

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPSS No.1676 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Vinay Bhatt, Advocate, for the petitioner. Mr. Sachin Mohan Singh Mehta, Standing Counsel, for the State of Uttarakhand/respondents. The brief facts of the case are that this is the second phase of litigation, which the petitioner has ventured on, on the pretext of the impugned judgment, which has been rendered on the representation which was preferred by the petitioner in pursuance to the direction issued by the coordinate Bench vide its order dated 08.12.2022. When the petitioner earlier approached the writ court for akin relief, as back as in the year 2019, he sought a relief that his services as a Cook in Uttar Pradesh Academy of Administration, over which he claims to have been working since 1993, he sought his services to be regularized. The matter was contested by the Standing Counsel. They have filed the counter affidavit, and their claim was opposed on the ground, that since the petitioner was only engaged in 1997, thus in order to meet out the administrative exigency of the work, and because he has never worked continuously against a post of the approved cadre. Therefore, he was not entitled for being regularized, but for the reasons best known to the petitioner when the pleadings were exchanged in the writ petition, he should have pressed his writ petition on merits rather than himself seeking a direction to get the representation decided. The orders directing to decide the representation are rather acting as a menace in multiplying the litigations. Because an issue

			which could have been otherwise resolved at the first stage when the writ petition was preferred, is being cumulatively instituted before the court for the redressal of the same grievances, and this Court is of the view that once the petitioner has filed the writ petition for regularization earlier and the pleadings have been exchanged, he ought to have attracted the court to pass an order on the merits, rather than opting out to get the representation decided, which is a non statutory in nature. Because even otherwise also the coordinate Bench of the Allahabad High Court has observed that when there is a direction to decide the representation by the High Court, there are two aspects which will be falling into picture for consideration, (1) that the petitioner has waived off to press his relief on merits when he earlier approached the writ court by alternatively seeking a direction to get the representation decided, and thus subsequent filing the writ petition for the same relief would not be sustainable. (2) The coordinate Bench of the Allahabad High Court, has taken a view that once, the petitioner has not pressed the relief on merits, at the first stage when he has filed the writ petition, he cannot resort to a recurring avenue to file a subsequent writ petition in pursuance to the order of rejecting his representation on the pretext that it was giving a fresh cause of action. Fresh cause of action would not be the order, which has been passed on the representation, but rather the cause which was persuaded by him when he filed the first writ petition. Thus, the subsequent writ petition merely on the basis of the representation having being rejected would not be maintainable. The said aspect was considered by the Allahabad High Court in the judgment reported in 2004 (5) ALL 231, “Ummed Ali Vs. Deputy Registrar Cooperative Society, Saharanpur U.P. and others”, wherein, the coordinate Bench of the Allahabad High Court in its paragraph 27 has observed, that it is beyond the perception of
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			judicial interpretation, that the petitioner cannot be permitted to recurringly approach the court when he has opted out to make representation and get it decided by the competent authority. The relevant paragraph is extracted hereunder:- “27. For the aforesaid reasons, this Court is unable to give petitioner any relief. The petitioner is severally reprimanded for filing repeated writ petitions and making these representations to this Court. The time has now come that the petitioner must be stopped from filing any further writ petition in this Court unless he discloses the entire background with any fresh cause of action to maintain the writ petition. The writ petition is accordingly dismissed with Rs. 10,000/- as cost against the petitioner and with a warning that any further filing of the writ petitions on the same cause of action will be treated to abuse of the process of the Court, and in such case the Court will be constrained to draw proceeding against him for misusing the legal process. In case the petitioner files any further writ petition before this Court, the registry of the Court is directed to put up a report, giving the details of all the earlier writ petitions filed by him and this order. The copy of the order shall be given to the Registrar General of this Court for compliance.” Almost a similar view has been taken by the Division Bench of Allahabad High Court in a judgment as reported in AIR 1994 Allahabad 187, Sri Swatantra Kumar Agrawal Vs. The Managing Director, U.P. Financial Corporation, Kanpur and another, that once a Writ Petition is decided in limine without expressing any
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			opinion on the merits of the matter, filing of the subsequent Writ Petition would not be maintainable in view of Rule 7 of the Rules of the Court to be read with Order 2 Rule 2 of the CPC. Even otherwise also, and as opposed by the Standing Counsel, he contends that the petitioner would not be entitled to be regularized for the reason being, that his appointment with the respondent department was intermittent in nature work was intermittent in nature, and he was not appointed against the cadre post against which he could have been considered to be regularized in pursuance to the alleged Government Policy/Notification dated 21.11.2011. While deciding the representation, the Executive Director has observed that since the petitioner's appointment was not against the regular post, but rather was exclusively temporary in nature, he would not be falling within the zone of the consideration for the regularization as per the Rules of 2011. Another reason, which has been assigned by the Executive Director while passing the impugned order while rejecting the representation is that since the petitioner has not continuously, worked thus too as per the parameters provided under the Rules of 2011, the period rendered by him for a very short span of time, will oust him from the purview of the Rules as notified on 21.11.2011 to be considered for regularization. The concept of the regularization is only when a person is appointed as against the sanction cadre post where after following the parameters which are required to be considered for appointment are the qualification, eligibility and resort to the process of the selection provided under the Rules, its then only would be permitting a regularization of the candidate. A person who is not appointed against the cadre post or who has been appointed exclusively on the basis of an arrangement made by the respondent to meet an exigency of work, would
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			amount to be a back door entry and the same cannot be permitted to be regularized under the Rules of 2011, as it would be in absolute contravention to the judgment of the constitution Bench of the Hon'ble Apex Court as rendered in Secretary, State of Karnataka and others Vs. Umadevi and others, because such type of an appointment if it is permitted to be regularized it will amount to be a back door entry and would be in violation to the Article 14, to be read with Article 16 of the Constitution of India, because such type of the induction into the services would be at the cost of the other eligible candidates, who could have been considered for appointment. Had the regular process of the appointment was resorted to by the respondent by holding the regular selection process as prescribed under the Rules. The process of the regularization cannot act as a substitute to override the process of the regular recruitment, after facing the selection process and after satisfying the eligibility conditions. Thus, the reason which has been assigned in the impugned order of 25.01.2023, does not suffer from any irregularity as such because the petitioner has only worked for an intermittent stage and for intermittent period, and not against the cadre post, his regularization cannot be considered in the light of the judgment of the Constitution Bench in UmaDevi Case. Hence, the writ petition lacks merit and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) 14.09.2023 NR
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