

In the High Court of Judicature for Rajasthan
Jaipur Bench
**

Civil Writ Petition No.777/2001
Bharat Lal Meena **Versus** State & (2) Ors.

Date of Order :: 31/03/08

Hon'ble Mr. Justice Ajay Rastogi

Mr. Dinesh Yadav, for petitioner
Dr. MS Kachhawa, for respondents

Instant petition has been filed assailing order dt.29/01/01 (Ann.6) whereby disciplinary authority imposed penalty of stoppage of one annual grade increment without cumulative effect alongwith recovery of Rs. 7183.25/- in inquiry initiated in pursuance of memo cum notice U/r 17 of Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 ("CCA Rules").

After notices were served, respondents have filed their reply while giving justification for imposition of impugned penalty, and raising preliminary objection that order impugned is appealable U/r 23 of CCA Rules and without availing of efficacious remedy of appeal available to petitioner, he has straight away approached this Court by way of instant petition.

Petitioner has given justification that since disciplinary authority has passed order of recovery and in departmental appeal, there is no

provision of interim stay order against recovery impugned; as such, efficacious remedy is to invoke extra ordinary jurisdiction of this Court.

Merely the appellate authority may or may not grant stay order against recovery impugned, that cannot be a ground to invoke writ jurisdiction. In considered opinion of this Court, once there is an efficacious remedy of appeal available under Rules, this Court ordinarily does not grant indulgence to invoke extra ordinary discretion U/Art. 226 of the Constitution.

Counsel submits that immediately upon passing of the order impugned, instant petition was preferred and period of limitation for filing appeal U/r 23 of CCA Rules by now has expired and if appeal is now preferred, appellate authority may or may not grant relief as claimed for in the appeal on merit.

Consequently, writ petition fails and is hereby dismissed alongwith stay petition. No order as to costs. However, in case an appeal is preferred by instant petitioner before appellate authority under CCA Rules, within sixty days from today, while treating within limitation, it shall be decided on merits expeditiously in accordance with law after affording of hearing to him.

(Ajay Rastogi), J.