

Coram: S.K.Keshote, J.
(22nd December 1995)

Order

None present for the petitioner. Shri D.A.Bhambania, Additional Government Pleader, for the respondent.

2. Shri Bhambania, learned Counsel for the respondent, raised a preliminary objection that this writ petition is not maintainable as the petitioner has an alternate remedy against the order dated 29.9.1994 under which his services were terminated. The petitioner has come up with the case that the order of termination of his service, which has been averred in para 6 of this petition, is passed by way of punishment. Section 56 of the Bombay Provincial Municipal Corporations Act, 1947 has been reproduced. Sub-section (4) thereof provides a right of appeal against the order of penalty of termination/ dismissal inflicted. The order has been passed by the Commissioner of Surat Nagar Nigam. Appropriate alternate remedy of appeal against the said order is available. It is a statutory right of appeal. But the petitioner has not availed of the same. Since the petitioner has a right of appeal, it should have been first resorted to. The petitioner has approached this Court within a period of one month from the date of passing the order, that is, within the period of limitation prescribed for appeal.

3. In the result, this writ petition fails and the same is dismissed on the ground of availability of alternate remedy. It shall be open to the petitioner to file his appeal before the appropriate authority within a period of 15 days from the date of receipt of the certified copy of this order, and in case such appeal is filed, the same may not be dismissed on the ground of limitation as the petitioner has approached this court within the limitation period prescribed for appeal. Rule is discharged. No order as to costs.

22nd December 1995

(S.K.Keshote, J.)

