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view is destructive of



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Where the Income-tax Officer has virtually refused to carry out the clear and unambiguous directions which a superior tribunal like the Income-tax Appellate Tribunal, had given to him by its final order in exercise of its appellate powers in respect of an order of assessment made by him, such refusal is in effect a denial of justice and is further more destructive of one of the basic principles in the administration of justice based as it is on the hierarchy of courts. In such a case, a writ of mandamus should issue to compel the Income- tax Officer to carry out the directions given to him by the Income-tax Appellate Tribunal. The High Court will be in error if it refuses a writ on the ground that no manifest injustice has resulted from the order of the Income-tax Officer in view of the errors committed by the Tribunal itself in its order. Such a view is destructive of one of the basic principles of the administration of justice. Mandamus can be issued when a person in authority,— (a) Oversteps the limits of its powers; or (b) Fails to comply with the condition laid down or the exercise of such powers; or (c) Refuse to perform his statutory duties. (Bharat Bank v. Employees of Bharat Bank. AIR 1950 S. C. 188 Jagannath c. District Magistrate, A. I. R.

1951 All; 710. Shanker v. Returning Officer, AIR.

1962 Bom. 277; State of Bombay v. Laxmidas, (1952) 5 Bom. L. R.

681]; or (d) Overlooks or violates the requirements of natural justice [B. B. das Gupta v. Bijoy Narain, (1952) 57 CWN 871]. Where the petitioner complains that because of the inaction of the State Government he has not been able to exercise his rights as a member and vice-president of a superseded Municipal Committee which he would be able to exercise if the

Committee were constituted, this is a kind of case in which a writ of mandamus can issue although whether to issue or not would be in the discretion of the Court.

Mudholkar, S., observed in the Nagpur case of *Gopal Jairam v. State of M. P.* [A.

I. R. (1951) Nag. 181] as follows; “ While it is true that in England a writ of mandamus cannot be issued to a Government unless there is a statutory provision in that regard. Article 226 specifically provides that such a writ can be issued even to any Government in an appropriate case. The purpose of a writ of mandamus is to supply defect of justice and it has been held in England that such a writ will issue to the end that justice may be done in all cases. Where there is a specified legal right and no specific legal remedy for enforcing such a right or where there is an alternative legal remedy, a person has no such mode of redress which is not less convenient, beneficial and effective. Further while a writ of this kind can be issued as a corrective for official inaction it has been accepted in England that the issue of such a writ is in the direction of the Court.

The petitioner complains that because of the inaction of the State Government he has not been able to exercise his right as a member and vice-president of the superseded Municipal Committee which he would be able to exercise if the Committee were reconstituted. Therefore according to him he is unable to enforce his legal right. Admittedly there is no specific legal remedy for enforcing the right, and so, according to him this is an appropriate case in which a writ of mandamus should be issued. I am of

opinion that if the interpretation put upon the relevant provision of law by the petitioner is correct, that is a kind of case in which a writ of mandamus can issue though whether to issue it or not would be in the discretion of the Court. The person who applies for the writ of mandamus must have a specific legal right which he wants to enforce. A writ of mandamus lies to compel the restoration of a person to a public officer. The applicant has to show that he has no other legal remedy available to him or, if available is not equally beneficial, convenient and effective. The writ is issued only for public purpose and for the performance of public duties, i.

e., duties imposed by statute or by some rule of Common Law to do or refrain from doing something. Mandamus cannot be made to serve the purpose for enforcement of breach of a contractual obligation. In *L. T. Corporation v. State of Madras*, [A.

I. R. 1952 Madras 112], the petitioner and the Government had entered into a contract. There was a threat of breach of contract on the part of the Government. The petitioner took recourse to the writ of mandamus. The writ was refused by the Court on the ground that it could be granted only to comply the performance of the duty of a public nature. Accordingly it was denied for the enforcement of a mere private right.

It was held by the Division Bench of the Allahabad High Court that— 1. A mandamus can be directed against persons who have to perform a public duty, and cannot be issued to private individuals who have no public duty to discharge. 2. To invoke the aid of mandamus, a condition precedent is that— (a) The petitioner must have a legal right to the performance of legal duty by

the party against whom the mandamus is sought, and (b) The duty which is sought to be compelled must be of a public nature. 3.

The Court will not interfere to enforce a law of the land by the extraordinary process of issuing a writ of mandamus in case where an action at law lies for complete satisfaction. 4. A writ of mandamus may issue to compel something to be done only if it is shown that the statute imposes a legal duty. 5. A mandamus can also issue when a power or discretion is exercised arbitrarily or mala fide.

Mala fide is established when the authority is influenced by extraneous or irrelevant considerations. 6. So, if an authority is influenced by irrelevant considerations in discharge of its duty the Court can interfere to correct the same. 7. Likewise, if an authority which has to discharge a public duty, while performing such duty, is influenced by irrelevant considerations, the Court can always interfere to correct the mischief.

8. Arbitrary and capricious exercise of power is no exercise of power in the eye of law. The High Court has jurisdiction to relieve by mandamus against unauthorised or illegal acts military authorities affecting the fundamental rights of persons in military service.