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WRIT COURT AND JUDICIAL REVIEW WITH REFERENCE TO SERVICE-RELATED DISPUTES: COMPILATION OF SOME SUPREME COURT JUDGEMENTS

Prof. (Dr.) Anupam Parua[1], Dr. Arunava Praharaj[2]
Professor & Principal[1], Assistant Professor[2]
Department of Commerce, Gourav Guin Memorial College, Paschim Medinipur, WB, India[1]
Department of Commerce, Subarnarekha Mahavidyalaya, Jhargram, WB, India[2]

Abstract

Writs are written order of court or judicial officer commanding any person to whom it is directed to perform or to refrain from performing certain act. In India power to issue writs are vested with the Supreme Court U/A 32 for protecting fundamental rights or with the High Courts U/A 226 for protecting fundamental and other legal or statutory rights, if any part of cause of action arises within its jurisdiction. Such writs may take the form of writ of habeas corpus, writ of mandamus, writ of certiorari, writ of prohibition and writ of quo warranto. In service-related disputes writ of mandamus and writ of certiorari are the most common remedies. Administrative orders must follow relevant service rules and principles of natural justice. Departmental proceedings are quasi-judicial in nature and must be based on evidence. In such proceedings relied upon documents are to be furnished to the charged employee, he must be given fair hearing, procedural propriety are to be ensured and administrative order must be reasoned. Violation of any of these gives the charged employee the right to knock the door of High Court or in cases the Supreme Court by means of writ petition for appropriate remedy. High Court or the Supreme Court would resort to judicial review of process of decision-making culminating into administrative order having civil consequences to examine its legality. Court can issue appropriate writ by using its supervisory jurisdiction as writ court. Understaffed Bench, overcrowded Bars, lack of visible accountability fixation, procedural lapses and delays are making performance of writ courts much less effective than what is expected of these.

Key Words: Fundamental Rights, Statutory Rights, Natural Justice, Writ, Writ Court, Disciplinary Proceedings, Judicial Review

1. INTRODUCTION

Merriam – Webster dictionary defines writ as an order or mandatory process in writing issued in the name of the sovereign or of a court or judicial officer commanding the person to whom it is directed to perform or refrain from performing an act specified therein: writ of detinue, writ of entry & writ of execution. Writs are the constitutional remedies designed to look after violation of fundamental rights of citizens of a country and are exercisable by higher courts of that country.

Constitution of India has listed some fundamental rights in its Part – III. Article 32 (1) guarantees right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part – III of our Constitution. Article 32 (2) gives the Supreme Court power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part - III. Article 32 (3) states that without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
Under Article 226, High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. This power is exercisable by High Court if at least any part of the cause of action arises within its territorial jurisdiction. The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

While writ jurisdiction to be exercised by the Supreme Court is for enforcement of fundamental rights only, High Courts can exercise writ jurisdiction for enforcement of not only fundamental rights but also some other legal or statutory rights. Thus, scope of writ jurisdiction is wider for High Courts. The words ‘for any other purpose’ in Article 226 is the enabler of this wider jurisdiction of High Courts. As both the Supreme Court and High Courts have writ jurisdiction they may be called as ‘writ court’ when they exercised such jurisdiction.

2. TYPES OF WRITS

As mentioned in both Article 32 and Article 226, writs may be of five categories:

2.1. Writ of Habeas Corpus

‘Habeas Corpus’ is a Latin word which means ‘to have a body’. ‘Writ of Habeas Corpus’ is a court order that commands a person or government agency holding someone in custody to bring the prisoner before a judge. It protects a person from illegal or unfair imprisonment. Issuance of this writ in favour of any person does not in any way mean that the person is not guilty and he is innocent. Writ of habeas corpus tests only the legality of arrest or whether the imprisonment follows the law and not the guilt or innocence of the arrested person.

2.2. Writ of Mandamus

'Mandamus' is a Latin word which means 'we command'. A writ of mandamus is a formal court order that commands a lower court, government official, or public body to perform a mandatory legal duty. It forces a public official or authority to do certain things which he/it is legally required to do. This writ is issued in exceptional condition when no efficacious alternative remedy is available. By issuing this writ, discretion of public official can't be taken away and he can't be forced to make certain choice when he has some discretion. Writ of mandamus directs action.

2.3. Writ of Certiorari

'Certiorari' is a Latin word which means 'to be informed' or 'to be made certain'. A writ of certiorari is a formal order issued by a higher court directing a lower court / tribunal / administrative authority to send up the records of a case for review. When lower court or tribunal acted beyond its jurisdiction or when clear mistake of law is visible on the face of the record or when principles of natural justice and especially its audi alteram partem component is violated, this writ may be issued.

2.4. Writ of Prohibition

Prohibition here means to forbid or to stop. A writ of prohibition is a legal order sent by a higher court to a lower court or tribunal to stop it from handling a case outside its proper authority. As opposed to writ of mandamus, this writ directs inaction. When personal bias of a judge is imminent or when there is the case of the lower court or tribunal acting in excess of its jurisdiction or when it tries to hear a case it has no legal right to judge this writ is issued. This writ is prospective in nature.

2.5. Writ of Quo Warranto

'Quo warranto' means by what authority or by what warrant. Writ of quo warranto is a legal order issued by a court to ask a person by what authority or warrant he is holding a public office or exercising a public power. It prevents an illegal usurper from wrongfully holding a public or corporate position. The person holding the office must prove to the court that they have the legal right to be there. If they lack proper qualifications or legal appointment, the court removes them. This writ may be issued against a public office which is substantive in nature and is created by law or constitution.

3. SERVICE DISPUTES, DISCIPLINARY PROCEEDINGS AND WRIT COURT

During the course of employment if the employer or disciplinary authority feels that any employee has committed any misconduct, then the disciplinary committee can inflict punishment on that employee. But in the matter of such disciplinary proceedings and / or adverse administrative order having civil consequences, following basic prerequisites and parameters are to be kept in mind by the employer, disciplinary authority and enquiry authority. In the light of the prerequisites and parameters noted below, administrative action arising out of any service dispute and connected and / or resultant disciplinary proceedings, disciplinary enquiry and penalty or punishment of employees or any other issue connected therewith or incidental and ancillary thereto, may be subjected to review on petition being filed by aggrieved party as to their legality against these prerequisites and elements by jurisdictional High Court or at times the Supreme Courts by exercising its supervisory writ jurisdiction and this review is known as Judicial Review. This judicial review is basically review of process of decision making and not review of the decision itself of the administrative body or

disciplinary committee. In case of service disputes two most commonly activated writs are writ of mandamus and writ of certiorari.

3.1. Quasi-Judicial Nature of Departmental Proceedings

Holding disciplinary proceedings against a government employee and imposing a punishment on his being found guilty of misconduct under the statutory rules is in the nature of quasi-judicial proceedings. [Mohd. Yunus Khan v State of U.P. and Ors. – (2010) 12 S.C.R. 448: 464 B].

Quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably [A. K. Kraipak v Union of India – (1969) 2 SCC 262: Para 2]

3.2. Standard of Proof in Departmental Proceedings

…….. the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. [Nirmala J. Jhala v State of Gujarat & Anr. – (2013) 5 SCR 200: 216 A-B]

In disciplinary proceedings, "preponderance of probability" is the legal standard of proof used to determine if an employee is guilty of misconduct. It means that, based on the evidence presented, it is more likely than not that the alleged incident occurred. The decision is to be based on a careful weighing of all available facts and circumstances. The scales are to be perfectly balanced and all evidences, facts and circumstances must be considered to come to finding of misconduct. [Sachin Kumar & Ors. v Union of India & Ors – 2026: AHC: 81720 – WRIA No. 38777 of 2015 in Allahabad High Court: Para 17]

The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction. [The State of Karnataka & Another v Umesh – (2022) 2 S.C.R. 574: 585 F-H]

Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the

delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. [Bank Of India and Anr v Degala Suryanarayana – (1999) 3 S.C.R. 824: 831 G-H, 832 A-B]

3.3. Proceedings Must Be Based on Evidence & Not on Suspicion / Whims and Fancies

In these circumstances, even in departmental proceedings, there had to be some overt evidence, and not mere suspicion, to support a valid finding of complicity of the respondent. [United Bank of India v Biswanath Bhattacharjee – (2022) 3 S.C.R. 988: 1004 D]

….. it is not on mere whims and fancies that any opinion should be formed by the disciplinary authority merely on the seriousness of charge rather before any final opinion is expressed on the charge, the Disciplinary Authority is under a lawful obligation to follow the procedure prescribed under the service rules. [Uday Pratap Singh Vs. State of Bihar & Ors. – 2017(4) PLJR 195 – Page 14]

3.4. Role of Statutory Rules and Principles of Natural Justice

Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. [Mohd. Yunus Khan v State of U.P. and Ors. – (2010) 12 S.C.R. 448: 464 D].

Statutory rules would mean applicable statute and rules made thereunder. As for example, in case of teachers of colleges in West Bengal holding substantive posts in any government or grant-in-aid college they are subjected to The West Bengal College Teachers (Security of Service) Act, 1975 - West Bengal Act XXXVI of 1975 read with West Bengal College Teachers (Security of Services) Rules, 1977. Departmental proceedings against any college teacher in substantive post in government or grant-in-aid college in West Bengal must follow the relevant provisions contained in the said Act and the said Rules.

Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression civil consequences encompass infraction of not merely property of personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects his civil life. [Canara Bank v V. K. Awasthy – (2005) 6 SCC 321: Para14]

Principles of Natural Justice has three facets: i) Nemo debet esse judex propria causa / memo judex in causa sua meaning that no one should be a judge in his own case as it leads to the rule of biasness; ii) Audi alteram partem meaning no person can be condemned or punished without having a fair opportunity of being heard to him / her. This is a part of fundamental rights guaranteed under Article 14 of the Constitution of India; iii) the order must be a speaking order or a reasoned order. If orders have not at all adverted to the pointed defences raised, orders are to be taken as ‘non-speaking’. It must not be like ‘inscrutable face of a Sphinx’. Non-speaking order makes it not fit for appeal to higher or appellate authority.

3.5. Balance between Interest of Employees and Employer

The governing principles in disciplinary actions aim to strike a balance between two key objectives: affording the employees a fair opportunity to defend their innocence and ensuring that justice is served to the employer as well for maintaining discipline within the public service and the administrative systems. [P. N. Saji v Kerala Public Service Commission - 2025: KER: 5997 in OP (KAT) No.439/2020 – Page 47]

3.6. No Arbitrary Exercise of Power in Departmental Proceedings

The rule of law prohibits the exercise of power in an arbitrary manner and/or in a manner that travels beyond the boundaries of reasonableness. Thus, a statutory authority is not permitted to act whimsically/arbitrarily. Its actions should be guided by the principles of reasonableness and fairness. The authority cannot be permitted to abuse the law or to use it unfairly. [Mohd. Yunus Khan v State of U.P. and Ors. – (2010) 12 S.C.R. 448: 466 F]

3.7. Consequences of Procedural Lapses

Procedure is handmaid of justice. That is a trite saying. By the same token, procedural safeguard cannot be placed at such high a pedestal as always to knock down an order passed in violation of the same, if it be otherwise legal. This is due to legal maxim "Quilibet potest reuntiare juri pro se introducto', meaning, an individual may renounce a law made for his special benefit. [Krishan Lal v State of Jammu and Kashmir – (1994) 2 S.C.R. 149: 152 H, 153 A]

3.8. Interested Person Not to Be Part of Departmental Proceedings

Law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of principles of natural justice renders the order null and void. [Mohd. Yunus Khan v State of U.P. and Ors. – (2010) 12 S.C.R. 448]

3.9. Documents Relied Upon Must be Furnished

…… if any document is relied upon to form the basis of enquiry, such document must be furnished to the employee; it is only then a meaningful reply can be furnished; and the failure to furnish the documents referred and relied in the notice would vitiate the entire proceedings as being arbitrary and in violation of the principles of natural justice; and before taking any adverse decision, the aggrieved person must be given an opportunity of personal hearing. In the light of the same, we have no hesitation to hold that the order of termination passed against the appellant is arbitrary, illegal and violative of the principles of natural justice and it cannot be sustained. [Basudev Dutta v. The State of West Bengal & Ors. - (2024) 12 S.C.R. 418: Para 12.6]

Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However,

it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of documents is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer. [Chandrama Tewari v Union of India, Through General Manager, Eastern Railways – (1988) 1 S.C.R. 1102: 1105 E-H, 1106 A-C]

3.10. Documents Must Be Proved

Documents used in departmental enquiry must be proved either by way of affidavit or by examination of witnesses. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved". [Ram Lal v. State of Rajasthan & Ors. – (2023) 15 S.C.R. 808: Para 26]

3.11. Administrative Order Must Be Reasoned

It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just. [Mahabir Prasad Santosh Kumar v State of U. P. & Ors – (1971) 1 S.C.R. 201: 205 B-D]

…… when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision. [Smt. Maneka Gandhi vs. Union of India and Anr – AIR 1978 SC 597]

Such reasons must disclose how mind was applied to the subject matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean

the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two. [Union of India v Mohan Lal Capoor and others – (1974) 1 S.C.R. 797: 820 C-D]

The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1). [Manager Govt. Branch Press & Anr. v D. B. Belliappa - (1979) 2 S.C.R. 458: 467 D]

3.12. Punishment only after Enquiry

As a culmination to departmental proceedings punishment may be inflicted or penalty may be imposed by the disciplinary authority on the delinquent or charged officer. Generally speaking, departmental enquiry cannot be dispensed with. Article 311(2)(b) of the Indian Constitution allows the government to dismiss, remove, or demote a civil servant without holding a normal departmental inquiry if the authority decides it is not reasonably practicable to hold one.

A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily of out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the government servant is weak and must fail. [Union of India v Tulsiram Patel & Ors. – (1985) Supp 2 S.C.R. 131]

The decision to dispense with the departmental enquiry, cannot therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of whim and caprice of the concerned officer. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must. definitely invalidates such an action. [Risal Singh v State of Haryana – (2014) 7 S. C. R. 544]

4. MAINTAINABILITY OF AND CERTAIN IMPORTANT POINTS IN WRIT PETITION

Whenever the Court had intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of 'State', within the expansive definition under Article 12 or it was found that the action complained of has public law element. [St Mary's Education Society v Rajendra Prasad Bhargava – (2022) 8 S.C.R. 301 – Para 68 (b)]

4.1. Against Whom Writs are Maintainable

…….. the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function. [Federal Bank Ltd. v. Sagar Thomas and Others – (2003) Supp. 4 S.C.R. 121: 137E]

4.2. Statutory Service Condition & Maintainability of Writ Petition

Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions, like Government institutions, discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities Employment in such institutions, therefore, is not devoid of any public character. [Anandi Mukta Sadguru Shree Mukta Jeevandas Swami Suvarna Jayanti Mahotsav Smark Trust & Ors. v. V.R. Rudani & Ors. – (1989) 2 S.C.R. 697: 705C-D]

An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service. [St Mary's Education Society v Rajendra Prasad Bhargava – (2022) 8 SCR 301 - Para 68 (c), Page 346]

4.3. Private Character and Maintainability of Writ Petition

If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. [Anandi Mukta Sadguru Shree Mukta Jeevandas Swami Suvarna Jayanti Mahotsav Smark Trust & Ors. v. V.R. Rudani & Ors. – (1989) 2 S.C.R. 697: 705B-C]

4.4. Presence of Efficacious Alternative Remedy and Maintainability of Writ Petition

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition. [U.P. State Spinning Co. Ltd. V R.S. Pandey and Anr. – (2005) Supp. 3 S.C.R. 603: 611 F-H, 612 A]

….. the rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of alternative remedy a writ Court may still exercise its discretionary jurisdiction of judicial review. [Satyendra Narayan Singh v State of Bihar & Ors. in Civil Writ Jurisdiction Case No.15706 of 2021 at Patna High Court – Para 17]

4.5. Certain Important Points with respect to Writ Petition

Following important points with relation to a writ petition filed is the be noted:

a) High Courts are to proceed in a writ petition on affidavits taken on record;
b) Burden of proving a fact asserted before the court rests squarely on party making such assertions;
c) It is wrong to shift the onus of proof on to respondents for deciding the crucial issue raised by the writ petitioners who were primarily under the burden to substantiate their assertions; [Indian Oil Corporation Ltd. & Anr v M/S Aditya H. P. Centre & Ors. Etc. – 2026 INSC 182]
d) In writ petition pleaded facts must be proved by evidence;
e) Facts not pleaded and evidence not annexed to writ petition or counter affidavits will not be entertained by the court; [Bharat Singh v State of Haryana – (1998) Supp 2 S.C.R. 1050]
f) Findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law; [M/S Atal Castings Ltd. v Bawa Gurvachan Singh – (2001) 3 S.C.R. 124]
g) If a point is to be raised by a party and to be considered by the Court, either the Supreme Court or High Court, it must be there either in – i) writ petition; or ii) counter affidavit; or iii) Special Leave Petition (SLP); or iv) any other affidavits. Mere production of any fact and evidence during the course of argument in court is not sufficient; [State of UP & others v Chandra Prakash Pandey – (2001) 2 S.C.R. 506]
h) When several issues are raised in a writ petition High Court can not merely focus only on single decisive point and not answering with reasons to each such issues raised;
i) Litigants have the right to a comprehensive decision;
j) Appellate court is benefitted from reasoned decision of the original court. [Hemlata Eknath Pise v Shubham Bahu – Uddeshiya Sanstha Waddhamna & Ors. – 2026 INSC 147]

5. EFFECT OF NON-MAINTAINABILITY OF WRIT PETITION

Dismissal of a writ petition filed by the appellants on the ground of maintainability would not lead to extinguishment of the rights of the appellants and only the forum for adjudication of their dispute would change. Any alleged violations of Articles 14 or 16 of the Constitution of India are simply grounds for claiming relief which can well be agitated before any other appropriate forum. It is not issue of right but issue of remedy.

6. STANDARD PROCEDURE IN WRIT COURT

Procedure adopted in case of writ petition filed in a High Court especially a writ of mandamus is, briefly and generally as follows:

6.1. Filing of the Writ Petition by the Petitioner(s)

Writ petition is filed either under Article 226 (in case of writ petition in High Court) or under Article 32 (in case of writ petition in the Supreme Court). In the matter of filing writ petition the petitioner has to keep in mind that it is basically maintainable against state, instrumentality of state, private body discharging public duty, state funded private body or person liable to discharge statutory function.

To succeed in a claim under Article 226 or Article 32, one must demonstrate either mala fide, or arbitrariness, or breach of a law in the impugned State action. [Association for Democratic Reforms v Election Commission of India and Another – (2024) 5 S.C.R. 415 – Para 22, 23].

Copies of the writ petition is to be duly served to all the respondents mentioned in the writ petition. Averments made in the petition are to be supported by documents and evidences.

6.2. Filing of Affidavit in Opposition by Respondent(s)

After being served with a copy of writ petition, respondents get the right to oppose the averments made by the petitioner in writ petition. Respondents may or may not file Affidavit in Opposition. In that case respondents pray to the Bench for filing such affidavit and if allowed by the Bench can file the Affidavit in Opposition. In Affidavit in Opposition respondents can deny and dispute averment made in the writ petition. Herein, respondents may submit counter documents favouring its/his counter averments in Affidavit in Opposition.

6.3. Filing of Affidavit in Reply by the Petitioner(s)

Against the averments made by the respondents in their Affidavit in Opposition, the petitioner has the right to submit Affidavit in Reply on prayer made to the Bench and subject to permission of the Bench. In Affidavit in reply petitioner can deny and dispute averment made in the Affidavit in Opposition. Herein, petitioner may submit counter documents favouring its/his counter averments in Affidavit in Reply.

6.4. Filing of Affidavit of Exception by Respondent(s)

Against the averments made by any respondent in Affidavit in Opposition, the other respondent(s) has the right to submit Affidavit in Exception on prayer made to the Bench and subject to permission of the Bench. In Affidavit in Exception respondents can deny and dispute averment made in any Affidavit in Opposition. Herein, respondents may submit counter documents favouring its/his counter averments in Affidavit in Exception.

6.5. Filing of Written Notes of Arguments by the Parties

Supervision of all the processes listed above, consideration of averments made in petitions and / or affidavits and deciding on remedies sought for in the petition are purely in the domain of authority of the concerned Bench. Procedural side in this matter is taken care of by the particular High Court in its own way. After due consideration of the entire matter & materials on record of the Bench and after hearing the parties or counsels for both the parties the Bench may require all the parties to submit 'Written Notes of Arguments'.

6.6. Final Hearing & Decision / Judgement by the Bench

After consideration of all materials on court records and after finally hearing all the parties the Bench will decide and pronounce judgment on whether or not remedies sought for by the petitioner may be granted. Any of the parties may be aggrieved by the decision of the Bench. Legal course available in case of grievance is normally to go to Higher Tier. Scope of this article does not require elaborate discussion in that matter.

7. SCOPE OF JUDICIAL REVIEW

It is well settled that the scope of interference under Article 226 or under Article 32 of the Constitution is limited and does not extend to re-appreciation of evidence or substitution of the Court's view for that of the disciplinary authority. However, where the decision-making process is vitiated by non-compliance with mandatory procedural requirements, denial or non-consideration of relevant defence material, judicial review is permissible to ensure fairness, proportionality and legality in administrative action.

7.1. Review of Decision-Making Process

In Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 Weekly Law Reports 1174 (HL) Lord Deplock said: Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground l would call 'illegality'. the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community.

Exercise of writ jurisdiction or judicial review by High Court / the Supreme Court generally speaking, is not directed against a decision, but is directed against the “decision making process”. [Ranjit Thakur v Union of India – (1998) 1 S.C.R. 512: 522G-H].

Judicial review generally speaking; is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. [Ranjit Thakur v Union of India – (1988) 1 S.C.R. 512: 522H, 523 A-C] The point to note, and emphasise is that all powers have legal limits.

The court in the exercise of judicial review must restrict its review to determine whether: i) Rules of natural justice were complied with; ii) the finding of misconduct was based on some evidence; iii) the statutory rules were observed; iv) the findings of the disciplinary authority suffered from perversity; v) the penalty was disproportionate to the proven misconduct. [The State of Karnataka & Another v Umesh – (2022) 2 S.C.R. 574: 590 A-B]

7.2. Review of Facts

Judicial review generally examines the legality of the decision-making process rather than reopening or re-evaluating the underlying questions of fact. In the matter of judicial review courts act as supervisory court and not as fact-finding

appellate court. Oral evidence, cross-examination of witnesses, expert testimony which are associated with departmental proceedings are rare in judicial review. But that does not mean writ courts are strictly debarred from reviewing facts.

When an administrative order is based on: (i) an incorrect fact or; (ii) there is an obvious mistake in foundational facts or; (iii) in the case of no evidence or; (iv) when vital factual matrix is ignored or; (v) when irrelevant facts are factored in, review of facts enters the lens of judicial review.

Thus, we must also place on record that on certain aspects even judicial review of fact is permissible. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. [Moni Shankar v Union of India and Another – (2008) 3 S.C.R. 871: 884 A-D]

As regards the power of the High Court to re-appraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a Tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. [M/S Bharti Airtel Ltd. v A. S. Raghavendra – (2024) 4 S.C.R. 100: Para 26]

7.3. Duty of Writ Court in Judicial Review

The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether: a) the enquiry is held by a competent authority; b) the enquiry is held according to the procedure prescribed in that behalf; c) there is violation of the principles of natural justice in conducting the proceedings; d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; i) the finding of fact is based on no evidence. [Union Of India and Others v P. Gunasekaran – (2014) 13 S.C.R. 1312: 1320 H, 1321 A-E 1321 F-H, 1322 A]

…….. while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to restitute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice. [Manoj Kumar Vs. Union of India & Ors. – (2024) 2 S.C.R 409 – Para 19 / 2024 INSC 126]

7.4. Forbidden Roles of Writ Court in Judicial Review

Under Article 226/227 of the Constitution of India, the High Court shall not: (i) re-appreciate the evidence; (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence; (iv) go into the reliability of the evidence; (v) interfere, if there be some legal evidence on which findings can be based; (vi) correct the error of fact however grave it may appear to be; (vii) go into the proportionality of punishment unless it shocks its conscience.[Union Of India and Others v P. Gunasekaran – (2014) 13 S.C.R. 1312: 1321 F-H, 1322 A]

According to, law even if two views are possible to be drawn against the petitioner on the basis of the Enquiry Report one which has been drawn by the Enquiry Officer cannot be held to be wrong taking the plea that the second view was also possible to be drawn based upon evidence. [Roop Singh Negi v. Punjab National Bank and Others – (2008) 17 S.C.R. 1476: 1485 C-D]

8. CONCLUSION

In India fundamental rights of the citizens as enshrined in Part – III of the Constitution of India are basically essential legal guarantees against inequality, abuse of power by the State, and for protecting life and liberty of citizens, personal freedom in democratic society. If these rights are infringed then aggrieved person may knock the door of either the Supreme Court of India U/A 32 or the High Court of the state where at least a part of cause of action arises U/A 226. The Supreme Court of India or High Court resort to judicial review of the impugned action infringing fundamental rights and gives proper and adequate redress by means of issuing writs which are basically formal orders compelling or restraining the infringer to do or to abstain from doing certain things which are under challenge in writ petition filed in either the Supreme Court or High Court. In judicial review the decision making is reviewed and not the decision itself. Entertaining writ petition and decide on the prayers made therein is known as writ jurisdiction and the court exercising such jurisdiction is called writ court. Writ courts are supervisory court and not fact-finding appellate court. The efficacy and timeliness of writ court go a long way in protecting fundamental rights not merely theoretically but in reality. Understaffed Bench, overcrowded Bars, procedural weaknesses, lack of visible accountability fixation, problems of budgetary allocation and poor utilisation of budgetary allocation for al round development of courts very often slows down the movement of writ petition from its initiation to finalisation and judgement delivery making the role of the writ court less effective than what is expected.

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