

(2010) 01 JH CK 0048
In the Jharkhand High Court

Apurba Kumar Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 01 JH CK 0048

Hon'ble Judges : Gyan Sudha Mishra, C.J.;Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the order dated 17.4.2009 passed by the learned Single Judge in W.P.(S) No. 675 of 2006 by which learned Single Judge had been pleased to dismiss the writ petition with cost as it was held that the petitioner/ appellant herein knowing fully well that his application before the Central Administrative Tribunal, Patna Bench had been dismissed on 9.5.1994 and had attained its finality, yet he filed a writ petition in the High Court of Jharkhand at Ranchi ignoring the effect of the order passed by the Central Administrative Tribunal, Patna Bench though the appellant could have preferred an appeal before the Supreme Court against the judgment of the Tribunal before which the appeal at the relevant point of time would have been maintainable.

2. The petitioner/appellant had filed a writ petition before the learned Single Judge with a prayer that he was entitled to the benefit of the pensionary scheme still he was allowed to be governed by the contributory provident fund scheme though the pensionary benefit had been made available to the employees of Central Fuel Research Institute which is the organization from which the appellant had resigned. Since the petitioner was denied the benefit of the pension scheme, he had filed an application before the Central Administrative Tribunal, Patna Bench, vide O.A. No. 129 of 1992 wherein the appellant had sought relief of grant of pension scheme in place of the contributory provident fund scheme. As already indicated hereinbefore, the Tribunal dismissed the

application holding therein that the Tribunal had no jurisdiction to entertain the application as against the employees of the Central Coalfields Limited but in spite of that, it decided the issue holding therein that the applicant was not entitled to the benefit of contributory provident fund scheme as he had failed to exercise the option of pension scheme when it was floated by the respondent organization for the benefit of its employees. The appellant acquiesced with the order passed by the Tribunal as he failed to prefer any appeal before the Supreme Court which was maintainable in the year 1994 and at the same time he also availed all the benefits of the contributory provident fund scheme by availing the amount which was payable to him under the contributory provident fund scheme. However, after ten years of the dismissal of the case by the Tribunal, the appellant filed a representation before the respondent organization for considering his plea for grant of the benefit of the pension scheme which was rejected. The petitioner thereafter filed a writ petition before the Jharkhand High Court, Ranchi assailing the order of the respondent passed on his representation whereby the benefit of the pension scheme was rejected. Learned Single Judge was pleased to dismiss the writ petition holding therein that the appellant having already availed the remedy before the Tribunal could not have filed writ petition after ten years on the plea that his representation had been rejected. Learned Single Judge, therefore, was pleased to dismiss the writ petition filed by the petitioner/appellant herein with cost of Rs. 500/-. Hence this appeal.

3. Learned Counsel for the appellant in support of the appeal submitted that although the application of the petitioner had been rejected by the Tribunal but the same should not have been given much weightage by the learned Single Judge as the application of the petitioner/appellant was rejected only on the ground of lack of jurisdiction, But this contention was instantly refuted by the counsel for the respondent organization by submitting that the application of the appellant was rejected not only on the ground of lack of jurisdiction but also on its merit as the appellant had failed to exercise his option for availing the pension scheme when the option was invited from its employees.

4. Counsel for the appellant endeavoured hard to get over the impediment as it was submitted that the appellant was not aware of the information inviting option for the pension scheme as he was on deputation in another organization. Since the petitioner had already moved the Tribunal assailing the rejection of his representation for grant of pension scheme against which he did not prefer any appeal, he cannot be allowed to assail the action of the respondent by contending that he could not avail the benefit of option to pension scheme as he was on deputation in another organization. Once the writ petition is held to be not maintainable plea of illegal rejection of his prayer for grant of pension scheme, obviously could not have been entertained. This plea utmost could have been raised by the appellant if he had preferred an appeal against the order passed by the Tribunal and since the said liberty was not availed of by the appellant, the same could not have been permitted to raise by filing the writ petition after ten years of the dismissal of the application by the Central

Administrative Tribunal.

5. It is well settled that if a person is choosing to move a particular forum for redressal of his grievance as per the Act and thereafter he felt aggrieved with the judgment and order passed by the appropriate forum, obviously the appeal would be held maintainable before the forum which is provided under the Act. Admittedly under the Central Administrative Tribunal Act, the appeal against the order passed by the Tribunal could be entertained before the Supreme Court. The appellant having failed to avail that forum, could not have been allowed by moving another forum (which is this Court) by filing writ petition under Article 226 of the Constitution of India.

6. Under the aforesaid facts and circumstances, learned Single Judge has rightly held that the writ petition could not have been held maintainable with which we are fully agreeing and hence, there is no reason to entertain this application. It is, accordingly, dismissed.