

Rameshwarlal

Vs

Municipal Council, Tonk and Others

SLP (C) No. 16339 of 1996

(B. L. Hansaria, K. Ramaswamy, S. B. Majmudar JJ)

27.08.1996

JUDGMENT

1. The petitioner claims that he has been denied salary for the period from 10-9-1987 to 18-8-1988. He claims to have worked in the office of the Municipal Council, Tonk. He filed writ petition in the High Court in February 1990. The learned Single Judge held that since it is a claim recoverable in a civil action, the discretionary power under Article 226 of the Constitution is not exercisable. Accordingly, he dismissed the writ petition. The same came to be confirmed in the impugned order of the Division Bench made on 6-5-1996 in Special Appeal No. 218 of 1996. Thus, this special leave petition.

2. It is not necessary for us to go into the question of the legality of the order of the High Court in refusing to grant the relief. It is axiomatic that the exercise of the power under Article 226 being discretionary, the learned Single Judge as well as the Division Bench have not exercised the same to direct the respondent to pay the alleged arrears of salary alleged to be due and payable to the petitioner. Under these circumstances, the only remedy open to the petitioner is to avail of the action in the suit. Since the limitation has run out to file a civil suit by now, which was not so on the date of the filing of the writ petition, the civil court is required to exclude, under Section 14 of the Limitation Act, 1963, the entire time taken by the High Court in disposing of the matter from the date of the institution of the writ petition.

3. Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial court would consider and dispose of the matter in accordance with law on merits.

4. The special leave petition is disposed of accordingly.