. Reference may be made to the case of Hirday Narain vs. Income Tax Officer, AIR 1971 Supreme Court 33 and series of cases on that line. Further, in view of there being no controversy of fact at this later juncture, I do not feel persuaded to relegate the petitioner to alternative remedy.

17. The Sixth judgment on which learned Senior counsel for the petitioner has relied on is ***Oryx Fisheries Pvt. Ltd. Vs. Union of India and Ors.*** reported in **2010 (13) SCC 427** whose relevant paragraphs are 27, 39, 40 and 41 as follows:

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

39. On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in Kranti Associates (P) Ltd. v. Masood Ahmed Khan on 8-9-2010.

40. In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is



meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in



decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, EHRR at p. 562, para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

18. On the point of maintainability, this Court is of the firm view, after going through those judgments that whenever, there is a violation of principles of natural justice, the alternative remedy cannot restrain the High Court in passing order under Article 226 of the Constitution of India. In addition to other ground mentioned in the aforesaid judgments. Here in the present case, there is gross violation of principles of natural justice as well as the violation of Rule of Law. Therefore, this Court is of the firm view that the present writ petition is maintainable.

19. After perusal of the enquiry report, it transpires to this Court that enquiry officer has not passed order in the light of the Rule 17(23) of the CCA Rules of 2005, which categorically states that after conclusion of the enquiry, enquiry officer shall



indicate in the enquiry report about the articles of charge, the statement of the imputations of misconduct or misbehavior, the defence of the Government Servant in respect of each article of charge, an assessment of the evidence in respect of each article of charge and the findings on each article of charge and the reasons thereof.

20. Upon bare reading of the enquiry report, it transpires to this Court that the point of defence mentioned by the Government Servant has not been considered in the enquiry report at all, and therefore, this Court is of the firm view that enquiry report is not sustainable, as the disciplinary authority at the time of passing the order has not applied his own mind and has not reached on his own findings. It is also made clear that when the enquiry report is defective then automatically, all the further steps of departmental proceedings shall also become defective. Keeping in view the aforesaid facts that neither the enquiry report nor the order passed by the disciplinary authority are sustainable in law, both orders i.e letter no. 2609(g) dated 20.03.2018 issued by the signature of Deputy Secretary, Building Construction Department, Patna and report dated 19.09.2014 by which the Presiding Officer on basis of the inquiry report has held the charges leveled against the petitioner



to be true are hereby set aside. However the State would be at liberty to proceed further against the petitioner in accordance with law.

20. It is directed further that any decision which has to be taken shall be taken by State within 90 days and conclude it, if there shall be no action taken against him within the said period then the respondents shall pay all his benefits for which he is entitled.

21. With the aforesaid observations and direction, this writ petition stands allowed.

(Dr. Anshuman, J)

Sunnykr/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

