
(2000) 08 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ. Petition No's. 2214, 2517, 2213 of 1985

Girdhari Lal and Others

APPELLANT

Vs

State of Rajasthan etc.

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 4 RLW 94 : (2001) 1 WLC 248 : (2001) 1 WLN 96

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—All these three petitions are disposed of by this common judgment and order as the common question of law is arising in all these petitions.

2. By an order dated 24.7.1997, Hon''ble Dr. B.S. Chouhan, J. referred all these matters to the larger Bench for deciding a question as to whether the cases which are pending since 1985 can be dismissed or not on the ground of alternative remedy available to them before the Civil Services Appellate Tribunal?

3. Petition filed by Girdhari Lal has become infructuous in view of the fact that he is already retired from service during the pendency of this petition. However, for rest of the petitioners, their matters are required to be decided.

4. In case of Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, the Hon''ble Supreme Court held that where there is a statutory alternative remedy available then in such cases the High Court should not exercise its extra ordinary jurisdiction. The same view was continuously followed by the Supreme Court till 1997 in case of L. Chandra Kumar v. Union of India JT1997 (3) 589.

5. Full Bench of five Hon''ble Judges of this Court in case of Gopi Lal Teli Vs. The

State of Rajasthan and Others, has held that when there is an alternative remedy available then in such cases the High Court should not entertain the petition under Article 226 of the Constitution of India. It may be stated that while referring all these matters, the learned Single Judge himself observed that, "No doubt that the petitioner ought to have preferred their claim before the State Service Tribunal..." still for the aforesaid purpose only his lordship has referred the matter to the larger Bench. The consistent view of the Hon'ble Supreme Court and of various High Courts including of this Court is that when there is a statutory alternative remedy available then in such cases the High Court should not entertain the writ petition. In spite of this, if the petitioners have chosen to file writ petitions instead of availing statutory alternative remedy before the State Service Tribunal then merely because their petitions were entertained at the admission stage that itself could not be a ground to give them any benefit. Knowing fully well that the writ petition was otherwise not maintainable in view of the fact that there was alternative remedy if they have chosen to file writ petition then they should suffer. Mere pendency of the cases since 1985 should not be a ground in their favour. If we entertain the petitions only because they are pending before this Court since 1985, though there is alternative remedy available to them before the State Service Tribunal then we are giving premium to such type of persons.

6. In the latest judgment of Sumedico Corporation and Another Vs. Regional Provident Fund Commr., , the Hon'ble Supreme Court held that the petitioner should approach the Service Appellate Tribunal.

7. By dismissing the writ petitions on the ground of alternative remedy available to them, no harm is caused to them except that they have to approach the State Service Tribunal with an application for condonation of delay if there is any. They can approach the Tribunal within one month from today with an application for condonation of delay, if there is any.

8. We hope that as directed above, if the petitioners approach the Tribunal within one month then the Tribunal will consider and decide their cases on merits after condoning the delay, if any.

9. Accordingly, we answer the reference in negative by holding that mere pendency of these cases since long i.e. from 1985 by itself could not be a ground for not dismissing the matters on the ground of suitable alternative remedy available to them before the State Service Tribunal.

10. In view of the above discussions, all these petitions are dismissed without going into the merits of the case only on ground that The petitioners had statutory alternative remedy available to them before the State Service Tribunal and they ought to have availed the same.