
(2011) 06 UK CK 0047

In the Uttarakhand High Court

Case No : Special Appeal No. 114 of 2011

Bhupendra Singh Negi and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 06 UK CK 0047

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—In the writ petition filed by the Appellants, they contended that they entered the service in the Forest Department of the Government before the private Respondents entered the service of the Forest Department of the Government and were also regularized before the private Respondents were regularized. It is their contention that in such circumstances, private Respondents could not be reckoned as senior to the Appellants. It was the further contention of the Appellants that a final seniority list was prepared showing the private Respondents senior to the Appellants and while doing so no tentative seniority list was prepared calling for objections. Appellants further contended that the private Respondents have been given promotion on the basis of seniority while miserably failing to consider the seniority of the Appellants. This writ petition has been dismissed on the ground that in relation to the subject matter of the writ petition, Appellants have an alternative remedy.

2. In the present appeal, it is the contention of the Appellants that alternative remedy is not a bar to exercise of jurisdiction under Article 226 of the Constitution of India and having regard to the facts and circumstances of the case, a legal question has arisen on admitted facts whether, in law, the private Respondents could be treated as senior to the Appellants. We accept the submission made to the effect that existence of an alternative remedy is no bar to exercise of jurisdiction under Article 226 of the Constitution of India. However,

the Court exercise discretionary jurisdiction under Article 226 of the Constitution of India and a Court exercising such jurisdiction would normally loathe to exercise such jurisdiction when alternative and efficacious remedy is available. In the instant case, Tribunal has similar competence and jurisdiction which this Court has, especially in relation to seniority matters. In such circumstances, it would be appropriate on the part of the writ Court to leave the seniority matters either to be decided on law or to be decided on facts to the wisdom of the Tribunal at the first instance.

3. We, accordingly, refuse to entertain the present appeal. However, we feel, in order to allay the apprehension of the Appellants that the matter before the Tribunal may be unnecessarily delayed, it is appropriate on our part to request the Tribunal to decide the controversy to be highlighted by the Appellants in the claim application to be filed by them before the Tribunal as quickly as possible but not later than six months from the date of presentation of the claim application alongwith a copy of this order.