
(2001) 11 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4964 of 1997

Goverdhan Bahari Kaushik and Others	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision : 01-11-2001

Acts Referred:

Citation : (2003) 3 RLW 1963

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Alok Sharma, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Keshote, J.—The petitioners by this petition are praying for quashing and setting aside of the seniority list prepared on 19.3.97 in the cadre of Principals Sr. Sec. Schools.

2. This petition has been filed by the petitioners in the Court on 29.8.97. The writ petition was admitted ex parte which is clear from the order dated 19.9.97.

3. Though nobody is present on behalf of the respondents but I find that they filed preliminary objection and reply to the writ petition on 16.7.2001. A copy of this preliminary objection cum reply has been given to the learned counsel for the petitioner on that very day.

4. The petitioners have not filed their rejoinder to the preliminary objection cum reply of the writ petition.

5. The learned counsel for the petitioners does not dispute that it is a service matter and against this impugned order right of appeal is available to the petitioners under these Rajasthan Civil Services Appellate Tribunal Act, 1976. However, it is submitted that as this petition has been admitted, the petitioners may not be relegated to the alternate remedy at this stage. The learned counsel for the petitioners on being put by the Court fairly conceded that the petition is

admitted ex parte.

6. In this case the respondents have right to raise preliminary objection re-maintainability of this petition. Otherwise also merely because the writ petition has been admitted it is not a law that in all the case this court cannot relegate the petitioners to alternative remedy available.

7. The petitioners have made an incorrect statement of fact in para No. 21 of the writ petition. The statement of fact made by the petitioners in this para are contrary to the provisions of the Rajasthan Civil Services Appellate Tribunal Act, 1976. The petitioners are not lay man. The contents of para No. 21 are affirmed and verified to be true and correct on the basis of personal knowledge by the deponent. This affirmation and verification made of para No. 21 is not correct. It is no doubt true there is no statutory bar on entertaining direct writ petition by the Court under Article 226 of the Constitution in a case where the litigants has alternative remedy of appeal, revision, review etc. It is a self imposed restriction. But, direct writ petition can only be entertained by the Court in the matter where against the impugned order the litigants have efficacious alternative remedy available of appeal or revision in exceptional cases. The litigant who directly files a petitioner in a service matter where statutory right of appeal is available, has to make out a exceptional case. Only in case, where Court is satisfied on the basis of the material produced by the litigant on the record that it is exceptional case it may entertain direct writ petition and not as a rule as what it is contended and claimed by the petitioners. The petitioner have not made out any case of exceptional nature where this court may permit them to avail this extraordinary remedy in the case where statutory right of appeal is available against the impugned order infact it is to be stated in the petition. But on the other hand the petitioners have made a wrong statement of fact that they have not alternative remedy in the matter.

8. The learned counsel for the petitioners contended that in case the petitioners now file an appeal before the tribunal than same is likely to be dismissed on the ground of limitation. Though this apprehension may not be without merits and substance. But the Court in a case where the litigant has filed writ petition within the period of limitation prescribed for filing of the appeal before the tribunal in the service matter against the impugned order may direct the tribunal to decide the same merits. This writ petition has been filed by the petitioners after expiry of the period of the limitation prescribed for filing of the appeal before the tribunal. The learned counsel for the petitioners admits that this petition is filed after expire of the period of limitation prescribed for filing appeal before the tribunal. The delay in filing of the appeal now before tribunal may be in three parts. Firstly the delay made till day of the filing of the writ petition. Second from the date of filing of the petition to the date of the decision of the writ petition. Thirdly from the date of decision in the writ petition to the date of filing of the appeal before the tribunal. So far as the "first part of the delay is concerned for condonation therefore discretion lies with the tribunal to consider the matter

accordingly. For this, second part of delay is concerned, may not be in all the cases, the court may direct the tribunal not to dismiss the appeal if filed for this delay in filing thereof before it. Re third part is concerned the Court may direct the Tribunal not to dismiss the appeal for this delay in case the same is filed within time given by the Court for the filing thereof before it.

9. So far as to the second preliminary objection regarding non- joinder of the necessary party is concerned, the respondents are free to raise it before the tribunal if the appeal is admitted.

10. Now last preliminary objection raised re-maintainability of the Joint writ petition is to be considered. The petitioners have distinct, serparte and individual cause of action as it is a service matter. A joint writ petition may be permitted so as to avoid the large number of filing of the identical matters but it cannot be permitted on one set of court fee. In case litigants are interested as well as to avoid the number of identical matters so as to unnecessarily burden the work of the registry and the Court a joint writ petition may be permitted but the state revenue cannot be permitted to be suffered. In case where joint writ petitions is filed the Registry should take all care and caution that the petition is filed on proper court fee or proper court fee is paid. The court fee on the petition is to be the amount which is payable in the petitions which are to be filed by the petitioners individually. Here there are 5 petitioners and they have to pay court fee which is payable on the 5 writ petitions.

11. In the result, this petition is dismissed only on the ground of availability of efficacious alternative remedy to the petitioners. However, it is expected from the tribunal that in case appeal is presented within one month before it, it may not be dismissed only on the ground of limitation the period from the date of the presentation of the writ petition i.e. 29.8.97 to date. However, so far as the period from the date of the impugned order to the date of the presentation of the writ petition i.e. 29.8.97 to date. However, so far as the period from the date of the impugned order to the date of the presentation of the writ petition is concerned, if it is not within limitation, the petitioner is free to file application for condonation of delay and that application is expected to be considered in accordance with law.

12. The petitioners have not paid the full court fee payable on the joint writ petition. The petitioners are directed to pay 4 sets of court fee more forthwith. The registry is directed to not to give certified copy of this order to any of the petitioners until they have paid 4 sets of court fee in the matter.