
(2019) 04 UK CK 0117
In the Uttarakhand High Court
Case No : Special Appeal No. 194 Of 2019

Bishan Singh Bariyal	Vs	APPELLANT
State Of Uttarakhand & Others		RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 04 UK CK 0117

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Sandeep Kothari, B.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No.295 of 2019 dated 13.02.2019.
2. The appellant-writ petitioner filed Writ Petition (S/S) No.295 of 2019 on 12.02.2019 seeking a writ of certiorari to quash the order dated 10.08.2017 passed by the respondent-authorities; and to further quash the appointment order issued in favour of the fourth respondent in as much as he was engaged subsequent to the appellant-writ petitioner. The fourth respondent was appointed on a regular basis vide proceedings dated 28.06.2016.
3. In the order under appeal, the learned Single Judge noted that, in answer to the query as to why the petitioner had approached the Court belatedly, the counsel for the petitioner had stated that other persons, who were similarly appointed and posted at other places, were regularized in service; and this fact came to the petitioner's notice at a later stage, under the Right to Information Act, only in 2018. The learned Single Judge observed that this, in itself, would not give him a cause of action to challenge the action of the respondent in dispensing with the services way-back in 2017; the petitioner had slept over his

rights and did not question the order dated 10.08.2017, dispensing with his services, within a reasonable time frame; and the writ petition suffered from laches and was liable to be dismissed. Aggrieved thereby, the present appeal.

4. Mr. Sandeep Kothari, learned counsel for the appellant-writ petitioner, would draw our attention to the information furnished to the appellant-writ petitioner under the Right to Information Act on 10.09.2018, to submit that the appellant-writ petitioner had invoked the jurisdiction of this Court five months after the information was furnished to him; and as such the learned Single Judge had committed a patent error in non-suiting the appellant-writ petitioner on the ground of delay and laches.

5. The information furnished to the appellant-writ petitioner on 10.09.2018 merely states that, in terms of the proceedings dated 30.12.2013, no person was regularized in service in the division in Uttarakashi district. The said proceedings dated 10.09.2018 makes no reference to the appointment of the fourth respondent vide proceedings dated 28.06.2016.

6. As has been noted by the learned Single Judge, in the order under appeal, the appellant-writ petitioner questioned his termination, as a daily wage employee, vide proceedings dated 10.08.2017 more than a year and a half thereafter on 12.02.2019. The appointment of the fourth respondent was even prior thereto on 28.06.2016. In effect the petitioner questioned the appointment of the fourth respondent more than two and a half years after his appointment.

7. In an intra-court appeal, the Division Bench exercises the very same jurisdiction which the learned Single Judge exercises under Article 226 of the Constitution of India. As the learned Single Judge is not a court subordinate, interference by a Division Bench, in an intra-court appeal, would be justified only if the order under appeal suffers from a patent illegality. The order of the learned Single Judge, non-suiting the appellant-writ petitioner on the ground of delay and laches, cannot be said to suffer from any such infirmity.

8. The appeal fails and is, accordingly, dismissed. No costs.