

Arma Niranjana and ors. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/462948

Court : Allahabad

Decided On : Mar-05-2009

Reported in : 2009(85)AWC1887

Judge : S.U. Khan, J.

Appellant : Arma Niranjana and ors.

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. In para 3 of the writ petition it has been stated that earlier also petitioner had filed Writ Petition No. 19944 of 2008 with regard to same controversy which is involved in this writ petition but under assurance given by District Basic Shiksha Adhikari. to settle the dispute by adjusting the petitioner in the school of their choice petitioner withdrew the above mentioned writ petition on 19.4.2008. The file of the said writ petition has also been summoned. The said writ petition was dismissed by the following order on 19.4.2008:

Learned Counsel for the petitioner stated that he may be permitted to withdraw the writ petition. In view of the aforesaid statement writ petition is dismissed as

withdrawn.

2. In my opinion after dismissal of the earlier writ petition as withdrawn without any liberty to file another writ petition on the same cause of action having been granted debars the petitioner from filing another writ petition on the principles of Order XXIII, Rule 1, C.P.C. vide *Sarguja Transport Service v. State Transport* : [1987]1SCR200 and *Upadhyay and Co. v. State of U.P.* : AIR 1999 SC509 .

3. In this regard reference may also be made to Chapter XXII of Allahabad High Court Rules dealing with writ petitions. Rule 7 of the said chapter states that where an application has been rejected it shall not be competent for the applicant to make a second application on the same facts. This Court in *A. Gaffar v. I. Ahmad* 1989 ALJ 297. has held that even dismissal in default debars filing of second writ petition on same facts.

4. Learned Counsel for the petitioner has cited an authority of this Court in *Cottage Industries v. A.D.M.* 1992 AWC 653, and particularly its para 18. However, the facts of the said case were different, as both the writ petitions were listed together and prayer for dismissal of one writ petition as withdrawn was opposed still it was granted.

5. Accordingly, in my opinion this second writ petition is not maintainable as no liberty to file another writ petition was granted by this Court on 19.4.2008 when earlier writ petition on same ground and facts, for same cause of action and for same relief was dismissed as withdrawn.

6. Accordingly, writ petition is dismissed as not maintainable.