

(2012) 10 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1208 of 2012 with Civil Miscellaneous Stay Application No. 12081 of 2012 in Civil Writ Petition No. 7734 of 2010

State of Rajasthan and Another

APPELLANT

Vs

Rukasana Ansari and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2012) 10 RAJ CK 0007

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : S.N. Kumawat, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

1. Learned counsel for the appellants submitted that similar special appeals involving identical questions of law, have been dismissed with liberty to file review petition before the Single Bench, after hearing both the parties, and with a further direction that in case the review application is filed within a period of 15 days, then the same be treated as within time. Therefore, the present appeal may also be dismissed with the same liberty to file review petition before Single Bench. The order dated 3.9.2012 passed by the Coordinate Bench of this court in connected Special Appeal i.e. D.B. Civil Special appeal (Writ) No. 198/2012, State of Rajasthan & another Vs. Suman Kumari and other similar 21 special appeals, is reproduced as under :.

There is delay in filing the appeals.

For the reasons stated in the applications, delay in filing the appeals is condoned. Applications u/s 5 of the Limitation Act stand disposed of.

Other defects are waived.

Heard finally with the consent of learned counsel for the parties.

It is submitted by Shri S.N. Kumawat, Additional Advocate General appearing on behalf of appellants that no agreement was made by the Counsel appearing on behalf of the State of Rajasthan before the Single Bench. He also submitted that even otherwise in view of decision of Hon''ble Apex Court in SLP(C) No. 6037/1999-State of Rajasthan Versus Sushil Sharma, relief could not have been extended even on the basis of wrong concession, as recorded, which has been extended and was not permissible and the State Government is not ready to accept the aforesaid decision because plea of discrimination is not available so as to seek treatment which is not permissible, in accordance with law. Plea of discrimination is permissible only in the cases where similar treatment is claimed in the eye of law i.e. with respect to treatment in accordance with law, not to perpetuate the illegalities. Decision of Apex Court in the case of Sushil Sharma(supra), has also been referred in the order passed by the Single Bench, in which it has been held that two wrongs don't make a right. Merely because some other officer has been given an unwarranted favour can be no ground for the rules being allowed to be violated and payment made out of the public exchequer when it is not due while allowing these appeals, we should also expect the applicant state to see that rules are not circumvented or violated as seem to have been done in cases other than those of the respondents.

In view of the aforesaid observations made by the Apex Court in the case of Sushil Sharma(supra), we prima-facie find that concession which has been granted, is against the decision of Apex Court and plea of discrimination is required to be re-examined by the Single Bench. The Single Bench ought to have dealt with the matter on merits. Prima-facie, good case for reviewing the order is made out.

As such, Shri Kumawat, Additional Advocate General appearing on behalf of appellants, has prayed for liberty to withdraw the present appeals and to file review applications before the Single Bench and also to file fresh appeal, in case necessity so arises, against the impugned order and against the order which may be passed by the Single Bench in review applications, in case it is against the appellants.

Liberty, prayed for, is granted.

The special appeals are, accordingly, dismissed as withdrawn. Stay applications also stand dismissed.

Review applications to be filed, as agreed by the Counsel appearing on behalf of the parties, shall be treated within the period of limitation, in case they are filed within a period of 15 days from today.

For the same reasons, liberty and directions given in the above-referred connected Special Appeal, the present special appeals as well as stay applications are also dismissed. The applications u/s 5 of the Limitation Act stand

disposed off.

The registry is directed to place on record a copy of this order in each connected file.