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**(1999) 11 RAJ CK 0006**  
**In the Rajasthan High Court**  
**Case No : S.C.A. No. 1176 of 1999**

Laxman Singh Verma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 05-11-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Rajasthan Co-operative Societies Act, 2001 — Section 32

**Citation :** (2000) 3 LLJ 685 : (2000) 1 RLW 449 : (2000) 2 WLC 11

**Hon'ble Judges :** N.N. Mathur, J;A.K. Singh, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

N.N. Mathur, J.—Heard Mr. Mridul, learned counsel for the appellant.

2. This special appeal is directed against the judgment of the learned single Judge dated August 4, 1999 dismissing the writ petition on the ground of availability of alternate remedy by way of statutory appeal against impugned order dated February 3, 1990 passed by the Joint Registrar, Co-operative Societies.

3. Few necessary facts are that petitioner came to be appointed as Lower Division Clerk in the Minor Irrigation Project of the Govt. of Rajasthan, which was to be operative under the respondent Chittorgarh Prathmic Sahakari Bhoomi Vikas Bank Limited by order dated April 22, 1981. He was initially appointed for a period of sixty days, which was extended for further sixty days by order dated June 26, 1981. Before the expiry of sixty days by order dated August 24, 1981 (Annexure3), he was allowed to continue in service till the sitting of the selection committee or availability of surplus personnel or selected personnel, whichever is earlier. A direction was issued by the Project Director (Monitoring), Co-operative Department, Govt. of Rajasthan, that the Bank may take steps for absorption of the employee becoming surplus on account of abolition of one post of Lower Division Clerk. The Bank was also informed that after September 30, 1984, no

grant shall be paid for the posts abolished.

4. The say of the petitioner is that the Project Director (Monitoring) by letter dated March 21, 1985, invited the attention of the Project Officer and Secretary to the respondent Bank to the fact of one Lower Division Clerk becoming surplus and to the direction that such employee may be absorbed in the service of the Bank. The Project Officer was to take a decision in that regard and inform the Director. The matter was, accordingly, processed and a proposal was worked out to the effect that petitioner may be adjusted against the available vacant post in the Bank. However, the formal order was not issued in pursuance to the aforesaid order till it came to be resolved vide resolution No..... February 3, 1990 that the petitioner be absorbed on the post of L. D. C. in the respondent Bank. It appears that the Joint Registrar, Co-operative Societies, vide order dated April 1, 1991, rescinded the resolution of the Bank dated February 3, 1990 having found it contrary to financial interest of the respondent Bank and beyond its powers. The said order was passed by the Joint Registrar in exercise of the powers conferred upon him u/s 32 of the Rajasthan Co-operative Societies Act. It appears that the resolution of the Bank was rescinded by the Joint Registrar after hearing the respondent Bank. This fact, is evident from reading of the order dated April 1, 1991 (Annexure 10), In view of this, by order dated May 6, 1991, the Secretary of the Bank withdrew the petitioner from the service of the Bank. He was reverted to the Project Staff. Petitioner has also raised controversy with respect to revision of pay scale relying on the award of Industrial Tribunal dated December 23, 1978 under the Heading "Regarding Settlement". Petitioner has taken diversion stating facts and raising contentions in paras C/1 to C/11 with respect to revision of pay scale. The petitioner has prayed for the following relief:

"by an appropriate writ, order or direction - Order of Joint Registrar dated February 3, 1990 (Annexure 10) may be declared to be invalid and may be quashed so also order consequent thereto being dated May 6, 1991 (Annexure 11) made in respect of the petitioner."

By Annexure "10 dated April 1, 1991, the resolution of the Bank whereby the petitioner was absorbed, has been rescinded and by Annexure 11 dated May 6, 1991, petitioner has been withdrawn from the Bank Services and continued under the Project of the State Government. It appears that petitioner has deliberately chosen not to be clear with a view to take advantage of confusion.

5. Two separate replies were filed, one on behalf of the respondent Nos. 1 and 3 and another on behalf of the respondent No. 2. A preliminary objection was raised that the petition is not maintainable as the petitioner has an efficacious alternate remedy u/s 124 of the Rajasthan Co-operative Societies Act, 1965. It was also averred that the petitioner did not possess the minimum qualification for absorption on the post of clerk in the bank, as he did not fulfil the minimum qualification for appointment on the post of clerk. The reliance was placed on Annexure R/1, wherein the minimum qualification provided is that a person should be a graduate with typing speed of 30 words per minute, whereas the

petitioner is simply higher secondary pass and as such, did not possess the minimum qualification. It is also averred that petitioner has been successful in misleading the Court by referring similar writ petitions in which grievance with respect to pay scale have been raised. It is also averred "the petitioner persuaded this Hon"ble Court to admit the writ petition and grant same order which has been made in those writ petitions and on this ground alone, the writ petition filed by the petitioner deserves to be dismissed". It may be stated that in paras 1 and 2 of the writ petition, reference has been made to similar writ petitions pending before the Division Bench. The instant writ petition was filed as single Bench Petition.

6. When the matter came up for hearing before the learned single Judge, the learned counsel for the respondent Bank pressed the preliminary objection with respect to the maintainability of the writ petition as the statutory appeal is provided u/s 124 of the Rajasthan Cooperative Societies Act. It was contended on behalf of the petitioner that as the petition was pending for last several years, the statutory appeal had become time barred. In view of that submission, the learned single Judge protected the petitioner by directing that if the memo of appeal is presented before the appellate authority within a period of six weeks, the same shall be entertained and decided on merits without going into the technical objection of limitation. A further direction has been given to dispose of the appeal within a period of eight weeks.

7. Assailing the judgment of the learned single Judge, it is contended by Mr. M. Mridul, senior advocate, that an alternate remedy cannot come in the way of maintaining a writ petition in a case where the principles of natural justice stand violated. In support of the contention, reliance is placed on certain decision of the Apex Court viz (i) State of U.P. v. Mohammed Nooh AIR 1958 SC 86 A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, (3) Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, (4) Andhra Industrial Works Vs. Chief Controller of Imports and Others, (5) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . It is also contended that once a petition has been admitted and is at the stage of hearing, it cannot be thrown out on the ground of alternate remedy. Learned counsel has placed reliance on various decisions, reported in (1) The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, (2) Dr Bal Krishna Agarwal Vs. State of U.P. and Others, and (3) L. Hirday Narain Vs. Income Tax Officer, Bareilly, Learned counsel has also relied on some of the decisions of this Court in (1) 1997 WLR 46: 1996 (2) RLW 188; (3) 1996 WLR 321; (4) 1994 (2) WLC 116; (5) 1994 WLR 25; (6) 1991 WLR 21; and (7) ILR (1979) Raj 515,

8. It is no more res integra that when an alternate and efficacious remedy is available to a person, the High Court should not invoke its extraordinary jurisdiction under Article 226 of the Constitution, except in a case where the order complained of is wholly without jurisdiction or has been passed in total

breach of principles of natural justice. All the cases of the Apex Court, referred by the learned counsel, have been considered by a Constitution Bench of five Judges of this Court in *Gopi Lal Teli Vs. The State of Rajasthan and Others*, In view of this, it is not necessary to deal with all the cases earlier to year 1995. Suffice it to say that the Court held that normal rule is that an employee should avail remedies provided under the Act and entertainment of a writ petition by the Court under Article 226 of the Constitution of India without exhausting the remedy should be with great care and caution and in very exceptional cases.

9. Learned counsel has not addressed either before us or before the learned single Judge as to how the impugned order is in violation of the principles of natural justice or without jurisdiction. Be that as it may, the Joint Registrar by the impugned order has rescinded the resolution of the Bank after giving an opportunity of hearing to the Bank in exercise of powers conferred by Section 32 of the Rajasthan Co-operative Societies Act, No opportunity of hearing was required to be given to the petitioner.

10. Learned counsel has pressed into service and argued vigorously the second limb of the contention that once a petition has been admitted and is at the stage of hearing, it cannot be thrown out on the ground of alternate remedy, The first case relied upon by the learned counsel is *Dr. Bal Krishna Agarwal v. State of U. P.*, (supra). In the said case, there was a dispute with respect to the inter se seniority between all the teachers appointed by way of direct recruitment and by way of personal promotion. Though, there was a remedy available to the writ petitioner u/s 68 of the U. P. State Universities Act, the Supreme Court held that as the question involved a pure question of law and even if the matter as referred to the Chancellor u/s 68 of the Act, it was bound to be agitated in the Court and, as such, the learned single Judge of the High Court was in error in rejecting the writ petition on the ground of alternate remedy when it was pending before the High Court for last more than five years. Nothing is shown what was the pure question of law involved in the instant case, which could not have been decided by the appellate authority. In view of this, the said decision is of no help to the petitioner.

11. The next case relied upon is *Commissioner of Income Tax v. U.P. Forest Corporation*, (supra). We have gone through the said judgment, In the said case the assessee U. P. Forest Corporation during the course of assessment, claimed exemption from levy of tax having claimed the status of a local authority. The claim was rejected and the Authority taxed it in the status of "artificial jurisdictional person" for the Assessment Years 1977-78, 1980-81 and as Company for the year 1984-85. The Commissioner of Income Tax relied on a decision of the Apex Court in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, in which it was held that the Forest Corporation was not a local authority. The Corporation instead of following the procedure prescribed by way of reference u/s 256 of the Income Tax Act, approached to the High Court in a writ petition under Article 226 of the Constitution of India. The writ petition was

entertained and allowed. The matter was carried to the Apex Court and it was contended that the Corporation should have availed the alternate remedy open under the Act and the writ petition ought to have been dismissed on the ground of alternate remedy available. The contention did not find favour for the reason that it was too late particularly when the writ petition was allowed by the learned single Judge and the litigation continued for number of years and further that the assessment pertained to 1977-78 and after the judgment of the High Court, the Assessing Authority was still required to examine the question as to whether the Forest Corporation was entitled to benefit u/s 11(1) of the Income Tax Act. This case is of no assistance to the petitioner.

12. In *Whirlpool Corporation v. Registrar Trade Marks*, (supra), the Court held that the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, of India, in spite of the alternate statutory remedy, is not affected specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. This case is also of no assistance to the petitioner as nothing is shown as to how the impugned order of the Joint Registrar is without jurisdiction.

13. In *Tin Plate Co. of India Ltd. Vs. State of Bihar and Others*, the Court observed as under:

"5. In the present case, in view of the observations made by the High Court, the Appellate Authority has rejected the appellant's appeal at the threshold and the appellant has been left without any remedy under the law. In such circumstances, we are of the view that the observations made by the High Court in its judgment on merits of the case was totally uncalled for and deserves to be set aside. Consequently, we set aside the observations made by the High Court in the judgment under appeal to the extent they relate to the merit of the case which was the subject-matter of appeal before the Sales Tax Appellate Authority. Since the Appellate Authority under the Act observed that delay could have been condoned and also the fact that the appellant has deposited 20% of the tax, we set aside the order of the Appellate Authority dated June 22, 1996 and restore the appeal to the file of Joint Commissioner of Commercial Taxes (Appeals), who shall decide the appeal expeditiously on its own merit without being influenced by any of the observations made by the High Court in the writ petition."

14. Learned counsel has submitted that a Full Bench decision of this Court in *Gopi Lal Teli's case* (supra) has been distinguished by a Division Bench of this Court in *Deepak Kumar Kivsara v. Oil India Ltd.*, (supra). In the said case, the writ petition was admitted in the year 1990. It came up for final hearing in the year 1995. The parties submitted written submissions and it was argued for three consecutive days. The learned single Judge after hearing the writ petition in great detail on merit rejected the petition by a cryptic order on the ground of availability of alternate remedy. The Division Bench has rioted the proceedings before the learned single Judge as follows:

"The learned single Judge, who took up the writ application for final disposal cryptically made an observation inter alia to the effect that since an alternative remedy was available and a Full Bench decision was there, the writ application stood rejected. This was done after a full-throated hearing of the case when the writ petitioner-appellant submitted his written arguments and argued the matter for three consecutive days. While one of the learned single Judges was promoted to decide the writ application on merits and did not refer the writ petitioner to his alternative remedy, it was rather sad that the learned single Judge (B. J. SHETHNA J.) ultimately refused to go into the merits and took resort to the Full Bench decision of this Court and passed such a judgment in a cryptic fashion."

15. The said case has no application to the facts of the present case inasmuch as the learned single Judge has rejected the writ petition on the ground of alternate remedy without hearing the case on merits,

16. Thus, we are of the view that no broad proposition can be laid down that in all cases, where a writ petition has been admitted under Article 226 of the Constitution of India, the Court will have no discretion at the time of the final hearing to relegate the petitioner to statutory alternate remedy available. The writ petition is admitted ex parte. It is always open to the respondents to resist the writ petition on all available grounds including the ground of maintainability of the writ petition on the ground of efficacious and alternate remedy available under the statute. It is for the Court to consider exercising the sound judicial discretion as to whether at a particular stage, petitioner should be heard, notwithstanding the existence of alternate remedy or not. No inflexible rule can be laid down in this regard. It is a mere matter of expediency. Normally where complaint is made against any act done or purported to be done under any statutory provision, the fact that there exists in the Statute itself a possible remedy is an important fact to be taken for consideration and the Court will be extremely reluctant to interfere by way of high prerogative writ. Thus, it is essentially a question of fact to be decided in each case. Suffice to say that the tendency to bypass alternate remedy must be discouraged and no body should be permitted to take advantage of his own wrong. In the instant case, the respondents at the earliest by filing the reply raised a preliminary objection with respect to the maintainability of the writ petition on the ground of alternate remedy. Petitioner got the writ petition admitted saying that similar writ petitions have been admitted. It is also to be noticed that though the learned single Judge could have straightway rejected the petition upholding the preliminary objection that the writ petition was not maintainable in view of the statutory alternate remedy available, has protected the writ petitioner by giving a direction that if the appeal is filed within six weeks, the same shall be decided on merits expeditiously within a period of six weeks without taking the technical objection of limitation. In our view, in the facts of the case, learned single Judge was justified in relegating the petitioner to statutory alternate remedy. While doing so, learned Judge has considered expedient to protect the petitioner, by giving appropriate direction. There is no obligation on the Court to give such protection,

as such, it cannot be taken as precedent. It depends upon the facts of each case. Thus, the order of the learned Judge calls for no interference by us.

17. In view of the aforesaid, we find no merit in this special appeal and the same is accordingly dismissed in limine. However, we extend the protection given by the learned single Judge to be computed from the date of this order.