
(2001) 11 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 799 of 1997

O.P. Khairari

APPELLANT

Vs

Rajasthan State Co-operative Spinning and Ginning Mills
Federation Ltd. and Another

RESPONDENT

Date of Decision : 24-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 RLW 572 : (2002) 4 WLC 448

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

Bench : Single Bench

Advocate : Ashok Mishra, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Keshote, J.—Heard learned counsel for the parties.

2. In the reply to the writ petition the respondents have raised a preliminary objection that in the writ petition number of the disputed question of facts are involved and for adjudication thereof the evidence is necessary and this petition is not the appropriate remedy. Second preliminary objection has been raised that this petition has been filed after considerable delay. The Court has also put the learned counsel for the petitioner that in such matters the petitioner has efficacious alternate remedy by way of raising the industrial dispute or raising a dispute u/s 75 of the Rajasthan Co-operative Societies Act.

3. Learned counsel for the petitioner fairly conceded that in the matter the petitioner has efficacious alternate remedy u/s 75 of the Rajasthan Co-operative Societies act but what he contends that this petition has been admitted and is pending for the last more than four years, the petitioner at this stage may not be relegated to the alternate remedy.

4. So far as the alternate remedy for raising the industrial dispute is concerned, learned counsel for the petitioner submitted that this remedy is not available to

the petitioner as the petitioner is not a workman. However, it is not disputed that the respondent No. 2 is an industry.

5. It is next contended that the respondents have not raised this objection re-the maintainability of the petition on the ground of the availability of the alternate remedy to the petition and this Court may not relegate the petitioner to the alternate remedy.

6. It is true that this petition has been admitted and pending for all these years but I do not agree with the contention of the learned counsel for the petitioner that as the other side has not raised the objection re-the maintainability of the writ petition on the ground of availability of alternate remedy this petition cannot be dismissed on this ground. It is the duty of the petitioner as well as the requirement of the Rajasthan High Court Rules that the petitioner has to state in the writ petition that he has no other alternate remedy except to approach this Court by way of the petition in the matter.

7. In para No. 29 of the writ petition, the petitioner has stated that he has no alternate efficacious remedy in the case. That averment made by the petitioner is absolutely incorrect and in fact it amounts to suppression of material and important fact from the Court. As per the petitioner's own case in the matter that is a service matter the petitioner has efficacious alternate remedy available of raising the dispute u/s 75 of the Rajasthan Cooperative Societies Act but this has not been stated. In a case where the litigation has efficacious alternate remedy available in the matter and where it chooses to file writ petition directly in this Court it is a legal obligation upon him to disclose this fact and give the exceptional circumstances to justify his direct approach to the court by the petition. The alternate remedy if it is there in the matter it has to be availed of first by the litigant. It is not a constitutional bar but it, is a self imposed restriction and only in exceptional cases the litigant can be permitted to bypass or circumvent the efficacious alternate remedy available in the matter. It has to be specifically mentioned by the petitioner that for the given exceptional reasons and grounds this alternate remedy may not be taken to be a bar to entertain the petition.

8. In this petition the petitioner has not given out the exceptional reasons which may justify his direct approach to this Court by this petition in a matter where undisputedly he has efficacious alternate remedy of raising of the dispute u/s 75 of the Rajasthan Co-operative Societies Act.

9. It is difficult to accept as a rule as that the petition has been admitted the Court has no jurisdiction to relegate the petitioner to the alternate remedy though undisputedly available to him. Similarly it is also difficult to accept as a rule that where the respondents have not raised this objection the Court cannot itself raise this objection. When the matter is placed before the Court for admission or final hearing it is within its jurisdiction to look into the matter and where it is satisfied that efficacious alternate remedy is available in the matter and looking

to the facts of this case that remedy has to be availed of first it is always permissible and open to it to relegate the litigant to that remedy.

10. Here in this case if we go by the facts of this case seriously disputed question of facts involved and for adjudication thereon the evidence may be necessary. Under Article 226 of the Constitution this Court is not recording the evidence. This objection has been raised by the respondents in the reply to the writ petition, reference of which has already been made earlier. It is really a very seriously disputed question of fact whether in the fact and circumstances of the case the resignation submitted by the petitioner from the service could have been accepted or not by the respondents. Similarly, it is also a highly disputed question of fact for what benefits the petitioner would be entitled in the matter.

11. The petitioner very artistically drafted the petition. The action of the respondents to accept the resignation of the petitioner has not been challenged. The prayer has been made to continue the petitioner with all the consequential benefits. What is means and it is to be conveyed it is difficult to understand by the Court. In sum and substance the real grievance of the petitioner seems to be and it appears to be that his all claims be paid to him along with the encashment of 158 days earned leave with interest. It appears from this prayer that the petitioner is praying for that it may be considered the case of his voluntary retirement from the services.

12. For what benefits the petitioner may be entitled and what ultimately will be the quantum thereof are seriously disputed questions of facts and the same can only be decided after taking the evidence of the parties.

13. Looking to the fact of this case I am satisfied that the remedy of raising the dispute u/s 75 of the Rajasthan Cooperative Societies Act is only appropriate remedy in the matter. It is a case where for the petitioner's own benefit the Court has to relegate him to this remedy.

14. I am also satisfied that it is a case where the petitioner has another efficacious alternate remedy of raising the industrial dispute. This remedy is available to the petitioner and it is incorrect to contend by the learned counsel for the petitioner that the petitioner is not a workman. In the writ petition the petitioner nowhere stated that he is not a workman.

15. On being put by the Court otherwise also learned counsel for the petitioner utterly failed to satisfy also how the petitioner is not a workman. The petitioner cannot be a Judge in his own cause. The learned counsel for the respondents states that the petitioner is a workman.

16. Having gone through the writ petition and the fact that the petitioner has not claimed himself to be not a workman I am satisfied that the petitioner is a workman and he has efficacious alternate remedy available of raising the industrial dispute in the matter. This petition is not maintainable on this ground also and reference here may have to the larger bench decision of this Court in

the case of Gopi Lal Teli v. State of Rajasthan and Ors. (1).

17. Each case is to be decided on its own facts and in the facts of this case the decisions on which the reliance has been placed by the petitioner are of little help to him and it is not necessary to refer, all those decisions, reproduced and discussed. This matter is squarely covered by the larger bench decision of this Court in the case of Gopi Lal Teli (supra), which has binding effects.

18. In fact after the decision of the larger bench of this Court in the case of Gopi Lal Teli (supra) this petition should not have been filed or if it is filed the reasons are to be stated to bring it from the clutches of the decision of the larger bench.

19. In the result this petition is dismissed only on the ground of availability of two alternate remedy to the petitioner that is one raising of the dispute u/s 75 of the Rajasthan Cooperative Societies Act and second raising of an industrial dispute under the Industrial Disputes Act, 1947.

20. In case the petitioner files the reference application u/s 75 of the Rajasthan Cooperative Societies Act within a period of two months from today the same may not be dismissed on the ground of delay and laches or limitation but is to be decided on merits. In case where the petitioner decides to raise the industrial dispute it is expected from the State Government on failure of the conciliation to make a reference thereof expeditiously say within two months from the date of receipt of the failure report. In the facts of this case no order as to costs.