REPORTABLE

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 224 OF 2024

Rajendra S/o Baburao Patil
Age: 59 years, Occu: Retired,
R/o. “Apulki”, Plot No.42,
Domdekar Nagar, Pimprala,
Jalgaon, Tq and District Jalgaon … **Petitioner**

VERSUS

1. The State of Maharashtra
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai – 32

2. The Divisional Commissioner
Nashik Division, Nashik

3. The Chief Executive Officer
Zilla Parishad, Jalgaon, District Jalgaon

4. The Chief Accountant and Finance Officer,
Zilla Parishad, Jalgaon,
District Jalgaon … **Respondents**

....

Mr. Y. B. Bolkar, Advocate for Petitioner
Mr. S. B. Narwade, AGP for Respondent Nos. 1 and 2
Mr. V. V. Gujar, Advocate for Respondent Nos. 3 and 4

....

CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 30.01.2024

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. This is a peculiar case wherein, the employer has practically ignored the fundamental principles of service jurisprudence, while partly disagreeing with the findings of the Enquiry Officer and attaching a stigma to the career of Petitioner which has affected his career, though he was exonerated by the Enquiry Officer of all the charges levelled against him.

3. This Petition before us is for seeking the deemed date of promotion, in terms of prayer clauses (B), (C) and (D), which read as under:-

> "*(B) By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly quash and set aside the impugned Order dated 19/08/2022 passed by the Divisional Commissioner, Nashik Division, Nashik in proceeding bearing No. Sankirna-2022/20717/VIASHA/ASTHA-2.*
>
> *(C) By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly direct respondent Nos. 2 to 4 to extend the deemed date of promotion w.e.f. 30/08/2007 for the post of Junior Accountant in favour of petitioner, and consequently to direct the respondent authorities to pay the difference of arrears of monetary benefits w.e.f. 30/08/2007.*

(D) Pending hearing and final disposal of this Writ Petition, this Hon'ble High Court may kindly direct respondent Nos. 2 to 4 to extend the deemed date of promotion w.e.f. 30/08/2007 for the post of Junior Accountant in favour of petitioner, and consequently to direct the respondent authorities to pay the difference of arrears of monetary benefits w.e.f. 30/08/2007."

4. The undisputed facts are as under:-

(a) The Petitioner was appointed as a Junior Assistant on 07.03.1984.

(b) On 29.08.2007, the Zilla Parishad decided to conduct a Departmental Enquiry against the Petitioner after levelling charges of negligence in duties.

(c) On 30.08.2007, Respondent No.3 promoted two senior employees and a few junior employees to the post of Senior Assistant (Accounts), ignoring the Petitioner, due to pendency of the Departmental Enquiry.

(d) On 24.06.2008, the Enquiry Officer submitted his enquiry report concluding that no charges are proved against the Petitioner.

(e) On 13.01.2009, as a consequence of his exoneration, Respondent No.3 promoted the Petitioner to the post of Senior Assistant (Accounts).

(f) Hence, the demand for the deemed date of promotion w.e.f. 30.08.2007, when juniors were promoted and the Petitioner was ignored on account of the pendency of the disciplinary proceedings.

5. The submissions of the Petitioner are that, by virtue of Clause 5 under Annexure-A to a Government Resolution dated 06.06.2002, if a Departmental Enquiry is pending and subsequently if the charge-sheeted employee is exonerated or a minor punishment is imposed, he would be entitled to the deemed date in matters of promotion. However, we are informed that the said GR has been repealed by a Notification dated 21.06.2021.

6. The Petitioner draws our attention to the conclusion of the Enquiry Officer that the two charges levelled upon the Petitioner, are not proved and he has exonerated. He further points out that the order of punishment dated 05.02.2009 was passed after his promotion on 13.01.2009, wherein, the Disciplinary Authority came to the conclusion that though the charges levelled upon the Petitioner, are not proved and he is exonerated, the charges are of serious nature and therefore, he should be punished by recording a “blot” (‘thapkaa’ in Marathi, which amounts to attaching a “stigma”) on his career. For

clarity, we are reproducing the conclusion of the Disciplinary Authority, as under:-

> "चौकशी अधिकारी यांनी कोरा *ानादेश चोरीस गेल्या प्रकरणी हलगर्जीपणा व निष्काळजीपणा व वेतनभत्त्याच्या रकमा रोख स्वरूपात अदा करणे प्रकरणी आरोप सिध्द* झालेले नसल्याने शिक्षेची शिफारस केलेली नाही.
>
> श्री. पाटील यांचेवर ठेवलेले आरोप सिध्द झालेले नसले तरी सदर आरोपांचे गंभीर स्वरूप विचारात घेता, महाराष्ट्र जिल्हा परिषद व जिल्हा सेवा (वर्तणुक) नियम १९६७ मधील नियम ३ चा आणि महाराष्ट्र जिल्हा परिषदा व पंचायत समित्या लेखा संहिता १९६८ मधील संबंधीत नियमांचा भंग/उल्लंघन केल्याचे सिध्द झालेले असल्यामुळे सदर प्रकरणांशी संबंधीत सर्व बाबी कागदपत्रे तथा स्थिती विचारात घेवून महाराष्ट्र जिल्हा परिषदा जिल्हा सेवा (शिस्त व अपिल) नियम १९६४ चे नियम ४(१) मधील तरतुदीनुसार, "श्री. राजेंद्र बाबुराव पाटील, कनिष्ठ लेखाधिकारी पंचायत समिती बोदवड यांचेवर ठपका ठेवण्याची शिक्षा" अंतिम करण्यांत येत आहे व भविष्यात पुन्हा असे होणार नाही याची दक्षता घेणेत यावी.**"**

7. The learned Advocate representing the Zilla Parishad submits that the Government Resolution dated 06.06.2002 has been repealed by a Notification dated 21.06.2021. He specifically draws our attention to Clause 4(5) of the said notification, which reads as under:-

> **"**शिस्तभंगविषयक कारवाईच्या निष्कर्षानुसार पदोन्नतीचा मानीव दिनांक देणे - ज्या शासकीय कर्मचाऱ्याविरूध्द शिस्तभंगाची कारवाई चालू असल्यामुळे त्यास पदोन्नती देण्यात आलेली नाही असा कर्मचारी कालांतराने शिस्तभंगविषयक कार्यवाहीअंती निर्दोष मुक्त झाल्यास, अशा शासकीय कर्मचाऱ्याची प्रत्याक्ष पदोन्नती झाल्यावर त्याला शिस्तभंगविषयक कारवाईमुळे डावलण्यात आले नसते तर ज्या दिनांकास त्याची नियमित पदोन्नती झाली असती तो दिनांक त्याच्या नियमित पदोन्नतीचा मानीव दिनांक म्हणून नेवून देण्यात येईलः

परंतु ज्या शासकीय कर्मचाऱ्यास जाणीवपूर्वक निर्णय घेउन शिस्तभंगाविषयक कार्यवाहीच्या निर्णयाच्या अधीन राहून पदोन्नतीच्या कोट्यातील रिक्त पदावर तात्पुरती पदोन्नती देण्यात आलेली असेल व असा कर्मचारी कालांतराने शिस्तभंगविषयक कार्यवाहीअंती निर्दोष मुक्त झाल्यास, अशा शासकीय कर्मचाऱ्यास शिस्तभंगविषयक कारवाईमुळे डावलण्यात आले नसते तर ज्या दिनांकास त्याची नियमित पदोन्नती झाली असती तो दिनांक त्याच्या पदोन्नतीचा मानीव दिनांक म्हणून नेमून देण्यात येईल.”

8. The learned Advocate further submits that, though a mere stigma was attached to the Petitioner by the order of punishment dated 05.02.2009, the Petitioner has not challenged the said order. Therefore, the said order cannot be faulted. It is undisputed that the Petitioner has not challenged the final conclusion of the employer, by which it has concluded that though none of the charges are proved against the Petitioner, yet, a stigma is being attached to his career.

9. There can be no debate that an employer may disagree with the findings of the Enquiry Officer. The procedure to deal with such a situation in the light of the settled position of law is that the employer will issue a show cause notice to the employee setting forth it’s analysis as regards the evidence recorded against the employee in the enquiry and draw it’s conclusions as to why the Disciplinary Authority concludes that the charges are proved and disagrees with

the conclusions of the Enquiry Officer. The evidence recorded in the enquiry has to be analysed by the employer and the reasons assigned for taking a different view, have to be set out in the notice to the charge-sheeted employee to give him an opportunity to reply to all the reasons set out in such notice. Thereafter, if not convinced by his reply, the employer can pass an order holding the employee guilty on the basis of the available material.

10. In ***S. P. Malhotra Vs. Punjab National Bank and others, (2013) 7 SCC 251***, the Hon'ble Supreme Court concluded in paragraph Nos. 7 and 13 to 20, as under:-

> *"**7**. The appellant challenged the said orders of punishment by filing a Writ Petition No. 1201 of 1988 before the High Court of Punjab and Haryana at Chandigarh. The said writ petition was contested by the respondent Bank. The learned Single Judge allowed the said writ petition vide judgment and order dated 20.5.2011, holding that in case the Disciplinary Authority disagrees with the findings recorded by the Enquiry Officer, he must record reasons for the dis-agreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be passed. In the instant case, as such a course had not been resorted to, the punishment order stood vitiated.*
>
> ***13**. In the case of ECIL Vs B. Karunakar – (1993) 4 SCC 727, only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84, wherein the judgment of ECIL (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of*

punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for dis-agreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied upon the earlier judgment of this court in Institute of Chartered Accountants Vs. L. K. Ratna - AIR 1987 SC 71.

14. *Kunj Behari Misra (supra) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra (supra), this court held as under:*

> *"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer." (Emphasis added)*

15. *The Court further held as under:-*

> *"21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings."*

16. The view taken by this Court in the aforesaid case has consistently been approved and followed as is evident from the judgments in Yoginath D. Bagde Vs. State of Maharashtra & Anr., AIR 1999 SC 3734; State Bank of India & Ors. Vs. K.P. Narayanan Kutty, AIR 2003 SC 1100; J.A. Naiksatam Vs. Prothonotary and Senior Master, HighCourt of Bombay & Ors., AIR 2005 SC 1218; P.D. Agrawal Vs. State Bank of India & Ors., AIR 2006 SC 2064; and Ranjit Singh Vs. Union of India & Ors., AIR 2006 SC 3685.

17. In Canara Bank & Ors. Vs. Shri Debasis Das & Ors., AIR 2003 SC 2041, this Court explained the ratio of the judgment in Kunj Behari Misra (supra), observing that it was a case where the disciplinary authority differed from the view of the Inquiry Officer.

> *"26. …. In that context, it was held that denial of opportunity of hearing was per se violative of the principles of natural justice." (Debasis Das case, SCC p. 578, para 26)*

18. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra).

19. The learned Single Judge has concluded the case observing as under:

> *"The whole process that resulted in dismissal of the petitioner is flawed from his inception and the order of dismissal cannot be sustained. I am examining this case after nearly 23 years after its institution and the petitioner has also attained the age of superannuation. The issue of reinstatement or giving him the benefit of his wages for during the time when he did not serve will not be appropriate. The impugned orders of dismissal are set aside and the petitioner shall be taken to have retired on the date when he would have superannuated and all the terminal benefits shall be worked out and paid to him in 12 weeks on such basis. There shall be, however, no direction for payment of any salary for the period when he did not work."*

20. As the case is squarely covered by the judgment of this court in Kunj Behari Misra (supra), we do not see any reason to approve the impugned judgment rendered by the Division Bench. Thus, in view of the above, the appeal is allowed. The judgment and order of the Division Bench is set aside and that of the learned Single Judge is restored. No costs."

11. In ***Anand Kumar Singh Vs. U. P. State Road Transport Corporation and others – 2009 III CLR 490,*** the Allahabad High Court held in paragraph No.9, as under:-

> "*9. From the pleadings and record available before this Court it is evident that the inquiry officer found the petitioner not guilty of the charges levelled against him. It is well settled that the disciplinary authority is not bound to accept the findings of inquiry officer and can record his own opinion different from what has been recorded by the inquiry officer after considering the report of the inquiry officer and other material on record. However, before acting upon such findings which are different than what was recorded by the inquiry officer, it is incumbent upon the disciplinary authority to inform such findings of disagreement to the employee concerned and give him opportunity to make his representation thereagainst. If the inquiry officer forms an opinion which is in favour of the employee concerned and the disciplinary authority forms opinion different from such favourable report, he has to inform the delinquent employee about his own findings otherwise it would amount to acting upon a material which was never disclosed to the delinquent employee. The findings of disagreement consists a material which have arrived subsequently i.e. after the inquiry by inquiring authority is over and, therefore, it is incumbent upon him to communicate the said findings to the employee concerned. This aspect was initially considered by the Apex Court in the case of Punjab National Bank Vs. Kunj Behari Misra, 1998 (7) SCC 84 and following the Constitution Bench judgement in Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993 (4) SCC 727 it was held that when the inquiry officer holds the charges proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he could be condemned unheard.* ***In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority and, therefore, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its final***

> ***findings.*** *The report of the inquiry officer containing its findings of disagreement will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer and not to proceed with his tentative findings which are contrary from the report of the inquiry officer.* ***It was held by the three Judge Bench of the Apex Court in Kunj Behari Misra (supra) that non compliance of the above would vitiate the proceedings. This has been followed consistently by the Apex Court in Yoginath D. Bagde Vs. State of Maharashtra & another, AIR 1999 SC 3734; SBI & others Vs. Arvind K. Shukla, JT 2001 (4) SC 415; State Bank of India & others Vs. K.P. Narayanan Kutty, 2003 (2) SCC 449; and Ranjit Singh Vs. Union of India and others, 2006(4) SCC 153.***"

12. The law is thus settled that if the disciplinary authority disagrees with the findings recorded by the Enquiry Officer, it is bound to record reasons for disagreeing with the findings of the Enquiry Officer and furnish such reasons to the delinquent. Non furnishing of a copy of the recorded reasons for disagreeing with the report of the Enquiry Officer, prejudices the delinquent and the consequent order of punishment stands vitiated. The case for the management would be worsened if the disciplinary authority does not record specific reasons for disagreeing with the findings of the Enquiry Officer and issues the order of punishment, as has been done in the case before us, no matter however minor the punishment could be. Such action of the employer would be unsustainable in law.

13. Considering the case before us, it is apparent and beyond debate that the employer could not have come to a conclusion of

attaching a stigma to the Petitioner without following the due procedure. Merely tendering a copy of the Enquiry Officer's report to the Petitioner by stating that he should not have made one payment in cash, is of no consequence because the Enquiry Officer has already exonerated the Petitioner by concluding that he is not guilty of any charge. We also find one statement in the impugned order of punishment, wherein, the Chief Executive Officer concedes that none of the charges are proved against the Petitioner and he is partly agreeing with the same.

14. The learned advocate for the Zilla Parishad submits that the enquiry officer has said in his report that the Petitioner should not have made a payment in cash. We do not find that this contention needs any consideration for the fact that the enquiry officer has not declared him guilty of any charge that was specifically levelled upon him. A passing reference to an incident without any guilty finding/ conclusion, would not support the stand of the employer, if the procedure expected to be followed, has been ignored. We, therefore, conclude that the impugned order of attaching a stigma to the career of the Petitioner, is flawed and cannot be sustained.

15. The learned Advocate for the Zilla Parishad contends that as the Petitioner had not challenged the order of attaching a blot to his career, this Court should not entertain this Petition. We find that, in ***Radha Krishna Industries Vs. State of Himachal Pradesh and others (2021) 6 SCC 771,*** on the issue of entertaining a Writ Petition to protect the right of an individual, the Hon'ble Supreme Court held in paragraph Nos. 27 and 28, as under:-

> "***27.*** *The principles of law which emerge are that:*
>
> ***27.1.*** *The Power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
>
> ***27.2.*** *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*
>
> ***27.3.*** *Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*
>
> ***27.4.*** *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
>
> ***27.5.*** *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

> ***27.6.*** *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily he interfered with.*
>
> ***28.*** *These principles have been consistently upheld by this Court in Chand Ratan V. Durga Prasad – (2003) 5 SCC 399, Babubhai Muljibhai Patel V. Nandlal Khodidas Barot – (1974) 2 SCC 706 and Rajasthan SEB V. Union of India – (2008) 5 SCC 632, among other decisions."*

16. *In* ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-Cum-Assessing Authority and others, 2023 SCC OnLine SC 95,*** the Hon'ble Supreme Court observed in paragraph Nos. 4 to 8, as under:-

> "*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 the 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."

17. In these circumstances, we are of the view that our extra ordinary Writ jurisdiction under Article 226 of the Constitution of India, needs to be exercised in this matter, when a non-est order of attaching a blot to the service of the Petitioner has been passed. Neither has the disciplinary authority of the Zilla Parishad followed the due procedure in concluding, with reasons, as to why it disagrees with the findings of the Enquiry Officer, nor was the Petitioner given any opportunity to show cause by the employer while concluding that though the charges are not proved against him, a stigma needs to be attached to his career. The cause of action raised by the Petitioner before us, turns on the said flawed action of the employer.

18. Therefore, we are of the view that the ends of justice would be met by allowing this Petition, ignoring the view of the employer that a stigma be attached to the service of the Petitioner, which is without following the due procedure laid down in law.

19. In view of the above, **this Petition is allowed**. The order of the Divisional Commissioner dated 19.08.2022 is quashed and set aside. The Petitioner shall be granted the deemed date of promotion with effect from 30.08.2007. Consequential service benefits, including monetary benefits/gratuity/pension etc., will be calculated by the Competent Authorities within a period of 60 days. The arrears of retiral benefits, including difference in the pension amount, if any, shall be paid to the Petitioner within 45 days after such calculations are carried out.

20. Rule is made absolute in the above terms.

21. No order as to costs.

[Y. G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

SMS