

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. 1736 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Vijay Bhatt, Advocate, for the petitioners. Mr. Narayan Dutt, Standing Counsel, for the State of Uttarakhand. The facts of the case are, that the petitioner had earlier approached the Writ Court by filing Writ Petition (S/S) No. 2221 of 2022, praying for the following reliefs :- <i>“I. Issue a writ, order or direction in the nature of mandamus directing the respondents to pass appropriate order (s) to adjust the Petitioners on the Respective posts of Assistant Teacher LT Grade in the college, as provided in Government Order dated 4.8.2015 (Annexure no. 3), and to pay the Petitioners as per the prescribed pay scale against their posts, as is being paid to other regular Assistant Teacher LT Grade engaged in the college;</i> <i>II. Issue an appropriate writ order or direction to the respondents to pay the arrears of salary, as due per pay scale, with effect from 4.8.2015 with interest at the rate of 8% per annum from the date the same fell due;</i> <i>III. Issue any suitable writ, order or direction, which this Hon'ble court may deem fit and proper on the basis of the facts and circumstances of the case;”</i> For the reason best known to the petitioners and his counsel, who represented their cause at that point of time, the relief which was chosen to be pressed for was for getting a direction to decide the representation. Accordingly, the Coordinate Bench has passed an order to the following effects :- <i>“Accordingly, the writ petition is disposed of with a direction to Secretary, Sanskrit Education to take decision on petitioners’ representations dated</i>

		<i>07.11.2022 & 09.11.2022 (enclosed as Annexure No.11 to the writ petition) as early as possible; but, not later than eight weeks from the date of production of certified copy of this order alongwith copies of representations.”</i> Subsequently, when the representation was considered by the Secretary, the same has been rejected by an order dated 12th June, 2023, which is now the subject matter under challenge and under the garb of the said order, which he has solicited, based on the direction as issued by the Coordinate Bench to decide the representation, this Writ Petition has been preferred. In fact, this principle of getting a direction from the Court to decide the non statutory representation, without pressing the principle relief, would create a bar for filing of the subsequent Writ Petition for the same relief on the pretext that the representation has been rejected. The said principle was considered by the Coordinate Bench of Allahabad High Court in a judgment as reported in 2004 SCC OnLine All 1783, Ummed Ali Vs. Deputy Registrar Cooperative Societies, Saharanpur U.P. and others, wherein in para 27, the Coordinate Bench in its specific terms has observed, that the petitioner should not be permitted to take recourse for filing the consecutive writ petition for the same cause of action and relief, when she has earlier approached the Writ Court for the same relief and has opted out to get the representation decided without pressing the principle relief. Relevant para 27 is extracted hereunder :- <i>“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</i>
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			<i>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.”</i> Not pressing of the principle relief by the petitioners at the first available opportunity would attract the provisions as contained under Order 2 Rule 2 of the CPC, which is principally applicable in writ jurisdiction. In fact, it was at the first stage, when the petitioners should have pressed their relief on merits. Having not done so, the principle of waiver will come into play. 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 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. In fact, this aptitude, which is being adopted by the litigants of getting the Writ Petition decided with a direction to decide the representation, in fact, it is an abuse of the process of law, and it burdens the litigants and the Court too with the litigation, on the subsequent decision being taken by the respondents on the same subject. It has often come to the notice of the Court, that the petitioners, who press the Writ Petition limited to the extent of deciding the representation, in fact, before filing the Writ Petition, they have already negotiated with the officers for deciding an issue, which they are otherwise not legally entitled to receive under law, and under the garb of the direction to decide the representation, the officers
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			who are in collusion with the petitioners, they for the purposes of their motivation due to illegal gratification, they pass an order on the representation in favour of the petitioners on the basis to satisfy the superior authority, that they were helpless because of the directions issued by the High Court to decide the representation. Thus, this system of disposing of the Writ Petition to decide the representation has to be curbed because, apart from the fact, it burdens the litigants and it burdens the High Court with the cases. Further, it burdens the State and its authorities to get the liberty to adopt all recourses of corruption, which stands increased by this attitude of directing to decide the representation in a Writ Petition. There could not have been an argument extended by the learned counsel for the petitioner, that it is a fresh cause of action, and hence, the Writ Petition would lie. But the issue would be, that one who has solicited this fresh cause of action to be attracted based upon a direction to get the representation decided is for same cause, which rather facilitates corruption for the above reasons. The petitioners cannot take an advantage of their own wrong. He ought to have addressed before the Court, when they had first approached for the first time on merits of the matter and should have solicited the judgment on merits. Having not done so, they cannot under the garb of an order passed on the representation, file a subsequent Writ Petition for the same cause of action. In view of the above, I do not find that this Writ Petition would at all be tenable, because in the light of the principles of waiver or not pressing the relief No.II, which was akin to the one pressed in the earlier Writ Petition, the provisions and principles of Order 2 Rule 2 would be attracted. Thus, the Writ Petition lacks merits owing to the above, and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) Dated 14.09.2023 Shiv
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