

(2019) 10 UK CK 0073

In the Uttarakhand High Court

Case No : Writ Petition No. 496 Of 2019 (S/B)

Chandra Prakash Sharma And Others

APPELLANT

Vs

Uttarakhand State Public Service Tribunal And Others

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Citation : (2019) 10 UK CK 0073

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Abhijay Negi, S.S. Chaudhary

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Abhijay Negi, learned counsel for the petitioners and Mr. S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand-respondent Nos. 2 to 4.

2. The petitioners, four in number, have invoked the jurisdiction of this Court seeking a writ of certiorari to quash the observations made by the learned Public Services Tribunal from para No.2.9 to para16.3 of its order dated 20.08.2018, and the observations made in the Review Order dated 24.10.2018; and a writ of mandamus to the Public Services Tribunal to proceed afresh in the matter of the applicability of the Government Order dated 06.11.2013.

3. Facts, to the limited extent necessary, are that the petitioners are all directly deputed Rangers in the cadre of Forest Ranger Officers. Some of these directly deputed Rangers invoked the jurisdiction of this Court filing WPSB No.200 of 2018. A Division Bench of this Court, in its order in WPSB No.200 of 2018 dated 27.07.2018, noted that the petitioners were granted higher pay scale in the year 2014 & 2015; the same had been withdrawn by order dated 08.05.2018; their case was that they had neither misled, nor misrepresented or concealed facts,

at the time when the higher pay scale was granted to them; the petitioners had not been issued any show cause notice before reducing their salary by order dated 08.05.2015; and the petitioners had suffered civil and evil consequences, and there was violation of principles of natural justice. The writ petition was allowed, and the impugned orders passed by the Government dated 04.05.2018 and 08.05.2018, and consequential orders, if any, were quashed and set aside with liberty reserved to the respondents to proceed with the matter strictly in accordance with law.

4. Even prior thereto, petitioner Nos.1 to 3 herein, along with another, had filed Claim Petition No.23/DB/2018 and batch before the Uttarakhand Public Services Tribunal, Dehradun which, in its order dated 20.08.2018, held that, in view of the order passed by the High Court on 27.07.2018 (i.e. order in WPSB No.200 of 2018 dated 27.07.2018) neither was there any need, nor were they in a position, to pass any order in respect of the relief sought for in the claim petitions, as the impugned Government Orders dated 04.05.2018 and 08.05.2018 had already been set aside by the High Court with liberty reserved to the respondents to proceed with the matter strictly in accordance with law.

5. The petitioners, thereafter, filed Review Application No.05/DB/2018 before the Public Services Tribunal which, in its order dated 24.10.2018, observed that its earlier order dated 20.08.2018 was a well considered decision which did not require any review on the points raised by the petitioners in the Review Application; the scope of review was very limited, and only a manifest error, apparent on the face of record, could be corrected in review; the Tribunal did not act as an Appellate Court for re-appraisal or re-appreciation of its own judgment in the proceedings under review; even if there were any shortcomings in the judgment of the Tribunal, it would not be corrected in the proceedings under review; and an erroneous decision can only be corrected by a Higher Court. The Review Application was, accordingly, dismissed by order dated 24.10.2018.

6. Pursuant to the earlier order passed by the Division Bench in WPSB No.200 of 2018 dated 27.07.2018, reserving liberty to them to proceed with the matter strictly in accordance with law, the respondents issued a notice on 21.09.2018 calling upon the directly deputed Rangers to show cause why recovery should not be effected. On the very same day i.e. 21.09.2018, an order of recovery was passed questioning which certain of these Directly Deputed Rangers filed WPSB No.31 of 2018 and batch along with an amendment application. A Division Bench of this Court, in its order dated 23.05.2019, held that passing an order on 21.09.2018, on the very same date on which the show cause notice was issued, had denied the petitioners therein a reasonable opportunity to show cause; and, as they were denied a reasonable opportunity of being heard, the impugned orders must be set aside.

7. The Division Bench granted the petitioners therein three weeks' time to file their reply to the show cause notice dated 21.09.2018. The second respondent therein was directed to pass a reasoned order in accordance with law with

utmost expedition and, in any event, within four weeks from the date of receipt of a copy of the representation. Till a reasoned order was passed, on the petitioners' representation, the earlier interim order passed by the Court was directed to be continued. The Division Bench made it clear that, in case the petitioners failed to submit their reply to the show cause notice within three weeks, it would be open to the respondent to proceed and take action in accordance with law both for reduction of the pay scales of the petitioners, and for recovery of the excess amount, if any, paid to them earlier. It does appear that these Directly Deputed Rangers submitted their reply to the show cause notice, and orders of recovery was passed on 31.07.2019, and thereafter.

8. On a few of these employees questioning the orders of recovery passed from 31.07.2019 onwards, a Division Bench of this Court relegated the petitioners therein to avail their remedy of approaching the Public Services Tribunal. We are informed that, while several Directly Deputed Rangers had approached the Tribunal, the petitioners herein have not availed the said remedy as yet. They have now invoked the jurisdiction of this Court contending that no useful purpose would be served in their approaching the Public Services Tribunal, since the Tribunal had already made certain observations, in its order in Claim Petition No. 23/DB/2018 and batch dated 20.08.2018, which are prejudicial to them, though it had disposed of Claim Petition No.23/DB/2018 by its order dated 20.08.2018, holding that, in view of the order passed by the High Court in WPSB No. 200 of 2018 dated 27.07.2018, neither was there any need, nor was the Tribunal in any position, to pass an order, with respect of the relief sought for in the Claim Petition.

9. The Tribunal has merely followed the order of the High Court in WPSB No. 200 of 2018 dated 27.07.2018, and has disposed of the claim petition in terms thereof.

10. While fairly stating that the Tribunal had, in fact, followed the order of the Division Bench of this Court, Mr. Abhijey Negi, learned counsel for the petitioner, would, however, contend that, though the Tribunal had concluded its order by following the judgment of the Division Bench of the High Court, several observations were made, regarding the Government orders dated 04.05.2018 and 08.05.2018, in the body of the judgment which would prejudice the petitioners' case; and, since the petitioners' application for review of the said order has already been dismissed, this Court should consider deleting the observations made in the order of the Tribunal, in as much as these observations would render the remedy of approaching the Tribunal, questioning the order of the recovery dated 31.07.2019 onwards, redundant.

11. The petitioners, in claim petition No. 23/DB/2018, had questioned the validity of the Government Orders dated 04.05.2018 and 08.05.2018. The observations, in the body of the judgment notwithstanding, the Tribunal has acknowledged that both these Government Orders have been set aside by the Division Bench of the High Court. The apprehension expressed before us that the

contents in the body of the judgment may prevail with the Tribunal, while hearing the Claim Petition afresh, is wholly misconceived, since the Tribunal has itself acknowledged that the earlier Government Orders dated 04.05.2018 and 08.05.2018 have been quashed. Since these two Government orders are no longer in existence, the question of the Tribunal placing reliance thereupon would not arise.

12. Mr. Abhijey Negi, learned counsel for the petitioner, would submit that, though the subsequent orders of recovery dated 31.07.2018 onwards do not refer to these Government Orders dated 04.05.2018 and 08.05.2018, their contents are more or less similar.

13. It would always be open to the petitioners to approach the Tribunal and contend that the observations made, in the context of the Government Orders dated 04.05.2018 and 08.05.2018, cannot be relied upon since these Government Orders were quashed by the Division Bench of the High Court on 27.07.2018, even before the Tribunal had passed its order on 20.08.2018. We have no reason to doubt that, on the petitioners invoking the jurisdiction of the Tribunal, and on their raising any such contention before it, the Tribunal would consider the same strictly in accordance with law, and pass a reasoned order thereupon. That would, however, not justify our entertaining the writ petition, and examining the contents of the order of the Tribunal when, even according to the petitioners, the conclusions arrived at by the Tribunal accord with law.

14. Leaving it open to the petitioners to avail their remedy of approaching the Public Services Tribunal, the writ petition fails and is, accordingly, dismissed. No costs.