
(2012) 03 AHC CK 0012
In the Allahabad High Court
Case No : Special Appeal No. 73 of 2012

Rajendra Prasad Upadhyaya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 13(2), 17, 33A, 34, 35

Citation : (2012) 5 AWC 4678

Hon'ble Judges : Uma Nath Singh, J; Ritu Raj Awasthi, J

Bench : Division Bench

Advocate : Rajan Roy and Sanjay Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.—This special appeal arises out of the final order dated 30.1.2012 passed in Writ Petition No. 529 (SS) of 2012, Rajendra Prasad Upadhyaya v. State of U.P. and others, wherein on preliminary objection raised by the learned standing counsel, the writ petition was dismissed on the ground of availability of alternative remedy to the petitioner at the admission stage. Since the grounds raised in the appeal relates to the maintainability of the writ petition in the background of existence of alternative remedy, which are purely legal in nature, thus, we have proceeded to decide the special appeal at the admission stage with the consent of parties counsel.

2. Heard Mr. Anil Tiwari, learned senior advocate, assisted by Mr. Rajan Roy, learned counsel for appellant and Smt. Sangeeta Chandra, learned additional chief standing counsel for State and perused the record.

3. Shorn of unnecessary facts, suffice it to mention that the writ petition before the learned single Judge was filed against the punishment order dated 31.12.2011 challenging the punishment of reduction in rank to the post of Chowkidar and withholding of increment for the year 2006-07 alongwith

punishment of reprimand.

4. As per appellant-petitioner, he was initially appointed as Mate in the Irrigation Department in the year 1972 and thereafter promoted on ad hoc basis as junior clerk in the year 1977 and confirmed on the said post in 1978. As a consequence of restructuring of the clerk cadre, the appellant was designated and given the pay scale of senior clerk in the year 1996. On a complaint made by one Sri Ajay Singh, the then President. U.P. State Employees Union, an inquiry was held against the appellant in the year 2009. After the receipt of charge-sheet, the appellant had demanded certain documents which could not be provided to him and as such no reply to the charge-sheet was submitted, the inquiry officer had submitted an ex parte inquiry report on the basis of which a show cause notice was issued. The appellant in his reply denied the alleged charges levelled against him and the findings of the inquiry officer and pleaded that he was not provided adequate opportunity of defence in the inquiry proceedings.

5. Moreover, in the inquiry proceedings out of five charges, three were not found proved by the inquiry officer, whereas the finding with regard to remaining two charges, apparently, were not sustainable as they were in gross violation of Rule 9 (2) and 9 (4) of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the Rules of 1999) as well as the law laid down by Hon'ble the Apex Court in the cases of (i) 1996 VII AD 821 (SC) , (ii) State of U.P. and Others Vs. Saroj Kumar Sinha, , (iii) Roop Singh Negi Vs. Punjab National Bank and Others, , wherein it has been held that in case a delinquent employee had avoided to submit reply, he had forfeited his right to submit reply, nonetheless the disciplinary authority is not absolved of the duty to hold an ex parte enquiry to find out whether or not the charges have been proved.

6. The arguments at considerable length have been raised by both the parties but the controversy revolves around the sole question as to whether the appellant-petitioner be relegated to avail the departmental remedy of appeal and in the presence of such remedy, whether the writ petition is maintainable or not.

7. The existence of alternative remedy is not an absolute bar, is a legal proposition, which does not require any detailed reasons. It is also not open to debate that in case an alternative efficacious remedy is available, the High Court normally would not interfere straight-way under Article 226 of the Constitution of India. It is also established principle of law that self restraint is exercised by the High Court in dealing with such matters, which otherwise can be looked into by the Special Forum or Statutory Authorities. Merely the bar in granting any interim relief by a Special Forum or Tribunal created for the purpose of adjudicating such disputes would also not be a ground in itself to permit the aggrieved person to by-pass the alternative remedy and to entertain the petition straight-way in writ Jurisdiction unless there are some cogent reasons for permitting such a challenge straight-way in writ jurisdiction. The exceptions, however, have been well defined by the Apex Court as well as this Court in a number of judgments.

8. In the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , the Supreme Court has laid down the principles for the guidance for the High Court in determining the forum in a matter where efficacious alternative remedy is available and has observed that 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".

The Supreme Court further held that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has 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 following contingencies, namely:

- (i) where the writ petition has been filed for the enforcement of any of the Fundamental Rights; or
- (ii) where there has been a violation of principle of natural justice; or
- (iii) where the order or proceedings are wholly without jurisdiction; or
- (iv) the vires of an Act is challenged.

9. The question with regard to maintainability of the writ petition in presence of an alternative remedy was considered at length in one of the Judgment of this Court, i.e., in the case of Subodh Kumar Trivedi Vs. State of U.P. and others, . The relevant paras of which are quoted below:

15. In the case of Rashid Ahmed Vs. The Municipal Board, Kairana, , the Supreme Court observed 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 case, namely K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , where the Apex Court while reiterating the above proposition 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 a 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.

16. In the case of The State of Uttar Pradesh Vs. Mohammad Nooh, , a specific and clear rule was laid down 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.

17. This proposition was considered by a Constitution Bench of this Court in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, , and affirmed and followed in the following words:

The passages in the Judgment 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.

18. Another Constitutional Bench decision in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , laid down as under:

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 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 u/s 34, income tax Act.

19. The Supreme Court in the case of *Whirlpool Corporation (supra)*, on consideration of various judgments has observed as under:

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.

20. In the case of *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, , it was held that the High Court has a discretion to grant relief under Article 226 even if an alternative remedy is available.

21. In the case of *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, the Supreme Court

observed that the existence of an alternative remedy does not oust the jurisdiction of the High Court but it is one of the circumstances to be taken into consideration by the High Court while exercising its discretionary jurisdiction.

22. The two exceptions of doctrine of availability of alternative remedy were reiterated in the case of Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, , namely:

- (i) where the proceedings are taken under a law which is ultra vires and
- (ii) the action complained of is violative of the principles of natural justice.

23. The Supreme Court in the case of State of West Bengal Vs. North Adjai Coal Co. Ltd., , laid down that entertaining a writ petition without the litigant having exhausted the alternative remedy available to him is a rule of practice rather than a rule of jurisdiction. The High Court has the power to entertain a writ petition even if the litigant has not exhausted the remedies available to him.

24. On the question of entertaining a writ petition when the writ petitioner complains that the action taken is without Jurisdiction, the Supreme Court in the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, . held that in such case, the writ petition was maintainable notwithstanding the existence of an alternative remedy.

25. Even the High Court can try issues of fact as has been observed by the Supreme Court in the case of Om Prakash v. State of Haryana, (1971) 3 SCC 792 (293) , that there is no rule that the High Court cannot try issues of fact. In each case, the High Court has to consider whether the party seeking the relief has an alternative remedy which is equally efficacious.

26. Reliance has also been placed upon the case of Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, , for defining the term "entertain". In this case, the Supreme Court, while interpreting Section 9 of the U.P. Sales Tax Act, 1948, observed as follows:

In our opinion, these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration". It would, therefore, appear that the direction to the Court in the proviso to Section 9 is that the Court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the Court for the first time.

27. In the case of Devi Lal Shah Vs. Union of India (UOI) and Others, the order of removal from service was under challenge against which an appeal was provided, the removal order was challenged as being violative of principle of natural justice, the Court entertained the writ petition after holding that the relief may be granted, though the alternative remedy was available.

28. In the case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, . the Apex Court

found that the parties claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high handed, arbitrary or unjust is entitled to a hearing of writ petition.

29. In the case of Nathi Mal Ram Sahai Mal and others v. V.C., Meerut, 1998 UPLBEC 161, the Apex Court held that the existence of alternative remedy has been held to be no bar where it is alleged that the provision is ultra vires or action is in violation of the Principle of natural Justice.

30. The learned counsel for the petitioner further placed reliance upon the case of Dr. Shyam Narain Pandey v. V.C. Gorakhpur University, 1985 UPLBEC 99. in which the impugned order was found to be wholly void and ineffectual under law, the Apex Court observed that the writ petition cannot be dismissed on the ground of alternative remedy after hearing has been done on merits.

31. In the case of L. Hirday Narain Vs. Income Tax Officer, Bareilly, , the petitioner was having an alternative remedy of filing a revision before the Commissioner of Income Tax but the High Court entertained the writ petition. The Apex Court observed that Hirday Narain could have moved the Commissioner in revision because at the date on which the petition was moved the period prescribed by Section 33A of the Act had not expired. Their Lordship further held that the revision for an order correcting the order of the income tax Officer u/s 35 was not moved, the High Court would not be justified in dismissing the petition as not maintainable, which was entertained and heard on merits.

32. In the case of Ashok Kumar and others v. Managing Director, U.P. Leather Development and Marketing Corporation and another, 1986 (16) LCD 6, relying upon the cases Jai Kishan and others v. U.P. Cooperative Bank Ltd., 1989 (2) UPLBEC 144 (DB) and L. Hirday Narain Vs. Income Tax Officer, Bareilly, , the Division Bench of this Court observed that if an order is void and the petition does not involve controversial question of facts, the Court may not refuse to exercise its jurisdiction. The pendency of the writ petition for several years in the High Court was also taken to be a justifiable ground for not relegating the petitioners to get their grievances redressed under the provisions of the Industrial Disputes Act. Holding that in such circumstances it will not in any manner advance the cause of justice if after the lapse of several years this Court is to tell the workmen to go to the Labour Court for seeking redressal of their grievances more so in a case where there was no controversy over the relevant facts.

33. Reliance has also been placed upon the case Ashok Kumar and others v. Managing Director, V.P. Leather Development and Marketing Corporation and another, 1986 (16) LCD 6, the High Court after observing that the rule of exhaustion of statutory remedy, before a writ will be granted, is a rule of policy, convenience and discretion rather than a rule of law and it further observed that this is a matter of discretion of the Court which is to be exercised according to the facts and circumstances of each case.

34. In the case of Akhilesh Kumar Saxena v. Director of Education (Secondary) U.P., Lucknow, 1999 (17) LCD 904, the Division Bench of this Court observed that where the Court has entertained the petition staying operation of the impugned order after exchange of affidavits the Court should not have disposed of the matter finally only by dismissing the petition on the ground of alternative remedy. In view of this, the appeal was allowed setting aside the order and directing that the writ petition be disposed of finally after hearing on merits.

35. In the case of Sudhakar Malviya v. Benaras Hindu University. 1997 (2) ESC 1213, it has been held that the High Court was wrong in dismissing a writ petition on the ground of availability of an alternative remedy when the writ petition had been entertained and had remained pending for 11 years. This was a case where statutory remedy u/s 68 of the State Universities Act was available to the petitioner but he has directly approached the High Court under Article 226 of the Constitution against the impugned order and the High Court dismissed the writ petition on the ground of availability of alternative remedy u/s 68 of the State Universities Act.

36. From the catena of decisions of the Supreme Court following propositions broadly flow:

(i) Statutory alternative remedy is not an absolute bar for the High Court to entertain a writ petition under Article 226 of the Constitution.

(ii) Refusal to entertain a writ petition on existence of statutory alternative remedy is a self imposed restriction for which following considerations weigh, namely;

(a) alternative remedy is adequate, efficacious and speedy.

(iii) The High Court can try issues of fact but may not entertain petition where disputed question of facts have to be determined and in such cases the petitioner may be relegated to the statutory alternative forum.

(iv) If a writ petition has been entertained despite there being a statutory remedy, which may be adequate, and the said petition has remained pending for considerable period then there would be little justification for relegating the petitioner to the alternative remedy, unless there are valid and cogent reasons for doing so.

(v) Even if there exists an adequate alternative, efficacious, speedy remedy in the alternative forum, the High Court may entertain the writ petition in the following circumstances:

(a) for enforcement of any of the fundamental rights.

(b) where there has been a violation of principle of natural Justice,

(c) where the order or proceedings are wholly without jurisdiction, or

(d) the vires of the Act is challenged.

Lastly, it depends upon the facts and circumstances of each case as to whether the discretion of entertaining the writ petition in the teeth of the statutory remedy has to be exercised or not.

10. The submission of learned counsel for appellant-petitioner is that the disciplinary proceedings against the appellant suffers from gross violation of principles of natural justice, firstly, at the stage of inquiry and thereafter at the stage of issuing show cause notice as well as passing of the final order of punishment. Initially the appellant was denied the relevant documents on account of which he could not submit his reply to the charge-sheet resulting in the submission of ex parte inquiry report by the inquiry officer. The inquiry officer had wrongly proceeded ex parte.

11. Even if the inquiry officer had to proceed ex parte it was obligatory upon him to hold an inquiry and prove the charges on the basis of evidence by recording his findings after discussing such evidence but this was" not done by the inquiry officer as would be evident from a bare perusal of his findings in respect of charge Nos. 3 and 5, which shows that he has simply treated the same proved merely on account of non-submission of reply by the appellant.

12. It is also contented that charge Nos. 1, 2 and 4 were not found proved by the inquiry officer against the appellant and the disciplinary authority while issuing the show cause notice under Rule 9 (4) of the Rules of 1999 did not differ with the findings of the inquiry officer in respect of the same, yet while passing the final order of punishment he differed with the inquiry officer. The disciplinary authority could not have done so without complying with the mandatory provisions of Rule 9 (2) by recording the reasons for differing with the finding of the inquiry officer and thereafter communicating the same under Rule 9 (4), since this was not done there was gross violation of the said provisions and the principles of natural justice rendering the entire proceedings and the final order of punishment unsustainable.

13. The learned State counsel on the other hand submitted that there is no illegality or infirmity in the impugned order. It is the discretion of the Court whether to entertain the writ petition or to relegate the appellant/petitioner to exhaust the statutory alternative remedy available under law.

14. It is contended that in case there is violation of Rules especially Rule 9 (2) and 9 (4) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 as averred by the appellant, then he should have first availed the remedy available under the said Rules itself before invoking the extra-ordinary jurisdiction of this Court.

15. In support of her submission Smt. Sangeeta Chandra, learned additional chief standing counsel relied upon the decision of the Supreme Court in the case of N.P. Ponnuswami (appellant) v. Returning Officer, Namakkal Constituency, Namakkal, Salem Distt and others-(respondents); N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , wherein it has been held

that in case right or liability is created by a Statute, redressal shall be first availed in the forum created under the said Statute itself. The relevant paragraph-12 of the said judgment is reproduced as under:

12. It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes. J. in *Wolverhampton New Water Works Co. v. Hawkesford* (1) in the following passage:

There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage Was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.*, (1919) AC 368, and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Cordon Grant and Co.*, 1935 AC 532 and *Secretary of State v. Mask and Co.*, 44 Cal WN 709; and it has also been held to be equally applicable to enforcement of rights: (see *Hurdutrai Jagdish Prasad and Others Vs. Official Assignee of Calcutta* , at p. 349. That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.

16. Reliance has also been placed upon the case of *State of U.P. and another Vs. Labh Chand*, , where it was held that when a Statutory Forum or Tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters, the High Court should not normally permit such persons to ventilate their specified grievances before it in the writ jurisdiction under Article 226 of the Constitution.

The case of *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*, , has been placed in support of submission that the adequate and speedy statutory remedy normally cannot be allowed to be bye-passed.

17. Relying upon the decision of the Supreme Court in the case of *United Bank of*

India Vs. Satyawati Tondon and Others, , and in the case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, . The learned additional chief standing counsel further submitted that where the alternative remedy is available under a statute the Court must relegate the appellant-petitioner to that forum.

18. In the case of Kanaiyalal Lalchand Sachdev and others (supra) in paragraphs 21 and 22, the legal position has been summarized, which is reproduced as under:

21. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. It is well-settled that ordinarily relief under Articles 226 /227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: Sadhana Lodh v. National Insurance Co. Ltd. and another: Surya Dev Rai v. Ram Chander Rai and others and State Bank of India v. Allied Chemical Laboratories and another). In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and others, this Court had observed that:

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 petitioner 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.

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice u/s 13 (2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal u/s 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

19. We have considered the submissions made by the parties' counsel.

20. Before the writ court the appellant-petitioner had assailed the impugned order of punishment mainly on the ground of violation of principles of natural justice and violation of Rules under U.P. Government Servants (Discipline and

Appeal) Rules, 1999. It was the specific case of the appellant that he was not provided adequate opportunity of defence in the departmental inquiry, the disciplinary authority while awarding the punishment had disagreed with the findings of the inquiry officer and had awarded the punishment in violation of Rules 9 (2) and 9 (4) of the Rules of 1999. The disciplinary proceedings against the appellant suffers from gross violation of principles of natural justice firstly at the stage on enquiry and thereafter at the stage of show cause notice as well as passing of the final punishment order. Further even if, the enquiry officer has to proceed ex parte it was obligatory upon him to hold an inquiry and prove the charges on the basis of evidence by recording his findings after discussing such evidence but this was not done by the inquiry officer and the charges were simply treated to be proved merely on account of non-submission of reply to the charge-sheet by the appellant.

21. So far as the legal proposition that the existence of alternative remedy is not an absolute bar, it does not require any adjudication as the law laid down by the Supreme Court as well as this High Court is well settled. In order to summarize the aforesaid legal position we reiterate the same as under:

(i) Statutory alternative remedy is not an absolute bar for the High Court to entertain a writ petition under Article 226 of the Constitution.

(ii) Refusal to entertain a writ petition on existence of statutory alternative remedy is a self imposed restriction broadly based on following considerations, namely;

(a) alternative remedy is adequate, efficacious and speedy.

(b) writ petitions involving complex and disputed question of facts may be relegated to statutory alternative forum;

(iii) If a writ petition has been entertained despite there being a statutory remedy, which may be adequate, and the said petition has remained pending for considerable long time then there would be little justification for relegating the petitioner to the alternative remedy, unless there are valid and cogent reasons for doing so.

(iv) Even if there exists an adequate alternative, efficacious speedy remedy in the alternative forum, the High Court may entertain the writ petition in the following circumstances:

(a) for enforcement of any of the fundamental rights,

(b) where there has been a violation of principle of natural justice,

(c) where the order or proceedings are wholly without jurisdiction, or

(d) the vires of the Act is challenged.

It will depend upon the facts and circumstances of each case as to whether the discretion of entertaining the writ petition in the light of the availability of

statutory remedy has to be exercised or not. There cannot be any straitjacket formula or a hard and fast rule so as to either entertain such writ petition or throw it away at the threshold asking the petitioner to approach the alternative forum.

22. The learned single Judge while dismissing the writ petition on the ground of availability of alternative remedy did not address itself on the plea of violation of principles of natural Justice in the departmental enquiry and relegated the appellant to avail departmental remedy, we are of the considered opinion that the impugned order requires interference. In cases of violation of principles of natural justice and denial of reasonable opportunity to defend in the disciplinary proceedings, the writ petition is fully maintainable and it shall not be normally dismissed on the ground of availability of alternative remedy, as was the position in the present case.

23. Since the writ petition was dismissed on the very first date without calling for counter-affidavit, therefore, it would be appropriate that the matter may be remanded back to the learned single Judge to decide the writ petition on merit. In this view of the matter the special appeal is allowed and the order dated 30.1.2012 passed by the learned single Judge in W.P. No. 529 (S/S) of 2012 is hereby set aside. The matter is remanded back to the learned single Judge with a request to decide the same on merits in accordance with law. The parties shall appear before the writ court as and when the case is listed. Cost made easy.