

Ram Chandra Sharma Vs. Rajasthan Tribal Area Development

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Court : Rajasthan

Decided On : May-29-2002

Reported in : RLW2003(3)Raj1594; 2002(4)WLC784; 2002(5)WLN14

Judge : Sunil Kumar Garg, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : S.B. Civil Writ Petition No. 1458 of 1992

Appellant : Ram Chandra Sharma

Respondent : Rajasthan Tribal Area Development

Advocate for Def. : Dinesh Maheshwari, Adv.

Advocate for Pet/Ap. : K.K. Shah and; M. Mridul, Adv.

Disposition : Writ petition dismissed

Judgement :

Garg, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner against the respondents on 5.3.92 with a prayer that by an appropriate writ, order or direction the order dtd. 30.1.88 (Annex. 13) by which services of the petitioner were terminated be quashed.

2. It arises in the following circumstances:

(i) The petitioner was selected and appointed on the post of Assistant Regional Manager in the Rajasthan Tribal Area Development Cooperative Federation Limited (hereinafter referred to as the Federation) Vide order dated. 28.1.82.

ii) By communication dtd. 10.6.85, the petitioner was charged and this charge was explained by statement of allegation. Copy of Communication dtd. 10.6.85 and statement of allegation are marked as Annex. 1 and 2 respectively. The specific charge against the petitioner was that he proceed the appointment on the post of Assistant Regional Manager by producing a false certificate wherein it was sought to be certified that the petitioner worked as Assistant Manager in Jhalara Gram Seva Sahkari Samiti from 6.4.78 to 2.5.81.

iii) The petitioner vide his letter dtd. 22.6.85 (Annex.3) requested that the copy of alleged false certificated referred to in the charge may be made available to him.

Note: It may be stated here that the certificate alleged to have been submitted by the petitioner at the time of seeking appointment is missing from the file of the respondents and in the communications between the petitioner and respondent, the petitioner was asked to produce copy of the alleged false certificate as original certificate was missing and on the other hand, the petitioner demanded that before enquiry is held against him, copy of that alleged forged certificate should be provided to him.

iv) Ultimately, enquiry Officer submitted his report and it is marked as Annex. 19 and on the basis of that report, the impugned order dtd. 30.1.88 (Annex. 13) was passed by the Managing Director, by which services of the petitioner were terminated.

v) It is admitted case of the petitioner that being aggrieved from the order dtd. 30.1.88 (annex.13), the petitioner preferred an appeal to the Chairman of the Federation and copy of appeal is Annex. 14 and that appeal of the petitioner was referred to a Committee constituted by the Board of Directors and the petitioner was called upon to appear before the Committee. The dates of hearing were fixed

many a times, but nothing was done in the matter. There is no dispute on the point that the appeal is still pending.

vi) In the meanwhile the petitioner also approached the Civil court by filing a suit which was ultimately withdrawn by him later on.

vii) Therefore the present writ petition has been filed on 5.3.92 and the order dt. 30.1.88 (Annex.13) has been challenged on various grounds.

3. Reply to the writ petition was filed by the respondent and apart from submitting reply on merits, a preliminary objection was taken by the respondent that since the petitioner has availed alternative remedy i.e. filing of appeal before the Chairman of the Federation as provided in the Bye-laws and when that appeal is still pending, this Court cannot entertain the writ petition filed by the petitioner on the ground of alternative remedy. Hence, writ petition be dismissed on this ground alone.

4. I have heard both and perused the record.

5. There are Bye-laws of Rajasthan Tribal areas development Cooperative Corporation Ltd. (hereinafter referred to as they Bye-laws). Rule 38 of the Bye-laws deals with powers of Board of Directors and Rule 38 specifically provides that entire administration of the Nigam shall vest in the Board of Directors and amongst others, the powers of Board shall be:-

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17. to hear appeal of the orders passed by the Managing Director against employees of the Nigam in disciplinary cases;

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6. Thus, the Bye-laws specifically make provision of appeal against the order passed by the Managing Director and it appears that in pursuance of these Bye-laws, the petitioner filed appeal before the Board of Directors against the order dtd. 30.1.88 (annex, 13) passed by the managing Director by which services of petitioner were terminated and the same is still pending.

7. The question that arises for consideration is whether in view of the fact that there is alternative remedy of appeal and the same has been availed by the

petitioner though no final adjudication has taken place in that appeal, the present writ petition is maintainable or not?

Law on Alternative Remedy

8. In my opinion where an alternative and equally efficacious remedy is available to a litigant, he should pursue that remedy and may not invoke special jurisdiction of the High Court to issue a prerogative writ.

9. The remedy under Article 226 being, in general, discretionary, the High Court may refuse to grant it where there exists an alternative remedy, equally efficient and adequate, unless there are good grounds therefore, but where a party complaining of fraud had no other alternative remedy available, he could avail writ remedy. For that following authorities may be referred to;

i) Than Singh v. Supdtd. Taxes (1)

ii) Kerala State Electricity Board v. Kurien E. Kalathil (2)

iii) United India Insurance Co. Ltd. v. Rajendra Singh (3)

10. The question whether the alternative remedy is equally efficacious or adequate is a question of fact to be decided in each case and the onus lies on the petitioner to show that it is not adequate.

11. Where the petitioner had already availed remedy of appeal under the ordinary law, no petition under Article 226 will ordinarily be entertained on the same questions, at least so long as those proceedings are not disposed of.

12. In my opinion, the petitioner cannot be allowed to pursue two parallel remedies at the same time as in the present case not only that the alternative remedy is available to the petitioner, the petitioner has already availed that remedy by filing appeal before the Board of Directors and that appeal is still pending and simply because appeal has not been decided, it would not give a cause to the petitioner to file writ petition under Article 226 of the [Constitution of India](#).

13. The learned counsel for the respondent has placed reliance on a case of *Sheela Devi v. Jaspal Singh* (4). this authority also leads, to the conclusion that the present writ petition is not maintainable as alternative remedy is available to the petitioner and he has availed the same. Apart from this, the question which have been raised by the petitioner in this writ petition are questions of facts or mis-questions of facts and law which require investigation before reaching a conclusion and investigation/enquiry in my opinion is beyond the scope of Article 226 of the [Constitution of India](#).

14. The High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or Tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another Tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition Under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

15. In the present case, following questions of facts may arise :

(i) Whether the petitioner presented false certificate before respondent for seeking appointment or not ?

(ii) Whether that certificate was forged one within the knowledge of the petitioner or not

(iii) Whether while holding enquiry against the petitioner the procedure laid down in Bye-laws has been followed or not? etc. etc.

16. The above question are question of facts or mis questions of facts and law which should not have been decided for the first time in writ jurisdiction under Article 226 of the [Constitution of India](#). From this point of view, the present writ

petition is not maintainable,

17. The Hon'ble Supreme Court in the case of K.S. Rashid and son v. Income Tax Investigation Commission and Ors. (5), has observed as under:-

'The remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. Where the petitioners have already availed themselves of the remedy provided for in Section 8(5) of the Taxation of Income (Investigation Commission) Act and a reference has been made to the High Court in terms of that provision which is awaiting decision, it would not be proper to allow the petitioners to invoke the discretionary jurisdiction under Article 226 of the Constitution at this stage.'

18. The case of K.S. Rashid (supra) clearly covers the point in dispute as the petitioner has already availed the remedy of appeal by filing appeal before the Appellate Authority. Hence, jurisdiction under Section 226 of the [Constitution of India](#) should not be exercised in favour of the petitioner.

19. Similarly in the case of Shriram Refrigeration Industries Ltd. v. Commercial Tax Officer and Ors. (6), the Hon'ble Supreme Court has held that when the appeal is pending before the appellate Authority on similar issue by same party, the writ petition cannot be entertained. This authority also goes to the very root of the maintainability of the present writ petition.

20. The Hon'ble Supreme Court in the case of Basant Kumar v. The Eagle Rolling Mills Ltd. and Ors. (7), has held that when alternative remedy is available under the Industrial Disputes Act, 1947, the matter cannot be considered Under Article 226 of the [Constitution of India](#). In this regard, the following authorities may also be referred to:

i) R.K. Panda v. Steel Authority of India and Ors. (8)

ii) Gopichand Teli v. State (9)

iii) Laxman Singh Verma v. State of Raj. (10)

21. It is well settled that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ.

22. Where an alternative and equally efficacious remedy exists, it will be sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.

23. In my considered opinion a right to appeal may be an 'adequate remedy' to bar the issue of a writ. In this regard the following authority of Hon'ble Supreme Court may be referred to:

Bhopal Sugar Industries Ltd. v. D.P. Dube, Sales Tax Officer (11)

When Alternative Remedy Does Not Bar Relief

24. It should not, however, be forgotten that the existence of an alternative remedy is not an absolute bar to the granting of a writ under Article 226 but 'is a thing to be taken into consideration in the matter of granting writs'. In other words, the existence of an alternative remedy is a rule of policy, practice and discretion and not a rule of law. It is a self imposed limitation and cannot oust the jurisdiction of the Court. In exceptional circumstances, the High Court may grant relief under Article 226, even if an alternative remedy is available to the aggrieved person.

25. The existence of an alternative remedy is no ground for refusing prohibition or certiorari where-

(a) the absence or excess of jurisdiction is patent and the application is made by the party aggrieved, or

(b) there is an error apparent on the face of the records,,

(c) there has been a violation of the rules of natural justice,

(d) where there has been a contravention of fundamental rights,

(e) Where the tribunal acted under a provision of law which is ultra vires.

26. Apart from this, when there is infringement of fundamental rights, where remedy cannot be said to be alternative and where remedy cannot be said to be adequate or equally efficacious and where the order is ultra vires, without jurisdiction or violative of natural justice, writ petition under Article 226 of the [Constitution of India](#) can be entertained.

27. The rule requiring the exhaustion of alternative remedies before the grant of writ is a rule of policy, convenience and discretion for the guidance of Court rather than a rule of law meaning thereby that in exceptional cases, though there is alternative remedy, still the writ jurisdiction lies.

28. In the present case none of the abovementioned conditions are present and there is remedy available to the petitioner which is not only alternative but same is adequate and equally efficacious. Apart from this, this remedy has been availed by the petitioner by way of filing appeal before the Board of Directors. From this point of view also, the present case is not that case where inspite of availability of alternative remedy, relief can be granted to the petitioner under Article 226 of the [Constitution of India](#) at this stage atleast so long as the appeal is disposed of.

29. Hence, it is held that the present writ petition is not maintainable on the ground of alternative remedy available to the petitioner.

30. In view of the law just discussed above, the following authorities on which reliance has been placed by the learned counsel for the petitioner would not be helpful to him:

i) Prabhudan Charan v. State of Raj. and Ors. (11)

ii) Bhikam Chand v. Jodhpur Central Cooperative Bank Ltd. and Ors. (12)

iii) Subhash Chandra v. State of Rajasthan (13)

31. So far as the case of Union of India v. Mohd. Ramzan Khan (14) would not be helpful at this juncture..

32. For the reasons mentioned above, the present writ petition is not maintainable as the petitioner has already availed alternative remedy available to him by way of

filing appeal before the Board of Directors and the same appeal is till pending and hence the present writ petition is liable to be dismissed as not maintainable.

33. Accordingly, this writ petition is dismissed as not maintainable at this stage.

34. However, the respondent is directed to decide the appeal filed by the petitioner within six months from today.

35. Cost made easy.

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