
(2000) 01 AHC CK 0149
In the Allahabad High Court
Case No : C.M.W.P. No. 7670 of 1997

Dr. Manvendra Misra

APPELLANT

Vs

Gorakhpur University and others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (2000) 2 AWC 1028 : (2000) 1 UPLBEC 702

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Prakash Padia and R.G. Padia, for the Appellant; Dilip Gupta, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and D. R. Chaudhary, JJ.—Against the Impugned order of the Vice-Chancellor, Gorakhpur University dated 31.1.1997 (copy of which is Annexure-12 to the writ petition), the petitioner has an alternative remedy of approaching the Chancellor u/s 68 of the U. P. State Universities Act.

2. The learned counsel for the petitioner has submitted that this writ petition had been admitted by order dated 26.11.1997 and hence it cannot be dismissed on the ground of an alternative remedy. We are not in agreement with this submission. There is no such hard and fast principle that if a writ petition has been entertained or admitted or if counter-affidavit and rejoinder-affidavits have been exchanged then the writ petition cannot be dismissed on the ground of alternative remedy.

3. Learned counsel for the petitioner relied on the decision of this Court in Suresh Chandra Tewari Vs. District Supply Officer and another, . In that decision, this Court held that it was not inclined to reject the writ petition on the ground of alternative remedy having regard to the fact that the petition had been entertained and an interim order had been passed. In our opinion, this decision

does not lay down any absolute rule that a writ petition cannot be dismissed on the ground of alternative remedy after it had been entertained or after an interim order had been passed. The said decision does not lay down any universal principle and must be confined to its own facts.

4. In *Dr. Bal Krishna Aganval v. State of U. P.* 1996 (2) UPLBEC 1055. the Supreme Court observed that the High Court was not right in dismissing a writ petition on the ground of availability of alternative remedy u/s 68 of the U. P. State Universities Act when the writ petition had been admitted and was pending for more than five years, and the controversy was purely legal. This decision too, in our opinion, does not lay down any universal principle that a writ petition which has been once entertained cannot later be dismissed on the ground of alternative remedy.

5. There are a large number of cases where not only the writ petition was admitted by the High Court but thereafter it was even allowed, but subsequently the respondents filed an appeal before the Supreme Court and the Supreme Court not only allowed the appeal but dismissed the writ petition on the ground of alternative remedy observing that the High Court should not have entertained the writ petition at all e.g. *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others*, , etc. Hence what to say of a writ petition which has been entertained or admitted, even if the writ petition is later allowed thereafter, also the Court can dismiss the writ petition itself on the ground of alternative remedy. Hence there is no such absolute legal principle that a writ petition cannot be dismissed on the ground of alternative remedy, once it has been entertained or admitted or counter and rejoinder-affidavits have been exchanged. It is entirely a matter of discretion, though of course the discretion should not be exercised arbitrarily. Since writ jurisdiction is discretionary jurisdiction hence if there is an alternative remedy, the petitioner should ordinarily be relegated to his alternative remedy. This is especially necessary now because of the heavy arrears in the High Court, and this Court can no longer afford the luxury of entertaining writ petitions even when there is an alternative remedy in existence. No doubt alternative remedy is not an absolute bar but ordinarily a writ petition should not be entertained if there is an alternative remedy.

6. With these observations the writ petition is dismissed on the ground of an alternative remedy before the Chancellor. However, if the petitioner approaches the Chancellor, the Chancellor should decide the reference u/s 68 of the U. P. State Universities Act preferably within two months from the date of production of a certified copy of this order after hearing the parties concerned in accordance with law by a speaking order.