

Anil Kumar Vs. State of Raj. and ors.

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Court : Rajasthan

Decided On : Nov-08-1996

Reported in : 1996(2)WLN307

Judge : V.G. Palshikar, J.

Appeal No. : S.B. Civil Writ Petition No. 3571 of 1996

Appellant : Anil Kumar

Respondent : State of Raj. and ors.

Disposition : Petition dismissed

Judgement :

V.G. Palshikar, J.

1. By this petition, the petitioner has challenged the order dated 20.9.96 by which he was reverted. Several grounds of challenge have been raised. It is alleged that the order suffers from non-application of mind, it is based on a Circular which is not applicable to the facts giving rise to the impugned order. The impugned order, is therefore prima facie arbitrary.

2. The petitioner has been ordered to be given seniority from the date of his continuous appointment and was accordingly promoted in accordance with the seniority. He could not, therefore has been reported. The reversion made without

giving any opportunity of being heard to the petitioner renders the order made as violative of the principles of natural justice. The order is also violative of Govt. rules framed under Article 309 of the Constitution and, therefore, view from any point, the order impugned in this petition is liable to be quashed as arbitrary and unsustainable in law.

3. The perusal of Annex. 12, the impugned order, will show that it is a matter relating to the promotion of a Govt. servant and the impugned order takes away the promotion granted to the petitioner. It is an order varying from other service conditions to the disadvantage of the Govt. servant.

4. It is obviously not an order it is a penalty. Consequently, the impugned order is a service matter within the meaning of the word 'service matter' as defined in Section 2(f) of the Rajasthan Civil Services, Service matters Appellate Tribunal Act, 1976 (For short The Act of 1976).

5. The petitioner has thus an efficacious remedy before a Tribunal, specially created by the State for the purposes of expeditiously resolving the disputes regarding service matters of Govt. servants. Each of the ground canvassed before this Court on the proposition that the order impugned is unsustainable in law can be canvassed before the appellate Tribunal. The petitioner is in gross misconception of law that only disputed questions of facts can be raised before the Tribunal. There is nothing in law or in the Constitution that questions involving complaints of infringement of constitutional rights cannot be adjudicated upon by any other Tribunal save this Court, A Tribunal set up by our Statue of the State Legislature is not only competent but also has constitutional rights. It is, therefore, incorrect to say that a Tribunal cannot decide any case for violation of constitutional rights and also where it has been arises in the service matters as defined by Section 2(f) of the 1976 Act.

6. A judicial opinion will have to be taken on the pendency of the writ petitions involving service matters before this Court and matters are pending at least for 8 years and more. A Tribunal to consider service matters is created and an appeal to the Tribunal would certainly be a more efficacious remedy than a petition to this Court. It has been conclusively held by this Court by a judgment of 5 Judges'

Bench, of this Court that a writ petition directly to this Court should normally not be entertained where alternative remedy of some efficacy is available. Nothing is brought to my notice in the present case. What is so extraordinary about this service matter that the extraordinary Jurisdiction under Article 226 should be exercised, ignoring a statutory alternative remedy available under the 1976 Act and I, therefore, dismiss this petition with a liberty to the petitioner to approach if he so advised to the Appellate Tribunal under the 1976 Act.

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