

(1992) 11 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44101 of 1992

Attar Singh

APPELLANT

Vs

Deputy Inspector General

RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 3 AWC 1465 : (1993) 3 UPLBEC 2077

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Tej Pal, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Being aggrieved by an order of his dismissal from service passed on 16-10-1992 after holding departmental enquiry, Petitioner, who is Sub Inspector of Police, has filed this writ petition before this Court. Against the order of dismissal, admittedly, appeal lies before the Prescribed Authority. The remedy of appeal is efficacious alternative remedy. In view of the availability of the statutory remedy of appeal it is not a fit case for this Court to Interfere under Article 226 of the Constitution of India.

2. Learned Counsel for the Petitioner has in this connection made two submissions; namely, (1) when there is violation of Principles of natural justice, writ petition cannot be dismissed on the ground of availability of alternative remedy of appeal. For this proposition reliance has been placed on the decision of the Supreme Court in the case of Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, and (2) the impugned order not having been passed by the Deputy Inspector . General of Police is not sustainable.

3. There is no such rule that whenever there are allegations of violation of Principles of natural Justice this Court cannot dismiss the writ petition on the ground of availability of alternative remedy of appeal. Ordinarily whenever an

efficacious alternative remedy is available to the Petitioner this Court does not interfere In exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India unless the Petitioner pleads and proves that the alternative remedy is not efficacious and adequate. In view of the facts and circumstances of a particular case this Court can also Interfere under Article 226 of the Constitution of India even If an alternative remedy is available because availability of alternative remedy is not an absolute bar against entertaining writ petition.

4. In the case of Institute of Chartered Accountants of India v. L.K. Ratna and Ors. (supra) what was under challenge was an order holding a member of highly respected profession as guilty of misconduct without giving him a reasonable opportunity of being heard. Supreme Court declared the order impugned therein an illegal without relegating the person aggrieved to the appellate forum. But the Supreme Court did not accept the wide proposition that whenever there is violation of Principles of natural justice writ petition has to be entertained and cannot be dismissed on the ground of alternative remedy. After noticing the certain English decision, wherein certain observations were made to the effect that a failure of natural justice in the trial can not be cured by sufficiency of natural Justice in an appellate authority, the Supreme Court observed as under:

But perhaps another way of looking at the matter lies In examining the consequences of the initial order as soon as it is passed, there are cases where an order may cause serious injury as soon as it Is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal For instance, as in the present case, where a member of a highly respected and publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation in his most valuable possession. It effects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It Is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It Is the portrait of his professional honour. In a world said to be notorious for Its false attitude towards the, noble values of an earlier generation, a man's professional reputation Is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision.

5. In the instant case Petitioner was given an opportunity of bearing and the Impugned order is the speaking order running into about 14 pages. Petitioner in the Instant case does not belong to any profession and is one of the, Government servants In case he ultimately succeeds and his appeal is allowed he will be fully compensated by award of salary. It is not a case like the case of a professional where the harm may be irreparable. First submission as such lacks

merit and has to be rejected.

6. As regards the second submission it also lacks merit. It is admitted that the Impugned order has been passed by Dy. Inspeotor General of Police. Merely because order was passed on the report of the subordinate officer, it can not be said to be void ab-initio.

7. For the reasons given above this writ petition is dismissed on the ground of alternative remedy.