

(1996) 11 AHC CK 0111
In the Allahabad High Court
Case No : Special Appeal No. 816 of 1996

Abhai Prakash Sharma

APPELLANT

Vs

Chief Engineer (West), Level-I, Irrigation Department and
Others

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 7

Citation : (1997) 1 UPLBEC 77 : (1997) 1 UPLBEC 362

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : W.H. Khan, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—On the request of Sri W.H. Khan, learned counsel for the appellant, and Sri Hunuman Upadhyay, learned Standing Counsel, this appeal is disposed of finally.

2. The appellant who claims to be Junior Engineer in the Irrigation Department filed Writ Petition No. 24851 of 1996 before this Court challenging the order of his transfer dated 21st July, 1996. This writ petition was disposed of on 8th August, 1996 by a learned Single Judge with the observation As the petitioner has already represented against the impugned order of transfer, it is not necessary to go into the merits of the grounds on which it is challenged. The writ petition is, however, disposed of with the direction to the first respondent to decide the representation dated 26th July, 1996 ,in accordance with law expeditiously, at an early date preferably within a period of three week a certified copy of this order is filed by the petitioner before the said respondent."

3. The respondent, however, rejected the representation of the appellant against which the appellant filed another Writ Petition No. 29394 of 1996 which was disposed of by a learned Single Judge on 11th September, 1996, relevant portion

of which is reproduced below:

"It is settled law that the representation against the impugned transfer order can be filed only after the transfer order is passed and it is the solemn duty of the employer to decide the same after considering the grievances of the employee. Thus, in view of the above, respondent No. 1 is directed to redetermine the representation of the petitioner within a period of two weeks from the dated of production of a certified copy of this order."

4. The respondent thereafter by a reasoned order dated 26th September, 1996 rejected the appellants' representation. Feeling aggrieved by the said order, he filed Writ Petition No. 34083 of 1996 which has been dismissed by the learned Single Judge on 17th October, 1996 on the ground that it is the third writ petition and such a writ petition, in view of the provision of Rule 7 of Chapter XXII of the Rules of the Court, is not maintainable. Being aggrieved by the said order of the learned Single Judge, the appellant has filed this appeal.

5. It is true that Chapter XXII Rule 7 prohibits the filing of the second writ petition "on the same facts". In the instant case, this Court, while disposing of first writ petition No. 24851 of 1996 filed by the petitioner did not decide any controversy and merely required the petitioner to get his representation decided. Second Writ Petition No. 29394 of 1996 filed by the petitioner was alleged by the learned Single Judge on the ground that the order of the authority disposing of petitioner's representation was unsustainable in law. He, therefore, directed the authority concerned to decide the representation afresh in accordance with law, pursuant to which the order impugned in the third writ petition was passed whereupon appellant's representation was rejected by a reasoned order. In none of the earlier two writ petitions, the controversy involved had been decided. The third writ petition, therefore, can not be said to be on the same facts. Therefore, it cannot be barred under Chapter XXII, Rule 7 of the Rules of the Court.

6. A Division Bench of this Court in *Saheb Lal v. Assistant Registrar (Administration) Banaras Hindu University, Varanasi and Ors.* (1995) 1 UPLBEC 31 (DB) in Paragraph 9 of its Judgment which is reproduced below, has laid down that once facts and grounds taken in the first petition have been repelled by the court, the same would not be available to him even under the garb of fresh cause of action in the second writ petition :

"9. Indeed, disposal of his representation gives fresh cause of action, but the fact remains that once facts and ground taken in the first petition have been repelled by the court, the same would not be available to him even if under the garb of fresh cause of action second petition is filed, and, therefore, the argument advanced by the learned Counsel in this respect, is of no avail to the petitioner/appellant. Besides Chapter XXII, Rule 7 of the Allahabad High Court Rules, reference may also be made to the decision rendered in *I. S. Tripathi v. B.H. U.* 1993 (1) UPLBEC 448, wherein it has been held that filing of successive writ petitions on the same facts and grounds, apart from being abuse of process of

Court, is against public policy."

7. In the instant case, in the earlier writ petitions, this Court did not repel any of the grounds and facts referred to by the petitioner. The Division Bench Judgment of this Court in Suheb Lal (Supra), therefore, will not be applicable. In fact the present case will be governed by the decision of the Supreme Court in P.N. Subramanyam Reddy Vs. Andhra Pradesh State Road Transport Corporation and others, relevant extract of which is reproduced below :-

"11. As regards the judgment of Chinnappa Reddy, J. dated February 28, 1978 in Writ Petition No. 3322 of 1976 and the decision of the Division Bench in Writ Appeal No. 299 of 1978 arising out of the said decision, it may be stated that the learned Judges of the Division Bench in their order dated September 2, 1985, while disposing of the Writ Appeal No. 299 of 1978, have clearly observed ".....In the end if Subrahmanya Reddy is aggrieved, we reserve for him to agitate in this Court all questions which are raised in the writ petition." These observations indicate that all questions which had been raised by the appellant in the writ petition which had been disposed of Chinnappa Reddy, J. by judgment " dated February 28, 1978 had been reserved so as to enable the appellant to agitate the same in the event of his being aggrieved by the order passed by the TTD or the APSRTC in his representation. In these circumstances, the observations made by Chinnappa Reddy, J. in his judgment dated February 28, 1978 in Writ Petition No. 3322 of 1976 cannot be set up as a bar to the appellant agitating the said questions in a Writ Petition No. 578 of 1986 which was filed by him after the rejection of his representation by the Board of the TTD."

8. The learned Judge, therefore, was not right to dismiss the appellant's Writ Petition. The appeal is accordingly allowed. The impugned Judgment of the learned Single Judge is set aside. The writ petition will now be listed before the appropriate learned Single Judge for deciding the same. The learned Standing Counsel prays for and is granted a month's time to file counter-affidavit in reply to the writ petition and the petitioner will have two weeks thereafter to file rejoinder-affidavit. The writ petition will thereafter be listed before the appropriate Bench.